XIV. Disputes

*Tim Reilly**

Peaceful settlement of disputes—Permanent Court of Arbitration—Plenary Meeting

On 9 September 1993 the Minister for Foreign Affairs, Senator Evans, and the Attorney-General, Mr Lavarch, released the following statement:

> Former Governor General and High Court Justice, Sir Ninian Stephen, has been chosen to chair the first plenary meeting of the Members of the Permanent Court of Arbitration (PCA), the Minister for Foreign Affairs, Senator Gareth Evans, and the Attorney-General, Michael Lavarch, announced today.
>
> The inaugural conference, to be held at the Court's seat in The Hague on 10–11 September, will discuss the future of the PCA and the role it can play in the preparation of a Third Hague Peace Conference. The conference is scheduled to coincide with the PCA's centenary in 1999.
>
> The conference is one of a set of initiatives aimed at promoting the use of the PCA as part of the United Nations Decade of International Law. The Solicitor-General, Dr Gavan Griffith, will also attend.
>
> "Australia supports the Permanent Court as a mechanism for the peaceful resolution of disputes between States. We are proud that Sir Ninian has been asked to chair the first meeting of all Members of the PCA in its 93 year history," Senator Evans and Mr Lavarch said.
>
> "PCA members include many of the most eminent jurists in the world and Sir Ninian's selection to chair the conference shows the high regard in which he is held internationally", Senator Evans and Mr Lavarch said.

Disputes—Iraq-Kuwait border demarcation

On 20 July 1993 the Minister for foreign Affairs, Senator Gareth Evans, issued the following press release:

> In May 1993 the United Nations Iraq Kuwait Boundary Demarcation Commission submitted its final report to the Security Council. The UN Security Council subsequently approved the Commission's report and unanimously adopted UNSCR 833 on 27 May 1993.
>
> The Commission was established in May 1991 under UNSCR 687 and the UN Secretary-Genera's report of 2 May 1991. The Commission was composed of five members: three independent experts appointed by the Secretary-General and one representative each of Iraq and Kuwait, appointed by their respective Governments.

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* Report prepared by Tim Reilly, International Organisations Law and International Litigation Group.

The Commission's task was to demarcate the international boundary between Iraq and Kuwait that had been agreed to by the parties on 4 October 1963. As a result of the demarcation both parties have access to the sea. The Commission has not reallocated territory between Kuwait and Iraq, but has simply carried out the technical task necessary to demarcate, for the first time, the precise coordinates of the international boundary reaffirmed in the 1963 Agreed Minutes.

Iraq continues to dispute the location of the 202 kilometre long border.

The Australian Government supports fully the Commission's report and UN Security Council Resolution 833.

UNSCR 833 reaffirms that the Commission's decision on the demarcation of the border is final and demands that Iraq and Kuwait respect the inviolability of the international boundary.

Disputes—Australia-United Kingdom nuclear test sites rehabilitation—Settlement

The following is extracted from a media release by the Minister for Primary Industries and Energy of 21 November 1991:

The Australian Government has presented its position on the rehabilitation of former British nuclear test sites in Australia and associated compensation for the traditional owners.

The Minister for Primary Industries and Energy, Simon Crean, met with Parliamentary Under Secretary of State for Defence for the Armed Forces, Lord Arran, in London yesterday.

Mr Crean made it clear that the Australian Government considers that the U.K. is legally and morally obliged to make a substantial contribution to rehabilitation of the test sites and to bear the cost of compensation of the traditional owners of the Maralinga lands.

"The 1968 release concluded by Australia was in error because the U.K. Government did not provide full and proper information as to the likely extent and nature of contamination," he said. [Editor's note: see Article 48 of the Vienna Convention on the Law of Treaties]

"Australia continues to pay significant environmental and human costs for its involvement in the tests."

Mr Crean sought Lord Arran's assurance that the U.K. would enter positively into the detailed discussions on the technical and financial aspects of the clean-up and compensation arrangements for the Aboriginal people.

In 1985 an Australian Royal Commission recommended that the Maralinga and Emu test sites be rehabilitated for unrestricted habitation by Aboriginal people and that the costs of any clean-up be borne by the U.K. Government.

The Commonwealth Government's Technical Assessment Group (TAG), in a report tabled in Parliament in 1990, concluded that Britain's 1967 clean-up was inadequate and the test sites continue to present an unacceptable hazard.

On 29 June 1993 the Minister for Foreign Affairs and the Minister for Primary Industries and Energy issued the following joint statement:

> The Minister for Foreign Affairs, Senator Gareth Evans, and the Minister for Primary Industries and Energy, Simon Crean, today announced the Government's in principle decision to accept an offer from the British Government as an *ex gratia* payment in full and final settlement of Australia's claims regarding the rehabilitation of the former British nuclear test sites at Maralinga and Emu in South Australia.
>
> The UK offer, as negotiated in discussions in London earlier this month, was for an amount of £20 million, payable in an initial instalment of £5 million and five subsequent annual instalments of £3 million each. Taking into account the relevant exchange rate, the timing of payments and inflation adjustments, the British offer is expected to comprise approximately half of the estimated cost ($101 million) of the rehabilitation program.
>
> The precise specification of payment details, and the text for the document of release in which Australia will agree not to pursue its claims further, are expected to be settled shortly.
>
> "The Government has never accepted the UK denial of legal and moral liability in respect of rehabilitation matters or of responsibility for addressing the legitimate concerns of the Aboriginal people whose lands are affected. By offering an *ex gratia* payment of this magnitude, the UK has now effectively acknowledged the strength of Australia's case."
>
> We now want to get on with the clean up and achieve a just and fair settlement with the Maralinga Tjarutja people who have been waiting a long time for this result. This decision is a significant step for the Maralinga Tjarutja towards regaining use of lands denied to them by the British nuclear test program of the 1950s and 60s. Another key issue is economic development of the Aboriginal community which we can now address in conjunction with the clean up.
>
> "We are developing consultative arrangements to ensure that the Aboriginal people and the South Australian Government are fully involved as the rehabilitation program develops," the Ministers said.

On 18 June 1993 the Minister for Primary Industries and Energy, Mr Crean, said in the course of a press conference in London:

> I might say that we believe that we have a very strong legal case—a legal case based on the fact that either information was not available to us that should have been available, which would have enabled a better clean-up, or where it was available, work was not performed in accordance with standards that were then known. The difficult trick in it was that we signed off, or a previous Government in Australia, signed off in 1968. The whole basis of our approach over the last couple of years is that we signed off on wrong information or inadequate discharge of obligation. And that is why we believed we had a strong legal case. Now I think that if the British Government had taken the decision that their legal position was so strong, or that they didn't care, that the '68 agreement really discharged them of any obligation, I think we would have had an answer a long time ago and we would have then been required to take our options further in legal proceedings.

International Court of Justice—Acceptance of jurisdiction by States

On 27 October 1993 the Minister representing the Minister for Foreign Affairs, Mr Bilney, answered a question on notice from Mr Melham (ALP, Banks) concerning the International Court of Justice. Question and answer were as follows (House of Representatives, *Debates*, vol 190 (1993), p 2701):

(Q1) Which states have accepted the compulsory jurisdiction of the International Court of Justice.

(Q2) Which states included reservations in their declarations accepting the compulsory jurisdiction of the Court.

(Q3) Which states have terminated their declarations accepting compulsory jurisdiction of the Court.

