V—TERRITORY

Territory—Australian territory—State of Queensland—possible secession from the Commonwealth of Australia

On 26 March 1985 the Leader of the Government in the Senate, Senator Button, answered a question without notice in part as follows (Sen Deb 1985, 786–787):

> I understand that yesterday Sir Joh Bjelke-Petersen confirmed that he meant that steps would be taken to gain independence for Queensland from the rest of Australia. I believe that there will be a further consideration of this matter by the Premier of Queensland. In 1934 Western Australia petitioned the Parliament of Westminster seeking preliminary steps to be taken in respect of the secession of that State from the Commonwealth of Australia. That petition was not greeted with warmth by the United Kingdom and in fact was rejected. I remind honourable senators that the preamble to the Constitution Act of the United Kingdom Parliament, by which the Commonwealth of Australia Constitution Act was established, recites the agreement of the people of the several colonies of Australia 'to unite in one indissoluble Federal Commonwealth under the Crown'. Most of us, except one or two of Irish extraction, would be grateful for that recitation which appears in the preamble to the Constitution Act. Neither the Constitution nor the Constitution Act makes any provision for secession of a State. Section 128 of the Constitution sets out the only practical method of amendment to the Constitution, and that is by referendum. The application of section 128 of the Constitution to the covering provision—namely, the one to which I have referred, the Constitution Act—is a matter on which there are differing views amongst distinguished lawyers.

Territory—Australian territory—Ashmore and Cartier Islands—access by traditional fishermen of Indonesia—legislation—surveillance measures

On 25 March 1985 the Minister for Territories, Mr Scholes, answered a question without notice in the House of Representatives as follows (HR Deb 1985, 805):

> I am aware of activities by Indonesian fishermen on Ashmore and Cartier islands. Under the memorandum of understanding which exists between Indonesia and Australia, visits by traditional fishermen to those islands are allowed. In recent years, however, fishermen have consistently breached the memorandum of understanding. Their activities have included killing birds and turtles and these breaches have been raised with the Indonesian Government. In 1983, because of its conservation significance, a national nature reserve was declared over the Ashmore reef area under the National Parks and Wildlife Conservation Act. There have been regular visits to the islands by officers of the Australian National Parks and Wildlife Service and by elements of the Defence Force and the coastal surveillance unit. We are seeking to obtain the cooperation of the Indonesian Government. We also have the question of surveillance requirements and the need for an Australian presence on the islands under active consideration.

On 17 April 1985 the Minister of Territories, Mr Scholes, introduced the

Ashmore and Cartier Islands Acceptance Bill 1985 into the House of Representatives, and explained the purpose of the Bill: see HR Deb 1985, 1302–1303.

In his address in reply to debate on the Bill on 13 May 1985 the Minister for Territories, Mr Scholes, said in part (HR Deb 1985, 2186):

> Firstly, I should cover an apparent misunderstanding in the last few words of the speech by the honourable member for Fairfax (Mr Adermann). The Ashmore and Cartier Islands Acceptance Amendment Bill does not transfer the Islands to the authority of the Northern Territory Government. It applies the Northern Territory law as the law of the Commonwealth in vogue on those Islands in accordance with the provisions of the original Ashmore and Cartier Islands Acceptance Act 1933 which at that time applied the law of the Northern Territory to the Islands before independence. It is an updating of law.

On 20 August 1985, the Minister for Territories, Mr Scholes, issued the following statement (Comm Rec 1985, 1424):

> The Minister for Territories, the Hon Gordon Scholes, tonight announced a considerable increase in expenditure on surveillance of Ashmore and Cartier Islands. The Territory of Ashmore and Cartier Islands is one of the most northern parts of Australia. The increase of over 300 per cent in expenditure associated with surveillance of the islands reflects the increased importance with which the Government views the territory.
>
> The islands are about 350 km north-west of Western Australia in the Indian Ocean, approximately 800 km from Darwin and 200 km south of Timor. The Territory consists of four small islands, three of which are in the Ashmore Reef (East, West and Middle Islands) while the fourth, Cartier Island, is approximately 70 km south of the Ashmore Reef. They are uninhabited except for visits by Indonesian fishermen and by oil exploration and development companies operating in nearby seas.
>
> Under an agreement between Australia and Indonesia, traditional Indonesian fishermen have been allowed to land for water on two of the Ashmore Islands.
>
> Mr Scholes said that in order for Australia to administer the Territory effectively a presence is to be established in the Territory during the fishing season (from March to November each year) by Australian personnel from the Department of Territories, supported by representatives of other organisations with responsibilities or interests in the area.
>
> The 1985–86 proposed expenditure of $133,000 comprises $48,000 for charter of aircraft and $85,000 for administrative and operation expenses associated with the establishment of the presence.

