X—DIPLOMATIC AND CONSULAR RELATIONS

Establishment of diplomatic relations—Albania—Democratic People's Republic of Korea

On 15 September 1984 the Acting Minister for Foreign Affairs, Mr Scholes, issued the following statement (Comm Rec 1984, 1750):

> The Acting Minister for Foreign Affairs, the Hon Gordon Scholes, announced today that the Government of the People's Socialist Republic of Albania and the Government of the Commonwealth of Australia, wishing to develop relations between the two countries, have agreed that diplomatic relations be established at the level of Ambassador. Mr Scholes said that the Australian Ambassador in Belgrade would be accredited to Albania.

The following appeared in an article entitled "Albania: Diplomatic Relations with Australia" published by the Department of Foreign Affairs in *Backgrounder*, No 451, on 10 October 1984, 1–2:

> Australia has recognised the post-war communist government of Albania for many years but, owing to our limited dealings which have been mainly in multilateral fora, Australian Governments have not felt compelled to establish formal diplomatic relations.
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> There is a small Albanian community in Australia, but we have had few direct contacts with Albania. Our trade has been minimal; Albania imports about $10,000 worth of Australian products a year. Although there may be potential for a modest development in bilateral trade, there were other factors which influenced the Government's decision to establish diplomatic relations. A principal reason was that Albania was the only country in East Europe with which Australia did not have diplomatic relations. Albania already has diplomatic relations with 102 countries; although not with our major Western allies, such as the United States, the United Kingdom and Canada, or with any developed English-speaking country.

On 16 October 1984 the Minister for Foreign Affairs, Mr Hayden, said of the Democratic People's Republic of Korea (North Korea) in the course of an address at the University of Sydney (Comm Rec 1984, 2052):

> Diplomatic relations, established in 1974, were interrupted by the DPRK in 1975. In 1983 DPRK agents made their outrageous terrorist attack on President Chun in Rangoon, killing twenty-one people including four ROK Cabinet ministers.
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> It is the Australian Government's view that, in the long term, the DPRK must be bought into a more comprehensive relationship with the region. But DPRK co-operation can only mean something if it starts with the ROK. In the meantime, Australia is not prepared to examine the question of restoring diplomatic relations with Pyongyang until it renounces hostile action against Seoul and abides by internationally accepted norms of behaviour.

Diplomatic and consular relations—Australian embassies and consulates

On 2 October 1984 the Acting Minister for Foreign Affairs provided the following written answer to a question on notice in the Senate (Sen Deb 1984, 1060–1061):

(1) The following changes have been made in Australia's overseas representation for the financial year 1983–84:

Bolivia—Diplomatic relations were established with the Republic of Bolivia. The Australian Ambassador in Chile is accredited on a non-resident basis to the Republic of Bolivia.

Brunei—upgraded representation from a Commission to High Commission in Bandar Seri Begawan following Brunei's Independence.

El Salvador, Honduras and Nicaragua—Diplomatic relations were established with El Salvador, Honduras and Nicaragua. The Australian Ambassador in Mexico is accredited on a non-resident basis to the three countries.

Iceland—Diplomatic relations were established with Iceland. The Australian Ambassador to Denmark is accredited on a non-resident basis to Iceland.

Lebanon—the operations of the Australian Embassy in Beirut were temporarily suspended. The Australian Ambassador in Syria is accredited on a non-resident basis to the Lebanon.

Mauritius—A High Commission was established in Port Louis. Responsibility for conducting Australia's diplomatic relations with Mauritius was transferred from the Australian High Commission in Tanzania.

Nepal—An Embassy was established in Kathmandu. The Australian High Commissioner in New Delhi remains accredited as Ambassador to the Kingdom of Nepal.

South Africa (Cape Town)—The Consulate was closed but a Visa Office remains.

United Arab Emirates—upgraded representation from a Consulate-General to an Embassy in Abu Dhabi.

Yemen—Diplomatic relations were established with the People's Democratic Republic of Yemen. The Australian Ambassador in Saudi Arabia is accredited on a non-resident basis to the People's Democratic Republic of Yemen.

(2)(a) closed—Cape Town but see (1) above; (b) downgraded—Beirut; (c) upgraded—Abu Dhabi; (d) opened—Port Louis (Mauritius): Kathmandu (Nepal).

On 29 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer in part to a question on notice in the House of Representatives (HR Deb 1985, 4048–4050):

(1) Diplomatic missions the Australian Government has opened since March 1983 are: Addis Ababa—opened December 1984; Budapest—opened October 1984; Brunei—opened March 1983; Geneva Disarmament—Ambassador appointed May 1983; Kathmandu—opened April 1984; Port Louis—opened March 1984; Riyadh—opened September 1984; Shanghai—opened July 1984.

(4) The justification for the opening of these Australian missions overseas is set out below.

(a) *Addis Ababa*—The Australian Embassy at Addis Ababa is our first resident mission in the Horn of Africa region. Its establishment is in

keeping with Australia's increasing focus on the Indian Ocean and East Africa region.

The headquarters for the Organisation for African Unity (OAU) and the United Nations Economic Commission for Africa are located at Addis Ababa. Thus, Addis Ababa became the preferred location in the region as a mission there provides an opportunity for close contact between Australia and both these important organisations.

Ethiopia's worsening drought and food distribution problems have given added importance to an Australian presence in the country. This presence has allowed us to monitor events there closely since the mission opened in December 1984. Australia's increasing aid commitment in humanitarian and development areas in the Horn of Africa and in East Africa has required the upgrading of our representation in Addis Ababa. A Third Secretary (Development Assistance) has been appointed and will begin work in November this year.

(b) *Brunei*—The Australian High Commission was established in Brunei in anticipation of its membership of Association of South East Asian Nations, and its independence, declared in January 1984. Our ASEAN neighbours are of great importance in determining Australia's foreign policy. As well, we accord high priority to regional Commonwealth countries, such as Brunei. These were the primary reasons for the establishment of an Australian mission in Brunei.

(c) *Budapest*—Hungary is a significant country in East Europe. For many years, we have had a fruitful exchange on issues such as disarmament, East-West relations, non-proliferation and Comecon.

As well, Hungary is a model of national self management in the Warsaw Pact. Its attempts at economic and social reform, which have brought about greater emphasis on the importance of market forces, deserve greater diplomatic support.

The potential for boosting and diversifying Australian trade with Hungary had existed for a long time. Prior to the establishment of our Embassy in Budapest, Hungary's foreign trade exceeded one-third of its gross domestic product, and more than half of that was trade with Organisations for Economic Co-operation and Development nations.

The early 1980's saw a closer relationship developing between Australia and Hungary. This created a heavy administrative burden on our diplomatic mission in Vienna, which was then accredited to Hungary. In the three years to February 1984, the Australian Ambassador made some twenty-five trips to Hungary. As well, we were receiving constant complaints from Hungarian officials in Australia about the lengthy delays in issuing Australian visas to Hungarians on official business. Both these examples indicate a workload which required the establishment of a resident Australian mission in Hungary.

The Hungarian Government had maintained an Embassy in Canberra for many years prior to 1984. This factor and the large Hungarian community in Australia provided further impetus for the establishment of an Australian mission in Hungary.

(d) *Geneva Disarmament*—Strictly speaking, the appointment of an Ambassador for Disarmament in May 1983 did not require establishment of a new mission. It simply led to an increase of two in the staffing level at the Australian Embassy in Geneva, with the post providing common services. Australia's increasingly active participation in disarmament and arms control efforts reflects the Government's strong commitment to balanced and verifiable arms control and disarmament measures both nuclear and conventional.

Our Government's contribution to disarmament has been enhanced significantly by the appointment of an Ambassador for Disarmament.

(e) *Kathmandu*—There were two main reasons for the establishment of a resident Australian diplomatic mission in Nepal. Firstly, there was a need to improve the efficiency of consular services for the very large number of Australians visiting Nepal which, prior to the opening of the embassy in Kathmandu, the British were conducting on our behalf. The volume of work put British consular services in Nepal under strain and there were frequent requests by the British that we rectify the situation.

A second reason for the establishment of a resident Australian mission in Nepal was that it would facilitate the administration of the Australian aid program to Nepal.

(f) *Port Louis*—The reasons which led us to establish an Australian mission in Port Louis are strategic, political and economic. The Australian Government recognises the strategic importance of peace and stability in the Indian Ocean, and it recognises the need for Australia to strengthen its relations and promote its views amongst the Indian Ocean Island States. The newly established mission in Port Louis is therefore dually accredited in the Comores and the Seychelles. Accreditation in Madagascar has been sought. The mission provides a central focus for the conduct of the broad range of Australian interests in the Indian Ocean.

Of all the Indian Ocean states, it is Mauritius that has established a close economic relationship with Australia. In 1983–4 Australian exports to Mauritius equalled total Australian exports to black African nations. As well, the Government of Mauritius established a diplomatic mission in Australia in 1977, and was becoming increasingly concerned that we had not reciprocated and established a resident mission in Port Louis. Prior to its establishment the High Commissioner in Dar Es Salaam was accredited to Mauritius pending agreement from the Madagascar Government for the transfer of accreditation to Port Louis. Our High Commission in Tanzania remains responsible for Australia's relations with Madagascar.

As well, a large Mauritian community in Australia made the establishment of an Australian diplomatic presence in Port Louis even more important.

(g) *Riyadh*—The Australian Embassy in Riyadh was relocated from Jeddah due to Saudi Government policy which required all missions in the country to relocate in the diplomatic quarter of Riyadh.

Saudi Arabia is of great importance to Australia, by virtue of its geographical location between two important sea routes, and as an important source of oil for Australia.

Since the establishment of the Australian Embassy in Jeddah, Australia has become recognised by Saudi Arabia as a reliable trading partner and is increasingly looked upon as a source of advice and training in a number of fields of economic and social development. The Embassy is primarily concerned with maintaining a healthy bilateral relationship with Saudi Arabia, the Gulf states and the Yemens, to which our Ambassador in Saudi Arabia is accredited. This means advancing our political and economic interests, particularly in relation to our access to future oil supplies and trade.

With the transfer of our Embassy to Riyadh, the post in Jeddah became a Consulate-General, staffed solely by Department of Trade personnel.

(h) *Shanghai*—In 1978 the Australian Government indicated its intention to open a Consulate-General in Shanghai in an Exchange of Notes. Since that time, the United States, the Federal Republic of Germany, Japan and Britain, and various non-Western nations have recognised the importance of establishing Consulates-General in Shanghai. The need to expand our representation was seen as essential for effectively representing our interests in China. The establishment of a Consulate-General in Shanghai was an ideal location for both political and economic reasons. Trade opportunities between Australia and China should be maximised through the establishment of a mission in the industrial heartland. As well, Shanghai has an important political role in China. During this century political movements in Shanghai have been a major determinant of the direction of Chinese politics.

The Minister for Foreign Affairs, Mr Hayden, announced the opening of a mission in Nepal on 14 March 1984 (Comm Rec 1984, 384) and of an embassy in Budapest on 27 August 1984 (Ibid, 1650).

Diplomatic and consular relations—Australian relations with the Palestine Liberation Organisation

On 2 May 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question without notice in the House of Representatives (HR Deb 1984, 1703):

The Government decided last year that Australian Ambassadors in relevant posts would be authorised to include PLO representatives in their range of contacts. Such contacts are of course completely informal, since Australia does not accord the PLO any international status. The decision was made so as to allow the senior political officers at relevant posts to inform themselves fully about developments in their areas of responsibility. Contacts are not restricted to any particular group or groups within the PLO.

On 6 December 1985 the Attorney-General, Mr Bowen, provided the following written answer in part to a question on notice in the Senate (Sen Deb 1985, 3237):

I should clarify that Mr Ali Kazak is an Australian citizen. He is not recognised by the Government as a representative of the Palestinian Liberation Organisation, nor does the Government recognise his Palestine Information Office as a PLO office. Any views expressed by Mr Kazak are those of an Australian citizen.

Diplomatic and consular relations—Vienna Convention on Diplomatic Relations—need for a review

On 21 August 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the House of Representatives (HR Deb 1984, 116–117):

(a) No formal review of the Vienna Convention on Diplomatic Relations has been instituted. The International Law Commission, however, has under study the question of international law relating to the diplomatic bag. East European states which initiated the study envisage that it might lead to a protocol to the Convention. Aspects of the operation of the 1961 Convention are understood to be under discussion within the European Community. The trend of discussion may be more towards stricter interpretation and enforcement of existing provisions, in the light of the Libyan People's Bureau crisis in London, than towards amendment of the Convention.