(A1) The following states have made declarations accepting the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2 of the Statute of the Court:

> Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia, Canada, Colombia, Costa Rica, Cyprus, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Finland, Gambia, Guinea-Bissau, Haiti, Honduras, Hungary, India, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Nauru, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Philippines, Poland, Portugal, Senegal, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom, Uruguay, Zaire.

(A2) The following states have included reservations in their declarations accepting the compulsory jurisdiction of the Court, being:

(a) reservations in respect of matters additional to those matters provided for under Article 36, paragraph 3 of the Statute of the Court; and

(b) reservations other than those excluding from the jurisdiction of the Court disputes in respect of which the parties thereto have agreed or shall agree to have recourse to other means of peaceful settlement for final and binding decision or disputes relating to matters which are exclusively within the domestic jurisdiction of the state concerned:

> Barbados, Botswana, Bulgaria, Cambodia, Canada, Cyprus, Egypt, El Salvador, Gambia, Honduras, Hungary, India, Kenya, Liberia, Madagascar, Malawi, Malta, Mauritius, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Senegal, Somalia, Spain, Sudan, Suriname, Swaziland, the United Kingdom.

(Article 36, paragraph 3 of the Statute of the Court provides that declarations recognizing the compulsory jurisdiction of the Court may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.)

(A3) Declarations made by the following states have either expressly or by virtue of Article 36, paragraph 5 of the Statute of the Court, expired, been withdrawn or been terminated without subsequently being replaced:

> Bolivia, Brazil, China, France, Guatemala, Iran, Israel, South Africa, Thailand, Turkey and the United States of America.

International Court of Justice—Action by Nauru against Australia—Settlement

On 9 August 1993 the Prime Minister, Mr Keating, issued the following statement in Nauru:

> I am very pleased to announce jointly with the President of Nauru, His Excellency Mr Bernard Dowiyogo, that he and I have agreed today on a Compact of Settlement which will end the dispute between our two countries currently before the International Court of Justice over responsibility for rehabilitation of phosphate lands which were mined out before independence.
>
> President Dowiyogo and I agreed on a package of measures worth a total of $107 million over the next twenty years. The Settlement includes cash payments to assist with rehabilitation of Nauruan land, an on-going program of development co-operation and a Joint Declaration of Principles guiding our future relations.
>
> Australia and Nauru have agreed that Australia will provide $57 million to Nauru according to the following schedule:
>
> - $A10 million on or before 31 August 1993,
> - $A30 million not later than 31 December 1993,
> - $17 million on 31 August 1994.
>
> In addition, Australia and Nauru will conclude a Rehabilitation and Development Cooperation Agreement under which Australia will fund $2.5 million worth of jointly agreed rehabilitation and development activities each year for the next twenty years.
>
> President Dowiyogo and I also agreed to formalise the close and cooperative relations that exist between Australia and Nauru by signing a Joint Declaration of Principles. The JDP will cover such matters as civil aviation, access to medical facilities, use of Australian currency on Nauru and trade and investment issues.
>
> On the basis of the above, Nauru has agreed to withdraw its International Court of Justice case and renounce future claims arising out of Australia's administration of Nauru.
>
> Nauru has also agreed to relinquish all claims against Britain and New Zealand. Australia administered Nauru on behalf of the three countries.
>
> President Dowiyogo and I agreed that this settlement provides an enduring framework within which the close relations between our two countries can develop further in the years ahead.
>
> The Compact of Settlement has opened a new phase in Australia-Nauru relations.

President Dowiyogo and I will sign the formal documents relating to the settlement on Tuesday 10 August.

The following is extracted from press points issued with the Compact of Settlement:

- The Australian Government considers the settlement substantial, fair and reasonable. It is a mutually advantageous outcome which will provide a sound basis for the continuing relationship between the two countries. On the occasion of the first-ever visit of an Australian Prime Minister to this former Australian-administered territory, and 25 years after Nauru's independence, the settlement has a particular symbolic significance for both countries. Australia is pleased that a sensible settlement has been achieved through amicable negotiation in the Pacific way.
- The settlement package has three components:
  - an agreement [of Treaty status] between Australia and Nauru for settlement of the Case in the International Court of Justice (ICJ), signed by Prime Minister Keating and President Dowiyogo, and to be ratified in accordance with each country's constitutional processes;
  - a Joint Declaration of Principles (JDP) Guiding Relations between Australia and Nauru, signed by Prime Minister Keating and President Dowiyogo; and
  - a rehabilitation and development co-operation agreement [to be negotiated].
- Pursuant to the settlement, a letter signed by the Solicitor General of Australia and the legal agents of Nauru will be sent to the Registrar of the ICJ to discontinue the Case.

The Settlement Agreement

- The agreement contains four articles which are largely self explanatory:
  - Article 1 specifies the monetary terms and the arrangements for payment;
  - Article 2 provides for the discontinuance of the Case currently before the ICJ;
  - Article 3 indemnifies Australia, the United Kingdom, and New Zealand, from any claim whatsoever arising from the Mandatge or Trusteeship or the termination of that administration, as well as any matter pertaining to phosphate mining, including matters pertaining to the British Phosphate Commissioners; and
  - Article 4 covers entry into force of the agreement.

The Joint Declaration of Principles

- The JDP is a comprehensive agreement which recognises the unique and historic relationship between Australia and Nauru, and sets out the principles which will guide the further development of relations between the two countries. It establishes six basic principles and a range of further specific provisions covering:
  - diplomatic co-operation and consular representation;

- trade, investment, and private sector co-operation;
- financial services co-operation;
- aviation;
- other transport and services;
- fisheries surveillance;
- health and medical co-operation;
- rehabilitation and environmental co-operation;
- development co-operation;
- communication and travel;
- legal co-operation;
- crime, terrorism and smuggling; and
- educational, scientific, cultural and sporting exchanges.

The Rehabilitation and Development Co-operation Agreement

- A Rehabilitation and Development Co-operation Agreement to be negotiated will formalise Nauru's inclusion in Australia's South Pacific Development Co-operation Program
  - hitherto Nauru has had assistance in scholarships, some minor project activities and from certain regional South Pacific development programs.
- The Agreement will provide for a bilateral program to take account of Nauru's rehabilitation and development priorities and Australia's development co-operation policies. Nauru has indicated that the major emphasis should be on rehabilitation. Talks will be held shortly with Nauru to carry forward planning and implementation. Nauru will be eligible for the range of aid forms provided to other South Pacific countries, e.g. technical assistance, professional advisory services, commodities and training.

Possible questions

Why is Australia settling with Nauru when it has previously said it would contest the case vigorously in the Court? Did the Government think it would have lost in the Court?

Both Governments are convinced that their interests are better served by settlement on the terms we have agreed than by the Case continuing. There would have been every prospect of the Case dragging on in the Court beyond the turn of the century. That process would be very costly in itself. Australia considered its case to be very sound, but these sorts of Court proceedings are inherently uncertain as to eventual outcome. Both Governments have agreed that it simply did not make sense for two friendly South Pacific Forum members to conduct relations in that way...

Why couldn't Australia simply ignore the ICJ as other countries have done in similar circumstances?

Successive Australian Governments have accepted the compulsory jurisdiction of the ICJ. Twenty years ago Australia, and other South Pacific Forum countries, successfully sought an ICJ ruling on the question of French

nuclear testing in the South Pacific. Australia is serious about its commitment to good international citizenship and the obligations that entails...

