Territory

Territorial claims. Australian territories. Christmas Island. Heard Island. Cocos (Keeling) Islands.

On 25 August 1982 the Minister for Foreign Affairs, Mr Street, provided the following written answer to the corresponding questions (Sen Deb 1982, Vol 95, 521):

> My question is directed to the Minister representing the Minister for Foreign Affairs. Is Australia's sovereignty over Christmas Island and the Cocos (Keeling) Islands contested respectively by Indonesia and Singapore? Does the Australian Government regard these islands as an integral part of Australia? Would Australian forces be asked to defend this country's sovereignty over these islands if sovereignty were contested by force?
>
> Australia's sovereignty over Christmas Island and Cocos (Keeling) Islands is not contested by Indonesia and Singapore.
>
> The Government has obligations and responsibilities to protect Australia's territory which includes Christmas Island and the Cocos (Keeling) Islands. There is no current threat of attack on any Australian territory. In the event that there were, the Government of the day would carefully consider what action would be appropriate to defend Australia's interests.

On 23 August 1983 the Minister for Science and Technology provided the following written answer concerning debris on Heard Island (Sen Deb 1983, Vol 99, 97):

> Permanent occupation of Heard Island ceased in 1955 to enable logistic resources to be directed towards establishing Mawson station on the Antarctic mainland. At the time every precaution was taken to ensure that the huts were adequately secure.
>
> The scattered debris and the condition of the huts is mainly attributable to the severe climatic conditions which prevail on the island. Elephant seals also cause damage to the buildings.
>
> The debris, although aesthetically unattractive, is not considered to be environmentally harmful.
>
> The Antarctic Division is aware of the condition of the huts on Heard Island but is restricted in the effort that can be applied in tidying up the station area. The Division's heavy commitment to the rebuilding program means that only short visits can be made to the island. However, it is intended that activity on Heard Island will be resumed when resources permit.

Maritime boundaries of Australia. Agreements with France, Papua New Guinea and Indonesia.

On 4 January 1982 the Minister for Foreign Affairs, Mr Street, announced that he had signed that day an agreement on maritime boundaries with France (Comm Rec, 3). The following article appeared in *Backgrounder,* published by the Department of Foreign Affairs, on 13 January 1982 (pp 3-4):

> *Australia/France: Maritime Boundary Agreement*
>
> On 4 January the Minister for Foreign Affairs and the French Ambassador in Australia signed an agreement providing for maritime

boundaries in areas where the entitlements of Australia and France — under current international law in respect of the continental shelf and 200-nautical-mile zones — would otherwise overlap. These areas are:

- the South West Pacific: that is, between Australian islands in the Coral Sea and more southerly Australian islands such as Lord Howe and Norfolk Islands on the one hand, and New Caledonia with the Chesterfield Islands and other outlying French islands on the other hand;
- the Southern Ocean: that is, between the Australian Heard and McDonald Islands, and the French Kerguelen Islands.

In a statement on the same day (Comm Rec 1982,3) the Minister said that it was the Australian Government's policy to conclude maritime boundary agreements with all of Australia's near neighbours, taking account of the evolution of international law on the subject, so that any potential disputes over rights and access to resources would be avoided.

The agreement comprises six articles. Articles 1 and 2 define the location and nature of the boundaries in the South West Pacific and Southern Ocean areas. Article 3 provides for the possibility of further extension of the boundaries in respect of the continental shelf when the actual location of the outer edge of the continental shelf is better known, and reserves the position of the two countries on this point. Articles 5 and 6 deal with dispute settlement and entry into force of the agreement.

The agreement will require a major adjustment to Queensland's Adjacent Area under the Petroleum (Submerged Lands) Act. Accordingly, that State's concurrence to the agreement was obtained before submitting it to Federal Ministers for their approval. The Queensland Government was represented in the negotiations with France.

The agreement represents a satisfactory result for Australia for the following principal reasons:

- it takes full account of all Australian territory and entitlements at international law;
- it provides for boundaries with France in the main areas where delimitation is required; and
- it is drafted in such a way as to enable either side to make full use of its entitlements in accordance with developing international law.

The Australian Government was careful to keep South Pacific Governments informed of developments, assuring them that signing the agreement did not in any way affect Australia's well-known policies towards the future of France's Pacific Territories, including New Caledonia. It is, of course, normal and proper for constitutional authorities to define territorial boundaries in advance of, or in anticipation of, political change. For example, Australia and Indonesia settled the present Papua New Guinea/Indonesia borders in the early 1970's before PNG became independent. A number of South Pacific countries have themselves begun delimitation discussions with France, and one (Tonga) has already concluded a maritime boundary agreement with France.

The Agreement entered into force pursuant to article 6 on 10 January 1983: Aust TS 1983 No 3.

Torres Strait Treaty. Progress towards ratification.

On 10 June 1981 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, said in part in answer to a question (Sen Deb 1981, Vol 90, 2920):

> The Torres Strait Treaty was signed by the Prime Minister and the Foreign Minister on 18 December 1978. The treaty, in addition to establishing maritime boundaries and dealing with other related matters, seeks to protect the traditional way of life of the traditional Australian inhabitants in the Torres Strait and of Papua New Guineans living in the coastal area of that country. The treaty will come into force after the necessary legislation has been passed in both Australia and Papua New Guinea and the instruments of ratification have been exchanged. In addition to Commonwealth legislation, the Queensland Government will also need to introduce relevant legislation to implement the treaty provisions.

On 19 October 1983 the Minister for Foreign Affairs, Mr Hayden, presented the Torres Strait Treaty (Miscellaneous Amendments) Bill 1983 to Parliament. His second reading speech is as follows (HR Deb 1983, Vol 133, 1899-1901):

> The purpose of this bill is to amend, as appropriate, existing Australian legislation to enable the ratification of the 1978 Torres Strait Treaty. That Treaty, as honourable members will recall, is an important milestone in the history of Australia's relations with Papua New Guinea, our closest neighbour. It provides a solution to the problems of territorial and maritime jurisdiction in the Torres Strait, which at one stage had the potential to disrupt our good bilateral relations. The Torres Strait area includes many islands forming part of Australia — some only a few kilometres from the Papua New Guinea coast. The Treaty takes account of the interests of the traditional inhabitants of the Torres Strait who have enjoyed and will continue to enjoy wide freedom of movement in the area, of the interests of commercial fishermen and mining companies, of the need to protect the marine environment, and of our ultimate right to take restrictive measures necessary to meet any problems which arise. The Treaty balances all these considerations. As part of the novel regime that it requires, it establishes a "protected zone" to facilitate administration of the key area of the Strait.
>
> It is a matter for regret to us all that, although nearly five years have passed since the Treaty was signed, it has not yet been ratified by Australia and Papua New Guinea. This has not been the result of any lack of will on the part of anybody — in Australia, successive governments have given it unqualified support and I know that this has also been the case in Papua New Guinea — rather it is because of the novelty and complexity of the Treaty's provisions and the need to co-ordinate implementing legislation in two national and one State jurisdictions — the Commonwealth, Papua New Guinea and Queensland. It has not been a simple matter to harmonise Commonwealth and State interests, especially in relation to fisheries administration. My colleague the Minister for Primary Industry (Mr Kerin), who will shortly be introducing the Torres Strait Fisheries Bill, will comment on the detailed fisheries arrangements that are now proposed.
>
> Since the Treaty pays particular attention to the interests of traditional inhabitants in the Torres Strait area, the people of that area have been

consulted, both during the period leading to the signing of the Treaty in 1978 and more recently, when the objectives of the proposed fisheries legislation were explained to them. This process of consultation will continue; indeed, the Treaty makes a number of arrangements for the participation of traditional inhabitants in its operation. The people known as Torres Strait Islanders have been in occupation of this area since time immemorial. They are the original owners of this land. The Commonwealth accepts that these people have the right to recognition of their just claims. We recognize their interest in these lands, as Australian citizens of indigenous descent. My colleague the Minister for Aboriginal Affairs (Mr Holding) has foreshadowed legislation to take a consistent national approach to Aboriginal land rights. The same principles will apply as much to the Torres Strait Islands as in any other parts of Australia.

The Bill before us, which would not have any measurable financial impact, would amend 10 Commonwealth Acts. I shall describe briefly the effect of each of the amendments. The Fisheries Act 1952 and the Continental Shelf (Living Natural Resources) Act 1968 are amended by disapplying those Acts in the future to the protected zone and to any waters outside the protected zone proclaimed to be waters in which the Torres Strait Fisheries Act applies to a particular fishery. The powers of officers, and the offences relating to obstruction of officers, are preserved in those waters under both the amended Acts to enable fisheries enforcement staff to cross protected zone boundaries without diminution of their authority. The Torres Strait Fisheries Bill will authorise the making of arrangements between the Commonwealth and Queensland for management under a single law of a particular fishery in the protected zone or in an area outside that zone proclaimed in relation to that fishery, including, in either case, in Queensland coastal waters. The present Bill, therefore, amends the Fisheries Act to preclude an arrangement under that Act from having effect in relation to that fishery in those areas.

The Fisheries Act is further amended to allow a Papua New Guinea boat that has an entry under the Torres Strait Fisheries Act to land its catch from the protected zone in any place in Australia. This authority will be granted under the Torres Strait Fisheries Act in specific cases and will not be a right that Papua New Guinea boats will enjoy automatically. Both these fisheries-related amendments contain savings provisions in respect of matters that occur before the amendments come into force.

The Coral Sea Islands Act 1969 is amended to adjust the boundaries of the area which includes the Coral Sea Islands Territory, to take account of the boundaries established by the Treaty. This amendment will neither add to, nor subtract from, the islands currently comprising the Coral Sea Islands under the Act. Another amendment converts the geographic co-ordinates which define the Territory to the Australian Geodetic datum. This enables the points to be more accurately plotted on the earth's surface.

The Treaty requires Customs procedures to be applied by each party in such a way that there is no hindrance to the free movement and performance of traditional activities in the protected zone and its declared vicinity by the traditional inhabitants of the other party. Part IV of the Bill, which inserts a

new section 30A in the Customs Act, is designed to achieve this end by providing for exemptions to be able to be made from specified provisions of the Customs Acts. Not all of the provisions of the Customs Acts will be exempted however, as it will be necessary to continue to impose controls over such things as narcotic drugs. This action is permissible under Article 16 of the Treaty, which allows each party to apply such measures as it considers necessary to meet problems which arise. Part V of the Bill inserts a new provision into the Customs Tariff Act to exempt goods relevant to the Treaty from Customs duties.