Under the Convention and existing customary law, diplomats have no licence to ignore national laws or international law. They are under a duty to respect the laws and regulations of the host State by virtue of Article 41(1) of the Convention. Diplomatic immunity entails immunity from enforcement of the local law, not immunity from the law itself. If immunity is waived, legal action may proceed. Nor is resort to violence countenanced by the Convention. A diplomat who commits an offence against the laws of the receiving state may be sanctioned by expulsion, is not immune from prosecution in his home state, and may be subject to extradition to the original receiving state for prosecution if found in a private capacity in a third state.

The Government therefore regards existing provisions as generally adequate. Amendment of the Convention would give no better guarantee that maverick incidents would not again occur.

(b) Governments investigating and taking action against diplomats who have offended against their laws may at their discretion make use of the valuable assistance of Interpol and other international bodies. Little purpose would be served by making the involvement of such bodies mandatory.

Diplomatic and consular relations—solicitation of funds by High Commissioner

On 22 May 1985 the Acting Minister for Foreign Affairs, Mr Bowen, said in answer to a question without notice in the House of Representatives (HR Deb 1985, 2881):

The position is that the Australian Council for Overseas Aid has recently issued a Press statement drawing attention to the concern expressed about raising funds in Australia for what is called the National Defence Fund of Sri Lanka. I am advised that this matter arose last year when a series of letters, I think dated in August, were issued from the Sri Lankan High Commissioner soliciting contributions for a defence fund. That caused some concern and apparently investigations took place at that time. It was acknowledged that whilst that solicitation was not in breach of the Vienna

Convention on Diplomatic Relations it was a practice that should not be encouraged. It was considered that the request went beyond what could be regarded as normal diplomatic custom, convention and practice.

Representations were made to the Sri Lankan High Commissioner in, I think, November last year. At that time the High Commissioner indicated that the appeal had concluded. I am now advised, having again been asked about the present position of the Fund, that the High Commissioner has said that whilst no further appeal has been made by him since last year some moneys are still being received into what he calls the trust account of the Fund. We hope that that practice will not be continued. We accept the advice that there has been no further appeal because it is a practice which we do not think should be encouraged.

Diplomatic and consular relations—embassies and consulates—occupation for the purpose of political protest—Lebanese embassy and consulates-general

On 7 May 1985 the Acting Minister for Foreign Affairs, Senator Gareth Evans, said in answer to a question without notice in the Senate (Sen Deb 1985, 1415):

As honourable senators will know, on 3 May the Lebanese Embassy in Canberra was occupied by members of the Lebanese community in Australia. The Lebanese Consulates-General in Sydney and Melbourne have also been occupied. Similar actions have taken place at the same time in other countries, including Belgium, France and Canada. The people involved have declared that their actions are intended to bring attention to the current situation in Lebanon, in particular the recent fighting between Moslem and Christian militia and their concern with the position of the Christian community in the south.

Officers of the Australian Federal Police have been present at the Embassy since the occupation and the Department of Foreign Affairs has discussed the situation with the Lebanese Ambassador. The Ambassador has been offered any assistance which might be practicable, but to date he has not sought assistance. I say finally that, while the Government understands very well the concerns which have motivated members of the Lebanese community, it simply cannot condone the occupation of an embassy. The Ambassador has been informed of our wish that the occupation should cease quickly and peacefully to allow the Embassy and the Consulates-General to resume their normal function.

Diplomatic relations—embassies—Australian Embassy in Lebanon—proposed re-opening

On 8 October 1987 the Minister for Foreign Affairs and Trade, Mr Hayden, said in answer to a question concerning a proposal to re-open the Australian Embassy in Beirut (HR Deb 1987, 987):

I have given consideration to this proposal, which has been put to me off and on over the past couple of years, and, regrettably, I have to say no. The response is negative because of the dangers to Australian representatives who would be required to serve on the ground in Lebanon. There are other

factors which apply to any suggestion that accreditation could be applied to some point outside of Beirut. The Australian Government is accredited to the Government of Lebanon, the capital of which is Beirut. Therefore, it would not be appropriate to open an office outside the capital. To do that would be to give some impression of support for the cantonisation of Lebanon. It would also lead to requests, which it would be extremely difficult if not impossible to resist, to open up similar posts in other parts of the Lebanon. Another consideration is that it would be extremely difficult—again probably impossible—for members of all religious groups to travel to places such as Jounie. Currently visa issuing for people from the Lebanon is carried out at the embassy in Damascus. For those unable to travel to Damascus, other Australian posts—for instance, Cyprus—can issue visas.

Diplomatic relations—establishment of diplomatic relations with the Federated States of Micronesia—accreditation of an Australian Minister

On 6 July 1987 Mr Richard Smith presented his Letter of Introduction to the President of the Federated States of Micronesia. Following is an extract from the speech he gave at the occasion (AFAR, July 1987, 394):

My country is honoured to be able to enter into a diplomatic relationship with the Federation States of Micronesia, and I am honoured, personally, that you have seen fit to agree to my appointment as Australian Minister.

The advent of the Federation States of Micronesia to the international comity of nations has been welcomed by the people and Government of Australia. We have worked with you in the past in the pursuit of shared interests in the Pacific, and we look forward to doing so to an even greater extent as you take your rightful place at international tables in the future.

Mr President, it is hardly for me to tell you of the winds of change that continue to blow in the Pacific. Your experience of them has been direct and recent. With the coming into effect of the Compacts of Free Association in the Federated States and in the Marshall Islands, the process of decolonisation in the Pacific has been significantly advanced. Australia has been proud to assist in this process elsewhere in the Pacific, and is proud now to be able to welcome the Federated States of Micronesia as another member of the community of democratic nations.

Diplomatic relations—interruption of diplomatic relations—the Democratic People's Republic of Korea—the Libyan People's Bureau

On 17 January 1986 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1986, 14):

The Minister for Foreign Affairs, the Hon Bill Hayden, today denied a report in this week's Bulletin magazine by Denis Reinhardt that Australian officials acting on Cabinet instructions had conducted two rounds of secret negotiations with North Korean diplomats involving Australia's diplomatic relations with the Democratic People's Republic of Korea (DPRK).

Mr Hayden said that no such Cabinet instructions were given. The facts are that since 1974 the Australian Government has recognised two states and two governments on the Korean Peninsula—the Republic of Korea (ROK)

and the Democratic People's Republic of Korea. Since 1975, however, relations with the DPRK have been suspended.

During 1983 there were a number of DPRK approached to the Australian Government, which included approaches to the Australian Embassies in Beijing and Jakarta, seeking an improvement in relations.

The DPRK was informed that if it put forward a formal submission, the Australian Government would examine it. No commitment was otherwise given. No such formal submission was received from the DPRK.

In November 1983, following the Rangoon bombing, Mr Hayden stated that Australia would not be prepared to restore the interrupted relationship with the DPRK until it renounced hostile activities against the ROK. Since that statement there have been no discussions between the Australian Government and the DPRK regarding the resumption of diplomatic relations between the two countries.

Australia would like to see the DPRK play a more constructive role in the Asian-Pacific region. Australia has been interested in the contact which has taken place between the ROK and the DPRK during the past twelve months.

On 1 June 1987 the Minister for Foreign Affairs, Mr Hayden, provided the following answer in part to a question on notice (HR Deb 1987, 3757):

Australia's relations with the DPRK have been interrupted since 1975. The Australian Government cannot make representations to a government with which its relations are interrupted.

On 15 April 1986 the Minister representing the Minister for Foreign Affairs in the Senate, Senator Gareth Evans, said (Sen Deb 1986, 1721):

On 20 March, Senator Short asked me a question in my capacity as the Minister representing the Minister for Foreign Affairs about Libyan diplomats in Australia. The Minister for Foreign Affairs has provided the following answer: It is correct that the Libyan authorities decided to transfer three of their government officials from Australia, two from the Libyan People's Bureau and one from the Libyan Cultural Centre in Melbourne. No reason has been provided to the Department of Foreign Affairs for this decision.

The three officials have not yet left Australia. Two are, however, expected to leave today—that is 15 April—and the other next week. The Department of Foreign Affairs has advised the Libyan People's Bureau that the three officials are not to be replaced. The honourable senator will be aware that there is a ceiling applied to the number of Libyan-based staff in the Bureau in Canberra. The Government has taken no decision to require the closure of the Libyan Cultural Centre. The Centre was established in response to an expressed need within the Arab and Moslem community in Melbourne for such a facility, and the departure of the Libyan-based Director does not remove that need. The remaining staff of the Centre are Australian citizens. The Government will not therefore be pursuing the question of closure.

On 28 April 1987 the Minister for Foreign Affairs, Mr Hayden, said in part in answer to a question (HR Deb 1987, 2059–2060):

In relation to the proposal that we should close down the Libyan People's Bureau in Canberra, I should point out first of all that the Libyan Embassy

was opened in Canberra in 1979 by the previous conservative Government. In 1979 there was clear evidence of Libyan international terrorist activity. In 1981, with the approval of the then Fraser Government, it was allowed to convert to the Libyan People's Bureau. By then international Libyan terrorist activity was manifestly apparent. In neither instance was the conservative government, of which the honourable member was a Minister at that time, the least bit disturbed.

As I have said, the Government is maintaining careful observation of what is developing in the South Pacific region but we should bear in mind that, in expressing our concerns on this matter, we do so from a self-interested point of view designed to look after our national interest. We in no way seek, explicitly or implicitly, to suggest to the South Pacific island states that, while we believe we are capable of looking after our affairs, we do not have confidence in their ability similarly to do so. I could not imagine anything more offensive, unacceptable or provocative to such countries. The closure of the Libyan People's Bureau is something that has been looked at from time to time in the past when circumstances have suggested that this was a matter that, among others, deserved attention.

On 19 May 1987 the Prime Minister, Mr Hawke, made the following statement (Comm Rec 1987, 774):

The Government has previously voiced concern about the nature and direction of Libyan activities in the South Pacific region. Some of these activities have been conducted openly, others—many others—with varying degrees of clandestinity. They have become more intense in the course of this year.

There is no plausible explanation in terms of geography or legitimate national interest for Libyan activity in this region, as the Foreign Minister and I have both noted in Parliament and elsewhere.

We have repeatedly been assured that Libya seeks normal relations with the countries of the region. Yet Colonel Gaddafi urges Pacific islanders to join a 'single front which stretches from the Pacific Ocean to the Atlantic Ocean', to 'stage a revolution', to 'fight to the end'. Libyan organisations have sponsored so-called Pacific meetings in Libya which have no constructive contribution to make to the well-being of the peoples of the South Pacific. And Libyan representatives offer funds to individuals and organisations for destabilising political purposes; arrange training in the techniques of propaganda, agitation and guerilla work; use contacts in one country to develop destabilising networks of contact and influence in others. Libya's record of subversion and terrorism elsewhere in the world justifies the gravest concern.

We have stated repeatedly, and I say it again now, that we respect the sovereign right of Pacific Island countries to establish relations with whatever countries they choose. Australia does not seek in any way to interfere in any aspect of their domestic or foreign policy. It is for our Pacific neighbours to make their own decisions in the light of their national interests.

But Australia has national interests of its own and a vital concern for peace, harmony and stability in the South Pacific. We are only too conscious

of the instability already existing in the region in New Caledonia and most recently and sadly in Fiji—and do not welcome a further element.

The Government has made its concerns about these matters known to our Pacific friends and neighbours as part of the constant process of consultation it maintains with them. It has explained frankly and fully its particular concerns about Libyan activities, and their likely impact on the region.

The Government has also carefully reviewed Australia's relations with Libya in the light of the pattern of Libyan activity in the South Pacific region, including that within Australia itself. I note that, despite the care with which Libyan activities are monitored, Libya has begun to intrude into our domestic affairs too, causing dissention and confrontation among communities, something of deep concern to all Australians, whatever their cultural background.

In this context of both regional and domestic concern about the increasingly disruptive activities of Libya, the Government has concluded that a continuing official Libyan presence in Australia serves no Australian interest or purpose, and, indeed, is serving to facilitate Libya's destabilising activities. The decision the Government has taken serves to underline the importance it attaches to the maintenance and development of the closest possible understanding with our regional partners on matters of such grave common concern. It gives further strength to our firm views about the dangers Libyan activities bring to the region.

The Secretary of the Libyan People's Bureau has today been instructed to close the Bureau forthwith and to leave Australia within ten days. His assistant is to leave within three weeks.

For a list of the 130 countries with which Libya has diplomatic relations, see the written answer of the Minister of Foreign Affairs, Mr Hayden, on 13 November 1986 (HR Deb 1986, 2936–2937).

