I I—SOVEREIGNTY, INDEPENDENCE, SELF-DETERMINATION

Sovereignty and independence—Australia—severance of residual constitutional links with the United Kingdom—proclamation of the Australia Act 1986

On 16 August 1985 the Prime Minister, Mr Hawke, issued the following statement (Comm Rec 1985, 1335–1336):

> With the agreement of Her Majesty the Queen, the Commonwealth and the United Kingdom Governments, and the Governments of all Australian States, the way has been opened for the major historical step of severing remaining constitutional links between Australia and the United Kingdom.
>
> The Australian Government and the Governments of all the Australian States have held extensive consultations over a number of years with a view to removing the outmoded links between Australia and the United Kingdom parliamentary, government and judicial systems.
>
> The agreement reflects Australia's status as an independent and sovereign nation. The Queen's position as the Australian Head of State remains unchanged. Major elements of the package include:
>
> - an end to appeals from Australian courts of law to the Privy Council, making the High Court of Australia the final court of appeal for all Australian courts
> - an end to the powers of the United Kingdom Parliament and Government with respect to the States
> - an end to United Kingdom legislation still restricting the legislative powers of the States.
>
> Special arrangements will apply in relation to State governors and recommendations for imperial honours, so that United Kingdom ministers will no longer advise the Queen:
>
> - the proposed legislation will establish a new constitutional principle by allowing the premiers to advise the Queen directly on the appointment and dismissal of governors. The present anachronistic requirement for advice from United Kingdom ministers will cease
> - honours are the personal prerogative of the Queen and are therefore not affected by the legislation. However, an arrangement will apply whereby any government wishing to continue to recommend imperial honours may do so directly to the Queen
> - all other powers in respect of the State which are formally vested in the Queen will be exercised by the State governor. However, when the Queen is present in a State and there is mutual and prior agreement between the Queen and the premier that it would be appropriate for her to exercise any of those powers, the legislation will enable this. All States have indicated their understanding that on such occasions mutual and prior agreement is a necessary and important ingredient of any such arrangements.
>
> These matters have been resolved in a manner which will preserve the authority of the respective State governments within their constitutional limits.

The Queen has been pleased to agree to the arrangements which directly affect her. The measures for implementing the package will be as follows:

- the State will pass Acts requesting the Commonwealth and United Kingdom Parliaments to enact the legislation severing the residual links
- the Commonwealth Parliament will then pass an 'Australia Act' severing residual links to the extent of its powers and a second Act requesting the United Kingdom Parliament to pass mirror legislation
- the United Kingdom Parliament will then pass an 'Australia Act' in the same terms as the Australia Act
- the Australia Acts of the Commonwealth and United Kingdom Parliaments will be proclaimed to come into effect at the same time.

These steps are required by the provisions of the Constitution and Statute of Westminster. The proposals have the support of the Federal Opposition and all State Governments—Labor, Liberal and National Party—have agreed to them.

It is pleasing that this coming-of-age of Australia's constitutional developments has been achieved by the co-operative efforts of the governments in Canberra, London and each of the States.

On 13 November 1985 the Attorney-General, Mr Bowen, introduced the Australia Bill 1986 into Parliament. His Second Reading Speech is at HR Deb 1985, 2684–2687.

Following the introduction of the Bill, the Attorney-General introduced the Australia (Request and Consent) Bill 1985, and said as follows (ibid, 2687):

This Bill flows from the Australia Bill 1986. By enacting this second Bill, the Australia (Request and Consent) Bill, this Parliament will declare that the Parliament and Government of the Commonwealth request, and consent to the enactment by the United Kingdom Parliament of an Act in the terms set out in the Schedule to the Australia (Request and Consent) Bill. That scheduled Act is in the same terms as the Australia Bill 1986 now before this House, except for some minor differences that are needed to take account of the fact that the scheduled Act will be an Act of the United Kingdom Parliament. In addition to this Commonwealth request to the United Kingdom Parliament, each State parliament has enacted legislation directly requesting the United Kingdom Parliament to enact legislation in the terms of the proposed United Kingdom Act. The remarks made in relation to the provisions of the Australia Bill apply to the corresponding provisions of the Act to be sought from the United Kingdom Parliament as set out in the Schedule to this Bill. I commend the Bill to the House.

For the Attorney-General's address in reply to debate on the Bills, see HR Deb 1985, 25 November 1985, 3594–3596. The Bills were assented to on 4 December 1985 (Acts Nos 142 and 143 of 1985). The Preamble and Sections 1 to 3 of the *Australia Act 1986* read as follows:

WHEREAS the Prime Minister of the Commonwealth and the Premiers of the States at conferences held in Canberra on 24 and 25 June 1982 and 21 June 1984 agreed on the taking of certain measures to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation:

AND WHEREAS in pursuance of paragraph 51 (xxxviii) of the Constitution the Parliaments of all the States have requested the Parliament of the Commonwealth to enact an Act in the terms of this Act:

BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Termination of power of Parliament of United Kingdom to legislate for Australia

1. No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory.

Legislative powers of Parliaments of States

2 . (1) It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.

(2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.