The Historic Shipwrecks Act 1976 is amended to ensure that Papua New Guinea wrecks of special significance are placed in a similar category of protection to old Dutch shipwrecks as provided for in the Historic Shipwrecks Amendment Act 1980. Papua New Guinea wrecks located in waters adjacent to Queensland will continue to be protected should Queensland ever request that the Historic Shipwrecks Act cease to apply in relation to its waters. In addition, where the Governor-General is satisfied that arrangements which have been made with respect to Papua New Guinea shipwrecks and Papua New Guinea relics make it appropriate, he may by proclamation declare that the principal Act ceases to apply to them.

The Migration Act 1958 is amended to exempt from entry permit requirements citizens of Papua New Guinea who are traditional inhabitants engaged in traditional activities in the protected zone area. However, the exemption will not apply to persons who would be prohibited from entry by virtue of suffering from prescribed diseases or having a criminal record or having been deported or excluded from Australia or another country in the past. Equally, the exemption will not apply to persons who cease to be inhabitants of the protected zone, who remain in Australia otherwise than in order to perform traditional activities or who enter a part of Australia which is not in or in the vicinity of the protected zone. Finally, it is proposed that the carriers of traditional inhabitants will be exempted from the provisions of the Act relating to the carriage of persons without visas or return endorsements. The Petroleum (Submerged Lands) Act 1967 is amended to ensure that the northern boundary of the Queensland adjacent area will coincide with the Torres Strait Treaty seabed line.

I turn now to the amendments to the Quarantine Act. That Act regulates for quarantine purposes the entry into Australia of persons, vessels and goods from any overseas place. Certain animals, plants and goods are prohibited entry, and all those not totally prohibited must pass quarantine clearance before being released to the importer. People entering the country are screened for various exotic diseases. In this way we protect ourselves, our rural industries and our unique range of plant and animal life. The Bill amends the Quarantine Act to allow the Governor-General to make special provisions in relation to traditional inhabitants going about traditional activities, and for their vessels and goods. At the same time, however, the Government will take steps to ensure that proper quarantine controls are maintained.

I draw honourable members' attention to clause 31 of the Bill, which proposes that the Governor-General be empowered to allow the entry of

specific articles, animals or plants which otherwise would be prohibited imports. That provision will allow the Governor-General to exempt goods that are brought into a part of Australia that is the protected zone by a traditional inhabitant for use in connection with the performance of a traditional activity.

Clause 32 of the Bill amends the Quarantine Act to allow the Minister for Health to exempt from all or specified provisions of that Act or its regulations traditional vessels that enter a part of Australia that is in the protected zone and on board which there are, apart from any government officials, only traditional inhabitants. By the exercise of this power the Minister will be able to allow the free movement of such traditional vessels in and around those parts of Australia that are within the protected zone. Without such an exemption persons on a vessel from a part of the protected zone outside Australia who wanted to land in Australia would first have to go to a first port of entry, such as Cairns or Thursday Island.

The Government is determined to do all that is required to prevent these relaxations from lessening this country's quarantine security. The Minister for Health will be proposing compensating measures to the Governor General, who has power under the Quarantine Act to regulate the movements of animals, plants and goods from those parts of Australia that are within the protected zone to any other part of Australia. The Minister will be able to ensure that, if an exotic disease is introduced into the protected zone, it will be excluded from the rest of Australia.

The Wildlife Protection (Regulation of Exports and Imports) Act 1982 is amended by this Bill to reflect the fact that hunting of certain wildlife for subsistence and cultural purposes is an important traditional activity recognized by the Treaty. The Treaty also provides that each party may implement within its area of jurisdiction measures to protect species of indigenous fauna and flora which are or may become threatened with extinction, or which either party has an obligation to protect under international law. The Government reaffirms its commitment to nature conservation in the Torres Strait. In particular, it will maintain safeguards to ensure compliance with Australia's obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora. My colleague the Minister for Home Affairs and Environment will initiate programs to monitor wildlife populations in the Torres Strait region, with particular emphasis on dugong and marine turtle.

In conclusion, and on a general note, I draw honourable members' attention again to the fact that, while we have accepted an obligation to apply procedures in such a way as not to prevent nor hinder the free movement or traditional activities of traditional inhabitants of Papua New Guinea, the Treaty reserves our right to apply immigration, customs, health and quarantine measures, temporary or otherwise, as we consider necessary to meet any problems which may arise. Papua New Guinea has, of course, reciprocal rights and duties in this regard.

This Bill, together with the Torres Strait Fisheries Bill, would provide the complete legislative framework for Australia's ratification of the Torres Strait Treaty. We expect that it will lie on the table now for a time, so that

all interested groups can become fully familiar with its details before we proceed to consider it further here. We expect too that in both Port Moresby and Brisbane complementary legislation will very soon be introduced, so that we can move forward together in all three jurisdictions to complete the formalities of implementation of a treaty which has been widely recognized as providing an innovative and balanced solution to a complex problem. I commend the Bill to honourable members.

The Bill was assented to on 26 April 1984 as the *Torres Strait Treaty (Miscellaneous Amendments) Act 1984* (Act No 22 of 1984).

Following the introduction of the above Bill by the Minister for Foreign Affairs, the Minister for Primary Industry, Mr Kerin, presented the Torres Strait Fisheries Bill 1983. His second reading speech was as follows (HR Deb 1983, Vol 133, 1901-1904):

> This Bill implements the fisheries aspects of the Torres Strait Treaty. In conjunction with clauses 4 and 14 of the Torres Strait Treaty (Miscellaneous Amendments) Bill, it replaces the provisions of the Fisheries Act 1952 and the Continental Shelf (Living Natural Resources) Act 1968, in the protected zone and, for particular fisheries outside but near the protected zone with provisions that will enable the Commonwealth to manage the fisheries in waters under Australian jurisdiction in accordance with the Treaty.
>
> The Queensland and Papua New Guinea parliaments will also be enacting legislation for the same purpose. Considerable work has been done to ensure that the three Bills will be in harmony with each other. Subject only to progress toward commencement of the similar Acts in Queensland and Papua New Guinea, ratification of the Treaty and commencement of the new legislation will occur simultaneously.
>
> Many interests will need to be taken into account before I, and the Queensland and Papua New Guinea ministers responsible for fisheries matters, exercise the powers provided in these Bills to deal with a variety of fishery management issues. Officials and scientists of the three governments will need to consult each other and Commonwealth and Queensland officials will need to consult traditional inhabitants and commercial fishermen, about the advice they offer to Ministers concerning application of measures which the Bills will authorise. These consultations have already started. Australian and Papua New Guinea scientists met in July 1981 and February 1983 to discuss research into the fish stocks which will provide a basis for future management decisions. Officials have consulted commercial fishermen about managing the fisheries in the protected zone pending ratification of the Treaty and commencement of the new legislative provisions. These consultations will continue and intensify as that commencement approaches and thereafter.
>
> Consultations are also being held with the people of the Torres Strait and adjacent coastal areas, particularly as they will have special rights to the fisheries resources of the protected zone. Officials have visited the area to discuss the Treaty and last week explained the Bill to representatives of the Torres Strait people whom the Treaty defines as traditional inhabitants. These people will have a significant voice in the deliberations of the Torres Strait Joint Advisory Council established under the Treaty, including

fisheries matters. The Bill provides for the Minister and the Protected Zone Joint Authority, established under Part V, to consult the Australian traditional inhabitants appointed to the Joint Advisory Council about fishery matters under the Bill affecting the interests of the Australian traditional inhabitants.

As a domestic Australian measure, beyond the requirements of the Treaty, the Bill makes special provisions, to which I will refer later in more detail, for commercial fishing operations by Australian traditional inhabitants. It proposes a minimum of control over such operations, subject only to the requirements of the Treaty and of effective management and conservation of the fish stocks. As well, it enshrines the right expressed in the Treaty of traditional inhabitants of both countries to undertake traditional fishing in the protected zone for their own and their dependants' consumption, with a minimum of regulation or restriction.

I have circulated a detailed explanatory memorandum dealing with the provisions of the Bill so I will not take the time of the House with an extensive summary. However, I believe that honourable members would wish me to deal at this time with the Bill's chief principles, especially insofar as they give effect to the Treaty.

In the defined area of Australian jurisdiction, the Bill applies to all fishing except recreational fishing with use of Australian boats by people who are not traditional inhabitants, which will be regulated under Queensland law. The area of Australian jurisdiction comprises the protected zone, south of the fisheries jurisdiction line in the Treaty. The area does not include Queensland coastal waters except where the Commonwealth and Queensland agree that a particular fishery is to be managed under Commonwealth law from the coast to the limits of the Australian jurisdiction.

To give effect to the Treaty definition of ''protected zone commercial fisheries'', the Bill provides that, in relation to a particular fishery in a subsidiary arrangement under Article 22 of the Treaty, Australia or Papua New Guinea may agree to include areas outside but near the protected zone in the area of Australian or Papua New Guinea jurisdiction, as the case may be, in relation to that fishery. It is proposed that this would happen where, for the good management of the fish stock inside the protected zone, Australia and Papua New Guinea agree that it is necessary to apply the measures in the subsidiary arrangement to the stock in agreed areas outside but near that zone.

To stimulate commercial fishing enterprise among Australian traditional inhabitants, a special category of commercial fishing has been created exclusively for them. Only Australian traditional inhabitants or other people employed to provide them with technical advice or training will be allowed to engage in what are to be called the community fisheries. Traditional inhabitants under obligations to act in accordance with the instructions or principals not themselves entitled to undertake community fishing will be regarded as commercial fishermen in the normal way. This will contribute significantly to protection of the traditional inhabitants from outside exploitation in their fishing activities.

Community fishermen will not be required to hold master fishermen's

licences. The Minister may declare that, for reasons of fishery management, community fishing boats are to be licensed in a particular fishery but unless he does so licences will not be required. A traditional inhabitant will be able voluntarily to take out for his boat a licence that Australia can nominate to Papua New Guinea to be endorsed for a fishery in waters under Papua New Guinea jurisdiction which is subject to an arrangement under Article 22 of the Treaty. There will be no charge for the endorsement and probably only a nominal fee for the Australian licence. While the Minister may prohibit such matters as taking fish undersized, out of season or by particular methods in the course of community fishing, he may also publish notices reserving particular fisheries for community fishermen, including activities on shore relating to such fisheries.

The provisions of the Bill relating to community fishing manifest the Government's intention to give effect to the spirit of Article 11 of the Treaty beyond the specific requirements of that Article. The concept of community fishing is an additional benefit for Australian traditional inhabitants, enabling them to undertake commercial fishing in the protected zone under conditions of considerable freedom from regulation.