Diplomatic relations—embassies—duty to observe local law—duty of non-interference in internal affairs—Libyan People's Bureau

On 5 March 1986 the Acting Minister for Foreign Affairs, Senator Gareth Evans, issued the following statement (Comm Rec 1986, 277):

The Acting Minister for Foreign Affairs, Senator the Hon Gareth Evans, said today that the Department of Foreign Affairs had, on his instructions, called in the Secretary of the Libyan Peoples' Bureau, Mr Shaban Gashut, in connection with a news release issued by the Bureau on 24 February.

The release contained a statement from Colonel Gaddafi calling for volunteers to join the Libyan Armed Forces and also announcing the formation of and calling for contributions to an 'International Peoples' Front', the purpose of which was to fight against imperialism, Zionism, racism and 'US aggression".

Mr Gashut was told by the Department that the Libyan action was a breach of the Crimes (Foreign Incursions and Recruitment) Act 1978, and that the Australian Government viewed the breach with deep concern.

Mr Gashut was reminded of the obligation of the Libyan Peoples' Bureau to conform with Australian law, and was told that there should be no repetition of the incident.

Diplomatic relations—embassies—closure of Australian embassies

On 18 September 1987, the Acting Minister for Foreign Affairs, Senator Gareth Evans, issued a news release (No M126) regarding the closure of the Australian Embassy in Addis Ababa and the Australian High Commission in Dar Es Salaam "solely for budgetary reasons".

Diplomatic relations—breaking of relations—embassies—protecting power—Article 45 of the Vienna Convention on Diplomatic Relations—Australia represents British interests in Syria

On 31 October 1986 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1986, 1932):

> The Minister for Foreign Affairs, the Hon Bill Hayden, confirmed today that Australia had agreed to represent British interests in Syria. He said that following the severance of diplomatic relations between Britain and Syria, the United Kingdom planned to maintain a small interests section in Damascus; and that Australia would act as protecting power.
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> Mr Hayden said that the Government had been engaged in sensitive discussions on this matter with the United Kingdom since 24 October. The Government had been in close consultation as well with the United States, Canada and members of the European Community. Such consultations form part of the customary response of governments to the scourge of international terrorism, Mr Hayden said.
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> Mr Hayden referred to the long-standing pattern of collaboration and mutual assistance between the foreign services of Australia and Britain. He said: 'Britain looks after Australian interests in many countries in which we are not represented. I am pleased that we have been able to accede to Britain's request to help out in Syria'.

On 13 November 1986 Mr Hayden issued a further statement (ibid, 2048):

> Referring to his announcement on 31 October confirming that Australia had agreed to represent British interests in Syria, the Minister for Foreign Affairs, the Hon Bill Hayden, said today that since the handing down of the judgment in the Hendawi trial, the Australian Government had engaged in sensitive discussions with Britain, as well as the United States, Canada and members of the European Community. Mr Hayden said that these consultations, which have focussed upon evidence tendered at the trial, formed part of the Government's co-operation with other concerned governments on ways to combat the spread of international terrorism.
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> Mr Hayden said that he had noted the measures which member states of the EC had agreed on in respect to their relations with Syria. All of these he said were consistent with the Australian Government's existing policies towards Syria. Australia would take no action which would undermine the measures taken by the European Community.
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> Mr Hayden emphasised that the Government was disturbed by the evidence submitted in the Hendawi trial, particularly that which was seen to establish a link between the attempted bombing of the El Al aircraft and Syria. He said: 'The implications of the matter, in terms of both the abuse of diplomatic practice and the callous indifference to the lives of aircraft passengers and crew, can only be condemned'.

Diplomatic relations—embassies—"information offices" distinguished—Information Offices of the Kanak Socialist National Liberation Front (FLNKS)—African National Congress (ANC)—South-West Africa People's Organisation (SWAPO)—Palestine Liberation Organisation (PLO)

On 19 August 1986 the Minister for Foreign Affairs, Mr Hayden, provided the following answer in part to a question on notice concerning the FLNKS Information Office in Australia (HR Deb 1986, 65–66):

> Mr Peu was nominated by the FLNKS to staff the FLNKS Information Office which was opened in July 1985. He was issued with a temporary residence visa to enable him to work in the Information Office.
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> As is the usual practice regarding the opening of such offices in Australia, the FLNKS Information Office is required to abide by the following conditions, namely:
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> (i) that the Information Office is established for the primary purpose of disseminating information;
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> (ii) that the office and its staff will not advocate violence as a means of achieving their political objectives;
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> (iii) that the office will have no privileged status and its staff will have no special standing and will be required to abide by Australian laws; and
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> (iv) that the office will not request or receive any financial assistance from the Australian Government.
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> On 6 April 1986 the Government decided to decline a request by Mr Peu for renewal of his temporary residence visa. The Government's decision took into consideration that fact that the FLNKS had in effect itself suspended Mr Peu as its representative: a decision to suspend the operations of FLNKS 'Foreign Ministry' was made by the FLNKS Political Bureau on 15 March 1986 in the light of projected travel to Libya by a number of FLNKS members, including Mr Peu.
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> The Government remains willing to consider nominations from the FLNKS leadership for an officer to staff its Information Office in Australia.

On 18 September 1986 the Minister representing the Attorney-General in the Senate, Senator Gareth Evans, said in part in answer to a question (Sen Deb 1986, 602):

> The point that needs to be made is simply that the ANC and SWAPO have established information offices in Australia pursuant to permission granted, initially, through the Minister for Foreign Affairs and announced by him in October 1983. The conditions of operation of those organisations here are that neither the representatives nor their respective officers will enjoy any status, privileges or immunities, that they will not espouse the cause of violence, that they be subject to Australian laws and that the Australian Government will provide no financial assistance to their offices or their respective representatives. We have absolutely no reason to believe at this time that the information offices of ANC and SWAPO are not abiding by the terms under which they were permitted to establish information offices in Australia.

On 14 October 1986 the Minister for Foreign Affairs, Mr Hayden, provided the following answer to a question on notice (HR Deb 1986, 1987):

> Since December 1982 an Australian citizen, Mr Ali Kazak, has operated an office in Melbourne styled the "Palestine Information Office". Mr Kazak claims to represent the PLO in Australia. The Australian Government does not recognise Mr Kazak as a PLO representative nor do we recognise the "Palestine Information Office" as a PLO office.
>
> Representations have been made by both Mr Kazak and by PLO representatives overseas to accord the office official recognition and diplomatic status. Australia does not however accord the PLO international status and will not change this attitude while that Organisation denies the right of Israel to exist. While Australia does not recognise the PLO as 'the sole and legitimate representative of the Palestinian people' it is acknowledged that the PLO represents a significant portion of the Palestinian people.
>
> Private organisations operated by Australian citizens such as the "Palestine Information Office" are not required by law to reveal the source of their operating costs. I am not therefore able to comment further on the question.

Diplomatic relations—diplomats—declarations of persona non grata—South African diplomats

On 16 June 1986 the Acting Minister for Foreign Affairs, Senator Gareth Evans, issued the following statement (Comm Rec 1986, 997):

> The Acting Minister for Foreign Affairs, Senator the Hon Gareth Evans, said that he was seriously concerned about the incident at the South African Embassy today. He had sought an explanation from the South African Embassy and had asked for an urgent and full report of the incident from the Australian Federal Police.
>
> Senator Evans said the Government would be giving urgent consideration to the most appropriate action to take. He said that under Article 41(1) of the Vienna Convention on Diplomatic Relations, Embassy staff have a duty to respect Australian laws and regulations, and this duty would apply to Australian laws of trespass and assault.
>
> South African Embassy staff would have the right to use reasonable force to remove or eject unlawful trespassers from the Embassy property. But if the force used was unreasonable the staff member would be liable to civil or criminal charges of assault. Similarly there is a right to use reasonable force in self defence, but with similar liability for use of unreasonable force.
>
> The issues could be determined by an Australian court if the South African Government waived the diplomatic immunity of the officer concerned and if the person concerned were still in the country. Whether or not diplomatic immunity were waived the Australian Government could, if it judged the circumstances so warranted, declare the person *persona non grata*.

Senator Evans said that the Government could not condone trespass upon or violence against any embassy property, and it was appropriate that the behaviour of the demonstrator concerned was to be the subject of police prosecution.

On 17 June 1986 Senator Evans issued a further statement (*ibid*):

The Acting Minister for Foreign Affairs, Senator the Hon Gareth Evans, said today that the Australian Government had decided that the official at the South African Embassy involved in the incident at the Embassy yesterday should leave the country as soon as possible. Senator Evans had directed the Department of Foreign Affairs to call in the South African Ambassador to inform him of the Government's wish that the official concerned be withdrawn within ten days.

Senator Evans said that the Government had received a report today from the Australian Federal Police which concluded that reasonable force had been employed in the circumstances, and that there was evidence which may substantiate a case of assault. Senator Evans said a written explanation had also now been received from the South African Embassy, but nothing in that explanation altered the Government's view that the behaviour of the Embassy official concerned was unacceptable by Australian standards and could not be tolerated.

On 22 August 1986 the Department of Foreign Affairs issued the following News Release (No D33):

SOUTH AFRICA: WITHDRAWAL OF OFFICIALS

The Department of Foreign Affairs today called in the Charge d'Affaires of the South African Embassy, Mr WL Brewis, following the Government's decision that four South African officials be withdrawn from Australia.

The Charge was asked to arrange their withdrawal by 22 September.

The Prime Minister, Mr Hawke, announced the decision in his statement to Parliament on 21 August. It falls within the scope of the sanctions decided on by the Commonwealth Heads of Government at their recent meeting in London.

The four officials are Mr PE Nortje, Vice Consul (Commercial) at the South African Consulate-General in Sydney, who has consular status; Mr D Hattingh and Mr E Odendaal of the South African Trade Commission in Melbourne, and Mr RG Grant of the South African Tourist Board Office in Sydney.

It was also made clear to Mr Brewis that the Government wished the Trade Commission and Tourist Board offices to be closed when the officials have departed.

Australia withdrew its Trade Commissioner from South Africa last year.

Diplomatic relations—diplomatic immunity—breach of Australian diplomat's inviolability in Suva—protest

On 18 May 1987 the Acting Minister for Foreign Affairs, Senator Gareth Evans, issued the following statement (Comm Rec 1987, 764):

The Australian Government protests most strongly against the actions of the military forces in Fiji detaining Mr Andrew Engel, First Secretary in

the Australian High Commission, Suva, and in their unwarranted harassment and detention of Australian journalists.

The action against Mr Engel represents a gross violation of the Vienna Convention on Diplomatic Relations. Mr Engel, as an accredited diplomatic officer in Fiji, is not liable to any form of arrest or detention. Moreover, Fiji is obliged under the Convention to treat him with due respect and to take all appropriate steps to prevent any attack on his personal freedom or dignity. Mr Engel was carrying out his official responsibilities on behalf of the journalists at the time.

Fiji, as a party to the Vienna Convention in Diplomatic Relations, is obliged to respect its provisions. Moreover, it has been stated that the safety of foreigners in Fiji would be guaranteed. This unwarranted detention of the Australian diplomat and journalists clearly brings into doubt the statements of the military authorities.

The Australian Government condemns this latest action by the Fijian military forces. It calls upon them to recognise and abide by Fiji's international obligation to protect and facilitate the activities of accredited diplomats in Fiji. The Australian High Commission in Suva has, on instructions, conveyed this protest to the Fijian Ministry of Foreign Affairs.

Diplomatic and consular relations—protection of diplomatic missions and offices

Following is an extract from a Report by the Secretary-General (A39/456)(pp 11–12) on the consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives:

Views received from States pursuant to paragraph 10 of General Assembly resolution 38/136

AUSTRALIA 9 August 1984

1. The Government of Australia supports the general principles underlying the inclusion of item 129, entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives", in the agenda of the thirty-ninth session of the General Assembly. Australia shares the concern expressed in resolution 38/136 over the number of violations of diplomatic and consular security in recent years and attaches particular importance to the co-operation of all States in maintaining effective diplomatic and consular protection. To this end, the Government of Australia sees the reporting procedures established in resolution 35/168 as an important and useful step.

2. Australia is a party to a number of relevant conventions on the protection of diplomatic and consular missions and representatives:

(a) Vienna Convention on Diplomatic Relations, 1961;

(b) Vienna Convention on Consular Relations, 1963;

(c) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973;

(d) Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes, 1961.

3. Australia takes preventative measures to fulfil its responsibilities as receiving State under these conventions.

4. There have been no serious attacks over the last 12 months against any Australian missions or individuals abroad such as to warrant using the reporting procedure. The Government, however, remains aware of the continuing danger to international missions and seeks to provide special measures of protection, over and above its normal protective role, to missions requesting such measures if the perceived level of threat is thought to warrant them.