Termination of restrictions on legislative powers of Parliaments of States

3. (1) The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

On Sunday, 2 March 1986 the Queen of Australia proclaimed the Australia Act 1986 (see *Commonwealth of Australia Gazette* No S 85 of 2 March 1986). On that day the Prime Minister, Mr Hawke, issued the following statement (Comm Rec 1986, 246–247):

> Her Majesty the Queen today signed the Proclamation to bring the Australia Act 1986 into operation. The Act will commence tomorrow at 4.00 pm Eastern Summer Time, simultaneously with the Australian Act 1986 which was recently enacted by the United Kingdom Parliament at the request of the Commonwealth Parliament and all the State Parliaments.
>
> Following the signing of the Proclamation, Her Majesty presented the Prime Minister, the Hon RJL Hawke, with a copy of the Act passed by the

United Kingdom Parliament. That Act will be framed and displayed publicly in the new Parliament House, along with the Act of the Australian Parliament and the Proclamation which the Queen signed today.

The two Australia Acts remove the outmoded links between Australia and the United Kingdom parliamentary, government and judicial systems. They reflect Australia's status as an independent and sovereign nation. Her Majesty's position as Queen of Australia is in no way affected.

In a written answer on 19 November 1987, the Minister representing the Minister for Home Affairs, Mr Scholes, said that the United Kingdom Government no longer was involved in recommendations to the Queen on the subject to imperial honours and awards for Australians: see HR Deb 1987, 2466.

Sovereignty—Australian sovereignty over its territory—United States/Australian Defence Facilities

On 6 June 1984 the Prime Minister, Mr Hawke, made a statement in the House of Representatives (HR Deb 1984, 2987–2988) in which he said:

The purpose and functions of the joint defence facility at North West Cape have already been made public. It is a communications relay station for ships and submarines of the United States Navy and the Royal Australian Navy and serves as a key element in a complex system of communications supporting the global balance. As indicated in the statement which the Minister for Defence tabled in Parliament on 3 November 1983, agreement was reached with the United States Government on new arrangements to ensure that the Australian Government would be able to make timely judgments about the significance for national interest of developments involving North West Cape.

These new arrangements are now in force. The Government is satisfied that Australia's sovereignty in the operation of the joint defence facility at North West Cape is now adequately protected.

Some people express concern about possible risks to our security from these facilities. The Government takes the view that the joint facilities directly contribute to the security that we enjoy every day and that this tangible benefit outweighs the possibility that risks might arise at some future time from our hosting the facilities. For many years our intelligence and defence authorities have assessed the risk of nuclear war as remote and improbable, provided effective deterrence is maintained.

Australians cannot claim the full protection of that deterrence without being willing to make some contribution to its effectiveness. It is important to support stability in the strategic relationship between the super-powers and our co-operation in the joint facilities at North West Cape, Pine Gap and Nurrungar does this.

...

The Government does not intend to comment further upon speculation or assertions about the joint facilities at Pine Gap and Nurrungar. Enough has been said, however, to correct some serious misunderstandings and to provide the reassurance that people properly seek.

Finally, let me emphasise again that these facilities are jointly managed and operated by the Australian and American governments. All functions

and activities require, and have, the full knowledge and concurrence of the Australian Government. We monitor this and we are satisfied that the operations of the facilities in no way derogate from Australian sovereignty.

Sovereignty—Indonesia—control over telecommunications to East Timor

In the Senate on 6 December 1985 Senator Walsh, as Minister representing the Minister for Communications, provided the following written answers to the respective questions (Sen Deb 1985, 3234):

(2) Can the Minister confirm that there are difficulties in making ordinary telephone communication with East Timor?

(3) If the Indonesian Government is restricting international access to Timor via telecommunications facilities, would this be inconsistent with international practice under the International Telecommunications Union Convention?

(4) Will the Government seek from Indonesia an explanation for these restrictions and consider urging Indonesia to open up telecommunciations with East Timor?

(2) Yes. At the time of my decision in July not to grant a licence to the Australian Coalition for East Timor, testing confirmed the availability of the automatic telex service, and the Indonesian manual assistance operators did not indicate any embargo on telephone connections. The precise date of cessation of telephone services to East Timor has not been able to be determined. Following OTC's enquiries in response to customer complaints, however, the Indonesian authorities advised on 19 August 1985 that, '...for the time being, communications from/to Dili/East Timor is not permitted'. Recent enquiries by OTC to the Indonesian telecommunications administration have confirmed that the telephone communications with East Timor continue to be unavailable.

(3) No. Although Article 23 of the International Telecommunications Convention states that 'Members shall take such steps as may be necessary to ensure the establishment...of international telecommunications', the Preamble to the Convention also recognises 'the sovereign right of each country to regulate its telecommunications'.

(4) The Government's support for greater international access to East Timor has been made known directly to the Indonesian authorities on a number of occasions. As telecommunications are a potentially important means of improving access, the Government would hope that such facilities could be made available to the population of the province without undue restriction.

Sovereignty—United Kingdom—Northern Ireland—Australian policy

In the Senate on 28 February 1984, Senator Gareth Evans, as Minister representing the Minister for Foreign Affairs, provided a written answer to a question about the Australian Government's policy towards Northern Ireland (Sen Deb 1984, 103), in which he said:

The Government's view is that the situation in Northern Ireland is the responsibility of the British Government—for historical, political and social

reasons. It follows that a lasting solution to the Northern Ireland problem is a matter for the Northern Irish people and the British Government to resolve. This is not to deny that the Irish Government has a special interest in developments in the North.