Why has Australia settled on behalf of all three Partner Governments? Will New Zealand and the UK be contributing to the settlement costs?

Nauru's ICJ action was against Australia. But the issues involved all three Governments and, in view of their part in the Mandate and Trusteeship arrangements, we have briefed the New Zealand and UK Governments on developments in our settlement negotiations with Nauru. As the terms of the settlement protect their interests, we are approaching both Governments formally to seek an appropriate contribution to the settlement costs. Any further questions should be referred to the New Zealand and UK Governments.

The Compact of Settlement reads:

AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF NAURU FOR THE SETTLEMENT OF THE CASE IN THE INTERNATIONAL COURT OF JUSTICE CONCERNING CERTAIN PHOSPHATE LANDS IN NAURU

Australia and the Republic of Nauru,

Wishing to strengthen the existing friendly relations between the two countries, and

Wishing to settle amicably the application brought by the Republic of Nauru against Australia in the International Court of Justice,

Have agreed as follows:

ARTICLE 1

(1) Australia agrees that, in an effort to assist the Republic of Nauru in its preparations for its post-phosphate future, it shall pay the Republic of Nauru a cash settlement of one hundred and seven million dollars ($A107 million) as follows:

(a) the sum of ten million dollars ($A10 million) on or before 31 August 1993.

(b) the sum of thirty million dollars ($A30 million) as soon as it may lawfully be paid and not later than 31 December 1993.

(c) the sum of seventeen million dollars ($A17 million) on 31 August 1994.

(d) an amount of fifty million dollars ($A50 million) to be paid at an annual rate of $2.5 million dollars, maintained in real terms by reference to the Australian Bureau of Statistics' non-farm GDP deflator, for twenty years commencing in the financial year 1993–94.

The above payments are made without prejudice to Australia's long-standing position that it bears no responsibility for the rehabilitation of the phosphate lands worked out before 1 July 1967.

(2) At the end of the 20 year period referred to in paragraph (1)(d) the Republic of Nauru shall continue to receive development co-operation assistance from Australia at a mutually agreed level.

ARTICLE 2

In consequence of the undertakings by Australia in Article 1, the parties agree that they shall take the action necessary to discontinue the present proceedings

brought by the Republic of Nauru against Australia in the International Court of Justice.

ARTICLE 3

The Republic of Nauru agrees that it shall make no claim whatsoever, whether in the International Court of Justice or otherwise, against all or any of Australia, the United Kingdom of Great Britain and Northern Ireland and New Zealand, their servants or agents arising out of or concerning the administration of Nauru during the period of the Mandate or Trusteeship or the termination of that administration, as well as any matter pertaining to phosphate mining, including matters pertaining to the British Phosphate Commissioners, their assets or the winding up thereof.

ARTICLE 4

This Agreement shall enter into force on the date on which the parties have notified each other that the constitutional requirements of each party for the entry into force of this Agreement have been complied with.

Memorandum of understanding

This Memorandum, signed by the parties to the Agreement between Australia and the Republic of Nauru for the Settlement of the Case in the International Court of Justice Concerning Certain Phosphate Lands in Nauru, records the understandings of the parties in relation to the following matters contained in the agreement:

1. Concerning Article 1(1)(d):

> The amount of $50 million to be paid at an annual amount rate of $A2.5 million dollars for twenty years commencing in the financial year 1993–94 and maintained in real terms by reference to the Australian Bureau of Statistics' non-farm GDP deflator, will be paid in accordance with a Rehabilitation and Development Co-operation Agreement to be concluded between the two parties, the Republic of Nauru and Australia. It is understood that any dispute occurring between the parties in relation to this paragraph of the Agreement will be settled in the terms of a dispute settlement clause contained within the Rehabilitation and Development Co-operation Agreement.

2. Concerning Article 2:

> Both parties agree that upon the entry into force of the Agreement pursuant to Article 4, the parties will jointly deliver a letter of discontinuance to the Registrar of the International Court of Justice in the following form:

Certain phosphate lands in Nauru

(*Nauru v Australia*)

Your Excellency,

This is to notify the Court that in consequence of having reached a settlement, the Republic of Nauru and the Commonwealth of Australia pursuant to Article 88 of the Rules of Court have agreed to discontinue the proceedings in the case Certain Phosphate Lands in Nauru (*Nauru v Australia*).

Please accept, Sir, the assurances of our highest consideration.

Yours sincerely,

V S Mani

Leo Keke	Gavan Griffith
Co-Agents	*Agent*
Republic of Nauru	Commonwealth of Australia

This letter will be held in escrow until the Agreement comes into force.

Joint Declaration of Principles guiding relations between Australia and the Republic of Nauru

Australia and Nauru have a unique and historic relationship which both countries recognise and are determined to maintain and strengthen.

Australia and Nauru have close and historic ties between their peoples which both countries seek to continue and broaden.

Australia and Nauru have many common interests underlying their historic links and bonds of friendship which both Governments seek to advance with full regard for one another's distinct national characteristics.

Both Governments respect and seek to build on existing bilateral, regional and other mutually beneficial arrangements in accordance with their shared commitment to constructive co-operation.

Both Governments are strongly committed to regional co-operation in the South Pacific and to co-operation with other neighbours.

Both Governments are committed to promoting a stable regional environment in which the aspirations of the peoples of the region for security, peace, equity and development can best be realised.

BASIC PRINCIPLES

1. The Governments and peoples of Australia and Nauru reaffirm their commitment to the maintenance and strengthening of close and friendly relations between their two countries.

2. Relations between Nauru and Australia will be conducted in accordance with the principles of mutual respect for one another's independence, sovereignty and equality.

3. Both Governments are committed to peaceful settlement of international disputes and to non-interference in the internal affairs of other countries.

4. Citizens of either country will be accorded fair and just treatment in the other in accordance with law.

5. The maintenance and strengthening of close and friendly relations between the two countries is an integral part of both Governments' independent foreign policies.

6. Co-operation and exchanges between the two countries will be mutually beneficial and based on full participation by both countries, with due regard to the capacity, resources and development needs of both countries, and on mutual respect.

PROMOTION OF UNDERSTANDING

7. Both Governments will seek to promote knowledge and understanding of the other country, and of the unique and historic relationship between their two countries.

DIPLOMATIC CO-OPERATION AND CONSULAR REPRESENTATION

8. The two Governments will seek to co-operate in pursuing shared national, regional and global interests through diplomacy and will assist one another in consular representation as far as practicable.

TRADE, INVESTMENT AND PRIVATE SECTOR CO-OPERATION

9. Both Governments desire to Strengthen trade, investment and private sector co-operation between the two countries.

10. Trade between the two countries will be on at least most-favoured nation terms and as free of both tariff and other restrictive regulations of commerce as may be consistent with both Countries' domestic requirements and international commitments, recognising that Australia already offers free and unrestricted access into the Australian market for all Nauru products (except sugar) on a non-reciprocal basis under SPARTECA.

11. Both Governments will seek to co-operate in ensuring Nauru receives the maximum economic benefits from the production and international marketing of its phosphate resources.

12. The two Governments will accord to Nauru and Australian companies and individuals resident in either country investment treatment no less favourable than that accorded to those of any third country.

13. The two countries will encourage co-operation between the private sectors of their two countries in trade, investment and related areas.