Diplomatic and consular relations—protection of diplomats and missions

On 5 October 1984 Australia's representative to the Sixth Committee of the United Nations General Assembly said on the Report of the Secretary-General on effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (A/C 6/39/SR 12, pp 3–4):

9. Mr NOLAN (Australia) said that a tragic development of the various societies had been that international terrorism and violence had continued throughout the past year. Of special concern was the fact that many of those acts of violence had been directed at diplomatic and consular missions and personnel, which seriously affected international peace, security and understanding.

10. The report of the Secretary-General contained examples of such acts, including the attack in Rangoon. One attack that had not been reported to the Secretary-General was the one on the United States Embassy in Beirut. The safety and security of diplomatic premises and personnel and the obligation of the receiving State to ensure that security constituted one of the basic principles of relations among States and, certainly, a corner-stone of international law. It was around that concept that the complex of principles, understandings, treaties and other bilateral and multilateral agreements among States had developed. In that connection, it was important for States that had not yet done so to accede to the Vienna Conventions and to the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. While new legal instruments should be elaborated where there was a clear need, his delegation believed that it was even more important to implement existing international instruments.

11. Another useful measure in the fight against acts of violence and terrorism in general was co-operation among States in the development and exchange of techniques and methods for the protection of diplomatic personnel. His Government was prepared to offer its full co-operation in the search for measures to enhance that protection and to support any measure to prevent acts of terrorism against internationally protected personnel and premises.

Diplomatic and consular relations—embassies—misuse of embassies—attacks

On 18 April 1984 the Acting Minister for Foreign Affairs, Mr Bowen, issued the following statement (Comm Rec 1984, 699):

The Acting Minister for Foreign Affairs, the Hon Lionel Bowen, today deplored the violent incident at the Libyan People's Bureau in London and expressed regret at the loss of life and serious injuries which had resulted.

Mr Bowen said such violence was contrary to the norms of diplomatic behaviour and the perpetrators, in accordance with the principles of international law, should not escape responsibility for their acts. He expressed the hope that negotiations would shortly produce a solution which fully protected both the rights of diplomatic missions and the rights of the host state and its people.

On 3 May 1984 the Minister for Foreign Affairs, Mr Hayden, said in answer to a question without notice in the House of Representatives (HR Deb 1984, 1763):

In common with honourable members, I am aware of the reports which were publicised in the last 24 hours. As the honourable member pointed out, there was apparently a blatant breach of the Vienna Convention, which established the proper modes of conduct internationally in this sphere. The Australian Government was deeply shocked by the shooting incident at the Libyan People's Bureau in London on 17 April. At that time the Acting Minister for Foreign Affairs expressed the Government's concern. We are appalled at the apparent callousness of the Libyan authorities in relation to the incident, the misuse of the People's Bureau premises in London, and the abuse of diplomatic privilege. The Government calls upon the Libyan authorities to identify and bring to justice the person or persons responsible for the dreadful incident to which I have referred.

We consider the Libyan response to date to the crisis created by the shooting to be quite inappropriate. I have directed the Department of Foreign Affairs that the Libyan representatives in Australia should be told this directly. We fully understand the decision of the British Government to break off diplomatic relations with Libya. I have noted reports that the British Government may decide to call for a review of the Vienna Convention and diplomatic relations as a result of this episode. If it should do so, Australia would be willing to join in any international consideration of the problems which the shooting incident has revealed so starkly, but no one should underestimate the complexity of the issues and the difficulty in securing international agreement to any significant revision of the Convention.

On 21 September 1984 the Acting Minister for Foreign Affairs, Mr Scholes, issued the following statement (Comm Rec 1984, 1827–1828):

The Acting Minister for Foreign Affairs, the Hon Gordon Scholes, today expressed his deep shock and sorrow at the deaths and injuries which had resulted from the bomb attack on the office of the American Embassy in East Beirut.

Mr Scholes described the attack as a further example of the brutal and senseless acts of terrorism which had tragically characterised the recent history of Lebanon. He expressed his hope that neither this latest outrage, nor the reports of shooting of civilians in the occupied southern sector of the country, would deter the efforts of the Government of Lebanon from achieving a peaceful resolution of the problems confronting that country.

> The world wishes to see Lebanon given the opportunity to further the process of reconstruction and rehabilitation recently begun after many years of civil strife.
>
> Mr Scholes reiterated the Australian Government's abhorrence of the use of violence and called for renewed respect for international conventions relating to the protection of diplomatic personnel and property.

On 10 May 1984 the Minister for Foreign Affairs, Mr Hayden, said in the course of a written answer to a question on notice in the House of Representatives (HR Deb 1984, 2289):

> Australia and many other governments condemned the seizure of the United States Embassy in Tehran and the holding hostage of its staff.

Diplomatic and consular relations—diplomatic immunity—immunity from civil jurisdiction—Family Court of Australia—applications by spouse of a diplomat

In the Family Court of Australia at Canberra on 18 June 1984 Justice Renaud delivered her judgment in the *Diplomatic Immunity Case* as follows (Case No C565, unreported: the confidentiality provisions of the Family Law Act 1975 prohibit identification of the parties to a case brought before the Family Court). She said in part:

> Before the court are three applications brought by the wife. The first is an application for dissolution of marriage filed on 6 April 1984. The second, filed on the same day, is an application seeking injunctions restraining the husband from disposing of certain identified items of property, and seeking orders for property settlement pursuant to section 79 of the Family Law Act. In particular, she sought that the husband transfer to her some of those items of property, namely a motor vehicle and a home unit in Queensland. On 24 May 1984 the wife filed an amended application for property settlement seeking in the alternative a declaration that the husband holds the home unit on trust for himself and the wife as tenants in common in equal shares, or in such other proportions as this court should deem appropriate. In the third application, filed on 18 April 1984, the wife seeks sole guardianship of a child of the marriage and an order restraining the husband from removing that child from Australia.
>
> Tendered to the court as an exhibit in these proceedings is a certificate signed by the Minister for Foreign Affairs and dated 29 April 1984 which, I am satisfied, is a certificate under section 14 of the Diplomatic Privileges and Immunities Act 1967–1973, certifying that the husband had been an ambassador in Australia since February 1981.
>
> Section 7 of that Act provides that Articles 1, 22 to 24 inclusive, and 27 to 40 inclusive of the Vienna Convention on Diplomatic Relations ("the Convention") shall have the force of law in Australia.
>
> I am satisfied, on the basis of the certificate, that the husband, the respondent to all the wife's applications, is a diplomatic agent, as defined in Article 1 of the Convention, and has been such since 4 February 1981.
>
> The government which the husband represents has not waived his diplomatic immunity although it has power to do so under Article 32 of the

Convention. The husband's position is therefore covered by Article 31(1) which provides:

> A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
>
> (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
>
> (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
>
> (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official function.

It was not disputed by either of the counsel who appeared before me that the wife's applications invoke the civil jurisdiction of Australia, the receiving State.

On the return date of the wife's applications (other than her amended application for property settlement) Dr O'Connor of counsel appeared before me to seek leave to appear as *amicus curiae* and to argue in effect that the provisions of Article 31(1) prevent this court from dealing with any of the wife's applications as the husband is immune from the court's jurisdiction by virtue of his status as a diplomatic agent.

In support of his application for leave to appear as *amicus curiae* Dr O'Connor cited the case of *Intpro Properties (UK) Limited v Sauvel and Others* [1983] 1 All ER 658. In that case the defendant was a diplomatic agent of the French government and initially appeared represented by counsel. The French government was subsequently joined as a party, but when the matter returned before the court it was not represented. Counsel originally appearing for the defendants attended to notify the court that he was no longer instructed. The court invited that counsel to act as *amicus curiae* in order to argue the question of diplomatic immunity and of the jurisdiction of the court to entertain the action before it. Although the situation in the present case was different, I granted Dr O'Connor leave to appear as *amicus curiae*.

When the matter came back before me for hearing of the jurisdictional point, Mr Richardson, appearing for the first time as counsel for the wife, argued that the procedure adopted by Dr O'Connor was not appropriate and that the husband ought instead to have filed an answer under protest, in accordance with Regulation 57 and Form 14.

Regulation 57 applies only to an application for dissolution of marriage, or for a decree of nullity. It therefore does not cover all the applications presently before the court. Under all the circumstances I am satisfied that the course adopted by Dr O'Connor was an appropriate one.

In her application for dissolution, the wife claims to be domiciled and ordinarily resident in Australia, and the facts upon which she relies are that she was resided in Australia for at least three years and regards Australia as her permanent home. In her affidavit sworn on 5 April 1984, and filed on

6 April 1984, in support of her application for dissolution, she states in effect that she intends to remain in Australia even if the husband should return to his home country. Section 6 of the Domicile Act 1982 provides:

> The rule of law whereby a married woman has at all times the domicile of her husband is abolished.

Section 8(1) of the same act provides:

> A person is capable of having an independent domicile if
> (a) he has attained the age of 18 years; or
> (b) he is, or has at any time been married.

It appears from the wife's application for dissolution that she, although not the husband, was domiciled in, and ordinarily resident in, Australia at the date of her applications. I am satisfied that, in that regard, the court has jurisdiction to entertain her application for dissolution by virtue of section 39(3) of the Act, and to entertain her other applications by virtue of section 39(4)....

The question still remains however, whether the proceedings instituted by the wife in this case come within any of the three exceptions in Article 31.

1. **The application for dissolution of marriage**

The proceedings commenced by this application clearly do not fall within any of the exceptions to Article 31, and the husband is therefore immune from the court's jurisdiction.

The same view was taken by Balcombe J, in *Shaw v Shaw* [1979] 3 All ER 1, in which His Honour held that the wife could proceed on her petition once the husband ceased to be entitled to diplomatic immunity, but that whilst he held that immunity the application should be stayed.

Counsel for the wife sought to save her application by a suggestion adopting the procedure followed in the case of *Statham v Statham and His Highness the Gaekawar of Baroda* [1912] P 92. In that case the petitioning husband named a ruling foreign prince as co-respondent in a divorce petition. The court ordered the name of the co-respondent to be struck out of the petition and allowed the husband to proceed on the petition as thus amended. Counsel for the wife in these proceedings submitted that, in a somewhat analogous way, the husband need not be a respondent to the wife's application but that the court could somehow make an order declaratory of her status as a divorced person.

Even apart from the obvious point that she will not have that status unless and until a decree nisi is pronounced in properly instituted proceedings, and the decree becomes absolute, it is clear that paragraph (a)(i) of the definition of "matrimonial cause" under which these proceedings fall, requires that they be "between the parties to a marriage". The husband cannot be simply removed from the proceedings and all else remain the same.

2. **The application for custody**

The proceedings instituted by this application, equally clearly, are not covered by any of the exceptions in Article 31. They are proceedings which fall within paragraph (cb) of the definition of "matrimonial cause" and are:

> Proceedings between the parties to a marriage with respect to the custody, guardianship or maintaining of, or access to, a child of the marriage.

The case of *In re C. (An Infant)* [1959] 1 Ch 363, cited by both counsel in argument, is not to the point. In that case the stepmother of the child of a Greek diplomatic agent in England instituted proceedings to have the child made a ward of the court. The court held that the respondent father was entitled to have the proceedings stayed on the grounds of his diplomatic immunity, and the question arose as to whether the child himself could be added as a respondent. It was held that he could not because, by virtue of Article 37 of the Convention, the members of the family of a diplomatic agent, forming part of his household, enjoy the same privileges and immunities as the diplomatic agent himself.

The same considerations would apply in the present proceedings, even if an application had been made, which it was not, to name the child of the marriage as a respondent. Following the amendments to the Family Law Act which came into effect on 25 November 1983, and which expanded the definition of "matrimonial cause", it is now possible for proceedings to be instituted by, or on behalf of a child. However, even if such proceedings had been instituted in this case, which, as I say they were not, the husband who, according to the wife's affidavit in support of her application for custody, is presently the de facto custodian of the child, would have to be joined in the proceedings and would be entitled to have those proceedings stayed on the ground of his diplomatic immunity.

Counsel for the wife submitted that this court has, in effect, an overriding interest in the welfare of children and can make orders for the protection of children at risk, although he did not suggest that the child the subject of these proceedings was in that category. However, this court is limited to dealing with proceedings constituting matrimonial causes. Unlike courts which exercise a wardship jurisdiction, or those which can bring, in effect, criminal proceedings against say, neglected children for their own protection, this court cannot deal with, as it were, proceedings *in filium*. The wife's application in this case is a matrimonial cause, being proceedings between the parties to a marriage for custody of their child, proceedings from which one party is immune by virtue of his diplomatic status.

I should say that it does indeed seem to me regrettable that there are children otherwise within the jurisdiction of this court with whose welfare it cannot be concerned, but compassion does not, unfortunately, confer jurisdiction.