Sovereignty—Kiribati—Fishing Agreement with the USSR

In the House of Representatives on 29 November 1985, the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice (HR Deb 1985, 4055):

The fisheries agreement between Kiribati and the Soviet Union has not been made public. On 10 October 1985, Radio Kiribati carried a press release from the Kiribati Ministry for Natural Resources stating that the Soviet Union had paid the first instalment of $A672,000 under the agreement and that licences were issued on 4 October for eight Soviet fishing vessels for the period 15 October 1984 to 14 October 1986. Other information made public about the agreement is that licence fee for one year's fishing by Soviet vessels is some $A2.4m; that the agreement allows Soviet vessels to fish in Kiribati's exclusive economic zone for 12 months; and that Kiribati has not granted the Soviet Union access to shore based facilities on Kiribati.

The Government has on various occasions made known to the Government of Kiribati that it has some concerns over the implications of such an agreement. At the same time the Australian Government fully recognises that Kiribati is a sovereign independent country and that decisions on such matters are the responsibility of its Government.

Sovereignty and independence—Palau—compact of free association with the United States

On 16 September 1987 Senator Gareth Evans, the Minister representing the Minister for Foreign Affairs and Trade in the Senate, said in answer to a question without notice (Sen Deb 1987, 142–143):

There was a plebiscite in Palau on 21 August, observed by a visiting United Nations mission, which approved acceptance of the compact of free association with the United States by a vote of 73 per cent. Under that compact Palau will be self-governing in free association with the United States, which retains responsibility for defence and security matters. Earlier plebiscites failed to attain the then required 75 per cent majority. A referendum on 4 August amended the Constitution to enable the compact to be approved by a simple rather than that previous 75 per cent majority.

The 4 August amendment does not remove the non-nuclear provisions of the Palau Constitution. The three-quarters majority is still required to approve the use, testing, storage or disposal of harmful substances, including nuclear weapons and waste. Under the compact the United States may not use, test or dispose of such harmful substances, and has the right to operate nuclear-capable or nuclear-propelled vessels and aircraft, under the 'neither confirm nor deny' doctrine.

The Australian Government considers that the compact has been negotiated and approved in a manner consistent with the rights of the Palau people to self-determination, believing that the decision now taken on the

compact was a matter solely for the Government and the people of Palau. Accordingly, this Government has not made any representations to the United States Government about Palau. As to the spate of violence in that country recently, we, of course, regret those acts. However, we do not consider it appropriate for a UN-sponsored peacekeeping force to visit the country. It is a matter for the appropriate Palau authorities to maintain the necessary law and order. I just add, finally, that the Minister for Foreign Affairs and Trade and the Department of Foreign Affairs and Trade have responded in these terms to expressions of concern about Palau which have been addressed to the Government.

Independence—Tibet

On 28 October 1987 Senator Gareth Evans, the Minister representing the Minister for Foreign Affairs in the Senate, said in answer in part to a question without notice (Sen Deb 1987, 1380):

> The matter of the Chinese authorities granting more or less autonomy to the Tibetan autonomous region is one for the central Chinese Government and the people of Tibet to work out for themselves. It is not for the Government of Australia to speculate on the extent to which the strategic nuclear value of Tibet may play a part in relations between the Tibetan autonomous region and the central Government in Beijing.

Sovereignty and independence—Papua New Guinea—Declaration of Principles Guiding Relations between Papua New Guinea and Australia

On 9 December 1987 the Prime Ministers of Australia, Mr Hawke, and of Papua New Guinea, Mr Wingti, signed a Joint Declaration of Principles Guiding Relations between their two countries. Following the signing in Canberra, Mr Hawke said in part (AFAR, November/December 1987, 609):

> Mr Wingti and I signed the Declaration this morning.
>
> The Declaration represents the recognition by both our Governments of the enduring importance of the relationship between us and of the way in which that relationship is changing over the years.
>
> Its themes are mutuality, reciprocity and consultation.
>
> It stresses the sovereign equality of our two countries and the linkage between all elements in our relationship, so that decisions on any issue should be taken with due regard for the relationship as a whole. It spans the entire range of our contacts, which includes trade, investment, transport, communications, aid, defence, legal cooperation and border administration.
>
> It is, first and foremost, an intelligent document which confirms the worth of existing arrangements while opening the way for new arrangements to be concluded under its ambit.

Sovereignty and independence—non-interference—Australian legislation to outlaw interference in other countries

On 17 February 1987 the Attorney-General, Mr Bowen, provided written information on the prosecutions under the *Crimes (Foreign Incursions and Recruitment) Act* 1978 since its commencement: see HR Deb 1987, 81–82.

Self-determination—general principle

On 9 October 1984 Australia's representative to the Third Committee of the United Nations General Assembly is reported as having said on the subject of the self-determination of peoples (A/C 3/39/SR 4, pp 4–6):