The Treaty definition of ''traditional inhabitant'' requires that they be resident in the protected zone or the adjacent coastal area and maintain traditional customary associations with the protected zone. Both Australia and Papua New Guinea will have to agree on what is declared to be the adjacent coastal area for each country. As honourable members will know, there are communities of Torres Strait Islanders living on the mainland. It is proposed that the declaration of the adjacent coastal area should include the people of Bamaga, on the north-western hinterland of Cape York Peninsula. Torres Strait Islanders will not be able to undertake traditional or community fishing in the protected zone from other ports, for example, Cooktown, Cairns or Townsville. The Treaty provides for the privilege of traditional fishing to be enjoyed by residents of only the protected zone and the adjacent coastal area and it would not be proper to extend that concept to areas that are manifestly not adjacent to the protected zone. Islanders normally resident in places beyond the protected zone or the adjacent coastal area will be able to undertake traditional or community fishing if they return there to resume long term residence.

One of the most complex provisions of the Treaty is Article 23, which requires Australia and Papua New Guinea, whenever they agree to manage a commercial fishery jointly in the protected zone, to determine the annual total allowable catch for the fishery and then to share the catch in accordance with the provisions of that Article. Clause 14 of the Bill provides, in conjunction with appropriate administrative measures, for enforcing the total allowable catch to fulfil Australia's quota obligations.

The maximum penalty for knowingly providing false or misleading catch information in a quota fishery will be $5,000 or two years gaol, or both. For continuing to fish after the fishery is closed for the remainder of the year, the maximum penalty will be $5,000. These penalties reflect the seriousness with which the Government regards attempts to evade Treaty responsibilities.

The Bill makes special provision for collection of information of the catches of community fishermen in quota fisheries from processing plants or processing boats, so as to relieve community fishermen of the burden of acquiring radio equipment for reporting purposes. In any event, the quota requirements of the Treaty are to be phased in from the fifth to the tenth year after ratification.

The licensing provisions of the Bill require only the master of a commercial fishing boat to be licensed and do not extend that requirement to the master of a community fishing boat. Boats are to be licensed to take, process and carry their own catch; a separate licence is required for boats used to process and carry the catches of other boats. While the Bill provides for licensing of foreign boats, that is, boats other than Australian or Papua New Guinean, it reflects the requirement of Article 27 of the Treaty that no foreign boat will be licensed to fish in the protected zone without the specific agreement of the responsible Ministers in Australia and Papua New Guinea. There is little prospect of a foreign boat coming within the Government's present fishery licensing policy to allow it to fish in the area of Australian jurisdiction. The current policy of the Papua New Guinea Government is similar to ours in that it encourages local residents to occupy protected zone commercial fisheries in Papua New Guinea jurisdiction.

The Bill provides for Australia to endorse a Papua New Guinea licence for a boat which the Papua New Guinea Government nominates to fish in an area of Australian jurisdiction. This is a reciprocal measure that will happen only in relation to fisheries which are the subject of any arrangement under Article 22 of the Treaty. In accordance with paragraph 26 (2) of the Treaty the Bill ensures that no fee is payable for an endorsement.

Part V of the Bill, which is not specifically required to give effect to the Treaty, provides for the establishment of a Protected Zone Joint Authority comprising the Commonwealth and Queensland Ministers responsible for fisheries matters in the protected zone. The Joint Authority will have the power to manage particular fisheries, such as those covered by arrangements with Papua New Guinea under Article 22 of the Treaty. The establishment of the Joint Authority provides for the Commonwealth and Queensland to jointly participate in the management of the major fisheries in the zone. I also point out that the provisions of Part V of the Bill are subject to any decision that the Government may take about the future of the off-shore constitutional settlement.

Because the Bill does not require individual employee fishermen to be licensed, it cannot provide the useful sanction of cancellation of the licence following conviction for a major offence. The Bill therefore gives courts a discretionary power to order persons convicted of a breach of a condition of a boat licence or of a prohibition in a notice to stay off commercial fishing boats in the protected zone for a specified period or incur maximum penalty of $2,000 or six months' imprisonment. The Minister will have a discretionary power to suspend a boat licence or a master-fisherman's licence if the holder is charged with breach of a ministerial prohibition or a condition of the licence and to cancel such a licence if the holder is convicted under any Commonwealth, State, or Papua New Guinea fisheries

law. Paragraph 28 (13) of the Treaty requires cancellations following conviction for a breach of Papua New Guinea law.

Article 28 of the treaty contains unique enforcement provisions. Each country will prosecute persons of its nationality authorised by both countries to operate in fisheries governed by an Article 22 arrangement and who commit offences in relation to such fisheries in waters under the other country's jurisdiction. Each country will prosecute persons of the other nationality who breach its exclusive fisheries jurisdiction by either unauthorised fishing in any fishery or by contravening management measures in Article 22 fisheries for which the person or his boat is not licensed by both countries.

The Bill therefore provides for Australian offenders against Papua New Guinea law to be dealt with by Australian courts in the circumstances specified in Article 28. The Bill requires the Minister's consent for the prosecution of persons charged with offences in the area of Australian jurisdiction with the use of a Papua New Guinea boat. The Bill does not confer on the Administrative Appeals Tribunal jurisdiction over decisions made under it. The whole question of Commonwealth review powers over actions by State officials performing duties authorised under Commonwealth law is a difficult one and the Government intends to discuss it with the State at an appropriate time. Until the mater is resolved, the review powers of the Commonwealth Ombudsman and of the Federal Court of Australia under the Administrative Decisions (Judicial Review) Act will in any event apply to decisions of Commonwealth and Queensland officials pursuant to the Bill. After consultation with the States, the Government will consider whether to amend the Torres Strait Fisheries Act, as it will then be, in relation to proposed jurisdiction of the Administrative Appeals Tribunal.

Those provisions of the Bill with which I have not dealt in detail follow the precedents of the Fisheries Act and relate to the powers necessary to manage the fisheries and to enforce the Bill in the manner required by both the Treaty and the standards of justice in Australia. The explanatory memorandum deals comprehensively with all the provisions of the Bill. I commend the Bill to honourable members.

The Bill was assented to as the *Torres Strait Fisheries Act 1984* on 26 April 1984 (Act No 23 of 1984).

The Torres Strait Treaty was ratified in Port Moresby on 15 February 1985: Aust. TS 1985 No 4. The text of the Treaty is also reproduced in 18 *International Legal Materials* 291 (March 1979).

Maritime delimitation. Boundary with Indonesia. Timor Gap.

On 8 September 1983 the Attorney-General, Senator Evans, said in answer to a question (Sen Deb 1983, Vol 99, 530):

> Yesterday Senator Chaney asked a question of both Senator Walsh and myself concerning the progress on discussions relating to the seabed boundary between Indonesia and Australia in the light of the recent oil find at the Jabiru No. 1 well. The Minister for Foreign Affairs has provided the following information which I now give to the honourable senator and to the Senate.
>
> Sea bed boundary agreements with Indonesia were signed by Australia in

1971 and 1972. These agreements determined the boundary in the Arafura Sea and in the area south west of West Timor. The boundary further west was left for later talks. A gap was also left in the boundary south of what was then Portuguese Timor. Before a boundary agreement could be reached with Portugal, East Timor was incorporated into Indonesia.

Between 1979 and October 1981 four rounds of discussions were held between Indonesia and Australian officials to consider, amongst other things, drawing a boundary in the area of what has become known as the Timor Gap. However, these discussions were inconclusive. We are ready to hold further rounds of discussions as soon as the Indonesian side is ready.

I understand that the Jabiru No. 1 well is located on the Australian continental shelf to the south of, that is, on the Australian side of, the 1972 agreed seabed boundary with Indonesia. Indeed, Senator Walsh made that point yesterday. It is therefore to the west of the Timor Gap area, and should not be relevant to the continuing discussions on the Timor Gap.

The Minister for Resources and Energy, Senator Walsh, added (ibid):

May I add one additional fact to what Senator Evans has stated. As I said yesterday, the Jabiru well is outside the disputed area. I have since been advised that it is some 200 kilometres from the disputed area.

On 13 September 1983 Senator Walsh answered a further question concerning territorial jurisdiction over the area in which the Jabiru 1A oil well was situated (Sen Deb 1983, Vol 99, 595-596):

The honourable senator raised a complex matter which has quite a long history. The best starting point in explanation would probably be the 1967 Petroleum (Submerged Lands) Act, which established, in areas which were off-shore to all the States, joint authorities which laid down both the quantity and the distribution of royalties for oil which may be found off-shore. In the case of the Northern Territory, which was not self-governing at that stage, the Commonwealth retained as Commonwealth territory the sea area adjoining the Northern Territory. The Seas and Submerged Lands Act 1973 asserted Commonwealth sovereignty beyond the low water mark. That legislation was taken on appeal to the High Court of Australia. In 1975 the High Court found in favour of the Commonwealth.

There the situation rested until 1979, when the previous Government handed back to the States what was called the territorial sea, which was three miles off-shore. In a few instances it was somewhat more than three miles. That Government amended the 1967 Petroleum (Submerged Lands) Act to retain the joint authority arrangements for the management of the ocean area and ocean floor beyond three miles, whilst ensuring that ultimate control, in the event of a dispute in a joint authority, rested with the Commonwealth. Also in 1979 the Commonwealth — presumably because by then the Northern Territory had become self-governing — allocated to the joint authority of the Commonwealth and the Northern Territory almost all of the 200-mile zone which previously had been entirely Commonwealth territory. Because of the 1979 package of legislation the Northern Territory, for this purpose, acquired the status of a State. However, at that time a portion of the ocean area in question, known as the Ashmore and Cartier Islands, which had previously been Commonwealth territory, was excluded

from that part of the Commonwealth territory which was transferred, for purposes of management by a joint authority, to the Northern Territory.

At the end of that recital of the historical and factual background is the fact that the Ashmore and Cartier Islands area, within which the Jabiru 1A well was drilled, the results of which were announced by the Broken Hill Proprietary Co Ltd, I think, on 30 August, is entirely in Commonwealth territory, since constitutionally everything below the three-mile limit as adjusted is Commonwealth territory but, legislatively, all but the Ashmore and Cartier Islands ocean area is subject to the joint authority and stipulated royalty charges and royalty distribution between the States and the Commonwealth. The Ashmore and Cartier Islands area, within which this oil well was drilled, the results of which were announced by the company, is entirely within Commonwealth territory and not subject to the jurisdiction of the 1967 Act and, therefore, not subject to either the royalty charges stipulated in the 1967 Act or the distribution of those charges between the Commonwealth and any State or Territory.

On 18 October 1983 Senator Walsh answered a further question on the matter (Sen Deb 1983, Vol 100, 1642):

The Jabiru 1A well is approximately 200 kilometres away from the area in respect of which agreement on the border between Australia and Indonesia has not been reached. The Timor Gap, to which Senator Chaney referred, is a gap between two points on which agreement was reached some years ago, but the Jabiru well is some 200 kilometres away from that area and is not affected by the gap in the border on which common agreement has not yet been reached.