3. **The application for property settlement**

The orders sought by the wife in the application as originally filed, fell into two groups; firstly, injunctions restraining the husband from disposing of certain property, and secondly, orders altering property interests in accordance with section 79 of the Act.

I do not accept the submission of counsel for the wife that her application for transfer to her by the husband of the home unit in Queensland is:

> An action relating to commercial activity exercised by the diplomatic agent in the receiving State outside his official function.

and thus comes within exception (c) to Article 31(1) of the Convention. The evidence of the wife in her affidavit in support of this application is to the effect that the home unit was purchased in the name of the husband as an

investment, and that it is currently let to Australian tenants. I do not regard that investment, nor the collection of rent as a "commercial activity" within the ordinary meaning of those words. Moreover, the proceedings instituted by the wife must be essentially proceedings arising out of, or in some way related to the marital relationship, not essentially proceedings related to commercial activity. If that were not so her application would not be a matrimonial cause and hence this court would not have the jurisdiction to deal with it.

The real issue, it seems to me, is whether the wife's application, either the original application or the amended one is "a real action relating to private immovable property", and so comes within the exception in paragraph (a) of Article 31(1). A similar issue arose in the case of *Intpro Properties v Sauvel*, already referred to. The court in that case said:

> A 'real action' is a creature unknown to English law since the Middle Ages. The term in the 1964 Act is a literal translation of 'une action reelle' in the French master text of the treaty. There is no evidence before me from an expert in French law on the nature of an action reelle. If Intrpo wishes to rly on this action being a 'real action' it is for it to show me what action reelle means in the terms of the concepts known to English law. Commentators, of whose value I have no expert evidence, suggest that it means an action where the ownership or possession of immovable property is in question (*Satow's Guide to Diplomatic Practice* (5th edn, (1979) p 125), procedure regarding rights *in rem* over real estate (Szasy *International Civil Procedure* (1967) p 408), actions where the relief sought is a declaration of title, an order for sale or an order for possession (Denza *Diplomatic Law*). 'Droit reel' in the *European Glossary of Legal and Administrative Terminology* is translated as 'right *in rem*' as distinct from 'right *in personam*'. Except in the case of Admiralty jurisdiction in relation to ships that is a concept unknown to English law.
>
> In my judgment, Intpro's action does not in any way fit the concept of 'action reelle' as reflected in the commentaries. It is a normal action *in personam* to enforce by injunction the obligations arising from a lease, and for damages. If the Sauvels are properly joined as defendants, they are in my judgment protected from suit by Art 31 because the Action against them is not a real action.

Bristow J, therefore, did not have to decide upon the meaning of "real action" nor to determine whether any of the suggested definitions offered to him from the various commentators was the correct one in that context.

The commentators to whom His Honour there referred are also referred to by the learned authors Dicey and Morris, *Conflict of Laws*, 10th Edition, page 173, who say:

> 'Real action'. a term taken from the civil law, signifies 'an action where ownership or possession of immovable property is claimed'. (Satow, *Guide to Diplomatic Practice*, 5th Edition (1979), p 125) and comprises all actions for the determination of title to immovable property, whether ownership or any other *jus in rem*. See Szaszy, *International Civil Procedure* (1967), p 408. See also Denza, *Diplomatic Law* (1976), pp 159–161.

In Australia the Diplomatic Privileges and Immunities Act already referred to, incorporating as it does the specified Articles of the Convention, covers the law on this subject.

It seems to me that it would have been for the wife in these proceedings to satisfy this court as to the meaning of "real action" in the context of Australian law. In all the circumstances, I am not able to reach any conclusion as to its proper meaning in this context. In any event, whatever the meaning, it is clear that the injunctive relief sought by the wife restraining the husband from dealing with various items of property is, if an action at all, an action *in personam* against the husband and not a "real action" in any of the senses put forward by the commentators cited above. Similarly, the wife's application under section 79 seeking that the husband transfer to her the home unit in Queensland and the motor vehicle is not a "real action" in any of the senses cited but a request, as it were, for the court to alter the parties' existing legal and perhaps equitable interests.

The real issue arises from a consideration of the wife's amended application seeking, in effect, a declaration that the husband holds the home unit in Queensland on trust for the parties as tenants in common in equal shares. This seems, at first glance, to fall within the definition quoted from Denza, *Diplomatic Law* and to be, "An action where the relief sought is a declaration of title".

The wife's affidavits do not reveal whether the parties are co-owners of the home unit in Queensland but I infer from the nature of the amended application that the husband is the sole registered proprietor. If that is so, and the wife has no legal interest in the property, the interest she is seeking to have declared must be an equitable one and this is consistent with the way in which the wife's application is framed.

The question whether the wife has an equitable interest must be decided under section 78 in accordance with the ordinarily accepted rules of equity. As the wife's affidavits do not disclose that she made any financial contribution to the acquisition of the home unit in Queensland it seems unlikely, on the face of it, that she would succeed in obtaining a declaration that she has an equitable interest. However, that is ultimately a matter of evidence and is not decisive as to the jurisdictional point.

Another point which gives me some concern is that it seems clear in the whole context of the applications which the wife has brought that her real aim is to achieve an alteration of property interests and obtain some of the property now in the legal ownership of the husband. The only way for her to achieve this is by obtaining an order under section 79 which, I have found, she cannot do because of the husband's diplomatic immunity to proceedings of that kind. Even if she were to succeed completely in her alternative application under section 78, the declaration itself would mark the end of the road; to obtain any property as such she would need to institute further proceedings. That being so, the wife's amended application under section 78 appears to share some of the features of a legal fiction designed to attract the court's jurisdiction for other purposes. However, the fact, if it is a fact, that the application, even if successful, is pointless, does not of itself decide the jurisdictional issue against the wife.

The point which is decisive seems to me to be that for this court to entertain the wife's amended application at all, it must come within paragraph (ca)(i) or (ii) of the definition of "matrimonial cause" and constitute:

> proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them, being proceedings —
>
> (i) arising out of the marital relationship;
>
> (ii) in relation to concurrent, pending or completed proceedings between those parties for principal relief.

It is perhaps a nice point whether the application for property settlement can come within sub-paragraph (ii) of that definition, when I have already found that the wife cannot proceed with her application for dissolution. Whatever the answer to that may be, it seems to me that the wife's application is so essentially connected to her marriage to the respondent that the real issue before the court is what are the rights of the applicant and the respondent as parties to a marriage. Because that is the whole nexus of the wife's application the submission that her amended application is a "real action" (even if it were clear just what that means in this context) is an attempt to fit it into a procrustean bed which was not designed to accommodate it.

One of the submissions put on behalf of the husband was to the effect that if the wife were successful in her applications, certain consequences would or might follow, such as the issue of a warrant in the event of a custody order against the husband which he failed to comply with or a seizure of his property in the event of his dealing with property the subject of an injunction. Such actions would, it was submitted, amount to a breach of Article 30(1) which provides:

> The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

However, it seems to me that a distinction needs to be made between consequences flowing from orders themselves and consequences flowing from attempts to execute or enforce those orders. In regard to the latter the Convention clearly envisages the situation where orders could be made but could not be executed; paragraph 4 of Article 32 provides:

> Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

So if it were possible for the court to make a custody order in favour of the wife in these proceedings, for example, the police might still be unable to execute a warrant for possession of the child who, by virtue of Article 37, himself enjoys immunity or because the execution of the warrant might, contrary to Article 30, breach the inviolability of the diplomatic agent's private address.

In *Ghosh v D'Rozario* [1963] 1 QB 106, Davies LJ, in the course of deciding whether an action for a slander brought against a diplomatic agent should be stayed, made the following comment (at 118):

> The proposition that a court could give a judgment for damages and make an order for the payment of costs—quite apart from any question of execution—against a High Commissioner or an Ambassador contains in my view its own refutation.

Taking the same kind of overall view in this case it seems to me that it could not have been within the contemplation of those who framed the legislation incorporating the Convention, and still less of those who framed its legislative predecessors, such as the Diplomatic Privileges Act 1708, that the work, indeed the life, of a diplomatic agent, could be disrupted by the kinds of inroads into his private life that would be made by dissolving his marriage or entering into any of the areas of his life most intimately connected with his marriage. Of all relationships the marital is not only the most personal but the most closely tied to the social and cultural mores of the country of origin of the parties to the marriage. It is, for reasons already referred to, an essential feature of all the applications brought by the wife that they relate to her marriage to the respondent. I am of the view, therefore, that none of them is covered by the exceptions contained in Article 31.

From several of the English authorities which were cited to me it can be inferred that, having come to such a conclusion, the wife's applications can be either dismissed (as was done in *Intpro Properties v Sauvel*), or stayed. In *Ghosh v D'Rozario* a writ was issued against the defendent claiming damages for alleged slanders and was set aside on the basis of the defendant's diplomatic immunity, even though that came into effect only after the issue of the writ. It was held that the action: "is not an end but merely stayed. Should the defendant at any time cease to enjoy diplomatic immunity it will be able to proceed" (per Davies LJ).

Regulation 16 of the Family Law Act provides that a judge or magistrate may, at any time after the institution of proceedings, direct a stay of proceedings upon such terms as it thinks fit. There seems to be no reason, in this case, why the proceedings should not be stayed rather than dismissed.

It is perhaps worth pointing out at this stage that this preliminary issue, of the effect of the husband's diplomatic status on the wife's applications and the court's jurisdiction to deal with them, is not a question of jurisdiction in the sense in which that question is usually raised. For example, if the applicant was not domiciled in or ordinarily resident in or a citizen of Australia then the court would not have the jurisdiction necessary to it by virtue of section 39 of the Family Law Act. The difference is pointed up by the fact, already referred to, that it is possible to stay and subsequently to revive an action lacking in jurisdiction by virtue of the fact that the defendant has diplomatic immunity. The same is not true where the jurisdictional bar is, for example, failure to come within the provisions of section 39.

In *Empson v Smith* [1966] 1 QB 426 at 435, Danckwerts LJ cited the following from *Regina v Madan* [1961] 2 QB 1 at 7:

proceedings brought against somebody, certainly civil proceedings brought against somebody, entitled to diplomatic immunity are in fact proceedings without jurisdiction and null and void unless and until there is a valid waiver which, as it were, will bring the proceedings to life and give jurisdiction to the court.

He went on to say (ibid):

> Some logical difficulties have been suggested in regard to the survival of an action which is described as having been a nullity but, in my opinion, in the circumstances these do not form a useful mental exercise.

Later in [*Empson v Smith* [1966] 1 QB at 439,] Diplock LJ, tackling the same logical difficulty, expressed the view that it was incorrect to say that proceedings instituted against a diplomatic agent were a nullity at the time at which they were commended. In his view, Lord Parker in *R v Madan* was:

> clearly not using the words "null and void" in a precise sense, for what is null and void is not a phoenix. There are no ashes from which it can be brought to life. In that case he was concerned only with waiver as removing the procedural bar of diplomatic immunity. His words should not be read that only waiver can, as it were, bring the proceedings to life. The removal of the procedural bar from any other course will have the same effect.

The argument of Diplock LJ was accepted by Balcombe J in *Shaw v Shaw*, already referred to and, with respect, seems to me to be correct.

I am, therefore, of the view that the appropriate course to take in this case is to stay all proceedings instituted by the wife and, accordingly, I make orders in those terms.

Diplomatic and consular relations—diplomatic immunity—settlement of civil claims against diplomats

In February 1985 the Protocol Branch of the Department of Foreign Affairs issued the following amendment to its *Manual of Operative Notes* (text provided by the Department of Foreign Affairs):

RESOLUTION OF DISPUTES

In advancing a procedure to facilitate the just resolution of disputes that arise from time to time over contract obligations and claims from alleged civil wrongs the Department addresses the attention of Missions to both the Vienna Convention on Diplomatic Relations and the Resolution on the Consideration of Civil Claims of the United Nations Conference on Diplomatic Intercourse and Immunities.

2. The preamble to the Vienna Convention on Diplomatic Relations states that the purpose of privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions. Moreover Article 41 states that it is the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State. In the case of the Resolution it contains the recommendation that the sending State should waive the immunity of members of its diplomatic mission in respect of civil claims of persons in the receiving State when this can be done without impeding the performance of

the function of the mission, and that, when immunity is not waived, the sending State should use its best endeavours to bring about a just settlement of the claims.

3. Both the Convention and the Resolution demonstrate that diplomatic immunity was not intended to permit a privileged person involved in a dispute either to decline to provide compensation for loss or damage caused or to avoid obligations entered into under a contract.

4. Where a dispute of this kind between a diplomat and a member of the Australian community remains unresolved despite negotiations between the parties, the Department will, if approached, make every endeavour to help the parties reach a fair and equitable settlement.