Territory—Australian Antarctic Territory—Antarctic Treaty—United Nations

On 28 March 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the House of Representatives (HR Deb 1984, 890):

> I am not aware of any specific proposals for amendment to the Antarctic Treaty. However, Malaysia took the initiative both at the 1983 Non-Aligned

Summit and at the United Nations General Assembly of challenging the Antarctic Treaty system, claiming principally that it was exclusive and secretive, and that the benefits of any resource exploitation in Antarctica should be shared amongst all mankind. The 38th session of the General Assembly adopted by consensus a resolution calling upon the United Nations Secretary-General to prepare a comprehensive factual and objective study of all aspects of Antarctica, taking fully into account the Antarctic Treaty system and other relevant factors, and to report to the 39th session. Australia will cooperate in this study. It will argue strongly that the Antarctic Treaty system offers the best means of preserving the demilitarisation of the continent and of promoting international harmony and cooperation now and in the future.

In regard to the specific questions raised:

(a) At the 12th Antarctic Treaty Consultative Meeting (ATCM XII) held in Canberra in September 1983, contracting parties which are not consultative parties were invited for the first time to attend as observers. The consultative meeting decided to encourage the widest possible circulation of information about Antarctic activities and to send the report of ATCM XII to the United Nations Secretary-General.

(b) The Non-Aligned Summit resolution on Antarctica suggested that the exploration of the Antarctic and exploitation of its resources should be carried out for the benefit of all mankind. It made no reference to 'global revenue sharing'. Its operative section called for a comprehensive study of Antarctica by the United Nations Secretary-General which, following the 38th section of the United Nations General Assembly, is not in train.

(c) Talks are in progress between Antarctic Treaty consultative parties aimed at producing a minerals agreement which would govern any future minerals prospecting, exploration and development in Antarctica. The minerals regime is to be developed in a way which will not prejudice the interest of all mankind. The talks are at an early stage. The Government considers that any minerals agreement must contain stringent environmental safeguards.

Territory—Australian Antarctic Territory—Post offices—Universal Postal Union—Constitution—Article 3

Australia made the following declaration upon signature of the Acts of the 19th Congress of the Universal Postal Union in Hamburg on 27 July 1984:

> Australia does not accept the Executive Council's interpretation of the Antarctic Treaty on which Congress decision C 72 is based. The interpretation is contrary to article 4 of the Antarctic Treaty. Australia regards its post offices in the Australian Antarctic Territory as being on Australian territory.

Decision C 72 read as follows:

> Jurisdiction of the Union—Interpretation of article 3, b, of the Constitution
> Congress
> Decides
> that the term 'post offices set up by member countries in territories not included in the Union' contained in article 3, b, of the Constitution shall

henceforth designate post offices established by member countries in territories which are uncontrolled or jointly possessed, or internationalized by the international community.

Article 3 of the Constitution of UPU, dealing with the jurisdiction of the Union, is as follows:

The Union shall have within its jurisdiction:

a the territories of member countries;

b post offices set up by member countries in territories not included in the Union;

c territories which, without being members of the Union, are included in it because from the postal point of view they are dependent on member countries.

Territory—Australian Antarctic Territory—nature of territorial sovereignty

In an article on Antarctica written by the Minister for Foreign Affairs, Mr Hayden, and published in *The Age* (Melbourne) on 2 January 1985 and in the *Australian Foreign Affairs Record* in January 1985 (25–27), Mr Hayden wrote (at 26):

Sovereignty

Australia, like Argentina, Chile, France, New Zealand, Norway and the United Kingdom, maintains a claim to territorial sovereignty in Antarctica but wishes to ensure that claims do not give rise to conflict or international tension.

In the period before signature of the Antarctic Treaty, sovereignty issues were the cause of several disputes, particularly in the Antarctic peninsula. The Treaty provides an imaginative and original solution to this problem by allowing for the co-existence of different attitudes to territorial sovereignty, and by 'freezing' the situation.

As a country which claims some six million square kilometres of Antarctica, Australia attaches special significance to the Treaty provision dealing with sovereignty. In legal terms, Australia's claim is based on historic acts of exploration and discovery and the maintenance of a substantial and continuing presence.