The second part of Senator Robertson's question referred to the constitutional or legislative status of the territory in which the Jabiru well and surrounding areas are located. The well is in the Ashmore and Cartier Islands area — an area in which drilling permits are administered by the Northern Territory, as drilling permits generally in off-shore areas are administered by territorial or State governments. But, in regard to all areas other than the Ashmore and Cartier Islands area, the provisions of the 1967 legislation, as amended in 1979—the 1967 legislation being the Petroleum (Submerged Lands) Act—stipulate both the rate of royalty which will be applied and the distribution of that royalty between the Commonwealth and/or territorial governments. The Ashmore and Cartier Islands area is not subject to that distribution of royalties between the Commonwealth and a State or Territory and therefore royalty charges, if any, in that area would accrue entirely to the Commonwealth.

On 1 December 1983 the Attorney-General, Senator Evans, provided a written answer to a question which reads in part (Sen Deb 1983, Vol 101, 3187-3188):

We are ready to hold further rounds of discussions as soon as the Indonesian side is ready. No date has yet been fixed.

The outstanding issues are:

(a) the delimitation of continental shelf jurisdiction in those areas not already covered by existing agreements;

(b) the location of permanent sea boundaries for other jurisdictional purposes, such as existing and future exclusive economic zones.

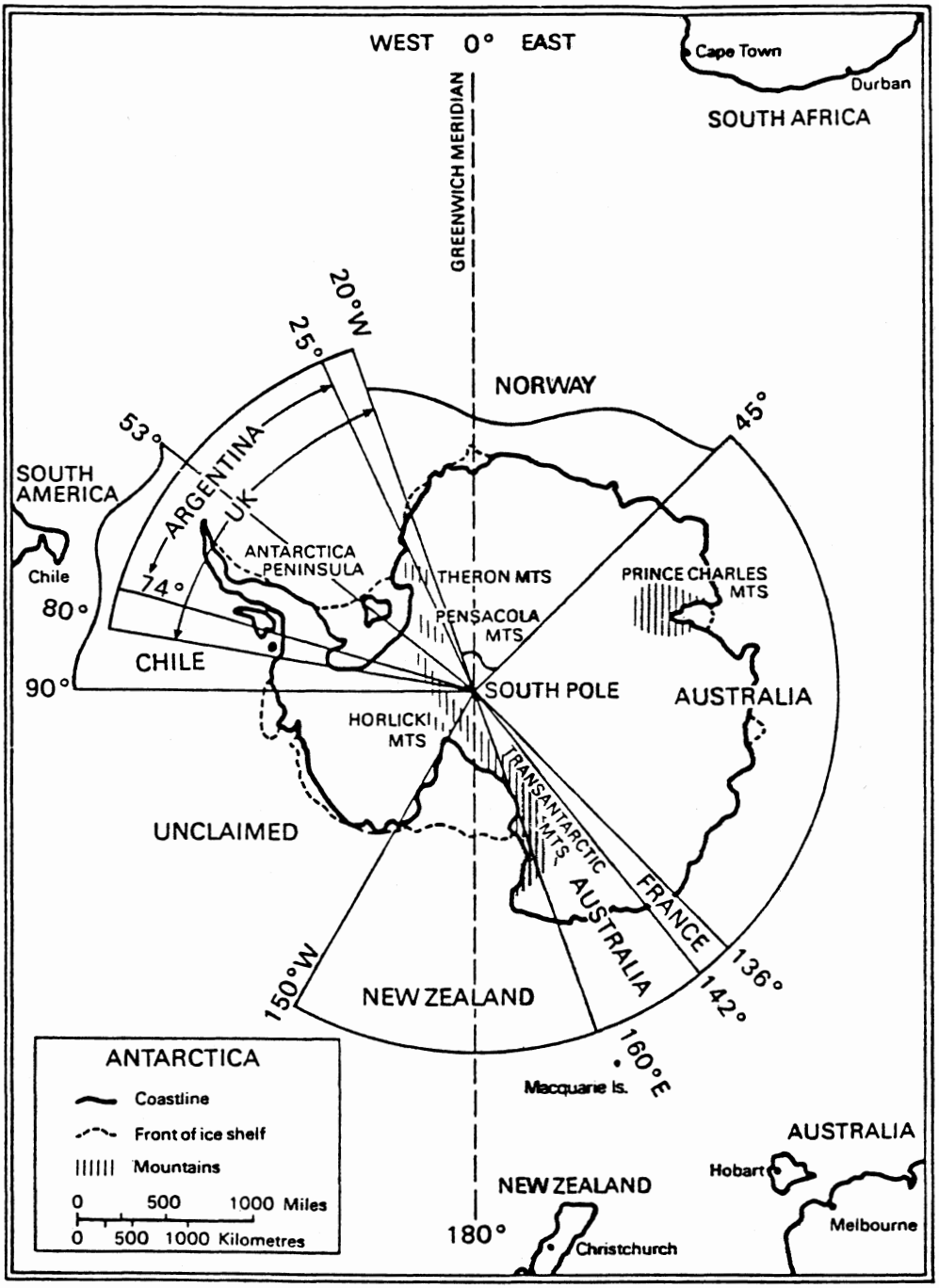
Sea bed boundary agreements with Indonesia were signed by Australia in 1971 and 1972. These agreements determined the boundary in the Arafura Sea and in the area south of West Timor. The boundary further west was left for later talks. A gap was also left in the boundary south of what was then Portuguese Timor. Between 1979 and 1981 four rounds of inconclusive discussions were held between Indonesian and Australian Officials to consider, amongst other things, drawing a sea bed boundary in the area of what has become known as the ''Timor Gap''.

Territory. Australian Antarctic Territory. Basis of claims to sovereignty. Legislative activity.

The following is an extract from an article entitled ''Antarctica in the 1980s'' published in *Australian Foreign Affairs Record* by the Department of Foreign Affairs in January 1981 (pp 5-6):

Sovereignty

Flowing from their historical involvement and activity in the area, seven states — Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom — claim sovereignty over parts of Antarctica. The extent of the claims is shown on the map of Antarctica (below). Australia's Antarctic Territory is by far the largest, covering some six million square kilometres — about the combined size of Western Australia, Northern Territory and Queensland — and comprising about three sevenths of the Antarctic continent. Australia's claim rests upon discovery and formal taking of possession by the United Kingdom, and then a continuous display of Australian occupation and administration after passage of the Australian Antarctic Acceptance Act of 1933. The Australian Antarctic Territory lies between 45 degrees east and 160 degrees east and is divided into two areas by the wedge of Adelia Land, claimed by France. To the east of the Australian Antarctic Territory (AAT) is the New Zealand territory, the Ross Dependency. To the west is the Norwegian territory of Queen Maud Land and further west is the British Antarctic Territory, which the claims of Chile and Argentina partly overlap. Most of the claimant States also claim sovereignty over islands situated offshore from their respective claimed sectors and south of 60 degrees south latitude. The United States, Japan and the Soviet Union have not made claims to Antarctic Territory and do not recognize any that have been made. The United States and the Soviet Union, however, have reserved their ''rights'' to make claims, though neither has given any indication that they will do so in the foreseeable future. There is a segment of the continent which remains unclaimed.


WEST 0° EAST
GREENWICH MERIDIAN
Cape Town
Durban
SOUTH AFRICA
20°W
25°
NORWAY
45°
53°
ARGENTINA
UK
SOUTH AMERICA
Chile
74°
80°
ANTARCTICA PENINSULA
THERON MTS
PENSACOLA MTS
PRINCE CHARLES MTS
CHILE
90°
SOUTH POLE
AUSTRALIA
HORLICKI MTS
TRANSANTARCTIC MTS
UNCLAIMED
FRANCE
AUSTRALIA
136°
142°
150°W
NEW ZEALAND
160°E
Macquarie Is.
ANTARCTICA
Coastline
Front of ice shelf
Mountains
0 500 1000 Miles
0 500 1000 Kilometres
AUSTRALIA
Hobart
NEW ZEALAND
180°
Christchurch
Melbourne

On 2 April 1981 the Minister for Science and Technology, Mr Thomson, provided the following written answer in part to a question concerning Mawson's Hut, built in the Antarctic by the late Sir Douglas Mawson during his expedition in 1911-1914 (Sen Deb 1981, Vol 88, 1124):

> Mawson's Hut is situated at Commonwealth Bay which is 120 km from the nearest manned research station, France's Dumont D'urville in the Terre Adelie Sector, and 1400 km from Casey, the nearest Australian station.
>
> In January/February 1978 a party from the Antarctic Division visited Commonwealth Bay to inspect Mawson's Hut, to assess the feasibility of returning it to Australia and to do some restoration work. The party found that the condition of the hut reflected the severe weather conditions it has had to withstand. They reported that the outer timbers had been reduced to half their original thickness and had shrunk leaving gaps between the boards. The inner and main timbers were generally in good condition, however some repairs and replacements would be necessary.
>
> The party recommended that because of the condition of the hut and the variable weather conditions no attempt should be made to return it to Australia and that it should be restored on site.
>
> The arguments leading to a decision to leave the hut in situ are:
>
> > The hut has been declared an Antarctic historic monument and it is the general practice of Antarctic Treaty nations, of which Australia is one, to leave their nominated historical monuments in situ;
> >
> > The voyages of Sir Douglas Mawson were the basis of Australia's claims in the Antarctic and the Commonwealth Bay hut forms an integral part of those explorations.

The Minister provided the following further written answer on 21 April 1982, in part (Sen Deb 1982, Vol 94, 1729):

> (1) Australia exercises sovereignty over all of the islands and territories situated south of 60°S latitude between 45°E and 160°E longtitudes, except for those islands and territories between 136°E and 142°E longtitudes. Under the definition of ''Australia'' given in the Acts Interpretation Act the Australian Antarctic Territory, being an External Territory, is not considered to be an integral part of Australia.
>
> (2) There are a number of objects, sites and structures in the AAT classified as Historic Monuments under the Antarctic Treaty. One of these, the main base hut of the 1911-1914 Australasian Antarctic Expedition, now known as Mawson's Hut, was placed on the Register of the National Estate by the Australian Heritage Commission in November 1978.
>
> (7) The Government has no plans to provide facilities for tourists to visit the Australian Antarctic Territory. The very high cost and hazardous conditions associated with life in the Antarctic, together with the extreme fragility of the environment, render the area unsuited for normal tourist activities.