5. Should the Department be unable to facilitate settlement it will refer the matter to the appropriate Head of Mission (or, if the Head of Mission is a party to the dispute, to the sending State) asking that he use his influence to encourage a just solution or alternatively by the waiver of immunity, permitting the dispute to be resolved by a court of law.

Diplomatic and consular relations—diplomatic premises—vacated diplomatic premises following the cessation of diplomatic relations—Vienna Convention on Diplomatic Relations, Article 45—disposal of the properties of Vietnam and Cambodia in Canberra

The Government of the Republic of Vietnam had been represented in Australia since the 1960s. It held two leases in Canberra under the City Area Leases Ordinance 1936. On one of these properties was the embassy, and on the other was the head of mission residence. Diplomatic relations ceased to exist when, on 5 May 1975, the Ambassador and the entire staff of the embassy resigned. On the following day the Australian Government announced its decision to recognise the Provisional Revolutionary Government of the Republic of South Vietnam.[1] From that date, the two properties were under the protection of the Australian Government pursuant to Article 45 of the Vienna Convention on Diplomatic Relations, no protecting power having been appointed.

In 1983 the Australian Government sought to have the title of the two properties transferred to the Government of the Socialist Republic of Vietnam. On 11 August 1983 the following letter from the Department of Foreign Affairs was sent to the Acting Registrar of Titles in the Australian Capital Territory (text provided by the Department of Foreign Affairs):

In 1961 and 1968 the then Embassy of the Republic of Vietnam purchased two properties in Hobart Place, Forrest—Block 14, Section 7 and Block 15,

1 This Year Book, Vol 6, p 239. The Government of Australia and Government of the Democratic Republic of Vietnam (North Vietnam) decided upon "reciprocal recognition and the establishment of diplomatic relations between their two countries at the level of Ambassador" on 26 February 1973. Such recognition did not alter Australia's continued recognition and diplomatic relations with the Government of the Republic of Vietnam (South Vietnam): Department of Foreign Affairs News Release No M/45 dated 26 February 1973. Formal unification of North and South Vietnam as the Socialist Republic of Vietnam took place on 2 July 1976.

Section 7. The leases are held in the name of the Government of the Republic of Vietnam (RVN).

When the former Saigon regime fell in 1975, the Provisional Revolutionary Government of the Republic of South Vietnam (PRG) took control of that part of the country formerly administered by the RVN. In June 1976 the States of the Democratic Republic of Vietnam and the Republic of Vietnam merged to form one state, the Socialist Republic of Vietnam.

Australia's recognition of the Socialist Republic of Vietnam as the successor State to the former States of the Democratic Republic of Vietnam and the Republic of South Vietnam involved, inter alia, an acknowledgment that the successor State acquired all the rights of its predecessors that appertain to sovereign jurisdiction. Such jurisdiction embraces the capacity to possess assets located in foreign countries.

Would you please note the transfer of these leases from the registered lessee (The Government of the Republic of Vietnam) to the transferee (The Government of the Socialist Republic of Vietnam).

When the transfer has been achieved, the Governments of Australia and Vietnam will sign an agreement to exchange the properties in Canberra for Australian Government property in Ho Chi Minh City (formerly Saigon).

Then, on 14 February 1984 a Memorandum of Understanding between the Government of Australia and the Government of the Socialist Republic of Vietnam on the Exchange of Properties in Canberra and Ho Chi Minh City (formerly Saigon) was signed in Ha Noi, as follows (text provided by the Department of Foreign Affairs):

This Memorandum of Understanding records and implements the understandings reached by the Foreign Minister of Australia and the Foreign Minister of the Socialist Republic of Viet Nam at their meeting in Ha Noi on 29 June, 1983.

1. As set out below the two Governments exchange immovable properties of equal value, including their furnishings and fittings, situated in Canberra and in Ho Chi Minh City:

(a) The Government of the Socialist Republic of Viet Nam transfers to the Government of Australia any interest in or title to No 39 National Circuit, Forrest, being in Block 15, Section 7, Forrest, and No 14 Hobart Avenue, Forrest, being in Block 14, Section 7, Forrest, in the Australian Capital Territory; and

(b) The Government of Australia transfers to the Government of the Socialist Republic of Viet Nam any interest in or title to the building situated at 149 Nguyen Thi Minh Khai Road (formerly Pasteur), the 7th Floor of the Doc Lap Hotel (formerly Caravelle) and the foundation under construction on a piece of land at "3C–4" Avenue (formerly Thong Nhat), in Ho Chi Minh City (formerly Sai Gon).

2. This Memorandum of Understanding concluded by the Representatives described hereunder of each Government will enter into effect upon signature.

3. This Memorandum of Understanding is signed in Ha Noi this 14th day of February, 1984 in duplicate in English and Vietnamese both text being equally authentic.

Then, on 7 May 1984, the Deputy Crown Solicitor for the Australian Capital Territory applied to the Registrar of Titles for an endorsement to be made in the Register Book that the two properties had "become vested in the Commonwealth of Australia as Crown Lands". In support of the application he lodged the letter from the Department of Foreign Affairs (above) and a copy of the Memorandum of Understanding (above) "attesting to the transfer of the said land to the Commonwealth of Australia".[2] In accordance with section 50 of the Real Property Ordinance 1925, the Registrar dispensed with the production of the original certificate of title, and, pursuant to sections 68 and 80 of the Ordinance, registered the properties as having become vested in the Commonwealth of Australia as Crown Lands.[3]

In the case of Cambodia, the Government of Cambodia purchased two Crown leases in Canberra for the purpose of the establishment of a diplomatic mission in 1961. On 9 October 1970, the Khmer Republic was declared as the successor to the Kingdom of Cambodia, and on 17 April 1975, having withdrawn the Australian mission to the Khmer Republic on 15 March 1975, the Australian Government recognised the Royal Government of the National Union of Cambodia, which Government was in March 1976 renamed the Government of Democratic Kampuchea.

Following the cessation of diplomatic functions and the departure of diplomatic representatives of the Government of the Khmer Republic on or shortly after 17 April 1975, the Australian Government took all appropriate steps to protect the premises of the mission, together with its property and archives. Nevertheless, during 1985 squatters occupied the former head of mission residence. The Public Order (Protection of Persons and Property) Act 1971 was amended to bring within the definition of "protected premises" in section 4 premises *formerly* occupied for the purposes of a diplomatic mission and *formerly* used as the residence of the head of a diplomatic mission, being premises to which Article 45 of the Vienna Convention on Diplomatic Relations applies.[4] Following the commencement of the amendment on 16 December 1985, the squatters were trespassers within the meaning of the Act and were liable to be arrested and convicted of an offence. Following a direction by a constable, they left the premises. The house and garden were restored, and both properties became the subject of a Licence granted by the Commonwealth of Australia, represented by the Department of Foreign Affairs acting in pursuance of its powers and obligations under Article 45 of the Vienna Convention on Diplomatic Relations, and had the following term included:[5]

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2 Application Nos 467907 and 467908.

3 Volume 57 Folio 5684, and Volume 67 Folio 6649. The registration was effected on 30 May 1984. Australia's diplomatic mission to the Republic of Vietnam in Saigon was withdrawn on 25 April 1975.

4 Statute Law (Miscellaneous Provisions) Act (No 2) 1985.

5 Text provided by the Department of Foreign Affairs. The Australian Government withdrew recognition from the Government of Democratic Kampuchea on 14

This licence is granted by the Commonwealth during the period of temporary cessation of diplomatic relations between Australia and Cambodia in pursuance of the powers and obligations of Australia under Article 45 of the Vienna Convention on Diplomatic Relations 1961. The premises are the property of the Government of Cambodia. Should such diplomatic relations be resumed, the Licensor or the Agent shall forthwith give written notice of the resumption to the Licensee, and the term of the Licence shall terminate at the expiration of 28 days from the giving of that notice, whereupon the Licensee shall deliver up possession of the premises to the Licensor or to a person nominated in writing by the Licensor, and the Licensee shall have no claims against the Licensor for any losses which may be suffered by the Licensee as a result of the termination of the licence.

Diplomatic relations—abandoned premises

In October 1986 the Department of Foreign Affairs, on behalf of the Commonwealth of Australia, leased an abandoned diplomatic residence which was the property of the Government of Cambodia on land leased from the Commonwealth. The following clause was inserted in the Lease (text provided by the Department of Foreign Affairs and Trade):

The licence is granted by the Commonwealth during the period of temporary cessation of diplomatic relations between Australia and Cambodia in pursuance of the powers and obligations of Australia under Article 45 of the Vienna Convention on Diplomatic Relations 1961. The premises are the property of the Government of Cambodia. Should such diplomatic relations be resumed, the Licensor of the Agents shall forthwith give written notice of the resumption to the Licensee, and the term of the Licence shall terminate at the expiration of 28 days from the giving of that notice, whereupon the Licensee shall deliver up possession of the premises to the Licensor or to a person nominated in writing by the Licensor, and the Licensee shall have no claims against the Licensor for any losses which may be suffered by the Licensee as a result of the termination of the Licence.

Diplomatic relations—diplomatic privileges—abuse of privileges—Australian diplomats in Jakarta—diplomats in receiving State not immune from jurisdiction in the sending State—disciplinary actions

On 5 May 1987 the Department of Foreign Affairs issued the following News Release (AFAR, May 1987, 278):

The Department of Foreign Affairs has completed the first stage of investigations into allegations of misconduct by public servants from several Departments regarding the importation and sale under diplomatic privilege of motor vehicles in Indonesia. The Department views this matter with the most serious concern. As a result of investigations into the importation by 133 officers of vehicles between 1982 and the present:

- Eleven officers have been charged with offences under the Public Service Act.

February 1981 (see this Year Book, Vol 8, p 275, and Vol 10, p 286), and has recognised no Government of Kampuchea since that date.

- In addition, a further 14 officers are to be reprimanded under the Public Service Act.

Also, two Departments have been asked to consider action in respect of four officers not covered by the Public Service Act.

The action taken affects officers from the Department of Foreign Affairs, Australian Development Assistance Bureau, Department of Immigration and Ethnic Affairs, Department of Defence, Department of Sport, Recreation and Tourism and the Australian Federal Police.

The next steps are:

- a formal inquiry into the charges will be held under Section 62 of the Public Service Act;
- officers charged will have 28 days to respond to the charges and decisions will then be taken as to whether the charges are proven;
- action will be taken against those officers who are found to have committed offences.

Ten officers of the Embassy in Jakarta have been informed in writing that vehicles which were imported in contravention of Indonesian requirements must be re-exported. The Indonesian Department of Foreign Affairs has been advised of this. If there should be any new evidence of irregularities then further investigations will be made.

The Director of Public Prosecutions has been generally advised of what has been done and is to be done. Mr Temby has no difficulty with the course that has been followed by the Minister and Department.

Diplomatic and Consular Relations—Vienna Convention on Consular Relations—freedom of communication—protest by Consulate-General at industrial action banning communications—Australian Government response

Industrial unions in Sydney imposed communications bans on the Consulate-General of Bulgaria in September 1984 to protest the denial of an exit visa to a Mr Georgiev's family in Bulgaria. The following Notes were exchanged, the first on 20 September (texts provided by the Department of Foreign Affairs):

The Consulate-General of the People's Republic of Bulgaria presents its compliments to the Department of Foreign Affairs and has the honour to inform about the following matter:

On the morning of the 20th of September the office of the Consulate-General of Bulgaria was orally informed, and later it was confirmed by the manager of the Edgecliff Post Office, that starting on 21st of September there will be a 14-day ban on all communication means of the Consulate-General of Bulgaria.

The action, no matter what or whom it is prompted by, is against the principles of the Vienna Convention, would halt and disrupt the normal work of the Consulate-General, due to which it is requested that the Department of Foreign Affairs takes immediate and energetic measures to prevent this.

The Consulate-General of the People's Republic of Bulgaria avails itself of the opportunity to renew to the Department of Foreign Affairs the assurances of its highest consideration.

The reply was dated 25 September (Note No 141/84):

The Department of Foreign Affairs presents its compliments to the Consulate-General of the People's Republic of Bulgaria and has the honour to refer to the Consulate-General's Note of 20 September 1984 concerning industrial action which has been notified to the Consulate-General concerning the communications of the Consulate-General.

While the Australian Government regrets any circumstances that might adversely affect the performance of the functions of any Consular Post in Australia, it notes that the People's Republic of Bulgaria has not expressed its willingness to be bound by the Vienna Convention on Consular Relations, so it cannot therefore invoke its particular provisions. The Australian Government in the conduct of its consular relations with States which are not parties to the Vienna Convention, or any other agreement on consular relations, is always ready to be bound by any relevant rules or customary international law in the area. While there may exist such a rule obliging States to permit and protect the freedom of communication on the part of a Consular Post for all official purposes, it is not established that this freedom extends to any particular means of communication. In this connection the Department notes that the Consulate-General remains free in the present circumstances to avail itself of a diverse range of means of communication, including consular couriers, private couriers, consular bags, private document exchanges, etc. while the present industrial action complained of by the Consulate-General obtains.