> *Mr THWAITES* (Australia), after noting that his delegation reserved the right to speak on item 88 at a later time, reaffirmed the importance of the universal realization of the right of peoples to self-determination. That right, which, as everyone knew, was not reflected in the United Nations Charter, had had significant influence on international relations and on the pursuit by peoples everywhere of their deepest aspirations. Although the Third Committee had not played a major role in the historic process of decolonization, which had drawn its inspiration from the Declaration on the Granting of Independence to Colonial Countries and Peoples, it was precisely the right forum for evaluating the special significance of the right to self-determination as a foundation for the capacity of peoples and individuals to exercise the full range of their human rights. The decolonization process was coming to an end, and so the remaining situations in which peoples were deprived of their right to self-determination were all the more intolerable. It was necessary to re-examine the concept of the right to self-determination from the standpoint of international law; from that perspective, the right to self-determination was clearly affirmed in article 1 of the two International Covenants on Human Rights. That right was not limited by time or by geographical criteria, nor could it be claimed that that right could be exhausted following its initial exercise. Self-determination was a permanent right which could not be regarded as being guaranteed once and for all by a process of decolonization or by an act of self-determination leading to independence. Self-determination implied the continuing right of all peoples and individuals within each nation to participate fully in the political process by various means, including free and fair elections. His delegation hoped that the comment on the implementation of article 1 of the International Covenant on Civil and Political Rights, which had been adopted by the Human Rights Committee and was to be incorporated in its report, would receive careful consideration from all States parties to the Covenant and from all Governments.
>
> Unfortunately, situations continued to exist in which the exercise of the right to self-determination was denied, as, for example, in Namibia. The parties to the most recent round of negotiations, the results of which were still awaited, had agreed to abide by Security Council resolution 435 (1978); it was therefore regrettable that the negotiations on Namibia's self-determination should be linked to the presence of Cuban personnel in Angola.
>
> With regard to the situation in the Middle East, Australia acknowledged the right of the Palestinian people to self-determination, including the right to independence and the possibility of establishing an independent State. PLO must participate in the search for peace in the Middle East, even though it was clear that the results of that search would be limited so long as PLO persisted in denying Israel's right to exist within secure and recognized

borders. The Government of Australia would continue to refuse to recognize PLO for as long as that denial was maintained.

It was particularly difficult to witness situations in which the right to self-determination of peoples who earlier had expressed and realized their right to act as independent nations was suppressed by force, as in the cases of Afghanistan and Cambodia. Australia had condemned the invasion of Cambodia at the time it had occurred and had called for the withdrawal of Vietnamese forces and for self-determination for Cambodia. In the case of Afghanistan, it was ironic that a super-Power which advocated the right of States to self-determination was deploying its might against a nation which had maintained its independence for centuries. The tragic consequences of that situation could be brought to an end only by a Soviet withdrawal from Afghanistan in accordance with successive United Nations resolutions.

In the South Pacific, a number of States had gained independence; nevertheless, a colonial situation continued to exist in New Caledonia. Australia proposed that New Caledonia should become independent through peaceful means, and welcomed the recognition by the French Government of the right of the Kanak people to self-determination.

A clear link existed between the eradication of racism and self-determination. In the case of South Africa, the recent constitutional reform had only worsened a situation based on violence and injustice which Australia found abhorrent. One step in its effort to fulfil its obligations to the people of South Africa and the international community with respect to the struggle against *apartheid* was the Australian Government's granting of permission, for the first time, for the establishment in Australia of information offices of the African National Congress and SWAPO. Australia believed it was imperative to fight against the various forms of racism and was determined to see that the consensus reached with regard to the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination was maintained and built upon during the current session. While his delegation had difficulty in accepting some points of that Programme, it had supported its adoption both at the Conference and in the General Assembly, in the conviction that it offered a reasonable basis for renewing co-operation in the struggle against racism in the wake of the frustration of the first Decade. It was encouraging that the Programme contained a broad range of practical measures directed at eradicating the conditions in which racism could emerge. For its part, Australia was committed to implementing the Programme of Action, but was convinced that an international consensus would give greater force to the measures adopted at the national level.

Self-determination—Australia—Cocos (Keeling) Islands—Act of Self-determination

In the House of Representatives on 28 March 1984 the Minister for Territories and Local Government, Mr Uren, made a statement on the Cocos (Keeling) Islands, part of which is as follows (HR Deb 1984, 941–945):

> I wish to inform the House that the United Nations has accepted an invitation by the Government to send a visiting mission to the Cocos (Keeling) Islands

to witness the making by the people of Cocos of an Act of self-determination. The visit is to occur in the first week of April 1984. The United Nations mission will consist of representatives of Sierra Leone, Yugoslavia, Fiji and Venezuela. This will be the third United Nations mission to visit Cocos. Earlier missions visited in 1974 and 1980. We have appreciated the degree of friendly cooperation that has developed over the years between Australia and the United Nations in regard to the advancement of the Cocos people. We expect that this process will reach culmination in 1984.

In issuing the invitation to the United Nations, the Government acted upon the advice of the Cocos leaders who, on behalf of the community, recently informed the Government that they were prepared to proceed with the act of self-determination and asked the Government to make the necessary arrangements with the United Nations. The Cocos people living in the islands will be determining their future in accordance with the United Nations requirements. The visiting mission will witness the plebiscite which will be oversighted by the Commonwealth Electoral Commission.

The requirements of the United Nations provide for non-self-governing territories whose development is considered by the United Nations Special Committee on Decolonisation—known as the Committee of 24—to exercise their right to self-determination, in accordance with the United Nations resolutions 1514(xv) and 1541(xv) which set out the principles by which a territory has achieved a full measure of self-government by choosing, (a) firstly, independence, (b) secondly, free association with an independent state, or (c) thirdly, integration with an independent state. The Government recently presented the details of the three options—independence, free association with Australia, and integration with Australia—to the community.