In more contemporary terms, Australia's claim to territorial sovereignty underlies its commitment to Antarctica and its desire for an influential role in the management of Antarctic affairs. Australia's sovereignty is an expression of national interests in the continent, interests which are substantive and which it intends to maintain. These include maintaining Antarctica free from strategic and political contention, protecting the Antarctic environment, taking advantage of the special opportunities for scientific research, deriving possible economic benefit from the resources of the Antarctic and being informed about and able to influence developments in a region close to Australia.

There is no indication that those States which exercise sovereignty are about to resile from their claims and attempts to challenge them would provoke international tension. In Australia's view, the Antarctic Treaty has

successfully put the question of sovereignty to one side, enabling international co-operation to flourish.

Territory—Antarctica—Agreed Measures on Conservation—French airstrip

On 13 May 1985 the Minister for Foreign Affairs, Mr Hayden, provided a written answer to a question on notice in the House of Representatives: see HR Deb 1985, 2254–2255.

Territory—Antarctica—Malaysian initiative in the United Nations

On 29 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the House of Representatives (HR Deb 1985, 4061–4062):

> The Malaysian Government continues to pursue its Antarctic initiative. Australia and other Antarctic Treaty Parties are in close contact on this matter. They are unanimous in their opposition to the Malaysian approach and in their support for the maintenance of the existing Antarctic Treaty system. This has been made clear to a range of other governments through our diplomatic missions. The matter will be considered again at the current session of the United Nations General Assembly. The Government will continue to support the Antarctic Treaty system, which fosters peaceful international cooperation in the Antarctic and is the best means of furthering Australian interests there.

Territory—Australian Antarctic Territory—Soviet bases—Antarctic Treaty

On 29 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answers to questions on notice in the House of Representatives on Soviet activities in Australian Antarctic Territory (HR Deb 1985, 4084–4085):

> On 30 July 1955, the then Minister for External Affairs issued a general invitation, in the form of a press statement, welcoming the interest of other countries in the coming International Geophysical Year (1957–58) and offering to provide assistance to anyone desiring to carry out scientific research in the Australian Antarctic Territory (AAT). This was followed, on 29 August 1955, by the despatch of a diplomatic note in similar terms to the Ministry of Foreign Affairs of the Soviet Union. This note was presented on the Australian Government's behalf by the British Embassy in Moscow.
>
> Australia and the Soviet Union are both parties to the Antarctic Treaty. The Treaty guarantees freedom of scientific investigation in Antarctica, subject to its other provisions. Since the Treaty entered into force on 23 June 1961, the question of permission for the establishment of Soviet bases in the AAT since that date does not arise.
>
> Article VII of the Antarctic Treaty requires all parties, including the Soviet Union and Australia, to inform other Contracting Parties in advance of their activities in Antarctica. The Soviet Union regularly fulfils its obligations in this regard, including in relation to Soviet activities in the Australian Antarctic Territory.

The Treaty also provides for the exchange of scientific personnel in Antarctica between expeditions and stations and for the exchange and free availability of scientific observations and results from Antarctica. Under these provisions of the Treaty Australia and the Soviet Union have regularly exchanged scientific data. Australian scientists occasionally participate in Soviet scientific programs in Antarctica.

In addition, Article VII of the Antarctic Treaty permits any Antarctic Treaty Consultative Party to designate observers who shall have complete freedom of access at any time to any or all areas of Antarctica for the purposes of inspection, to ensure that the provisions of the Treaty are being complied with. Inspection visits carried out by Consultative Parties to date have confirmed that the Soviet Union is abiding by its Treaty obligations.

On 3 December 1986 the Minister for Education, Senator Ryan, presented the Government's response to the report of the Senate Standing Committee on National Resources on the natural resources of the Australian Antarctic Territory, and said in part (Sen Deb 1986, 3266–3267):

On 2 June 1983 the Senate resolved to refer the matter of exploitation to the natural resources of the Australian Antarctic Territory to the Standing Committee on National Resources. The terms of reference of the Committee were widened on 7 December 1983 to reflect the Committee's concerns regarding environmental issues in Antarctica. The wisdom of this is evident in the large proportion of the Committee's recommendations which deal with environmental matters.

The Committee, which tabled its report on 5 December 1985, is to be commended for its efforts. The Government has closely examined the report and its recommendations and it is with appreciation that we present our response to the Committee's 28 recommendations.

The Government welcomes the fact that many of the Committee's recommendations accord closely with the thrust of existing Government policy, in particular support for the maintenance of Australian sovereignty over the AAT, support for the Antarctic Treaty system and emphasis on the need for stringent environment protection in the Antarctic.