As the Consulate-General will be aware, this action was taken without the instigation of the Australian Government, and is being continued without its support. The Department notes, however, that the action is a spontaneous response to the refusal by the Government of the People's Republic of Bulgaria to grant exit visas to members of the family of Mr Georgiev to permit his family to be reunited in Australia. Furthermore, the Department notes that Article 12 of the International Covenant on Civil and Political Rights, to which both Australia and Bulgaria are a party, guarantees everyone the right to be free to leave any country, including his own.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Consulate-General of the People's Republic of Bulgaria the assurances of its high consideration.

The ban on mail deliveries was lifted by the postal unions on 28 September 1984 after an assurances from the Consul-General that he would take steps to ensure that a decision on the Georgiev case was expedited.

Diplomatic and consular relations—diplomatic bags—conditions of use

On 28 February 1984 the Minister representing the Minister for Foreign Affairs in the Senate, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1984, 13):

As to the question of diplomatic bags, I assure honourable senators that Australian diplomatic bags arriving in the Department of Foreign Affairs from Australian missions overseas have no immunity and are regularly and thoroughly inspected by Customs officers. Items deemed to be other than

official are subject to the normal range of Customs duties and quarantine regulations.

On 10 October 1984 the Attorney-General, Senator Gareth Evans, provided the following written answer to a question on notice in the Senate concerning the misuse of a diplomatic bag by an officer of the Australian Intelligence Security Organisation (Sen Deb 1984, 1607):

> I am informed that an ASIO officer who was overseas on official duty requested an ASIO officer at an overseas post to arrange for some personal effects which would not fit into his luggage to be sent back to Australia by non-diplomatic freight bag. Unknown to either officer, all bags dispatched from overseas posts are regarded as diplomatic bags. I am of the view that this matter resulted from a misunderstanding, and that there was no intention to avoid Customs examination of the goods, or to infringe the rules relating to the use of diplomatic bags.
>
> The breach has been dealt with, by the Director-General of Security, as an internal disciplinary matter. He has taken what in my view is appropriate action. Further, ASIO members serving overseas have been advised of the restrictions placed on the use of air freight and sea bags dispatched from overseas posts.

On 14 October 1985 the Acting Minister for Foreign Affairs, Senator Gareth Evans, said in part in answer to a question without notice in the Senate (Sen Deb 1985, 1132):

> Strict instructions have been forwarded to all overseas posts specifying that only official items can be forwarded in the diplomatic bag. Any items of a personal nature must be forwarded by commercial means at the explicit cost of the consignee.

Diplomatic relations—diplomatic bag—Australian objection to reservations

On 6 February 1987 the Australian Mission to the United Nations in New York submitted the following Note No 12/87 to the Secretary-General (text provided by the Department of Foreign Affairs):

> The Permanent Mission of Australia to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to the following reservations entered in respect of the Vienna Convention on Diplomatic Relations done at Vienna on 13 April 1961.
>
> - On 6 June 1986 the State of Qatar acceded to the Convention and made the following reservations:
>
>> The Government of the State of Qatar reserves its right to open a diplomatic bag in the following two situations:
>>
>> 1. The abuse, observed in flagrante delicto, of the diplomatic bag for unlawful purposes incompatible with the aims of the relevant rule of immunity, by putting therein items other than the diplomatic documents and articles for official use mentioned in para 4 of the said article, in violation of the obligations prescribed by the Convention and by international law and custom.

In such a case both the Foreign Ministry and the Mission concerned will be notified. The bag will not be opened except with the approval by the Foreign Ministry.

The contraband articles will be seized in the presence of a representative of the Ministry and the Mission.

2. The existence of strong indications or suspicions that the said violations have been perpetuated.

In such a case, the bag will not be opened except with the approval of the Foreign Ministry and in the presence of a member of the Mission concerned. If permission to open the bag is denied it will be returned to its place of origin.

- On 10 April 1986 the Yemen Arab Republic acceded to the Convention and made the following reservation:

  Where there are serious and strong grounds for believing that the diplomatic bag contains articles or substances not mentioned in article 27, paragraph 4, of the Convention, the Yemen Arab Republic reserves its right to request that the bag be opened in the presence of a representative of the Embassy concerned. If the Embassy refuses to comply with this request, the bag shall be returned to its place of origin.

The Permanent Mission informs the Secretary-General that Australia does not regard as valid the reservations made by the State of Qatar and the Yemen Arab Republic in respect of treatment of the diplomatic bag under Article 27 of the Vienna Convention on Diplomatic Relations of 18 April 1961.

The Permanent Mission of Australia should be grateful if the Secretary-General would bring this communication to the attention of other parties to the Convention.

The Permanent Mission of Australia takes this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

Consular relations—signing of consular agreement—opening of consulate

On 16 April 1984 the Minister for Foreign Affairs, Mr Hayden, announced an exchange of letters with China agreeing to the establishment of two consulates in Australia and China: see Comm Rec 1984, 512–513. The Consulate-General at Shanghai in China was opened on 1 September 1985: see Comm Rec 1985, 1479.

Consular relations—consulates-general—bombing of Australian consulate-general in New Caledonia

On 2 December 1985 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1985, 2221–2222):

The Minister for Foreign Affairs, the Hon Bill Hayden, confirmed today that a bomb had exploded in a carpark adjacent to the high-rise office building in Noumea in which the Australian Consulate-General office is located.

Mr Hayden said he understood that the explosion had destroyed a vehicle belonging to a European member of the Kanak independence movement, the

FLNKS. No one was injured in the incident. As a precaution the Australian Consulate-General office, which is on the eighth floor, was temporarily evacuated. There was no damage to Australian property, nor was there any indication to suggest any link between the explosion and the presence of the Australian office in the building.

Consular relations—consulates—bombing of Turkish Consulate-General in Melbourne

On 23 November 1986 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1986, 2154):

The Minister for Foreign Affairs, the Hon Bill Hayden, condemned in the strongest terms those responsible for the car-bomb explosion earlier this morning in a car park underneath the building occupied by the Turkish Consulate-General, Melbourne. The explosion killed one person and slightly injured another. No Turkish Consulate staff were injured.

Mr Hayden noted that reports had been received that an organisation calling itself the "Greek-Bulgarian-Armenian front" had claimed responsibility for the attack. The Department of Foreign Affairs had no immediate knowledge of such an organisation but government authorities would check all available material on terrorist groups to assist the Victorian police in their investigation. Ministers would soon consider a detailed report on the explosion and would review security procedures, particularly for foreign representatives in Australia, in the light of that report.

Mr Hayden said: 'Australia would not tolerate acts of terrorism, wherever they occurred'. He recalled his statement issued on 21 November 1986, in which he noted that the key to combating terrorism lay in effective international co-operation and a common determination to bring all such activity to an end.

Mr Hayden said Australia's regret at this incident had been conveyed to the Turkish Government through diplomatic channels.

Consular relations—consular agreement between Australia and Canada—memorandum of understanding between Australia and Canada implementing the consular agreement

On 8 August 1986 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1986, 1269):

The Minister for Foreign Affairs, the Hon Bill Hayden, who is in Vancouver, has signed a consular sharing agreement with Canada. The Canadian Secretary of State for External Affairs, Mr [Clarke], signed on behalf of Canada.

The agreement, which was signed on 7 August, will open the way for each government to provide consular services, under certain conditions, to the other's nationals in areas where only one of the countries is represented. The details of the countries involved will be announced formally soon.

Mr Hayden said that the agreement reflected a desire among Commonwealth countries for greater consular cooperation. The 1985 Commonwealth Heads of Government Meeting in Nassau had endorsed the recommendations of a report on Commonwealth consular relations. The

report included recommendations for increased use of regional and bilateral agreements aimed at sharing consular duties and responsibilities.

Mr Hayden said the agreement with Canada represented an example of the special relationship and close cooperation between Canada and Australia.

On 23 January 1987 the Department of Foreign Affairs issued the following news release (AFAR, January 1987, 28):

> The Australian High Commissioner in Ottawa, Mr Robert Laurie, and the Canadian Minister for External Relations, the Hon Monique Landry, today signed a Memorandum of Understanding on sharing consular services abroad. The memorandum contains practical arrangements for implementing the consular sharing agreement signed in Vancouver in August 1986 by the Minister for Foreign Affairs, Mr Bill Hayden, and the Canadian Secretary of State for External Affairs, Mr Joe Clarke.
>
> The Memorandum provides that Australia will extend specified consular services to Canadians at Honolulu (USA) and Bali (Indonesia), while Canada will assist Australians in Lima (Peru), Oslo (Norway) and Tunis (Tunisia). Further locations may be included after mutual agreement by both countries.
>
> The services to be provided include financial assistance and repatriation, assistance in the case of illness or hospitalisation, issue of emergency travel documents, lost or stolen property enquiries, assistance with arrangements regarding deaths of citizens and local registration of nationals.
>
> The agreement with Canada represents an example of the special relationship and close co-operation which has developed between Australia and Canada over the years and will help widen the scope of assistance provided to both countries' nationals.

Consular relations—consular protection—pursuit of compensation for Australians who have had property nationalised abroad

On 16 October 1986 the Minister for Foreign Affairs, Mr Hayden, provided the following answer to a question on notice in the Senate (Sen Deb 1986, 1470):

> Many hundreds of Australian citizens claim that they have had property nationalised or taken into State control by foreign governments since about 1939. Few have had any success in pursuing their claims on an individual basis. Many had only limited ties with Australia at the time the actions complained of were taken. In 1984 I asked that an interdepartmental working group consider what can be done to facilitate a proper settlement of these claims.
>
> I expect that the ideal solution would include comprehensive official action to invite and assess the validity of claims made by Australian citizens. Compensation would then ultimately be paid out of funds provided following the negotiation of government-to-government agreements between Australia and the other countries concerned. However, achievement of this ideal solution requires the full cooperation of the latter countries, and this will need to be established.
>
> The work of the interdepartmental group is proceeding as resources allow. The legal and administrative issues involved are complex and it is

expected that final resolution of this matter will take some considerable time.

Consular relations—consular assistance to Australians abroad

On 8 March 1984 the Minister for Foreign Affairs, Mr Hayden, introduced the Registration of Deaths Abroad Bill 1984 into the House of Representatives, and explained the purpose of the Bill in part as follows (HR Deb 1984, 768-769):

> The purpose of this Bill is to provide for the registration in Australia of the deaths of Australian citizens, Australian residents and people in receipt of Australian social security benefits, whose deaths cannot be registered under existing State and Territory legislation. It will also enable Australia to conform to accepted international practice by registering the deaths of these and other persons which occur in international airspace or waters on board Australian registered aircraft of ships, or on board ships or aircraft travelling to and from Australia.
>
> Registration of deaths occurring within Australia is a State and Territory responsibility. There is, however, no legislation covering the registration in Australia of deaths which occur outside Australia. Legislation does exist, both Commonwealth and State, providing for such deaths to be registered in certain circumstances. Most States, for example, provide for the registration of deaths occurring outside the State on ships, and in some cases aircraft, proceeding to that State.
>
> These registration schemes leave a number of potential gaps. Although no conclusive statistics are available it is known that more than 200 Australians die overseas each year. Over the years, a number of deaths have occurred outside Australia which have not been able to be registered, either in Australia or another country. There are at present about 12 cases in which the deaths of Australians who died outside Australia cannot be registered. As a result, the personal representatives of such deceased persons have experienced considerable difficulties in winding up the estates because no death certificates can be issued in Australia.

On 22 October 1984 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1984, 2115):

> The Minister for Foreign Affairs, the Hon Bill Hayden, today called in the Vietnamese Ambassador, Mr Hoang Bao Son, to express his concern about the continuing detention in Vietnam of Michael David Flecker.
>
> Mr Flecker, from Perth, was a crew member of an American registered yacht, *So Fong*, which was detained by Vietnamese authorities off the coast of Hau Giang Province in the south of Vietnam on 22 July. The *So Fong* was sailing from Thailand to Hong Kong when it was apprehended by a Vietnamese patrol boat for allegedly intruding into Vietnamese territorial waters.
>
> Mr Hayden pointed out that Mr Flecker had now been held for three months. The Australian Embassy in Hanoi had been pressing continually with the Vietnamese authorities for Mr Flecker's release and also for permission to have regular consular access to Mr Flecker. So far Australian consular officials had been allowed only one consular visit to Mr Flecker.

The Australian Embassy was also seeking permission to have regular telephone contact with Mr Flecker.