On 1 December 1982 the Minister for Foreign Affairs provided the following written answer, in part (Sen Deb 1982, Vol 97, 2974-2975):

> 3. Australia is geographically comparatively close to Antarctica and has a long history of substantial exploration and scientific research in the region

going back over 70 years. Australia exercises sovereignty over the Australian Antarctic Territory.

4. The Government is confident that Antarctica is being, and will continue to be, managed responsibly and in the interests of the international community under the Antarctic Treaty. The Treaty is open to accession by any State, and a number of developing countries have in fact acceded to it.

On 4 October 1983 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question about proposals to have Antarctica declared a World Park (HR Deb 1983, Vol 133, 1321):

> The Government is aware of proposals to declare Antarctica a world park, but is not yet certain about the content and implications of the concept. The Government is committed to ensure the greatest practical protection for the Antarctic environment; and it will pursue this goal through measures drawn up directly under the Antarctic Treaty, as well as through the Convention on the Conservation of Antarctic Marine Living Resources and the negotiations which are being conducted by the Antarctic Treaty Consultative Parties to draw up an environmentally acceptable minerals regime.
>
> The Government does not believe that an analogy can be drawn between the resources of the high seas and seabed beyond national jurisdiction on the one hand and Antarctica on the other. Antarctica, unlike the deep seabed or outer space, has been subject to man's activity and sovereignty claims for a considerable time and is now the object of successful international co-operation and management under the Antarctic Treaty.

For the appointment of Deputy Coroners in the Australian Antarctic Territory pursuant to the *Coroners Ordinance 1956* as applied by the *Australian Antarctic Territory Act 1954,* see *Commonwealth of Australia Gazette,* 26 October 1982, p 2.

Australian Antarctic territory. Environmental protection legislation.

On 26 March 1981 the Acting Minister for Science and Technology, Mr McVeigh, presented the Antarctic Marine Living Resources Conservation Bill 1981 to Parliament. His second reading speech was as follows (HR Deb 1981, Vol 121, 1007-1008):

> The purpose of this Bill is to allow Australia legally to implement the Convention on the Conservation of Antarctic Marine Living Resources. The text of the Convention is provided as a schedule in the Bill. The Convention was drawn up within the Antarctic Treaty Forum and finalised at an international conference in Canberra in May 1980. The signatories include all the Antarctic Treaty consultative parties as well as a number of other nations, including the Federal Republic of Germany and the German Democratic Republic, which have recently entered the international Antarctic community.
>
> Australia was honoured at the conference by being chosen both as official depository nation for the Convention, and as host nation for the headquarters of the new international Commission which is to be established to administer the Convention. The Convention comes into force when the eighth ''instrument of ratification'' from a national government is

lodged with Australia as depository nation. The passage of this Bill will facilitate ratification by Australia. The Government is also pleased to note that Hobart has been selected as the site for the Commission headquarters, and this will be an added boost to Hobart's role as the focal point of Australian Antarctic activity. This is a notable first for Australia as it will be the first international organisation based here.

The Convention on the Conservation of Antarctic Marine Living Resources is also a notable first. The Convention is based on a conservation standard which embodies an ecosystem approach to conservation; that is, it seeks to protect not only harvested species but also the entire ecosystem, including species dependent on the harvested species. In this way it differs from traditional fisheries agreements which seek only to protect the target resource. The area of application of the Convention is the seas south of the Antarctic convergence, a natural physical boundary between the colder Antarctic waters and warmer oceans in temperate zones to the north. This is the first time an Antarctic agreement has had effect outside of the traditional Antarctic zone delineated by the 60 degrees south latitude.

This Convention is the third international agreement developed by the Antarctic Treaty nations in a series of agreements, designed to protect Antarctic wildlife and the Antarctic environment. The first was the Convention on the Conservation of Antarctic Seals, which was finalised in 1972. The second was ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'', which was given effect by the Antarctic Treaty (Environment Protection) Act 1980. The Treaty nations, including Australia, are currently working on the question of mineral rights and exploitation. It is likely that these discussions will lead to the development of another, fourth agreement.

The Commission provided for in Article 7 of the Convention is likely to be established in 1982 following a preparatory meeting to be held in Hobart later this year. The Commission will oversee the implementation of the Convention and will devise and recommend conservation measures for adoption by participating nations. Conservation measures may take the form of catch limits or total bans on harvesting delicate or endangered species. Restrictions may be imposed on fishing in certain areas during periods of the year when the risk of permanent damage to the species is high. Conservation measures such as these are commonly used in the management of living resources in both the marine and terrestrial environment. The Commission will decide which ones are applicable to the management of the Southern Ocean ecosystem and make appropriate recommendations to member countries. The Convention also establishes a scientific committee. This scientific committee will undertake analysis of research related to the ecosystem and formulate advice on this for the Commission.

The Bill itself is quite straight forward and establishes a permit system for research and commercial fishing in the area south of the Antarctic convergence. It provides for the adoption of conservation measures recommended by the Commission. The permit system to be established under the Bill gives the Minister power to regulate organisations and individuals in respect of activities involving marine life, including

harvesting and research, and provides for penalties for failure to comply with these. The Bill also allows the Minister to appoint inspectors, including every member of the Australian Federal Police or of the police force of a Territory, and specifies their duties and powers.

Australian sovereignty in the Australian-Antarctic territory is in no way prejudiced by the Convention. The Convention, like the Antarctic Treaty itself, safeguards all national sovereignty in the Antarctic. The Bill covers both the activities of Australians anywhere in the Convention area and the activities of any national in Australian territory.

The Minister for Primary Industry (Mr Nixon), of course, has primary responsiblity for the regulation of fishing activity in the Australian fishing zone and I will be consulting with him in the application of the Bill. Australia's policy towards Antarctica is based on the premise that the region is an important one for Australia. Therefore Australia has had a history of involvement and a range of interests and potential interests to protect. It is Government policy to maintain and strengthen that role and ensure that Antarctica remains both a zone of peace and of international co-operation. As a consequence, Australia has maintained an appropriate level of activity there and, as one of the 12 original signatories of the Antarctic Treaty, has played a prominent role in international discussions of Antarctic issues. International agreement on the Convention on the Conservation of Antartic Living Marine Resources is another important step in this process. It will help conserve the Antarctic heritage for future generations. This Bill represents the culmination of extensive and carefully considered efforts by many nations, including Australia, and is an important step forward in the protection of the Antarctic environment. I commend the Bill to the House.

The Bill became the *Antarctic Marine Living Resources Conservation Act 1981* (Act No 30 of 1981) and commenced on 14 May 1982: *Commonwealth of Australia Gazette*, No G19, p 3.

On 7 May 1981 the Minister for Science and Technology, Mr Thomson, provided the following written answer to a question concerning the procedures that have been adopted to ensure that animal and bird diseases are not introduced to the indigenous wildlife of Antarctica by (a) Australian expeditioners and (b) other nations with bases in the Antarctic (HR Deb 1981, Vol 122, 2206):

(a) The ''Agreed Measures'', developed and agreed to by the members of the Antarctic Treaty, detail provisions for the protection of all native Antarctic wildlife and for the prevention of the introduction of pests or disease into the Treaty area. Australia gave the ''Agreed Measures'' force of law under the Antarctic Treaty (Environment Protection) Act which was proclaimed in June 1980. The Antarctic Division is administratively responsible for the Act including a permit system which is used to monitor and control activities which may have an adverse effect on the native fauna and flora or their habitat.

In accordance with Section 19 (1) of this Act, unless specifically authorised by permit, it is unlawful to take to the Antarctic any animal, plant, virus, bacterium, yeast or fungus that is not indigenous to the Antarctic. This provision does not apply to the introduction of animals and plants into Antarctica for use as food provided that they are used for this

purpose and are kept under stringent conditions. Live poultry cannot be introduced.

The Division has actively implemented operational procedures consistent with the Agreed Measures . . .

(b) Antarctic Treaty Consultative Parties are bound by the provisions and procedures of the Agreed Measures for the Conservation of Antarctic Fauna and Flora. However, it is considered that itinerant yachts and foreign fishing trawlers operating in the Southern Ocean constitute a quarantine risk and there is a need for greater surveillance in this area.

On 7 September 1983 the Minister for Science and Technology provided the following written answer (Sen Deb 1983, Vol 99, 479):

Since the coming into operation of the Antarctic Treaty (Environment Protection) Act in December 1980, a total of 17 permits have been issued in connection with research on the productivity and dynamic functioning of the Antarctic marine ecosystem. The information requested by Senator Mason concerning the names of permit holders, their affiliations, and the projects for which permits were granted is quite extensive and, hence, the Minister for Science and Technology has chosen to pass this information by letter to the honourable Senator. To the maximum extent possible, research on Antarctic wildlife utilises passive sampling techniques which do not place wildlife at risk.

The Antarctic Treaty (Environment Protection) Act 1980 provides strict legal controls for the protection of wildlife in Antarctica. Persons who unlawfully kill, take, injure or otherwise interfere with wildlife in contravention of the provisions of the Act will be prosecuted accordingly.

On 15 September 1983 the *Migratory Birds (Amendment) Ordinance 1983* was made under the *Australian Antarctic Territory Act 1954* (Ordinance No 1 of 1983). The Ordinance was made to give effect to the Agreement on the Protection of Migratory Birds between Australia and Japan, signed in Tokyo on 6 February 1974.

Australian Antarctic Territory. Declaration of fishing zone. Icebergs.

On 28 May 1981 the Minister for Foreign Affairs, Mr Street, provided the following written answer to a question concerning the declaration of a 200-mile fishing zone for the Australian Antarctic Territory (HR Deb 1981, Vol 122, 2856):

(1) Consideration was given to the declaration of a 200-nautical-mile fishing zone for the Australian Antarctic Territory at the time of the establishment of the Australian fishing zone in 1979.

(2) It was then decided to declare a fishing zone for all waters within 200 nautical miles of the Australian coast and the coast of each Australian territory, other than waters within the territorial limits of other countries. The zone was proclaimed and came into force on 1 November 1979, and included the waters off the Australian Antarctic Territory. However, against the background of the Antarctic Treaty, and Australia's involvement at that time in negotiations with other Antarctic Treaty Consultative Parties for the Convention on the Conservation of Antarctic Marine Living Resources, the Government also decided to except the waters off the Australian Antarctic

Territory from the Australian fishing zone. Accordingly by a further proclamation dated 2 November 1979 these waters were excepted from the fishing zone.

I refer the honourable member to the statement on this matter made in the House by the then Minister for Primary Industry, Mr Sinclair, on 25 September 1979, giving a detailed account of the establishment of the Australian fishing zone.

On 27 April 1982 the Minister for Foreign Affairs, Mr Street, provided the following written answer to the respective questions (HR Deb 1982, Vol 127, 1923):

(1) Is the exterior limit to the Antarctic Territory at the edge of (a) the continental land mass or (b) the ice mass.