Amongst the recommendations of the Committee and the Government's response to them were the following (ibid, 3267–3271):

Recommendations:

(1) Australia maintains its claim to sovereignty over the Australian Antarctic Territory; however, it believes that there is an urgent need for Australia to re-examine the purpose and objectives of its presence in Antarctica.

(2) The Australian Government continues to support the Antarctic Treaty. It also RECOMMENDS that Australia encourages the adaptation of the Antarctic Treaty system to meet changing circumstances, such as the increasing emphasis on environmental protection and the need for greater participation in Antarctic decision-making processes, without prejudice to Australia's sovereignty claim.

...

(7) During the Minerals Regime negotiations, Australia continues to maintain its sovereignty claim while supporting minerals negotiations within the Antarctic Treaty system.

(8) A basic objective of Australia during the Minerals Regime negotiations be the protection of the unique Antarctic environment and its dependent ecosystems.

Responses:

(1) The Government will continue to maintain Australia's sovereignty over the Australian Antarctic Territory (AAT). The purpose and objectives of Australia's presence in Antarctica are regularly reviewed by the Government, most recently in 1984.

(2) The Government strongly supports the Antarctic Treaty system as the best means of preserving Australian interests in the Antarctic while at the same time ensuring peaceful international cooperation in the area. The Treaty system has demonstrated a remarkable capacity for evolution and adaptation over the past 26 years and, no doubt, will continue to do so in the future. The treaty system already gives major emphasis to environment protection.

During the past two years, Antarctic Treaty parties which are not Consultative Parties have been invited to attend Consultative Meetings as well as meetings of the Antarctic minerals negotiations as observers, and have played an active role. Any proposal for even greater participation in decision-making would need to be examined very carefully for its possible effect on Australia's ability to protect its interests in the area.

...

(7) See response to Recommendation 1 above. Australia continues to play an active role in the Antarctic minerals negotiations and hosted a session of the Special Consultative Meeting on Antarctic Minerals in Hobart from 14–25 April 1986.

(8) The protection of the Antarctic environment and its dependent ecosystems has been and will continue to be an important Australian objective in the minerals negotiations.

Antarctica—Marion Island (South Africa)—applicability of Antarctic regimes

On 30 March 1987 an answer was given to questions without notice: see Sen Deb 1987, 1440–1441.

Antarctica and the United Nations—views of the Consultative Parties

The following Note dated 30 April 1986 was submitted to the Secretary-General of the United Nations:

The Permanent Representative of Australia to the United Nations, acting on behalf of the Antarctic Treaty Consultative Parties,[1] presents his compliments to the Secretary-General of the United Nations and has the honour to refer to the Secretary-General's Notes PSCA/PAD/SSOA/1/86 and 2/86 of 10 February 1986 relating to Antarctica.

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1. Argentina, Australia, Belgium, Brazil, Chile, China, France, Federal Republic of Germany, India, Japan, New Zealand, Norway, Poland, South Africa, Uruguay, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

The Secretary-General's Notes were issued pursuant to General Assembly resolutions 40/156A and 40/156B. In this regard, the Permanent Representative of Australia has the honour to recall that, before the voting on these resolutions in the First Committee at UNGA 40, he made a statement on behalf of the Antarctic Treaty Consultative Parties. The statement noted that the insistence of some delegations in putting divisive resolutions to a vote had occasioned decisions by most of the Treaty Parties to take the unusual step of not participating in the voting. The statement also included the following observations:

"It is a matter of great regret to members of the Antarctic Treaty that the tradition of consensus decision-making which has been followed since the question of Antarctica was first inscribed on the agenda of the United Nations at the 38th Session has this year been broken.

The Antarctic Treaty Consultative Parties have been firm in their determination to proceed by consensus and have negotiated earnestly towards that end with Malaysia and some other delegations.

The Consultative Parties regret that the proponents of the draft resolutions were not prepared to abide by the consensus traditions that had been established in the handling of this item in previous years. They are firmly of the view that consensus offers the only realistic basis for United Nations General Assembly consideration of Antarctica. Accordingly, they will be compelled to reconsider their further participation in this item unless consensus can be restored."

Consistent with this statement, the Antarctic Treaty Consultative Parties remain of the view that consideration of Antarctica in the United Nations should and can realistically proceed only on the basis of consensus. They are therefore not responding to resolutions 40/156A and B, in the adoption of which they did not participate. They remain willing to provide information about Antarctica to the international community, as they have emphasised in their responses to previous General Assembly resolutions on this item, which were adopted by consensus.