FINANCIAL SERVICES CO-OPERATION

14. Both Governments recognise the benefit of, and confirm, the unique arrangements which allow the Australian currency to be used by Nauru as its transactions currency.

15. Australia particularly recognises the special needs of Nauru for investment in Australia and elsewhere through the Nauru Phosphate Royalties Trust which investment is designed to assist the post-phosphate economy and requirements of the Nauruan community.

AVIATION CO-OPERATION

16. Having regard to the long-standing and friendly aviation relationship between Australia and Nauru, both Governments and committed to developing arrangements which would meet the requirements of the public for air travel between the two countries and to facilitate and promote their respective aviation interests. Both Governments will continue to encourage the development of air links on the Australia-Nauru Route in accordance with the Air Services Agreement between the two Governments with an understanding of the role of Nauru in providing regular air links in and to the Central Pacific Region.

OTHER TRANSPORT AND SERVICES CO-OPERATION

17. The two Governments will, in accordance with the laws and policies of both countries and having regard to Nauru's development needs, co-operate to encourage the efficient supply of transport and other services between the two countries.

FISHERIES SURVEILLANCE ASSISTANCE

18. Recognising the importance of fisheries resources to both countries assistance will be provided through airborne fisheries surveillance patrols of Nauru's Exclusive Economic Zone by Australian Defence Force aircraft as resources permit and as part of the regional co-operative framework already established under the Niue Treaty.

HEALTH AND MEDICAL CO-OPERATION

19. Both Governments recognise the benefits Nauruans obtain from Australia's health and medical services and will work together to ensure maximum possible access to such services continues subject to both Governments' health, medical and welfare policies.

REHABILITATION AND ENVIRONMENTAL CO-OPERATION

20. Both Governments recognise both the challenge presented by rehabilitating the worked-out phosphate lands on Nauru, and the fragility of Nauru's ecosystems, and will work together to facilitate the progressive rehabilitation of Nauru and the protection of Nauru's environment.

DEVELOPMENT CO-OPERATION

21. Development assistance will be provided as part of an agreed Program of Co-operation which contributes to development and self-reliance in Nauru, allows for forward planning and implementation in accordance with policies and priorities set by Nauru, and takes due account of both Governments' policies on development co-operation but with emphasis upon development assistance in accordance with a Nauruan rehabilitation program.

COMMUNICATION AND TRAVEL

22. The two Governments will seek to promote and facilitate communications and travel between he two countries, with due regard for one another's national interests and policies.

LEGAL CO-OPERATION

23. The two Governments will co-operate, in accordance with their international legal obligations and respective laws, in the area of law enforcement and seek to increase co-operation in other areas of the law.

CRIME, TERRORISM AND SMUGGLING

24. The two Governments will co-operate, in accordance with their respective laws and international obligations, to prevent, detect and prosecute crime, terrorism and smuggling.

EXCHANGES

25. The two Governments will promote, educational, scientific, cultural, sporting and other exchanges between individuals, groups and public office-holders with common interests.

26. The two Governments will facilitate exchanges which contribute to the development of human resources, research capacity and technology in the public and private sectors.

CONSULTATION

27. The two Governments will endeavour to consult promptly and at an appropriate level of representation at the request of either.

28. The two Governments will hold such other consultations as may be agreed.

OTHER ARRANGEMENTS

29. Commitments made under existing arrangements between the two countries will be respected, and developed in accordance with this Joint Declaration.

30. The two Governments will endeavour to interpret and implement Agreements and Arrangements between them in the spirit of the principles and commitments contained in this Joint Declaration, without prejudice to commitments entered into under existing Agreements between Nauru and Australia.

31. The two Governments may give effect to this Joint Declaration in such further agreements and arrangements as may be agreed.

32. The two Governments will review the operation of this Joint Declaration at intervals of not more than five years.

DONE in two copies at Nauru this tenth day of August 1993.

For Australia	For the Republic of Nauru
Paul Keating	Bernard Dowiyogo
Prime Minister	*President*

On 13 September 1993, the International Court of Justice issued a communique which read in part:

> The above case, in which the Court, after its Judgment on Preliminary Objections dated 26 June 1992, had fixed time-limits for the deposit of further written pleadings by the Parties, has now come to an end.
>
> By a joint letter, filed in the Registry of the Court on 9 September 1903, the Agents of Nauru and Australia notified the Court that, having reached a settlement, the two Parties had agreed to discontinue the proceedings.
>
> In consequence, the Court, on 13 September 1993, made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's list.

The following is extracted from the Australian Counter-Memorial in the *Nauru v Australia* case [Editor's Note: the Nauruan Memorial and other pleadings became public upon the oral hearings of the jurisdictional phase of this case, under Article 53(2) of the Rules of the Court. As a result of the settlement, the Australian Counter-Memorial is now also public.]:

283. Any consideration of the claim that there is a duty to rehabilitate flowing from trusteeship obligations must have regard to the nature of those obligations. Australia does not deny that legal obligations do in certain circumstances arise under the trusteeship system. The Court in the 1971 *Namibia* advisory opinion indicated in relation to the Mandate that "definite legal obligations" arose designed for the attainment of the object and purpose of the Mandate (*ICJ Reports 1971,* p 30). And Australia does not deny that this general proposition also applies to the Nauru Trusteeship Agreement.[1]...

288. Nauru seeks to find a breach of trusteeship in certain actions of the Administering Authority (NM, para. 289–302). But in doing this Nauru overlooks the fact that the obligations contained in Article 76 of the Charter and the Trusteeship Agreement are obligations of result. None of those provisions required Australia to act in any particular way to meet the obligations. Rather, the Trusteeship Agreement, in particular, recognised that the obligations on the Administering Authority to "promote", for instance, advancement of the inhabitants or to assure to the inhabitants an increasing share in the services of the territory were to be met by action chosen by the Administering Authority having regard to the "circumstances of the Territory" or the "particular circumstances of the Territory and its people" (Art. 5(2)(b)) and (c) respectively of the Trusteeship Agreement). As well, Article 3 of the Trusteeship Agreement required the Administering Authority to administer the territory "in such a manner as to achieve" the basic objectives of the trusteeship.

289. It follows that the failure to rehabilitate cannot in itself constitute a breach of any international trusteeship obligation, given the absence of any such specific requirement in the trusteeship provisions. Nauru must establish that, by Australian actions and conduct in failing to rehabilitate, and given an outcome required under the Trusteeship. Unless it can do this no possible breach could be established...

292. Another important consideration is that, in considering the nature of the obligations of the Administering Authority, it is the actual provisions of the Charter and Trusteeship Agreement to which the Court must have regard. Australia rejects the attempt by Nauru to import into these treaty provisions the whole set of legal rights and duties connected with the notion of a "trust" in domestic law, particularly the common law. To do that is to mistake completely the fundamental elements of the United Nations Trusteeship System. Domestic law analogies have limited value in this area. The Court recognised the difficulty in equating domestic systems with the international mandate and trusteeship

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1 Australia, at the time of conclusion of the Trusteeship Agreement of Nauru, conceded that article 76(d) of the Charter imposed a binding obligation on the Partner Governments. The records state:

> In reply to questions raised by the delegations of India and China, the Australian delegation affirms that Article 76(d) of the Charter is accepted by the Delegations of Australia, New Zealand and the United Kingdom as a binding obligation in relation to the Trusteeship Agreement for Nauru, it being also noted that in accordance with the terms of Article 76(d) the welfare of the inhabitants of Nauru is of paramount consideration and obligation (United Nations, General Assembly Official Records, 2nd Session, Fourth Committee, Report of Sub-Committee 1, Doc.A/C.4/127).

system in the Status of South West Africa (Advisory Opinion) (ICJ Reports 1950, p 132):

> The League was not, as alleged by that Government [South Africa], a "mandator" in the sense in which this term is used in the national law of certain States. It had only assumed an international function of supervision and control. The "Mandate" had only the name in common with the several notions of mandate in national law. The object of the Mandate regulated by international rules far exceeded that of contractual relations regulated by national law. The Mandate was created, in the interest of the inhabitants of the territory, and of humanity in general, as an international institution with an international object—a sacred trust of civilisation. It is therefore not possible to draw any conclusion by analogy from the notions of mandate in national law or from any other legal conception of that law...