The Ambassador undertook to convey Mr Hayden's concern to the Vietnamese Foreign Minister and would advise Mr Hayden of his response.

The Minister for Foreign Affairs, Mr Hayden, welcomed the release of Mr Flecker by the Vietnamese authorities on 29 November 1984: see Comm Rec 1984, 2412 and 2551. Mr Hayden made a statement to Parliament on 7 June 1984 on a report on six Australian servicemen who were believed to have been killed in Vietnam but whose bodies had not been recovered: see HR Deb 1984, 3152–3154.

On 10 September 1985 the Minister representing the Minister for Foreign Affairs in the Senate, Senator Gareth Evans, said in part in answer to a question, without notice (Sen Deb 1985, 330):

Dr and Mrs Williamson were kidnapped near Quetta in Baluchistan, Pakistan, on 18 May. Dr Williamson, who is a hydrologist, is employed by an Australian company on contract to the World Bank. He was working in Baluchistan and living in Quetta when the couple were abducted. The Williamsons were originally abducted by members of the Sasooli tribe living in an area straddling the Pakistan-Afghanistan border. In exchange for the couple's freedom, the release from prison of a Sasooli tribal leader was initially demanded. Since then the situation surrounding the kidnapping has become confused and it now seems possible that the Williamsons are no longer being held by the Sasoolis. Information of relevance is hard to acquire and almost impossible to check. It does appear, however, that the Williamsons are being held inside Afghanistan.

Primary carriage of efforts to locate the Williamsons and secure their release, unharmed, has of course been with the Government of Pakistan, which has pursued its responsibilities with diligence. Australian officials have kept closely in touch with the Pakistanis, and to that end, an officer of the Embassy in Islamabad has visited Quetta on a regular basis since the kidnapping. Information has also been sought from a number of other sources. Additionally, the Government has officially sought the consular assistance of the governments of the Soviet Union and Afghanistan, as well as the assistance of the Secretary-General of the United Nations and the President of the World Bank. Friendly governments with representatives in Afghanistan have been asked for their help but no hard information has yet resulted from these approaches. Officials of the Department of Foreign Affairs have kept in daily contact with Dr and Mrs Williamson's families in Victoria.

I am extremely concerned, as is the Foreign Minister, that, after almost four months, we appear to be no closer to a resolution of this matter than we were before. Mr Hayden has again written to the Pakistan Foreign Minister, Yaqub Khan, asking that the Pakistan Government's best endeavours be continued to secure the early release, unharmed, of the couple. Honourable senators can be assured that this Government will continue to do all that it can to secure the early release of Dr and Mrs Williamson.

On 28 December 1985 the Minister for Foreign Affairs, Mr Hayden, issued a statement welcoming the release of the Williamsons by the Afghan authorities: see Comm Rec 1985, 2287.

On 26 November 1985 the Minister representing the Minister for Foreign Affairs in the Senate, Senator Gareth Evans, provided the following written answer in part to a question on notice (Sen Deb 1985, 2307) about the deaths of Australian journalists in East Timor in October 1975:

> Since mid-October 1975, officers of the Department of Foreign Affairs have attempted to gather as much information as possible about the circumstances surrounding the deaths of the journalists. New information which has surfaced from time to time has been fully taken into account. The result of investigations carried out by the Department has been a substantial body of information, which is a mixture of direct and hearsay experience, containing major inconsistencies and contradictions.
>
> The accounts gathered can be broadly grouped into two categories. On the one hand, it has been claimed that the journalists were shot by Indonesian forces, on the other, that they were caught in crossfire between Fretilin and pro-Indonesian forces.
>
> The fact that the incident took place on foreign soil and involved foreign nationals over whom Australia has no legal power to oblige to give evidence has meant that the investigations cannot proceed beyond the compilation of these accounts. The Indonesian Government has co-operated to some extent in providing information surrounding the circumstances in which the journalists died but there is no question of applying Australian legal processes to an investigation of the incident.

On 24 December 1985 the Minister for Foreign Affairs, Mr Hayden, released the following text of a message seeking clemency for two Australians sentenced to death in Malaysia for drug offences (Comm Rec 1985, 2286):

> I am taking the liberty of writing to you, as Head of the Penang Pardons Board, about the Australians, Kevin John Barlow and Brian Geoffrey Chambers, who received the mandatory death sentence in Penang on 1 August 1985 for the possession of 180 gm of pure heroin. Their appeals against conviction and sentence were rejected by the Supreme Court on 18 December 1985. I am aware that the families of the convicted men are arranging for Counsel to make submissions to the Pardons Board. Australia, like Malaysia, is strongly committed to international efforts to control the production and distribution of illicit drugs, and to combat drug abuse and illegal trafficking. Our commitment has been formally stated by our ratification of the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances co-ordinated through the United Nations. In ASEAN countries we have provided substantial funds towards the control of narcotics.
>
> The Australian Government has, however, rejected the death penalty on humanitarian grounds for any offence and it now has no part in Australia's Federal or State legal systems. This reflects the view, strongly shared by the Australian Government, that the community is not justified in taking away life as a punishment, no matter how serious the offence. Because of this, the Australian Government will make an appeal for clemency for any Australian

sentenced to death in any country, after all legal procedures in that country have been exhausted.

While the imposition of the death penalty on Barlow and Chambers could be expected to provoke an adverse reaction within Australia, a commutation of this sentence would, I believe, be welcomed by the Australian community.

I would, therefore, appeal to the Penang Pardons Board to give sympathetic consideration to commutation of the sentence of death to these two men.

I am sending a copy of this letter to Tan Sri Datuk Abu Talib bin Othman.

On 21 June 1986 the Acting Minister for Foreign Affairs, Senator Evans, issued the following statement (Comm Rec 1986, 998–999):

The Acting Foreign Minister, Senator the Hon Gareth Evans, today made the following statement in response to the decision of the Penang Pardons Board. He said:

The Australian Government deeply regrets the decision of the Penang Pardons Board to confirm the death sentences imposed on Kevin Barlow and Brian Chambers, convicted in Malaysia for drug offences.

The Australian Government's appeal for clemency, which was made by Mr Hayden in a letter to the Government of Penang last December and raised in discussion with Prime Minister Mahathir in March, was based on our repugnance toward the death penalty in any circumstances. We strongly believe that the taking of life as a punishment is never justified, no matter how serious the offence.

The Government nonetheless accepts that Australians travelling overseas are subject fully to the laws of the countries in which they travel.

All Malaysian review processes have now been exhausted and there is no further action open to the Australian Government.

On 23 June 1986 Senator Evans issued a further statement, part of which is as follows (Comm Rec 1986, 1041–1042):

The attacks that have been made on the Government's handling of the Barlow and Chambers cases are quite misconceived, and in so far as it is suggested that further steps could have been taken in the past by the Foreign Minister, or could even now be taken by the Prime Minister, they will do nothing but cause further distress to both men and their families.

Every action with a conceivable prospect of success that could possibly have been taken has been taken. Mr Hayden made a full and formal written appeal for clemency last December, and followed the matter up in discussion with Prime Minister Manathir in March. There have been a number of other communications with the Malaysian authorities, both formal and informal, before and since, including further representations by me as Acting Foreign Minister as late as last Friday. The Malaysian Government at all levels is completely aware of our very strong view that capital punishment is repugnant, never justified in any circumstances, and should not be imposed here.

Some specific comment is necessary in response to some of the more inaccurate and misleading suggestions that have been made by Mr Galbally and Mr Sinclair.

It has been suggested by Mr Galbally that Australian should complain internationally about the treatment of the two men in the Malaysian legal system for what he describes as a denial of natural justice. In some cases of a gross denial of human rights in other countries, the Australian Government has indeed complained internationally, both to the country concerned and in international forums. If such a gross denial were to be imposed on any Australian, the Australian Government would be vociferous in its condemnation.

But Messrs Barlow and Chambers were tried in open court before a respected judge, both represented by counsel who were able to call witnesses and present their clients' cases. Alleged errors of law arising from the trial were argued at length by counsel for both men before the full Malaysian Supreme Court, the highest court in the land and one which is internationally highly respected, presided over by the Lord President of Malaysia, and were unanimously rejected. There has been a further review of all the circumstances of the case by the Pardons Board in Penang, presided over by the Governor of Penang. This is simply not a case where the Australian Government could contemplate seriously any suggestion that there has been a gross denial of human rights.

It has also been specifically suggested by Mr Galbally that recourse should be had to the International Court of Justice. An initial difficulty here is that Malaysia has not made any declaration accepting the compulsory jurisdiction of the court, so that a case between Australia and Malaysia could only be referred to the court with the consent of both countries. The more immediately relevant consideration, however, is that the ICJ was established to deal basically with 'disputes' between States, and—for the reasons I have just given—there is simply nothing in the Malaysian conduct of this case which could reasonably give rise to a claim by Australia that such a dispute existed.

There has also been some talk of an appeal being made directly to the King of Malaysia. However, the Malaysian Constitution makes it absolutely clear that the prerogative of mercy in the case of a Malaysian State offence rests with the Ruler or Governor of the State concerned and not the King. The appeal for the exercise of the prerogative of mercy has already been made in the present matter to the Governor of Penang.

Mr Sinclair has made two quite extraordinary statements. He has suggested in the first place that the two men should have been tried in Australia, and not Malaysia. But they are charged with possessing drugs at an airport in Malaysia; it has not been alleged that they were in possession of drugs in Australia. On the known facts of the present case, there is simply no basis on which a request for extradition to Australia could have been made.

Mr Sinclair is also reported to have suggested that Australian law should have been applied to their trial in Malaysia. This suggestion is little short of preposterous, revealing a profound ignorance of the international ground

rules, accepted by Australia and every other country, under which criminal jurisdiction is exercised.

It is to be hoped that there will be no further ill-informed statements made to raise false hopes and add needlessly to the suffering of the condemned men and their families.

On 7 July 1986 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1986, 1114):

The Australian Government deeply regrets the execution today in Kuala Lumpur of Kevin Barlow and Brian Chambers for drug offences. It understands the anguish of the families at this terrible moment, and extends its sincere condolences to them.

The Australian Government reaffirms its abhorrence and rejection of the death penalty in any circumstance, believing that the taking of life as a punishment can never be justified.

The Australian Government's repugnance at the death penalty has been put forcefully to the Malaysian authorities by the Prime Minister, by Senator Evans as Acting Foreign Minister, and by myself on a number of occasions in the series of representations which have been made when seeking clemency for the two men.

The Prime Minister, in his message of 5 July, urged that the Malaysian Prime Minister and the Governor of Penang ensure that the two Australians had a full opportunity to avail themselves of all proper processes of the law.

This tragic event is a stark reminder that some countries in Australia's region impose the death penalty for drug offences, and that all countries have severe penalties for involvement with narcotics. It is also a stark reminder that Australians when overseas are subject to the laws of the country they are in, and that no matter how strenuous its efforts to protect Australian citizens, this is a reality which the Australian Government cannot change.

Consular relations—consular protection—dual national—protection of dual Australian-Yugoslav national with consent of Yugoslavia—protest at sentence

On 7 June 1987 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1987, 852):

The Minister for Foreign Affairs, the Hon Bill Hayden, expressed deep concern today at the severity of a sentence which a Yugoslav court has imposed on an Australian citizen of Yugoslav origin.

Dragolyub Pantelich, 40, was sentenced to six years' imprisonment by a District Court in Sabac, Serbia, on 5 June. He had been found guilty of charges under Yugoslav law of taking part in political activity hostile to Yugoslavia. The charges related largely to his membership of a Serbian organisation in Australia.

As a dual Australian-Yugoslav national Mr Pantelich is regarded by the Yugoslav Government as a Yugoslav citizen, and entirely subject to its law. Following his arrest in April Australian consular assistance was extended to him without objection from the Yugoslav authorities.

Mr Hayden said that Australia would continue to offer consular support in the period leading to the appeal hearing planned by Mr Pantelich. Australia

would assist in an appeal for clemency if Mr Pantelich should decide to make one. Mr Hayden said he also intended to convey to the Yugoslav authorities his hope that they would give serious consideration to at least reviewing the sentence imposed on Mr Pantelich.

Mr Hayden said that his reason for making this approach was that much of what Mr Pantelich was accused of, whatever its status under Yugoslav law, related to activity outside Yugoslavia, with most of it being in Australia. The Australian Government has had no indication that Mr Pantelich's activities outside Yugoslavia were other than compatible with an acceptable freedom of expression. As well, the evidence presented in court gave no suggestion that these activities were related to terrorism or violence.

Mr Hayden emphasised that Australia and Yugoslavia have normal and friendly relations and it was because of this well-established co-operative relationship that he believed he could put his and the Australian public's concern about the outcome of Mr Pantelich's trial.