In response to the Secretary-General's Note issued pursuant to Resolution 38/77, the Antarctic Treaty parties provided a very considerable volume of information about the Antarctic Treaty system and their activities in Antarctica. Some of this information was included in Part Two of the subsequent Report of the Secretary-General (A/39/583), which announced also that the voluminous annexes, containing additional material provided by the parties, were available for consultation upon request to the Secretary-General.

In making that information available, the Antarctic Treaty parties proceeded from the conviction that the Antarctic Treaty system has furthered the purposes and principles of the United Nations Charter. It has preserved peace and harmony in the Antarctic region; has established Antarctica as an effective, functioning nuclear weapons-free zone; has excluded Antarctica from the arms race by prohibiting any measures of a military nature; and has enabled important scientific research and cooperation to take place in a manner which has benefited all mankind. In addition, it protects the natural environment of Antarctica; provides for a comprehensive system of on-site

inspection by observers to promoted the objectives and to ensure compliance with the provisions of the Treaty; has averted international strife and conflict over Antarctica, and has promoted active scientific cooperation with international organisations, particularly with WMO, ITU, IOC and the Scientific Committee on Antarctic Research (SCAR). The Antarctic Treaty is open to accession by any member state of the United Nations, as are the other instruments already included within the Antarctic Treaty system. All Treaty Parties are able to participate in Antarctic Treaty meetings. Moreover, the Consultative Parties have reaffirmed that the Antarctic minerals regime would be open to all states, with all entitled to undertake minerals resource activities pursuant to it.

Based on these considerations, the responses of the Antarctic Treaty parties concluded that the operation of the Antarctic Treaty system since 1959 had demonstrated that the Treaty was a successful, practical and flexible instrument which has served important international objectives. These conclusions were acknowledged in the Report of the Secretary-General (A/39/583).

Since publication of the Secretary-General's Report, the Antarctic Treaty parties have shown a continuing willingness to provide information about Antarctica and the operation of the Antarctic Treaty system. In 1985, during debate at UNGA 40, the Treaty Parties provided further information on their activities, including the ongoing negotiations on an Antarctic minerals regime.

In recognition of increased international interest in Antarctica, the Antarctic Treaty Consultative Parties decided at the Twelfth Consultative Meeting to forward to the Secretary-General copies of the final reports of their regular Consultative Meetings. The most recent report, on the Thirteenth Consultative Meeting in Brussels in October 1985, was forwarded to the Secretary-General in November 1985 (A/C 1/40/12). At the Twelfth and Thirteenth Consultative Meetings the Consultative Parties also took further decisions relating to: the establishment of National Contact Points to disseminate Consultative Meeting Reports, the Antarctic Treaty Handbook and annual exchanges of information, as well as to provide up-to-date information on the location of depositories of data and information sources relating to Antarctica; the public release of documents from earlier Consultative Meetings; and procedures to enable relevant matters of scientific or technical interest to be drawn to the attention of United Nations Specialised Agencies or other international organisations.

In summary, the Antarctic Treaty Consultative Parties are firmly of the view that the Antarctic Treaty system works in the interests of all mankind and furthers the principles of the United Nations Charter. They have shown their readiness to respond positively to indications of international interest in Antarctica and remain of the view that consensus offers the only realistic basis for consideration of Antarctica in the United Nations.

The Permanent Representative of Australia, on behalf of the Antarctic Treaty Consultative Parties, avails himself of this opportunity to renew to the Secretary-General of the United Nations the assurances of his highest consideration.

Recognition of the incorporation of territory into a State—Baltic States and the USSR

On 16 September 1986 the Minister for Foreign Affairs, Mr Hayden, wrote in part in answer to a question on notice (HR Deb 1986, 636):

> This Government over the last three years has strongly and consistently deplored the Soviet Union's unsatisfactory human rights record, including in relation to the Baltic States, Estonia, Latvia and Lithuania. We have expressed our views publicly as well as conveying them privately to the Soviet authorities.
>
> On the question of self-determination, as you will already be aware, Australia does not recognise de jure the incorporation of Estonia, Latvia and Lithuania into the Soviet Union, but recognises de facto the Soviet Government's control over the Baltic States.