525. There is, as the Court acknowledges, a clear distinction between responsibility *stricto sensu* and the consequences of violation. Even if we were held responsible, the consequences for Australia would not be the same as if it had acted alone, rather than, as was the case, in conjunction with the United Kingdom and New Zealand under United Nations supervision. The facts cannot be ignored in this fashion. Australia cannot be required to meet the totality of the damage, because it acted at all times in conjunction with the United Kingdom and New Zealand and responsibility under the Trusteeship Agreement was joint, or equal and collective. Alternatively, Australia acted not only for itself, but as agent for the United Kingdom and New Zealand as well (cf ICJ Reports 1992, p 280 Judge Shahabuddeen). However characterised, if there has been any failure, it was a failure in which all three States participated. Australia cannot, in accordance with accepted principles of international law, be required to meet the alleged damage which is due to the other two States, and to the United Nations. The legal bases for this contention are discussed below (Part III, Chapter 3)...

560. It would, therefore, be contrary to international practice to disregard the involvement of the United Kingdom and New Zealand, and of the United Nations (discussed below) in deciding the question of Australia's liability in this case. It would be quite inequitable to hold Australia liable for the totality of the damage to which the United Kingdom, New Zealand and the United Nations have clearly contributed. Practically speaking, it is, of course, virtually impossible to link specific items of damage to the acts of one Government (or Organisation) rather than another. However, bearing in mind the equal responsibility of the other two States for the Trust Territory and their respective shares in the phosphate industry, Australia contends that it would not be appropriate to require Australia to bear more than a proportionate share of the supposed injury said to have arisen from mining during the Trusteeship period; and any such liability should be further diminished to take account of the role of the United Nations (and also of Nauru). See Sections IV and V...

590. As proof of Nauru's serious intent and the practicability of any rehabilitation program, Nauru should also be required by the Court to set aside a sum which would enable it to rehabilitate the lands which it admits are its responsibility—the lands mined out after 1 July 1967. This must be a condition of any award that might be made in Nauru's favour.

Peaceful settlement of disputes—United Nations—"Cooperating for Peace"

The following is extracted from a speech delivered by the Minister for Foreign Affairs, Senator Evans, to the 48th General Assembly of the United Nations on 27 September 1993:

Agenda for peace: unresolved issues

A little over a year ago, following a unique meeting of the Security Council, Secretary-General Boutros Ghali published "An Agenda for Peace". It was, and remains, a remarkable document, one which poses most of the questions we need to address if we are to have a fair chance of maintaining international peace and security in the world of today and the foreseeable future. Since that time a world-wide debate has taken place on the issues described in "An Agenda for Peace", which has involved not only governments and officials, but reached out to embrace universities, foundations, non-government organisations and many organs of the public media as well. This debate has generated resolutions at the last session of the General Assembly, several worthwhile changes to some procedures and structures within the Secretariat, and the prospect of further changes to come.

It cannot be said, however, that the issues raised by "An Agenda for Peace" are now all settled, either in theory or in practice. We still do not have even a completely clear and consistent shared vocabulary to define the ways in which it is possible for the UN, and other Organs of the International Community, to respond to security problems: "peace making", for example, means different things to different people: so does "preventive diplomacy" and "peace enforcement" is not drawn in the same way by everyone who uses these terms.

Nor do we seem yet to have clear and universal agreement even as to the kind of problems which justify a security response by the international community. Should we recognise, for example, a "humanitarian right of intervention" and, if so, in what circumstances and to what extent? When does an economic or social problem become the kind of *security* problem which justifies the mobilisation of the response strategies spelt out in Chapters VI and VII of the UN Charter?

Even when it comes to applying a very familiar response to a new problem—for example, establishing a peace keeping operation like the thirty which have now been initiated since 1948—there is not yet a commonly accepted check list of criteria to guide decision-makers in determining when precisely the operation should be set in train, how it should be structured, managed and resources, and how long it should continue. Every situation, of course, has its own characteristics, but is it really necessary for decisions on these matters by the Security Council or others to be made on so evidently ad hoc a basis?

When it comes to thinking about how the UN—and others in the international community, including regional organisations—might best be structured, organised, managed and funded to most effectively address the international peace and security agenda, it is not clear to me that we have yet heard the last word in the debate. An extraordinary amount has been achieved, in the tumultuous period since 1989, in responding to the new demands and challenges that have been unceasingly hurled at the UN. For a good deal more remains to be done if the UN in particular—the only fully empowered body with

global membership that we have—is to be as effective as we would all want it to be.

Cooperating for peace

It is much easier, of course, to ask all these questions than to answer them: identifying problems is always easier than defining acceptable solutions. But I believe that we all have a responsibility to each other and the international community to try to answer these questions, and to keep on working away at the answers until we find common ground. It is in that spirit that I put before you today a detailed study of these questions, which tries to answer them in a way which might help us find a little more of that common ground.

The study, in the form of a book entitled "Cooperating for Peace", has been distributed to delegations as I speak. I don't pretend for a moment that it says the last word on any of the enormously complex and sensitive issues with which it deals: it is simply an Australian contribution to the debate which was so thoughtfully and constructively initiated by the Secretary-General last year.

The Study before you seeks to do three things in particular. First, it suggests ways of bringing a little more clarity—to the extent this is presently lacking—into the concepts and vocabulary we use in defining security problems, defining possible responses, and matching responses to problems. Secondly, it suggests specific criteria that might be applied by decision-makers in deciding what, if any, response is appropriate to a particular new security problem. And thirdly, it suggests a priority list of areas in which further UN reform might usefully be pursued. In the short time that remains to me, I will try to give a quick outline sketch of what we are trying to say in each of these respects.

On the issue of concepts and terminology, it is perhaps worth making the point at the outset that this is not just something for academics to wrangle about: it matters in practice. If decision-makers don't share the same basic way of looking at issues, and the same basic vocabulary in defining them, there is a very real risk that they will talk past each other—or at the very least, find it very much harder to produce responses which are timely, property graduated, effective in practice, affordable and broadly consistent from one case to the next.

Just as importantly, the choice of words can sometimes significantly influence the way in which we think about matters of substance. To give just one example: if we use, as many people still do, the expression "peace making" to describe military enforcement action, then—simply because this is such an innocuous and constructive sounding expression—there is a danger that we may over time become a little more relaxed than we should be about taking such action. It is much better, I suggest, to confine "peace making" to diplomatic-type activity to resolve conflict: reserving the expression "peace enforcement" to describe the always dangerous and messing—and what should be last-resort—activity of applying military force.