Under the independence option, the Cocos-Malay community would be completely responsible for all aspects of their lives, including foreign affairs and defence. It would be up to them to determine how they would govern themselves and how they would raise revenue and establish their own social and economic strategies. Australia would obviously seek to have a close and friendly relationship with the new State, and would offer all assistance that is within our power to give. The newly independent State would be entitled to apply to join the United Nations and its agencies.

Under free association, Australia would conduct defence and foreign affairs matters on behalf of the Cocos community, and would negotiate with a new Cocos government the way it could assist that government to take full responsibility for a wide range of functions undertaken by Australia at present. These include health, education, transport, quarantine, radio communication and the conduct of the airfield at the Cocos (Keeling) Islands.

As with the independence option, members of the community would have to determine how they were to govern themselves, the standards of services that would be provided and the ways by which revenue would be raised. The Cocos (Keeling) Islands would not be eligible for United Nations

membership but Australia, as part of its responsibility for foreign affairs, would seek to obtain whatever United Nations assistance was available.

Under integration, the Cocos people would have the full rights, privileges and obligations of other Australian citizens:

> Local arrangements would be modified to give the Cocos (Keeling) Islands Council wider powers and ownership of the plantation lands at present leased by the Commonwealth to the Cocos Co-operative.
>
> The electors of Cocos would be included in an existing territory electorate for the purposes of House of Representatives and Senate elections and national referendums.
>
> Appropriate Commonwealth legislation not already applying would be extended to Cocos, including the social security and health Acts.
>
> A review in three years time would examine the introduction of tax. At present levels of income, the Cocos-Malay people are under the existing tax threshold and therefore they would not pay income tax in present circumstances.
>
> The Commonwealth Government would take measures to raise services and standard of living to comparable Australian levels within 10 years, and use the Commonwealth Grants Commission to review standards.

Consistent with its commitment to the United Nations, Australia has, since the Cocos (Keeling) Islands were accepted as a Territory of Australia in 1955, taken many measures particularly in recent years for the political, social and economic advancement of the people of the Cocos to bring about conditions which would enable the people to exercise freely their right to self-determination, in full knowledge of the choices open to them.

See also the written answers to questions provided on 5 April 1984 by the Minister, Mr Uren (HR Deb 1984, 1522–1523).

On 6 April 1984 the people of the Cocos (Keeling) Islands made their Act of Self-determination and chose to integrate with Australia. The Minister for Territories and Local Government, Mr Uren, wrote on 27 April 1984 to the Chairman of the Cocos (Keeling) Islands Council, Parson bin Yapat, outlining the Government's proposals for and commitments to the people of Cocos (for the text of the letter, see PP No 124/1985, presented to Parliament on 28 February 1985, at pp 57–59.

On 9 May 1984 the Minister introduced the Cocos (Keeling) Islands Self-determination (Consequential Amendments) Bill 1984 into the House of Representatives, and explained the purpose of the Bill (HR Deb 1984, 2148–2149).

The Bill was enacted and entered into effect on 25 June 1984. On 9 August 1984 the Permanent Mission of Australia to the United Nations in New York addressed the following Note to the Secretary-General (UN Doc A/39/401 dated 15 August 1984):

> The Permanent Mission of Australia to the United Nations presents it compliments to the Secretary-General of the United Nations and, further to information previously provided in fulfilment of its obligations under Article 73*e* of the Charter, has the honour to advise that, in accordance with the wishes of the people of the Cocos (Keeling) Islands, the Australian

Government organized an Act of Self-determination in the Territory on 6 April 1984 to enable the people to determine their future political status.

The Act of Self-determination took the form of a plebiscite in which all eligible adults participated and in which the people of Cocos were offered the choice of independence, free association with Australia or integration with Australia. The plebiscite was observed by a Visiting Mission appointed by the Secretary-General in accordance with General Assembly decision 38/420 of 7 December 1983. The Mission was chaired by His Excellency Mr Abdul Koroma, Permanent Representative of Sierra Leone to the United Nations and included His Excellency Mr Ratu Jone Filipe Radrodro, Permanent Representative of Fiji to the United Nations, Mr Nebojsa Dimitrijevic of the Permanent Mission of Yugoslavia to the United Nations and Miss Maria Eugenia Trujillo of the Permanent Mission of Venezuela to the United Nations. The Visiting Mission was present throughout the plebiscite and had opportunities for extensive consultations with the Cocos community before the plebiscite took place.

A total of 261 votes were cast in the plebiscite, of which 229 were in favour of integration with Australia, 21 in favour of free association with Australia and 9 in favour of independence. There were 2 informal votes. The decision of the Cocos community in favour of integration was acceptable to the Australian Government and steps are being taken to accord the people of Cocos the rights and responsibilities of other Australian citizens. By choosing to integrate with Australia the people of Cocos have thus exercised their right to self-determination in accordance with the Charter of the United Nations.

The Australian Government wishes to express its appreciation to the United Nations and to the Secretary-General for their positive contributions to, and interest in, the political and social development of the people of the Cocos (Keeling) Islands over a period of years.

The Permanent Mission of Australia requests the Secretary-General to circulate this note as a document of the General Assembly in connection with the Assembly's consideration of item 18 of the provisional agenda.

The Report of the Secretary-General to the General Assembly, transmitting the report of the United Nations Visiting Mission to Observe the Act of Self-Determination in the Cocos (Keeling) Islands 1984, dated 24 August 1984, is contained in UN Doc A/39/494 (17 September 1984).