On 25 September 1986 the House of Representatives in the Australian Parliament agreed to the following motion (HR Deb 1986, 1415–1418):

> That this House—
>
> Noting that—
>
> (a) the 3 Baltic States, Latvia, Lithuania and Estonia, were independent sovereign republics and members of the League of Nations from 1918 to 1940;
>
> (b) in 1940, as a consequence of the Molotov-Ribbentrop Pact between the USSR and Nazi Germany, the 3 States were incorporated into the USSR by military force and in a manner which violated elementary principles of freedom, democracy and justice;
>
> (c) like other democratic governments, Australia does not recognise *de jure* the incorporation of the Baltic States into the USSR;
>
> (d) under Soviet rule, well-documented violations of human rights have occurred and continue to occur in Latvia, Lithuania and Estonia; and
>
> (e) as a result of existing Soviet policies on indigenous languages and immigration, the very survival of the Baltic peoples as separate ethnic and cultural entities is endangered—
>
> (1) acknowledges the concern felt by the members of the Australian community over the situation in Latvia, Lithuania and Estonia, particularly the repression of individuals engaging in the non-violent expression of their ethnic and cultural identity and religious convictions;
>
> (2) commends the Government for its action in bringing this concern to the attention of the United Nations Commission on Human Rights at the Commission's meetings in March 1985 and March 1986;
>
> (3) invites the Government, on its own initiative and in consultation with like-minded Governments, to continue to raise formally the question of self-determination and other human rights for the Baltic States before appropriate international forums;
>
> (4) calls upon the Government of the USSR to end acts of repression against the Baltic peoples and to abide by the commitments which it has entered into under the various international covenants on human rights to which it is a signatory; and
>
> (5) requests the Speaker to bring this resolution to the attention of the Supreme Soviet of the USSR.

Australian Antarctic Territory—maintenance of Australian sovereignty—negotiations for an Antarctic minerals regime—environmental protection measures—Australian Government response to Parliamentary Committee Report

On 15 April 1986 the Minister for Foreign Affairs, Mr Hayden, wrote in answer to a question on notice (HR Deb 1986, 2359):

> Since 1982, there have been seven rounds of negotiations between Antarctic treaty Consultative Parties aimed at developing an agreement which would govern any future minerals activity in Antarctica.
>
> ...
>
> The Government supports the maintenance of Australian sovereignty over the Australian Antarctic Territory. Australia's position in this regard is protected by the terms of Article IV of the Antarctic Treaty. The Government is acting to preserve Australian sovereign interests in the context of the Antarctic minerals negotiations. This will require an Article similar to Article IV and some special position in regard to any exploration for, or development of, minerals in the Australian area. Australia is also working actively to ensure that principles are established and mechanisms are put in place within an Antarctic minerals regime which will ensure that the Antarctic environment is stringently safeguarded.

On 16 April 1986 the Minister for Science, Mr Barry Jones, said in part in answer to a question without notice on the negotiations for an Antarctic mineral regime (HR Deb 1986, 2397–2398):

> Australia has a special problem, claiming as we do 42 per cent of the whole area. If nations that do not recognise our territorial claim proceed to carry out some kind of exploratory work in the exposed areas of our claim it has very serious international legal implications for us. It is certainly in our interests to have some of the ground rules set down.

Territory—incorporation of territory—incorporation of East Timor into Indonesia—recognition by the Australian Government

On 22 June 1984 the Minister for Foreign Affairs, Mr Hayden, said in the course of a speech given to the Ipswich City Rotary Club in Queensland (Comm Rec 1984, 1117):

> The Government's attitude on Timor is unambiguous. We note the incorporation of Timor into Indonesia. We condemn it because of the way it was done. We believe it should have been done through an act of self determination by the Timorese people, properly supervised in accordance with the principles of international law. We have consistently said that.
>
> The Indonesians understand this point of view, though they may not like it. They have made it perfectly clear, moreover, that they will not reverse their action in Timor, whatever we do or say. Nor will they allow anybody else to reverse it for them. The point was re-emphasised only the other day by the Indonesian Ambassador.

In a television interview recorded in Canberra with Indonesian Television on 25 July 1985 the Prime Minister, Mr Hawke, said Australia recognised 'the sovereign authority of Indonesia' over East Timor (*The Canberra Times*, 19 August 1985, p 1). In answer to a question without notice in the House of

Representatives on 22 August 1985, Mr Hawke said (HR Deb 1985, 222–223):