In the study we define security problems, in more or less escalating order of seriousness, as "emerging threats", "disputes", "armed conflicts" and "other major security crisis". We make the point that security is not strictly or solely a military concept, and that threats to security can come these days very much from factors such as exploding population pressures, environmental degradation, mass involuntary movements of people and the illicit narcotics trade.

Equally, we define possible responses to security problems—in escalating order of severity—in terms of "peace building", "preventive diplomacy", preventive deployment", "peace making", "peace keeping", "sanctions" and "peace enforcement". We are at pains to emphasise that it is only as a last resort that security solutions should be seen as coming out of the barrel of a gun. We give much more emphasis than has been common elsewhere to the concept of "peace building", which we define as extending not just to *post*-conflict economic development and institution-building strategies, but to a whole variety of *preventive* strategies—both within particular countries, and in the form of international treaty-type regimes addressing both military and non-military threats to security.

In defining criteria for embarking on peace operations—whether peace keeping or peace enforcement—the most crucial consideration is that there be a clear-mined focus on the objectives of the exercise, and the likely effectiveness of the operation in achieving them. No operations of this kind should ever be embarked upon for the sake of "being seen to be doing something". Although it is not always possible to analyse or predict with certainty, it should always be possible to avoid embarking on operations which are manifestly likely to be ineffective—and which, as such, put at risk the most crucial UN resource of all, its credibility.

In the case of peace keeping, we suggest in "cooperating for peace" that there are seven basic conditions for ensuring an effective operation: clear and achievable goals: adequate resources: close coordination of peace keeping with any ongoing peace making activity: a capacity to be, and be seen to be, absolutely impartial as between the parties who have been in conflict: a significant degree of local support for the peace keepers: evident support for the operation from external powers who may have been involved previously in supporting one side or the other: and a "signposted exit", ie a clearly designated termination point, or set of termination criteria.

When it comes to peace enforcement operations, the criteria for determining involvement that we suggest are quite complex, and vary according to whether the operation is one in response to cross-border aggression (as with Iraq and Kuwait), or in support of peace keeping operations (the basic rationale for UN involvement in Bosnia-Herzegovina) or in support of humanitarian objectives (as in Somalia). Without going into the necessary detail now, the basic considerations come down to these: widespread international support: clear and achievable goals: adequate total resources to meet those goals: and clearly defined termination or review points.

If the UN is to play, with maximum effectiveness, the central role it needs to in maintaining international peace and security, then further change—further reform—in the system really is necessary. Some of that change is bound to be painful for some people, but that is the way of change. Putting it simply and starkly, unless the UN develops a comprehensive capacity to address today 's and tomorrow's problems—not yesterday's—there is a real risk of it gradually losing, with governments and peoples around the world, the credibility it needs to survive.

In the study before you, we identify seven priority areas for change. The first is to *restructure the Secretariat* to ensure that the Secretary-General has an effective chain of command exercising authority over major UN operations and to consolidate and coordinate in a more orderly and manageable way the present

sprawl of Departments and Agencies. We support the proposal that the Secretary-General create a new senior structure at UN Headquarters, under which he would have four Deputy Secretaries-General responsible respectively for peace and security, economic and social operations, humanitarian operations and administration and management. Each such Deputy would have full executive responsibility for the operational issues falling within his or her portfolio, subject only to direction by the Secretary-General. This is a big change, and it is not the first time it has been proposed, but it is the one that, more than anything else, would create the conditions for more orderly and effective management throughout the UN system.

The second priority need is to resolve once and for all the UN's critical *funding problem*. Various adventurous ideas have been canvassed for external funding, and we suggest that at least one of them—a small levy on international airline travel—be further explored. But overwhelmingly the problem is one that has been created by member states—including the richest of our number—and is entirely within our ability to resolve by meeting our assessed contributions for regular budgets and peace operations in full and on time. It is an abuse of good management principles and basic common sense to be forcing the Secretary-General to spend so much of this time pleading for debts to be honoured. If the bulk of current arrears were to be paid by the end of this year, the UN's finances would be in a quite healthy position, with the Working Capital Fund, the Peace Keeping Reserve Fund and the Special Account all replenished, and the UN in a position to meet all outstanding troop contribution costs.

The third priority is to improve the *management of Peace Operations*, both at Headquarters and in the field. Some very significant and useful steps have been taken in this regard in the context of the creation of the new Department of Peace Operations, but more remains to be done, including in particular the development over time of a properly constituted general staff to plan and manage the military dimensions of such operations.

The Fourth priority is to give special attention to the machinery of *preventive diplomacy*, again both at Headquarters and in the field. These efforts have been largely *ad hoc* in the past, although the Department of Political Affairs is gradually building a core of appropriate expertise. Quite apart from anything else, there is an overwhelming cost advantage in doing more to stop disputes becoming armed conflicts. We estimate the cost of keeping 100 well qualified preventive diplomacy practitioners in the field at $21 million annually: compare that with this year's Peace Operations budget of $3.7 billion—and the $70 billion that it is estimated to have cost the UN Coalition to fight the six-week gulf war.

The fifth priority is to re-think the system of *humanitarian relief coordination*. Despite advances that have been made with the creation of the Department of Humanitarian Affairs, we think some basic structural problems remain. We propose that they be addressed in a rather radical way by the creation of a new disaster response agency—combining the relief and basic rehabilitation functions of UNHCR, UNICEF and WFP—which would work directly to the suggested Deputy Secretary-General for Humanitarian Affairs.

The sixth priority, as we see it, is to take various steps to raise the profile within the UN system of *Peace Building*. This is the point of intersection between the UN's peace and security problems, and respect for human rights.

Too often during the cold war we looked past these obligations and concerns, because we were preoccupied with military means of survival. But the threats which concerned us then no longer exist—and what was written in San Francisco, before the cold war froze our capacity to deal with many other kinds of threat to security, should be seen now as a compelling guide.

Our survival in the 1990s and beyond will depend on our developing a new understanding of what constitutes security, and what contributes to it. It will depend on our capacity to think clearly about how to react to new security problems as they arrive. It will depend on our willingness to rethink and reshape our institutions, including the UN, so they can cope with the new realities. But above all, it will depend on us all developing and sustaining a real commitment to cooperating for peace.

Peaceful settlement of disputes—Bougainville Island

On 7 October 1993 the Minister for Development Cooperation and Pacific Island Affairs, Mr Bilney, said in the course of an answer to a question without notice (House of Representatives, *Debates*, vol 190 (1993), p 1873):

The government welcomes the statement which was made by John Kaputin, the Papua New Guinea foreign minister, on 29 September to the effect that the Papua New Guinea government will consider convening a meeting of leaders on Bougainville to address the need for a peaceful solution of the problems on that troubled island and on the decision of the governments of Papua New Guinea and the Solomon Islands jointly to negotiate a formal arrangement on the management of their common border...It has long been this government's firm view that a purely military approach to the problems of Bougainville cannot succeed. There is a need for a process of dialogue between the various groups involved in the conflict in order for a peaceful solution to be achieved...

Australia has offered to assist in facilitating such a meeting, either by providing a venue or some other form of logistic support...Those problems on Bougainville have dragged on for some four years, with tragic consequences for the population in terms of loss of life and the lack of basic services, such as health care. The effects of the Bougainville problem have also, as the honourable member referred to in his question, spilt over to affect the population of the neighbouring Solomon Islands, and those events have been without precedent in the South Pacific region and remain of great concern to the Australian government.