The Report of the Visiting Mission was considered briefly in the United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (the "Committee of 24") on 24 August 1984 (A/AC 109/PV 1269, 37; see Chapter XIII of the Report of the Committee of 24: G.A.O.R., 39th Session, Supp. No. 23 (A/39/23), 149). The Report of the Secretary-General (above) was considered in the Fourth Committee of the United Nations General Assembly on 7 November 1984 (A/C 4/39/SR 15).

Draft resolution A/C 4/39/L 3 was adopted by consensus. The decision was welcomed in a statement issued jointly by the Minister for Foreign Affairs, Mr Hayden, and the Minister for Territories and Local Government, Mr Uren, on 8 November 1984 (Comm Rec 1984, 2261). The draft resolution was then

adopted by the United Nations General Assembly by consensus at the 87th plenary meeting held on 5 December 1984 (Resolution 39/30). The Resolution read as follows:

39/30. Question of the Cocos (Keeling) Islands

The General Assembly,

Having considered the question of the Cocos (Keeling) Islands,

Having heard the statements of the representatives of Australia,

Having heard the statement of the Chairman of the Cocos (Keeling) Islands Council,

Recalling its resolutions 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and 1541 (XV) of 15 December 1960,

Recalling also its decision 38/412 of 7 December 1983, by which it noted, *inter alia,* that the administering Power had discussed with the representatives of the Cocos (Keeling) Islands community the question of holding an act of self-determination to determine their future political status, and its decision 38/420 of 7 December 1983, by which it authorized the Secretary-General to appoint and dispatch a United Nations mission to visit the Cocos (Keeling) Islands in 1984 and requested him to submit to the General Assembly at its thirty-ninth session a report on the findings of the mission,

Having heard the statement of the Chairman of the United Nations Visiting Mission dispatched to the Cocos (Keeling) Islands in April 1984 pursuant to General Assembly decision 38/420 and having considered the report of the Visiting Mission,

Noting with appreciation the active participation of the administering Power in the work of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in regard to the Cocos (Keeling) Islands and the co-operation it has extended to the Committee, including the receiving of visiting missions to the Territory in 1974 and 1980,

1. *Notes with satisfaction* the observations and recommendations of the United Nations Visiting Mission to Observe the Act of Self-Determination in the Cocos (Keeling) Islands 1984;

2. *Takes note* that the people of the Cocos (Keeling) Islands voted by a substantial majority for integration with Australia;

3. *Endorses* the view of the Visiting Mission that, in so doing, the people of the Territory have exercised their right to self-determination in accordance with the principles of the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

4. *Considers it appropriate* that, in view of the decision of the people of the Cocos (Keeling) Islands, the transmission of information in respect of the Cocos (Keeling) Islands under Article 73*e* of the Charter should cease;

5. *Takes note* of the actions taken by the Government of Australia to transfer ownership of land to the Cocos (Keeling) Islands community and to extend relevant legislation to the community so that it may enjoy the same

benefits as those available to the Australian community at large, as well as the Government's assurances that the unique cultural identity, heritage and traditions of the Cocos community will be preserved;

6. *Expresses its appreciation* to the Government of Australia, as the administering Power concerned, and to the Cocos (Keeling) Islands Council for the co-operation extended to the United Nations;

7. *Expresses its appreciation* to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples for the work it has accomplished, in close co-operation with the administering Power, in respect of the Territory.

On 18 September 1984 the Minister for Territories and Local Government, Mr Uren, announced the signing of a deed giving to the Cocos (Keeling) Islands Council ownership of land in the Cocos (Keeling) Islands (Comm Rec 1984, 1851). In the Senate on 26 February 1985 the Minister representing the Minister for Foreign Affairs, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1985, 179):

At the 1984 General Assembly the United Nations recognised the act of self-determination integrating the Cocos (Keeling) Islands into Australia, and this brought to an end Australia's last direct responsibility within the United Nations system for a non-self-governing territory.

The integration of Cocos provided an opportunity to review Australia's membership of the Committee of Twenty-four on Decolonisation and the Minister decided accordingly that we should withdraw.

Sovereignty—Australian external territories—Christmas Island—Ashmore and Cartier Islands

In the House of Representatives on 5 September 1985 the Minister for Territories and Local Government, Mr Uren, introduced the Christmas Island Administration (Miscellaneous Amendments) Bill 1984 and explained the purpose of the Bill in part (HR Deb 1984, 664–665):

As with the Cocos (Keeling) Islands, in the early years on Christmas Island there was a great deal of exploitation and injustice inflicted on the Chinese and Malay workers. This was particularly the case under the former mining operator, the British Phosphate Commissioners, who were managing agents for the Christmas Island Phosphate Commission, an Australian and New Zealand Government Authority. The phosphate mine generates the only significant economic activity and therefore is the primary employment base of the island.

Christmas Island became an Australian territory in 1958. The current mining operator, Phosphate Mining Co of Christmas Island, which was formed in July 1981 as a wholly-owned Australian Government company, has been responsible for most of the services to the island and for nearly all administrative costs.