> In an interview I gave on 25 July, on the occasion of the fortieth anniversary of the independence of Indonesia, I said: 'We recognise the sovereign authority of Indonesia'. I go back a little before the date mentioned by the Leader of the Opposition. In December 1978 the now Leader of the Opposition in his then capacity as Foreign Minister stated that Australia would recognise Indonesian sovereignty over East Timor and that de jure recognition took effect, as he said, in February of 1979. It is important to note that it has not been revoked by any subsequent government. I remind the House that recognition of the fact of Indonesian control over East Timor has been repeatedly demonstrated over the last several years. Let me illustrate that. Australian delegations, including parliamentary delegations, have obtained Indonesian permission to visit East Timor. So have representatives of the Australian media. The Australian Government has pursued human rights and aid issues in East Timor through the Indonesian Government. The very important family reunion program from East Timor was agreed to by the Indonesian Government.
>
> If I may pick up the point specifically alluded to by the Leader of the Opposition, it is the case that the negotiations between Australia and Indonesia over the unresolved seabed boundary adjacent to East Timor have continued with the Indonesian Government. These negotiations, the successful conclusion of which is of importance to Australia, can in practice be concluded only with the Indonesian Government. Having said those things, I add that the Government has expressed to Indonesia its concern at the way East Timor was incorporated...
>
> The legal fact that Australia has since 1979 recognised Indonesian sovereignty over East Timor has not previously hindered either our ability or Portuguese ability to seek a settlement of this problem. I see no reason why a statement by me of that legal fact now should in any way change the situation.

Also on 22 August 1985 the Minister representing the Minister for Foreign Affairs in the Senate, Senator Gareth Evans, answered a question without notice in part as follows (Sen Deb 1985, 169):

> In December 1978 the then Foreign Minister, Andrew Peacock, stated that Australia would recognise Indonesian sovereignty over East Timor. That de jure recognition took effect in 1979. It has not been revoked by any subsequent government. The recognition of the fact of Indonesian control over East Timor has been repeatedly demonstrated over the last several years. Australian delegations, including parliamentary delegations, have obtained Indonesian permission to visit East Timor and so have representatives of the Australian media. The Australian Government has pursued human rights and aid issues in East Timor through the Indonesian Government. The very important family reunion program from East Timor was agreed with the Indonesian Government. The negotiations between Australia and Indonesia over the unresolved seabed boundary adjacent to East Timor have continued with the Indonesian Government. These negotiations, whose successful conclusion is of importance to Australia, can in practice only be conducted with the Indonesian Government. Of course

the Government has, however, expressed to Indonesia on a number of occasions its concern at the way East Timor was incorporated. It has raised and will continue to raise the question of human rights in East Timor. It has sought free access for the media, international organisations and aid workers to East Timor and it has—I conclude my answer as I begun—supported international initiatives to settle the Timor problem, including extensive discussions with the United Nations Secretary-General, Indonesia and Portugal.

On 11 February 1986 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question upon notice (HR Deb 1986, 109):

While the Australian Government recognises the right of the Indonesian Government to determine access to Indonesian provinces, it has continued to make known its concern to the Indonesian Government that international access be permitted to the province. As stated by the Prime Minister in Parliament on 22 August, Australia's recognition of Indonesian sovereignty over East Timor has enabled Australia to seek permission for visits to the province by Australian delegations, including by non-government organisations. Both Australian parliamentary delegations, and representatives of the Australian and other international media have obtained Indonesian permission to visit East Timor. Most recently, in October this year, a party of officials led by the Australian ambassador to Indonesia visited East Timor. Further, the Australian Government has also supported access to East Timor for international humanitarian organisations and aid workers in line with our continuing concern about the human rights situation in the province. The Government is pleased to note in this respect that the International Committee of the Red Cross and United Nations Children's Fund are operating in East Timor. Since September 1975, the Australian Government has provided about $9 million in relief assistance to East Timor, mainly through the ICRC and UNICEF.

For a further statement on Australia's recognition of the incorporation of East Timor into Indonesia, see the speech of Senator Evans, Minister for Resources and Energy, on the Timor Gap boundary negotiations with Indonesia at page 262 below.

Territory—illegal occupation of territory—Israeli occupation of territories in the Middle East

On 6 July 1984, the Department of Foreign Affairs provided the following background information and answers to specific questions in response to an inquiry relating to the occupied territories in the Middle East:

Background

1. In 1920 the San Remo Conference assigned Britain the responsibility of administering Palestine under the 'Mandate of Palestine'. The terms of the Mandate were confirmed by the Council of the League of Nations on 24 July, 1922 and it came into operation in September 1923. The area of this administration was defined to include all the territory south of Syria to the Egyptian, and what were subsequently the Saudi Arabian, borders. The Mandate Instrument drew a distinction between the territories to the west of the Jordan River and the land to the east (Article 25) and in accordance with

this distinction Britain established the Kingdom of Transjordan in the territory east of the river. This was formally recognised in 1928 as a separate constitutional state. Britain recognised the Kingdom of Transjordan (later known as Jordan) as a fully independent and sovereign state in 1946.