(2) Who owns unattached icebergs within (a) the territorial sea, (b) the economic zone and (c) the high seas.

(3) Does it make any difference whether the territorial source of the iceberg is, or is not, known.

(4) What aspects of international maritime law apply to the towing of icebergs.

(5) Is he able to state what the potential international liabilities are for any ecological or other damage due to the harvesting or transportation of icebergs.

I have nothing to add to the answer given to the honourable member on 8 November 1979 in answer to Question No. 1474.

Antarctica. Consideration in the United Nations.

On 4 October 1983 the Minister for Foreign Affairs, Mr Hayden, said in the course of his speech during the General Debate in the United Nations General Assembly (A/38/PV.17, pp 79-81):

Before concluding my statement I feel obliged to turn to an issue which is on the agenda of the General Assembly for the first time and which is of particular importance to Australia, namely, Antarctica.

The Antarctic Treaty is a uniquely successful and co-operative international instrument. It is a major disarmament agreement and excludes all military activities. It forbids nuclear explosions in Antarctica and prohibits the dumping of nuclear waste. There is a comparative system of on-site inspection, with observers being guaranteed freedom of access at any time to all areas of Antarctica.

The resulting demilitarization and denuclearization of the continent — to which the two super-Powers are parties — is of great value to mankind and of specific value to Australia as a neighbouring continent. The Antarctic regime is also an instrument of conservation and management of resources.

I should add that the Treaty is not exclusive. Any State may accede, and 28 nations with diverse economic and political interests have already done so. The most recent adherents to the Treaty are India and China.

Australia is concerned about the introduction of this matter into the United Nations lest the substantial achievements of the Treaty system be put at risk. The United Nations was created to solve problems, not to create new ones.

It is the opinion of the Australian Government that any attempt to

negotiate a new international agreement on Antarctica or to renegotiate parts of the Treaty would prove counterproductive and introduce uncertainty and possible instability into a region of hitherto unparalleled international harmony.

On 5 October 1983 Australia's Permanent Representative to the United Nations, Mr Woolcott, addressed the following letter to the Secretary-General on the Question of Antarctica (A/38/439/Rev 1):

I refer to the request by the delegations of Antigua and Barbuda and Malaysia (A/38/193 and Corr. 1) to inscribe the question of Antarctica on the agenda of the thirty-eighth session of the General Assembly.

On behalf of the Consultative Parties to the Antarctic Treaty, I have the honour to state the following, the substance of which was brought to your attention on 19 August 1983:

"The Antarctic Treaty, which is open to all countries of the world and is of unlimited duration, establishes Antarctica as a region of unparalleled international co-operation in the interests of all mankind.

"It is based on the Charter of the United Nations, promotes its purposes and principles and confirms Antarctica as a zone of peace.

"It excludes Antarctica from the arms race by prohibiting any measures of a military nature such as the establishment of military bases and fortifications, the carrying out of military manoeuvres or the testing of any type of weapons, including nuclear weapons.

"It encourages and facilitates scientific co-operation and the exchange of scientific information beneficial to all States.

"It protects the natural environment for all mankind.

"The Treaty establishes a comprehensive system of on-site inspection by observers to promote the objectives and ensure the observance of the Treaty.

"The Treaty serves the international community well and has averted international strife and conflict over Antarctica. It removes the potential for sovereignty disputes between Treaty Parties.

"Revision or replacement of the Treaty which is now being suggested by Malaysia and Antigua and Barbuda would undermine this system of international law and order in Antarctica with very serious consequences for international peace and co-operation. It is unrealistic to think that, in the present state of world affairs, a new or better legal regime for Antarctica could be agreed upon. The undermining of the Treaty could open the way to an arms race in the region and might lead to new territorial claims. It would not serve the interest of any country, or group of countries, if Antarctica became an area of international conflict and discord.

"The Treaty system has proved to be a remarkably successful, practical and dynamic arrangement. Every effort should be made to preserve and maintain it.

"It is for these reasons that the Consultative Parties to the Antarctic Treaty have serious reservations about the initiative by the Governments of Malaysia and Antigua and Barbuda and about any attempt to revise or replace the present Treaty system.

> "This initiative inaccurately represents the Antarctic Treaty of 1959. It implies that there is a need for revision or replacement of the Antarctic Treaty system, something which could only be achieved under international law by the Parties to the Treaty."

Since the above was agreed upon by the Consultative Parties, two further States have been admitted to Consultative Party status on 12 September 1983.

I should be grateful if this letter could be circulated as a document of the General Assembly under agenda item 140.

(Signed) Richard Woolcott,
Chairman of the New York Group
of the Antarctic Treaty Consultative Parties

Mr Woolcott spoke in discussion of the question of Antarctica as Chairman of the Group of Antarctic Treaty Consultative Parties in New York on 28 November 1983 along the lines of the above letter: A/C. 1/38/PV.42, pp 23-24.

On 30 November 1983 Mr Woolcott spoke as Australia's Permanent Representative to the United Nations in the First Committee of the General Assembly on the Question of Antarctica (A/C.1/38/PV.45, pp 14-21):

> MR WOOLCOTT (Australia): Antarctica involves the national and security interests of the Australian Government and people.
>
> I have already spoken — on Monday — on behalf of the 16 Antarctic Treaty Consultative Parties about the value and importance of the Antarctic Treaty and its system. I also spoke about Antarctica in the General Assembly on 23 September, when the item was initially inscribed on the agenda. In the context of the fourth preambular paragraph of the draft resolution, I would, however, like the Secretariat to note the Australian statement in the General Assembly and ask that — in the words of the draft resolution — it be taken into account in the preparation of the proposed study.
>
> I do not propose, therefore, to take the time of the Committee today by reiterating at length the attitude of the Australian Government on the value and importance of the Antarctic Treaty. Rather, I prefer to comment on some of the misleading statements made about the Treaty by several of the representatives who have already spoken in this debate.
>
> I should say at the outset that Australia was fully involved in the protracted negotiations of the draft resolution, and my delegation endorses the hope expressed by both you, Mr. Chairman, and the Permanent Representative of Malaysia that this draft resolution will be adopted by consensus.
>
> Australia did not participate in the decision to inscribe the item on Antarctica on the agenda of the General Assembly. Let me explain why.
>
> We are not opposed to discussion of Antarctica in the United Nations. The Antarctic Treaty seeks to promote the principles and purposes of the United Nations Charter and it is reasonable that it be discussed here. But the memorandum accompanying the original request by Antigua and Barbuda and Malaysia for inscription of the item — and more, what was said by these delegations in the debate earlier this week — carry the clear

implication that the longer-term objective of the initiative is to replace the Antarctic Treaty.

That we cannot accept. Australia was an original signatory of the Treaty and we continue to give it our unqualified support today. More than that, Australia would regard any moves which might undermine the Treaty as a major setback to the cause of international co-operation.

As I have said, my main wish today is to take up some of the points that have emerged in the debate so far.

An initial observation I would have to make is to express disappointment that a number of those who have spoken in the debate seem to have sought to belittle the significant achievements of the Treaty by omission and, in one or two areas, misrepresentation. There is, for example, the claim that exploration and settlement of the Antarctic has been impelled by a "colonialist impulse". We do not accept that view, at least as far as Australia is concerned. Australia is a southern hemisphere country. It has a relationship with the Antarctic which, in geographical terms, is not all that different from the relationship that a number of northern hemisphere countries have to the Arctic, or, for that matter, that some countries have with their desert hinterlands; or, perhaps, the relationship one part of a sovereign State might have with another part when the two parties are separated by sea.

But beyond that, we have problems with the terminology. "Colonialism" and "colonialist impulses" evoke certain emotional connotations which my delegation believes are simply not relevant to what has been taking place in the Antarctic. What has been taking place there is essentially scientific investigation and scientific endeavour, the results of which have been made freely available to mankind as a whole. The scientific work that has been undertaken in Antarctica, often at very great financial cost, has undoubtedly added greatly to the sum total of global knowledge. In fact the Antarctic continent's only export in the foreseeable future will be knowledge.

Next, let me address the arguments about "common heritage". There were a number of references to common heritage in statements made on Monday and Tuesday. There seems to be a desire, at least on the part of some delegations, to have Antarctic resources, whatever these are or may be, declared the common heritage of mankind, like those of outer space and the deep sea-bed, beyond national jurisdiction. Australia is, of course, in favour of this principle in the Law-of-the-Sea context, but we do not consider it relevant or appropriate in Antarctica. First, for Australia and six other countries that maintain national territorial claims and, let me add, national settlements, Antarctica is not beyond national jurisdiction. Antarctica has instead been the subject of exploration, settlement and claims to sovereignty by a number of countries over many years. So there can be no international consensus that a common-heritage approach to Antarctica is acceptable.

Secondly, the common-heritage concept embodies a developmental purpose, which is not now, and we hope will never be, dominant in Antarctica, where the environment is, as some of the sponsors of this draft

resolution have stressed, extremely vulnerable to the activity of man and must be safeguarded by those pursuing activity there in the interest of all mankind.

The representatives of Malaysia and Antigua and Barbuda have referred to the krill in their statements and the need to prevent uncontrolled harvesting of this resource. It is relevant, I think, to note that under the auspices of the Antarctic Treaty it has been possible to negotiate a highly satisfactory convention on marine living resources, the main thrust and purpose of which is to regulate and control the exploitation of fishing and other marine resources. The purpose of this convention is precisely to ensure that there be no upset to important global food-chain systems. This convention is open to all to join and we would urge that as many states as possible should do so.

We have also heard the suggestion in this Committee that the Antarctic is a veritable cornucopia, overflowing with all kinds of minerals. This is a far-reaching assessment. Traces of minerals have been found, but there is nothing in the current evidence that would suggest the possibility of mineral exploitation for very many years to come and probably not before well into the next century.

There is no lure of economically valuable resources, to quote one speaker, and no multinational company, certainly not an Australian one, awaiting the prospect of exploiting Antarctic resources. I would also ask delegations to ponder on the cost of exploitation, even if resources were to be found there. Antarctica is not the deep sea-bed. It is a continent permanently encased in ice up to a depth of two or three miles in many places. It is certainly no place for your neighbourhood drilling team. In fact, the costs of doing anything there on the basis of present technology are simply prohibitive. Also, there is the assumption that exploitation would be practical or desirable. I would repeat that the approach to the continent so far has focused not on developmental purposes, but on the preservation of an extremely fragile and finely tuned environment not so far subjected to the hazards of exploitation for commercial gain.