The Government decided earlier this year that there was a need to bring the island and its community into the mainstream of Australian life. Initial and important steps have already been taken to provide for a normalisation of Christmas Island to confer rights, responsibilities and obligations on the

residents of the island commencing 1 October 1984. The changes being proposed follow the general thrust of the 1982 report by Mr WW Sweetland on the long term future of the island. He recommended that the island be opened up to a wide range of economic activities in view of the declining reserves of phosphate and that the Phosphate Mining Co of Christmas Island cease to be responsible for various non-mining functions on the island. He also pointed out that the island had special features and should not be treated as just an extension of the Australian mainland.

On 10 September 1984 the Prime Minister, Mr Hawke, provided the following written answer to a question in the Senate (Sen Deb 1984, 762–763):

> The Government considers that it is in the national interest for the Ashmore and Cartier Islands to retain their status as a separate Commonwealth Territory under Commonwealth control. The question of appropriate administrative arrangements within these parameters is currently under review, and I have assured the Chief Minister of the Northern Territory that his Government's views in this regard would be taken fully into account.

Self-determination—Kampuchea

On 8 December 1987 the Acting Minister for Foreign Affairs and Trade, Mr Duffy, said in part in answer to a question relating to recent diplomatic activity concerning Kampuchea (HR Deb 1987, 2939):

> Australia hopes that further progress will now follow, leading to a resolution which results in self-determination for the Kampuchean people, the safe return of displaced Kampucheans to their homeland, and the withdrawal of Vietnamese forces [from] Kampuchea, matched by arrangements to prevent the return to power of the Pol Pot group.

Self-determination—Palestinian people

In an address to the United Nations General Assembly on 2 October 1984 the Minister for Foreign Affairs, Mr Hayden, said in part (A/39/PV 17, 52):

> A just and lasting peace in the Middle East remains a necessary but elusive goal. It can be achieved only if it is accepted that Israel must be allowed to exist within secure and recognized boundaries and that the Palestinian issue is centrally important for any settlement. Acceptance of these principles does not mean that Israel can feel free to continue its settlement programme on the West Bank, since these settlements are contrary to international law and an obstacle to peace. The Palestine Liberation Organization (PLO), which represents a significant proportion of the Palestinian people, should be included in the search for peace. Australia acknowledges also that the Palestinian people have a right to self-determination, including a right to choose independence and the possibility of their own independent state. However, there is limited, perhaps non-existent, opportunity for the PLO to engage productively in the search for peace so long as it persists in denying Israel's right to exist. The Australian Government will maintain its refusal to recognize the PLO while it persists in that denial.

On 5 November 1986 the Prime Minister, Mr Hawke, said in the course of a speech at a parliamentary luncheon in honour of the President of Israel, Mr Herzog (Comm Rec 1986, 2000–2001):

We remain fundamentally committed to the security of Israel and its right to exist within secure and recognised boundaries in accordance with Security Council resolutions 242 and 338. We believe that there will be no peaceful, just and lasting solution to the dispute between Israel and its Arab neighbours which does not include a general recognition of the state of Israel.

We also believe that a resolution of the Palestinian question is central to any Middle East settlement. Our government acknowledges the right of self-determination for the Palestinian people, including the right, if they so choose, to independence and the possibility of establishing their own independent state. We recognise that whatever arrangements are finally settled will depend on decisions involving the participation and agreement of all parties concerned.

Self-determination—Puerto Rico

On 24 August 1984 Australia's representative in the "Committee of 24" said on the question of Puerto Rico (A/AC 109/PV 1269, pp 3–4):

Mr ROWE (Australia): The position of the Australian delegation on Puerto Rico has been made clear on many occasions in this Committee and in the General Assembly. In 1953, by virtue of its resolution 748 (VIII), the General Assembly determined that Puerto Rico was no longer a Non-Self-Governing Territory. The basis of the Assembly's action lay, of course, in a referendum held among the people of Puerto Rico on 3 March 1952. That referendum approved a constitution for the people of Puerto Rico to associate themselves with the United States. Australia accepted, as the General Assembly had done, that the people of Puerto Rico had thereby performed a valid act of self-determination.

On a number of occasions attempts have been made to reinscribe the question of Puerto Rico on the General Assembly's agenda, most recently in 1982, when the General Assembly refused to accept that proposition. As a result, my delegation sees no reason to change the position that it has consistently held on this subject.

Self-determination—New Caledonia—views of the South Pacific Forum—view of the Australian Government—action in the United Nations to re-inscribe New Caledonia on the list of non-self-governing countries

On 2 October 1984 the Minister for Foreign Affairs, Mr Hayden, said in General Debate in the United Nations General Assembly (A/39/PV 17, p 52):

In the South Pacific region, Australia remains alert to the fact that a colonial situation remains in New Caledonia. We continue to support peaceful evolution to independence in New Caledonia, determined in accordance with the wishes of the people there and free from outside influence. We welcome the recognition by the French Government of the legitimate claim of the Kanak people to an inherent and active right to self-determination in which independence is an option. We note that an act of self-determination is scheduled to be held by 1989. Australia calls on France to ensure that the transition to an independent, multi-racial New

Caledonia is achieved speedily and peacefully and, indeed, in a shorter time-scale than previously envisaged.