Since the Bougainville problem began in 1989, Australia has provided relief aid to Bougainvilleans, including medicines, tents, clothing and tools. Now that conditions are improving on the island, we are stepping up our efforts to restore services on Bougainville...

Finally, we welcome the continuing cooperation between the governments of Papua New Guinea and the Solomon Islands in addressing the spill-over effects of the Bougainville crisis. It is a process which has been assisted by the recent visit of Francis Saemala, the foreign minister of the Solomon Islands, to Papua New Guinea, and a process which we have encouraged all along.

United Nations peace-keeping operations—Australian involvement

Following is extracted from a news release by the Minister for Foreign Affairs and Trade on 18 March 1993:

> Australia has taken part in most UN peacekeeping operations—contributing forces to eleven such deployments—and has been a member of the Special Committee on Peacekeeping Operations since its inception.
>
> Australia is currently contributing large forces to UNTAC in Cambodia and the UN-sanctioned Operation Restore Hope in Somalia and has smaller contingents with UNOSOM (Somalia), MINURSO (Western Sahara), UNFICYP (Cyprus) and UNTSO (Israel).
>
> Senator Evans said there were currently 13 UN peacekeeping operations with 53,000 troops contributed by UN member states.
>
> The cost of peacekeeping operations in 1992 was almost US$3 billion. Australia contributed $34.8 million in 1991–92 and to date in 1992–93 has contributed about $22.4 million.

United Nations peace-keeping operations—Reform—Canberra Seminar

Following is extracted from a news release by the Minister for Foreign Affairs and Trade on 24 March 1993:

> The Minister for Foreign Affairs, Senator Gareth Evans, said today that representatives from many countries expressed the view that the UN was over-stretched, with a level of organisation, resources and procedures which were no longer adequate to cope with the increasing demands.
>
> He said they also pointed to the urgent need to further develop the UN's capacity for preventive diplomacy to ensure that disputes did not develop into armed conflict.
>
> Participants welcomed the establishment of the Australian Defence Force Peacekeeping Centre as a means for promoting development and discussion of peacekeeping procedures and providing training within the region.
>
> The three-day seminar, entitled *UN Peacekeeping at the Crossroads*, ended in Canberra today. It was hosted by the Australian Government in cooperation with the International Peace Academy in New York and the Peace Research Centre in Canberra.
>
> Representatives...observed that there had been a significant increase in levels of contribution to UN peacekeeping operations by countries in the Asia and Pacific region, both from countries with a tradition of contributing to such operations and those with more recent experience.
>
> The seminar considered the place of peacekeeping and preventive diplomacy in the development of a more effective approach to resolving international security problems, evaluated the recent experience of peacekeeping operations, with particular attention to Cambodia and Somalia, and identified a range of operational problems and suggestions for improving the implementation of peacekeeping.

Senator Evans said the seminar had been a most worthwhile exercise which would hopefully help lead to a revamped organisation structure in New York to overcome many of the problems experienced in recent and on-going operations around the world.

Many participants expressed the view that the number and skills of staff in UN headquarters needed to be expanded to meet the evolving needs of peacekeeping operations.

UN headquarters required a significantly enhanced planning staff to address the multidimensional demands made of peacekeeping and needed to be able to plan proactively.

Participants also called for improvement in procedures for developing plans in conjunction with, rather than well after, the decision to deploy a peacekeeping operation. For example, the force commander should be appointed early and be directly engaged in the preliminary planning.

There was a need to improve image building for peacekeeping operations to ensure a balanced coverage by the media based on realistic expectations of the UN's role. Some participants were very critical of the role of the international media for focusing on minor setbacks without acknowledging the success of the overall operation.

The seminar made a number of suggestions to strengthen the UN's role in preventive diplomacy including:

- developing the UN's capacity to address non-military threats to security—including economic and social problems
- strengthening weapons control regimes as a way of enhancing collective security
- establishing a UN dispute resolution service under the UN Secretary-General's authority which would not be subject to Security Council decisions but would be available to parties in dispute in a way that met concerns about respecting state sovereignty
- appointing regional special representatives of the UN Secretary General to enhance UN knowledge and forewarning of trouble spots.

United Nations peace-keeping operations—Planning—Reform

The following is the answer by Senator Robert Ray, Minister for Defence, to a question without notice on 6 September 1993 concerning United Nations peacekeeping missions (Senate, *Debates*, vol 159 (1993), p 920):

In the past two years and currently the United Nations has been involved in a record number of peacekeeping activities, most of which have been the result of some very good diplomatic efforts. The obvious weakness that has appeared in the past year or two is that the actual military planning from the United Nations in New York has shown great deficiencies—that is, poor planning and too often decisions changed at a day's notice, et cetera. This is causing enormous angst amongst defence ministers around the globe.

In the past three months I have had the opportunity of having discussions with six defence ministers and representatives from at least three or four other major countries, all of whom have expressed great concern at the lack of military planning that has gone into these ventures. The United Nations has set up a

working group to look at this, and I know that the United States has produced a major paper. Unless the matter is resolved, the various defence agencies around the world will be far less likely to be involved in peacekeeping in future.

It should be said at the outset that only 28 people in New York are involved in planning these multifaceted operations. They are badly resourced financially and, sadly, intellectually. From time to time we have made loan arrangements for officers to go there. But the fact is that, the way the military works around the globe, there must be planning. If there is a lack of planning and casualties occur, it would be extremely unlikely that, at least, defence ministers and, in turn, their foreign ministers will sign up for these ventures in future. In my view it would be very regrettable if that were ever to occur.

I do not know what the solution is. We have contemplated here that maybe one country should take over on a rotational basis the planning of any particular operation. Senator Gareth Evans and his department are working very hard at the moment on the production of a blue book, which I am sure will tackle this issue, amongst others to do with peacekeeping. Most of that emphasis, of course, will be on heading off the need for peacekeeping activities.

If there is a need for peacekeeping, the requisite amount of planning should be involved. If we do not get it, people will not involve themselves in future. Nothing will kill off peacekeeping ventures more quickly than reckless and unnecessary casualties.

United Nations peace-keeping operations—Cambodia

In a news release on 23 April 1993 on Cambodia, the Minister for Foreign Affairs, Senator Gareth Evans, said in part:

The Minister for Foreign Affairs, Senator Evans, announced today that following consultations in New York, the Signatory States of the Paris Agreements on Cambodia agreed on the following statement as a sign of their continued commitment to the principles of the Paris Agreements.

The timing of the statement (23 April New York time), which is to be conveyed to the various Cambodian parties, falls one month to the day before the start of voting in the UN-conducted elections for a Constituent Assembly.

Text of statement

At the initiative of the co-chairmen of the Paris conference on Cambodia, the signatory states of the agreements on a comprehensive political settlement of the Cambodia conflict declare their firm determination to support the electoral process under way in that country. In particular, they support unreservedly the decision of the Supreme National Council of Cambodia that the elections shall be held on 23/27 May 1993. They call on UNTAC to continue to make every effort to create and maintain a neutral political environment conducive to the holding of free and fair elections, and support UNTAC's endeavours in this respect. For this purpose, the Signatory States pledge their full support to the special representative of the Secretary-General, M. Yasushi Akashi, in implementing the Paris Agreements, in cooperation with the SNC. They associate themselves with resolution 810 as well as other relevant security council resolutions.