The Australian delegation was naturally pleased to hear in many of the statements delivered so far that most delegations recognize the important part played by the Antarctic Treaty in the disarmament area. In fact, the Antarctic Treaty constitutes a major disarmament agreement. As many speakers have noted, it explicitly prohibits military activities; it forbids nuclear explosions in Antarctica; and it prohibits the dumping of nuclear waste. There is a comprehensive on-site inspection, with observers being guaranteed freedom of access at any time. The Antarctic Convention is in fact, as my New Zealand colleague said yesterday, the only effective, functioning nuclear-free zone in the world today. It is perhaps appropriate, given the importance of the Treaty to disarmament, that this matter is being debated in the First Committee of this Assembly.

In areas other than disarmament, the sponsors of this item have, I think, been less generous about the Antarctic Treaty. We have heard again claims that the Treaty is exclusive and that it accords a privileged status to only some of its members. With this we, frankly, have to disagree. The Treaty is

not exclusive. Any State may join, and 28 countries with diverse economic and political interests have already done so. In 1983, two new members, China and India, joined the Treaty, and Finland only yesterday signified its intention to do so. Australia warmly welcomes the recent accession of China and India and also the interest in accession shown by Finland.

What about the status of Consultative Parties? Claims have been made here which reveal a misunderstanding of the operation of the Treaty. Any State carrying out substantial scientific activities may become a Consultative Party to the Treaty. In 1983 Brazil and India took this step. There are now 16 Treaty members that are also Consultative Parties.

It is not unnatural that those heavily involved in scientific research should wish to consult together and then to make available to the international community the fruits of their consultations.

Claims that the deliberations of the Consultative Parties are conducted in secret and that Consultative Parties meet as a cabal to take secret decisions, sometimes contrary to the interests of the acceding parties and the international community are quite simply untrue. Acceding parties, for their own good reasons, have presumably wished to limit their commitment to the Antarctic, short of that implied by consultative status. In fact that is the real point. It is not so much that the Consultative Parties enjoy benefits from their status as that they share obligations and responsibilities, often at very considerable cost. Those benefits which flow are essentially benefits of a scientific and technical nature and these benefits have been made available to all States and to the international community as a whole, without discrimination.

It is relevant that at the last meeting of the Consultative Parties in Canberra as recently as in September of this year, all members of the Antarctic Treaty, acceding as well as Consultative, participated in the deliberations. The results of the discussions at that meeting are before the Committee today, in the Final Report of the Twelfth Antarctic Treaty Consultative Meeting. So where is this alleged secrecy? A copy of the report has also been sent to the Secretary-General. I regret that we were unable to provide the Secretary-General with the report in the other working languages of the Treaty in time to have him distribute it as an official document of the Assembly. I hope that it will be possible to do this very shortly and I commend the report to delegations.

I have also today forwarded to the Secretary-General a copy of a document entitled "Antarctic Treaty Exchange Information: Particulars for Australian National Antarctic Research Expeditions 1983-84". This document is provided to Treaty parties in accordance with the provisions on the exchange of information under Article VII of the Antarctic Treaty, but I am also arranging for transmission to the Secretary-General and to delegations of copies of the Antarctic Treaty Handbook of Measures in Furtherance of the Principles and Objectives of the Antarctic Treaty. This handbook sets out the measures recommended at the 11 consultative meetings held between 1961 and 1981. These measures deal with such diverse subjects as man's impact on the environment, tourism, historic sights and monuments, disposal of nuclear waste and so on. I hope that they

will provide valuable information to the Secretary-General in the drafting of his report and to interested delegations.

There was a suggestion in what was said on Monday by the representative of Malaysia that the next few years would see a revival of rival territorial claims in the Antarctic leading, perhaps, even to conflict and turmoil.

Frankly, it is difficult to follow the logic of this suggestion. Surely a significant achievement of the Treaty has been to remove the potential for disputes relating to the exercise of sovereignty, through a formula which does not prejudice the position of any party. No new claims or enlargement of an existing claim may be asserted while the Treaty is in force. The Treaty has thus clearly fulfilled one of its major purposes of enabling countries that are active in the area to set aside the differences that they have outside Antarctica and to co-operate peacefully in Antarctica research.

This is something which we should have thought all Member States of the United Nations would have welcomed and applauded.

Australia, when it determines its approach to a regional question, invariably gives weight to the views of the regional countries closest to, and most directly concerned with, the particular issues under consideration. We do this, for example, on African questions, on Latin American questions and on questions relating to South-East Asia. A glance at the map will show that Antarctica lies to Australia's immediate south. This is the basis of our own clear and legitimate concern that the present satisfactory situation there should not be disturbed.

It would be our hope and expectation that other countries, further removed from Antarctica than Australia, would weigh these Australian concerns carefully in formulating their own positions on the subject before the Committee as we do in formulating our positions on their concerns. This approach, we hope, will be adopted, particularly by our neighbours to our immediate north.

The memorandum which accompanied the request of Malaysia and Antigua and Barbuda for inscription of the item reads in part:

> "Despite the progress made in these collaborative scientific efforts" — that is, under the Treaty — "there is a need to examine the possibility for a more positive and wider international concert through a truly universal framework of international co-operation through the United Nations, to ensure that activities carried out in Antarctica are for the benefit and in the interest of mankind as a whole." *(A/38/193, annex, para. 4).*

We have no problem at all with the last phrase of this statement, namely, the need to ensure that activities carried out in Antarctica are for the benefit and in the interest of mankind as a whole, but this must be achieved by building on the Antarctic Treaty and the system of measures, instruments and actions in furtherance of it and not by beginning from scratch, or trying to begin from scratch, with some new instrument.

In current international circumstances it would simply, in the view of my delegation, not be realistic to expect that a new instrument could have the same provisions for total demilitarization of the region, verified by on-site inspection, for the setting aside of potential disputes over territorial

sovereignty and for harmonious international co-operation in scientific research and environmental protection. In short, any new instrument would not as effectively protect important international interests in the Antarctic as does the current Treaty, and any attempt to revise this situation would, in our view, risk reopening the very contention and competition which the Treaty was created to do away with.

Against this background I hope that delegations will understand our concern that the question of Antarctica should be handled at the United Nations with care and sensitivity. It is our hope that the First Committee and the General Assembly will recognize the unique merits of the Treaty in demilitarizing the continent and removing it from contention. In the longer term, the best way of broading the management of Antarctica and taking account of the interests of all would be to encourage more accessions to the Treaty and to work out ways of improving the working of the Treaty without, however, affecting the Treaty itself which we believe is irreplaceable.

In conclusion, Australia is not opposed to a study on Antarctica, as called for in the draft resolution before the Committee, provided that such a study would be factual and objective and provided that it would draw fully, as requested in the draft resolution, on the experience of those countries, like Australia, which have developed over the years, and at great financial cost, considerable experience and expertise in the Antarctic continent.

Territory. Incorporation of Territory. Baltic States. East Timor.

On 31 March 1981 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, said in answer to a question relating to the Baltic States (Sen Deb 1981, Vol 88, 887):

> Last week Senator Harradine asked me a question with regard to travel restrictions on Soviet citizens. I am advised that the travel notification scheme applies to holders of Soviet passports visiting Australia. Whilst the Government does not recognize, de jure, the incorporation of the Baltic States into the Soviet Union, it is forced to recognize the political reality that citizens of the Baltic States are Soviet citizens and travel on Soviet passports. Thus it is not practicable for the Government to draw a distinction between holders of Soviet passports originating from the Baltic States and those from other constituent republics of the Soviet Union. It should also be noted that the restriction placed on Australians and other foreigners in the Soviet Union apply equally in the Baltic States.
>
> In applying the travel notification scheme to Soviet passport holders generally, the Government in no way purports to recognize de jure the incorporation of the Baltic States into the Soviet Union. Government policy on that issue remains unchanged.

On 19 August 1981 the Minister for Foreign Affairs, Mr Street, provided the following written answer in relation to a question about Indonesian undertakings to ensure self-determination for West Iran and East Timor (HR Deb 1981, Vol 124, 518):

> Australia regards Irian Jaya and East Timor as being provinces of Indonesia.

On 16 September 1981 Australia's Permanent Representative to the United Nations in New York, Mr Anderson, made a statement on the desirability of including the Question of East Timor (Item 93) on the agenda of the General Assembly. The statement, made in the General Committee, was reported as follows (A/Bur/36/SR.1, p 17):

> Mr Anderson (Australia) said that he opposed the inclusion of item 93 based on his Government's *de jure* recognition of the incorporation of East Timor into Indonesia.

On 13 October 1981 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, said in answer to a question (Sen 1981, Vol 91, 1088):

> Australia accepts that East Timor is part of Indonesia and that matters relating to East Timor, whether they be matters of security of any other matters, are the responsibility of the Indonesian Government. At the same time I think it should be said that the position of the Australian Government regarding internationally accepted standards of human rights is well known to the Indonesian Government and to the people in Australia as well.

On 12 November 1981 she added in relation to another question (Sen Deb 1981, Vol 92, 2087):

> The resolution on East Timor has again been adopted, at this year's meeting of the General Assembly by the Fourth Committee of the United Nations. Australia has voted against resolutions of this kind on East Timor since the 1978 United Nations General Assembly because they are considered unrealistic and impractical. The Australian Government accepts that East Timor is now part of Indonesia.

On 9 September 1982 the Minister for Foreign Affairs, Mr Street, said in answer to a question (HR Deb 1982, Vol 128, 1245):

> The gentleman mentioned by the honourable member is well known as a representative of the Fretilin movement in East Timor. The Government does not recognize that movement. It recognizes East Timor as an integral part of Indonesia. Mr Horta has been denied a visa to this country for about five years now. That policy will be maintained.

On 8 April 1983 the Minister for Foreign Affairs, Mr Hayden, said in Jakarta (Comm Rec, 402):

> I noted on behalf of the Australian Government that Indonesia has incorporated East Timor into the Republic of Indonesia but I also expressed our deep concern that an internationally supervised act of self determination has not taken place in East Timor.

On 6 September 1983 a Parliamentary Delegation presented its report on a visit to Indonesia during July and August 1983. It concluded its observations on East Timor as follows (PP No 154/1983, p 60):

> In late November 1975 Fretilin proclaimed the Democratic Republic of East Timor. In response, Indonesia launched an open military assault, attacking the East Timor capital of Dili on 7 December. Indonesia gradually extended its hold on the territory, although Fretilin resistance was markedly stronger than expected.
>
> The formal incorporation of East Timor into the Republic of Indonesia took place on 17 July 1976, making it the twenty-seventh Indonesian

province. Since then Indonesia has moved to bring the administration of the territory into line with that of other Indonesian provinces.