2. In November 1947 the United Nations General Assembly adopted Resolution 181 (II) recommending the partition of the remaining area of Palestine into an Arab and a Jewish state at the termination of the Mandate. (The Mandate terminated on 14 May 1948). The area allotted to Israel was approximately 56% of the territory west of the Jordan River. After the Arab/Israeli war in 1948 Israel occupied 78% of this territory. The remainder of the territory west of the Jordan River, comprising the eastern sector of the city of Jerusalem and areas which are referred to internationally as the 'Gaza Strip' and the 'West Bank' came under the control of Egypt and Jordan with Egypt assuming control of the 'Gaza Strip' and Jordan of the rest. These areas were part of the former Mandate of Palestine and were to be allotted to the proposed Arab state by the U.N. Partition Plan (the Plan was never put into effect). Israel captured these areas, and the Golan Heights from Syria, 1967. They are known collectively as the 'occupied territories'.

3. When Australia formally recognised the State of Israel in 1948, Israel did not, of course, encompass all the territory subsequently occupied since the 1967 war; and Australian Governments have consistently upheld the validity of UN Security Council Resolution 242 of 22 November 1967. This Resolution, which commands wide international support calls for the withdrawal of Israel from 'territories occupied in the recent conflict', and affirms the principle of inadmissability of the acquisition of territory by force.

4. Since the 1967 war the 'West Bank' and the 'Gaza Strip' have been administered by the Israeli military authorities. In July 1980 Israel formally annexed the eastern sector of Jerusalem by a unilateral act which does not command wide international support, and which Australia deplored. In November 1981 Civilian Administrations were appointed to the 'West Bank' and the 'Gaza Strip'. These Administrations remain under the control of the Israeli Ministry of Defence which is responsible for affairs in the 'occupied territories'.

5. The Palestinian Liberation Organisation (PLO) comprises a number of diverse groups pledged to the recovery of Palestinian land, and the establishment of a Palestinian State. These groups hold widely differing views on how to achieve these objectives though all acknowledge, in differing degrees, the role of armed struggle in pursuit of their aims. A number of the groups maintain their own fedayeen (commando) forces. These groups have conducted guerrilla operations inside Israel and the 'occupied territories' and elsewhere. Among operations conducted within the 1948 borders of Israel are the al Fatah raid on the Tel Aviv-Haifa road in March 1978, and the PFLP-GC attack on the village of Qiryat Shemona in April 1974. There were a number of incursions into northern Israel by Palestinian groups prior to the Israeli invasion of Lebanon in 1982. The principal commando organisations of the PLO publicly claimed responsibility for these (and other such) operations. They have bases in a

number of Middle Eastern countries.

Question 1: What are the geographical boundaries of Palestine? Do they include Israel or parts of Israel, and/or other territory or territories?

Answer: Palestine is not recognised by the international community as a State, country or territorial entity. Since it does not exist as a separate territory it does not have geographical boundaries.

Question 2: Are parts of Palestine occupied by or on behalf of a foreign government, whether legally or illegally under international law?

Answer: As Palestine does not exist as a separate entity (ceasing to exist following the expiry of the Mandate), it cannot be said to be occupied by or on behalf of a foreign government. The 'occupied territories' were not 'Palestinian territory' prior to their occupation by Israel in 1967, but territories which were under the de facto sovereignty of Jordan ('West Bank' and the eastern sector of Jerusalem) and the military administration of Egypt ('Gaza Strip'). De jure Jordanian and Egyptian sovereignty over these territories was not recognised by Australia and the majority of States.

The seizure and occupation of these territories by Israel are in violation of Art 2 of the UN Charter and general international law. Successive UN Resolutions make it clear that the overwhelming majority of States consider the occupation of these territories to be contrary to international law (viz, the seizure of territory contrary to the principles of the UN Charter, the UN Friendly Relations Declaration and general international law) which can no longer be justified under the principle of self-defence (recognised in Article 51 of the UN Charter).

Australia and the majority of States consider that Jewish settlements in the 'occupied territories' contravene the Fourth Geneva Convention on the Protection of Civilian Populations in time of War. This position was also confirmed by the UN Security Council in Resolution 465 of 1980.

Question 3: Which is or are the government or governments of the entity known as Palestine?

Answer: Since there is no entity known as Palestine, it follows that there is no government of such an entity. The PLO, however, could be said to be a government authority (which enjoys considerable international recognition although not by Australia) which claims to represent a people not established in a separate territorial unit. The Palestinian National Council, or PLO 'Parliament', does not regard itself as a government-in-exile and is not recognised as such.