The Signatory States of the Paris Agreements vigorously condemn all acts of violence committed on political or ethnic grounds whoever the perpetrators and the victims may be. In particular, they express their indignation at the cowardly assassinations of civilian and military personnel of UNTAC who came to Cambodia on a mission of peace. They demand that all Cambodian parties take measures necessary to end all acts of violence and to ensure particularly the safety of all UN civilian and military personnel.

They call upon all Cambodian parties to abide by their commitment under the Paris agreements to respect the results of the elections provided they are certified free and fair by the United Nations. They express their readiness to support fully the constituent assembly and the process of drawing up the constitution and establishing a new government for all in Cambodia.

The Signatory States of the Paris Agreements express their support for and confidence in his Royal Highness Prince Norodom Sihanouk, head of State and President of the Supreme National Council of Cambodia, for his crucial role in carrying out the peace process and in promoting national reconciliation. They pledge their full support for the determination of Prince Norodom Sihanouk and the people of Cambodia to achieve a comprehensive political settlement and to proceed with the election. They also support fully the vital role of Prince Norodom Sihanouk and the people of Cambodia in securing the assistance and active engagement of the international community in post election reconstruction and peace-building in Cambodia.

Finally, the Signatory States reiterate their full commitment to implement the Paris Agreements.

Signatory States of the Paris Agreements:

Australia; Brunei; Canada; China; France; Germany; India; Indonesia; Japan; Laos; Malaysia; Philippines; Poland; Russia; Singapore; Thailand; The Netherlands; United Kingdom; United States; and Vietnam.

On 28 September 1993, Senator Peter Cook as Acting Minister for Foreign Affairs replied to a question without notice concerning Cambodia. He said, in part (Senate, *Debates*, vol 159 (1993), p 1245):

Friday, 24 September, was an important day for people in Cambodia. On that day they promulgated the new Cambodian national constitution, which was a vital step forward for the independence of that country. Today is equally a very important day for Cambodia. The significance of today is that for the first time the newly constituted national assembly is meeting in Phnom Penh.

On behalf of the Australian government—and I believe I speak for the Senate in this as well—I extend my warmest congratulations to the national assembly of Cambodia in its first meeting in Phnom Penh today. I congratulate not only the members of that assembly, but all those who have helped achieve this outstanding outcome, including many important Australians.

This previously shattered nation has been rendered whole now, with its own democratically elected national assembly assuming responsibilities for ongoing peace and stability in that country. It means that the United Nations brokered peace process in Cambodia has achieved its primary objective of returning to the Cambodian people the responsibility for their own destiny. We acknowledge and salute this outstanding achievement of the United Nations peacekeeping force.

UNTAC's mandate formally ended on 24 September, the day on which the new constitution was promulgated. Under the constitution, Cambodia has become a constitutional monarchy, under which the monarch reigns but does not govern. Prince Ranariddh and Mr Hun Sen were appointed co-prime ministers. On the same day, Prince Sihanouk took office as King of Cambodia. The progressive withdrawal of UNTAC personnel is proceeding, including that of the Australian Defence Force contingent, and it is to be completed by 15 November this year.

...It should be remembered that Australia has made a significant contribution to the peacekeeping process, and the government commends all those Australians involved...

The future of Cambodia is now in the hands of the Cambodians, but it is the nature of the peace accord that the settlement process does not end with the completion of UNTAC's mandate; rather, it is a continuing international process by which the signatories are committed in a variety of ways to assisting Cambodia. These include the reconstruction of Cambodia through their involvement in the International Committee of Reconstruction in Cambodia; assistance on human rights questions through the Special Representative Commission on Human Rights; and assistance through whatever individual countries may do bilaterally.

Australia is committed to supporting the new government. Our aid program is generous and is directed towards humanitarian and development needs, including a contribution to the removal of mines from that country. The people of Australia wish the people of Cambodia peace and prosperity as Cambodians begin the task of transforming and reconstructing this brutalised nation. We look forward to Cambodia's full and fruitful partnership with Australia and with other countries of the Asia-Pacific region.

United Nations peace-keeping operations—Former Yugoslavia

On 1 April 1993 the Minister for Foreign Affairs, Senator Evans, said in the course of a news conference in New York:

I think so far as the particular situation in Yugoslavia is concerned, the bulk of the forces there will clearly have to come from Europe. What's being talked about is essentially a NATO-plus force there operating, albeit under Blue Beret control, with the United States, Britain, France, the traditional NATO contributors, bearing the major responsibility. I think to the extent that it is so obviously a problem on Europe's own doorstep, it's not unreasonable to expect the major burden to be born there by the Europeans. Elsewhere, however, it's becoming a really crucial and pressing problem for the international community because the demands are continuing to escalate, but the capacity to respond to them is obviously not.

Disputes—Israeli/Palestinian dispute

On 1 September 1993 the Minister for Foreign Affairs, Senator Evans, provided the following answers to questions on notice from Senator Bourne (Australian Democrats, NSW) (Senate, *Debates*, vol 159 (1993), p 848):

(Q3) What is the nature of Australian Government representations to Israel concerning the increase in the number of killings of Palestinians, evidence of use of torture by Israeli military authorities against prisoners, and other violations of human rights.

(Q4) What progress has been made in the implementation of United Nations Security Council resolution 799 concerning the return of 400 Palestinian deportees.

(Q5) How has the Australian Government involved itself in addressing the concerns set out in United Nations Security Council resolution 799.

(Q6) What is the nature of Australian Government representations to Israel concerning the implementation of the Fourth Geneva Convention on the Occupied Territories.

(A3) Australia makes periodical representations to the Israeli government expressing our concern at the human rights situation in the occupied territories and the conduct of the Israeli Defence Force. The last such representation was made by our Charge d'affaires in Israel in April this year. We also raise with the Israeli authorities individual cases of alleged human rights abuse, some of which are referred to us by the Amnesty International Parliamentary Group.

During my visit to Israel in May 1992 I raised with the then Prime Minister and Foreign and Defence Ministers the Government's concern about the use of administrative detention, collective punishments such as curfews and demolition of houses, conditions in prisons, the issue of family reunification, and the shooting of unarmed Palestinians by undercover units of the Israeli Defence Force. I made it clear that the Australian Government views such practices as violating the Fourth Geneva Convention and other internationally accepted norms of human rights behaviour.

(A4) While Israel has yet to comply with United Nations Security Council resolution 799 calling for the return of all the 415 deportees, over 100 of the deportees have been allowed to return, and the remainder are expected to be able to return by the end of this year.

(A5) The Government supports United Nations Security Council resolution 799 and we have made representations urging Israel to comply with it. On 18 December 1992, I issued a statement deploring the deportations, and on 22 December 1992 officers of the Department of Foreign Affairs and Trade called in the Israeli Charge d'affaires who was advised of the Government's condemnation of Israel's action. Our Charge d'affaires in Israel was also instructed to protest against the deportations to the Israeli Foreign Ministry.

(A6) In addition to the representations mentioned above, at the United Nations Commission on Human Rights this year, Australia urged Israel to accept de jure applicability of the Fourth Geneva Convention to the occupied territories and expressed concern over continuing human rights abuses against Palestinians. Australia has also made representations to the Israeli government protesting against the closure of the occupied territories which the Government considers constitutes a collective punishment prohibited by the Fourth Geneva Convention. I reiterated these concerns in discussions on 28 April this year with Israel's Deputy.