On 4 October 1983 the Minister for Foreign Affairs, Mr Hayden, said in the course of his speech in the General Debate in the General Assembly of the United Nations (A/38/PV.17, p 78):

> Earlier this year I noted, on behalf of the Australian Government, that Indonesia had incorporated East Timor in its territory, and at the same time I expressed our concern that an internationally supervised and accepted act of self-determination had not taken place.

On 16 November 1983 Senator Walsh presented the Government's response to the report of the Senate Standing Committee on Foreign Affairs and Defence on East Timor. Part of his response was as follows (Sen Deb 1983, Vol 100, 2650):

> It was not until the overthrow of the Caetano regime in Portugal in April 1974 that formal political parties were allowed to be established in East Timor. After that, the collapse of Portuguese rule and turmoil and chaos of civil war, led ultimately to Indonesian intervention. There was no gradual process of political development in East Timor, and no preparation for possible independence under Portuguese tutelage, within a framework of general international agreement.
>
> These basic facts are covered in the Committee's Report. They are also fully recorded in the report of the visit to Indonesia of the Australian Parliamentary Delegation which was tabled in Parliament on 6 September, two days before the Senate Committee report. It must be accepted that the proximity of these reports and the fact that they deal with much the same subject matter, means that consideration of one cannot preclude consideration of the other. They must be considered together.
>
> I now come to the last and most important part of the Senate report, Australian Policy towards East Timor, which leads us to the conclusions and recommendations. I shall take these together:
>
> The first recommendation is:
>
> > That in developing its policy towards East Timor the Australian Government should make formal recognition of the incorporation of East Timor into the Republic of Indonesia conditional on the holding of an internationally recognized act of self-determination which indicates that integration does in fact represent the will of the majority of the people of East Timor.
>
> Honourable Senators will know that when the Government came into office, the first overseas visit undertaken by Mr Hayden as Foreign Minister was to Indonesia. In a statement issued at the conclusion of his visit, Mr Hayden reaffirmed the need to maintain friendly and co-operative relations with Indonesia. He acknowledged that the Australian Government had never sought to evade the obvious fact that there have been difficulties between Australia and Indonesia over East Timor. He also noted that Indonesia has incorporated East Timor into the Republic of Indonesia but expressed the Government's deep concern that an internationally supervised act of self-determination has not taken place in East Timor. At the same time, Mr Hayden made it clear that the Government's primary concern was

to ensure that Australia did all it properly and reasonably could to help the East Timorese.

The second recommendation is:

> That until such an act of self-determination is held in East Timor, Australia should oppose the Indonesian position on the subject in the United Nations.

As I have mentioned, on 21 September the General Committee took a decision to defer consideration of East Timor until the 1984 General Assembly. I would point out that as Australia was not a member of the General Committee, it took no part in the deferral decision. The Government hopes, however, that deferral will produce a less divisive and more co-operative atmosphere in which the interest of the East Timorese people will be promoted.

The third recommendation is:

> That in the absence of a genuine act of self-determination, the Australian Government oppose any action or statement which implies endorsement of the legality of the incorporation of the territory of East Timor into the Republic of Indonesia.

I have already made clear the Government's position on East Timor. Let me simply add that Australian policy towards East Timor is indivisible from the policy that Australia must adopt towards Indonesia as a whole.

The fourth recommendation is:

> That the Australian Government use its influence in the United Nations and other international fora to maintain pressure on the Indonesian Government to redress the legitimate grievances of the people of East Timor.

As I have already said, the Indonesian Government is well aware of the Australian Government's position on human rights issues and its commitment to doing whatever it reasonably can to assist the people of East Timor.

On 30 November 1983 the Minister for Foreign Affairs, Mr Hayden, wrote in answer to a question on East Timor (HR Deb 1983, Vol 134, 3128-3129):

> As the honourable member is aware, during my visit to Jakarta in April this year, I noted on behalf of the Australian Government that Indonesia has incorporated East Timor into the Republic of Indonesia but I also expressed our deep concern that an internationally supervised act of self-determination has not taken place in East Timor.

Territory, Illegal occupation. Namibia.

On 10 September 1981 Australia's representative to the 8th Emergency Session of the General Session, called to consider the question of Namibia, said (A/ES-8/PV.9, p 51):

> In the recent discussions centring on Namibia, both in the United Nations and elsewhere, much criticism has been levelled at the members of the Western contact group as though they, rather than South Africa, had walked away from resolution 435 (1978). Let us be clear about the facts. The commitment of the Western contact group to achieving a genuine and lasting independence in Namibia has not weakened. As was stated during the Ottawa Summit in July, the Western Five remain committed to

resolution 435 (1978) and will continue to work purposefully towards its implementation. It is strange indeed that the Five should be singled out for criticism because the intransigence of South Africa has prevented the implementation of resolution 435 (1978).

In brief, we have given full support to the efforts of the Western contact group and our support will continue. At the same time we have emphasized, not only in the United Nations but also in our bilateral contacts with the Five, our commitment to resolution 435 (1978) and our opposition to any moves to impose an "internal settlement" on Namibia.

If the way forward is to be peaceful, then South Africa must agree to a time-table for implementation. It must not be allowed to evade this step any longer if the region is not to suffer further tension and violence. We commend the willingness of SWAPO, despite all the difficulties it has encountered, to support resolution 435 (1978). We say that because, even though we do not recognize the exclusive status which the General Assembly accords to SWAPO, we do recognize SWAPO's vital role in Namibia and the importance of its undertaking to abide by freely contested elections there.

On 14 September 1981, at the same session of the General Assembly, Australia's representative, Mr Starey, said (A/ES-8/PV.12, p 21):

> We fully support the inalienable rights of the people of Namibia to self-determination and independence and maintain that Namibia is and must remain the legal responsibility of the United Nations until such time as self-determination and independence are achieved in the Territory in full compliance with the relevant resolutions of the General Assembly and the Security Council.

On 1 December 1983 Australia's Permanent Representative to the United Nations in New York, Mr Woolcott, said in the General Assembly (A/38/PV.79, pp 16-17):

> Australia is an active member of the United Nations Council for Namibia and is unreservedly committed to the early independence of the Territory. South Africa's illegal occupation of that Territory has already continued far too long and should have ceased long ago. The foundation for an early settlement already exists in Security Council resolution 435 (1978) and it is a matter of deep dissatisfaction to the Australian Government that obstacles have been put in the way of early implementation. The Australian Government is committed to doing what it can to promote the early implementation of the United Nations plan for Namibia's independence. As the Australian Prime Minister, Mr Robert Hawke, told the meeting of Commonwealth Heads of Government in New Delhi, which has ended, the recently elected Australian Government rejects the concept of linkage as something outside the scope of resolution 435 (1978). As Prime Minister Hawke also said, the Australian Government has drawn some encouragement from the passage a month ago of Security Council resolution 539 (1983), which contains a strong anti-linkage paragraph.

Territory. Illegal occupation. Occupied territories of the Middle East. Applicability of the Fourth Geneva Convention.

On 30 November 1981 Australia's representative on the Special Political

Committee of the United Nations General Assembly made a statement which is reported in part as follows (A/SPC/36/SR.46, p. 16):

> The fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War was applicable to the occupied Arab territories where it was the principal safeguard for the protection of human rights. The establishment of Israeli settlements in those territories was contrary to the Convention and impeded the establishment of peace in the region.

On 15 December 1981 the Minister for Foreign Affairs, Mr Street, issued the following statement (Comm Rec 1981, 1692):

> The Minister for Foreign Affairs, the Hon. Tony Street, said today that the Australian Government deplored the announcement that the Israeli Government intends to enforce Israeli law on the Golan Heights.
>
> The Minister said that the Australian Government regarded the intention of the Israeli Government with respect to the Golan Heights as contrary to the principles of Security Council Resolution 242. The Australian Government considers the Golan Heights to be part of the occupied territories, the final status of which should be determined through negotiations between all parties in the context of a comprehensive settlement of the Middle East dispute.
>
> The Minister recalled that last year the Australian Government had also expressed its opposition to the declaration by the Israeli Knesset that all Jerusalem including occupied East Jerusalem, is the united capital of Israel.
>
> The Minister stated that the enactment of legislation enforcing Israeli law in the Golan Heights would exacerbate tension in the region and make it more difficult to achieve progress towards a comprehensive peace in the Middle East.

Australia's representative in the General Assembly, Mr Hutchens, made a statement along the above lines on 17 December 1981 (A/36/pV.103, pp 123-125).

On 5 February 1982 Mr Hutchens said at the 9th Emergency Session of the General Assembly (A/ES-9/PV.12, pp 16-17):

> The Australian Government deplores the decision of Israel to apply its laws to the Golan Heights. Our position was made clear by the Australian Foreign Minister in a statement of 15 December, when he described the Israeli decision as an act which would exacerbate tension in the region and make it more difficult to achieve progress towards a comprehensive peace in the Middle East.
>
> Australia has applied the same principles to Israel's decision on the Golan Heights as it applied to the adoption by the Knesset of the Basic Law on Jerusalem. These principles are contained in Security Council resolution 242 (1967) and the Fourth Geneva Convention. In line with these principles we are opposed to any action which might impede the search for a negotiated settlement in the Middle East. Israel's decision on the Golan Heights is one such action, and we join the rest of the international community in opposing it. We have heard no arguments from the delegation of Israel in the course of this debate which would cause us to change this view.

On 10 December 1982 Mr Hutchens said in the course of discussion on the

Question of Palestine in the General Assembly (A/37/PV.99, p 11):

> The Australian Government believes that a resolution of the Palestinian issue is central to the future stability and peace of the Middle East and the long-term security of all States in the region. We believe that a comprehensive settlement of Middle East problems should be based on the principles expressed in Security Council resolution 242 (1967). These include the recognition of the right of Israel and other States in the area to live in peace within secure and recognized boundaries and the withdrawal of Israel from territories captured in 1967. Such a comprehensive settlement should also be based on the recognition of the legitimate rights of the Palestinian people, including their right to a homeland alongside Israel, with the corresponding responsibility to live in peace with their neighbours, and the right to participate directly in decisions affecting their future.

On 30 September 1983 the Acting Minister for Foreign Affairs, Mr Bowen, announced certain decisions the Government had taken as the result of a review of Australian policy on the Middle East. Part of this statement is as follows (Comm Rec 1983, 1600):

> The Government acknowledges the right of self determination for the Palestinian people, including their right, if they so choose, to independence and the possibility of their own independent state. The Government recognizes, however, that whether such an arrangement is finally settled upon will depend on decisions involving peoples of the immediate region directly concerned in this issue.
>
> The Government calls on Israel to freeze the settlement program on the West Bank, and reiterates its belief that these settlements are contrary to international law and a significant obstacle to peace efforts.