On 21 January 1985 the Minister for Foreign Affairs, Mr Hayden, issued a statement on developments in New Caledonia which read in part (Comm Rec 1985, 42–43):

> Mr Hayden welcomed the French proposal to bring forward the act of self-determination. The plan outlined by Mr Pisani appeared to seek to meet the fundamental wishes of the Kanak people regarding land and independence at the same time providing guarantees to the non-Kanak population of New Caledonia. The plan was a sensible mechanism in all the circumstances to bring about a peaceful transfer of power. As such, it could form a reasonable basis for peaceful discussions aimed at resolving the unique and complex constitutional issues faced in the territory.
>
> Mr Hayden welcomed recent indications that the various groups in New Caledonia were prepared to continue the process of dialogue regarding the political evolution of New Caledonia, despite recent violence which Australia condemned...
>
> Mr Hayden reaffirmed that Australia strongly supported the principle of self determination and would like to see New Caledonia join the community of independent South Pacific countries as soon as was realistically possible. Australia hoped that the transition to an independent multiracial New Caledonia could be achieved in accordance with the timetable outlined by Mr Pisani.
>
> Australia hoped that those presently opposed to the Pisani plan would take an open-minded view with the best long term interests in mind of New Caledonia, France and the region.

On 25 February 1985 the Minister for Foreign Affairs, Mr Hayden, answered a question without notice in the House of Representatives as follows (HR Deb 1985, 100):

> The honourable member's question refers to commentary that took place in New Caledonia, mainly from the middle to the end of last month, along the lines that there was a belief that there was an elite force of 1 000 Australian military personnel trained, deployed, ready for movement to New Caledonia and military intervention. We inquired as to the cause of this report, which received fairly extensive publication, including in mainland France, and we discovered that on 14 January, on the radio program *AM*, I mentioned in passing that my Department had established a task force on the situation in New Caledonia. This had been freely interpreted in New Caledonia as *force de frappe*, which, of course, means a military strike force; hence, the rather feverish, hallucinatory commentary that developed.
>
> Australia has absolutely no military interest in intervening in any part of the region. We will do all we can to avoid conflict. We want to see the avoidance of bloodshed and tension. To the extent we can make contributions in that respect, we will do so. In the case of New Caledonia, we have expressed our support of the Pisani proposals as the best practicable in all the circumstances and therefore deserving support from all sides to the differences evident in New Caledonia.

On 22 August 1986 the Minister for Foreign Affairs, Mr Hayden, wrote in part in answer to a question upon notice (HR Deb 1987, 605–607):

(1) Australia's position at the 1985 South Pacific Forum on the question of decolonisation of New Caledonia was reflected in the Communique agreed to by Heads of Government (including Australia) who attended the Forum, the relevant section of which reads as follows:

Decolonisation: New Caledonia

'The Forum reviewed developments in New Caledonia since its last meeting.

The Forum reaffirmed its support for self-determination and the early transition to an independent New Caledonia in accordance with the innate, active rights and aspirations of the indigenous people and in a manner which guaranteed the rights and interests of all inhabitants of this multi-racial society.

The Forum condemned the violence which had and continues to occur in New Caledonia and which has resulted in tragic loss of life thus seriously jeopardising the process of dialogue. Heads of Government called on all parties to refrain from further violence and to engage in constructive dialogue which, alone, would ensure a peaceful and lasting resolution of New Caledonia's present problems.

Referring to the decision on New Caledonia adopted at its last meeting in Tuvalu, the Forum welcomed the fact that France had now publicly agreed to an early act of self-determination with the objective of bringing New Caledonia to independence. The Forum noted with satisfaction that the date for the act of self-determination had been brought forward: the vote was now to take place by the end of 1987 at the latest.

The Forum urged the French Government to undertake electoral reforms before the act of self-determination to ensure that the result accurately reflected the wishes of the Kanak people and others who had a long-term residence in and commitment to New Caledonia.

The Forum noted with interest the statement made by the French Prime Minister in April 1985 in which he outlined proposals for the administration of New Caledonia in the period leading up to the act of self-determination. The Forum noted that, in accordance with the Prime Minister's announcement, legislation concerning the relationship between New Caledonia and France had recently been adopted by the French Parliament. Heads of Government expressed the view that the course of action on which the French Government had now embarked contained positive elements which were appropriate in assisting the territory in its evolution to independence. The Forum expressed the strong hope that this plan would be firmly and consistently pursued to its conclusion by 31 December 1987. The Forum called on all parties to work towards the proper conduct of the forthcoming regional elections in a fair and peaceful manner and to advance diligently the process of decolonisation within New Caledonia.

In the light of strong reservations about increased militarisation of the region, the Forum called on France to clarify publicly the nature and extent of its announced intention to upgrade its military facilities in New

Caledonia. The Forum also again stressed its view that France should transfer additional political and administrative powers to the territory to ensure that it was adequately prepared for independence, and take the practical steps necessary to guarantee the full and active participation of the Melanesian community in the territory's educational, vocational, administrative and economic structures.

The Forum addressed the question of granting Forum observer status to the FLNKS and agreed to set up a working group to review the question of observer status in the Forum. The group should consider the existing guidelines governing the question of observer status, and consider whether any changes were desirable or necessary. The Forum noted that the work of this group would assist consideration of, but not be confined to, the proposal that the FLNKS be admitted to observer status at Forum meetings.

The Forum discussed in some detail the question of possible involvement of the United Nations in the situation in New Caledonia. It was widely acknowledged that keeping the question before the international community was important, and Forum members felt that speeches by Forum members in the United Nations General Assembly's general debate might take up the objectives of the Forum in relation to New Caledonia. However, the Forum reaffirmed that it had a continuing primary role, as a regional body, to continue its consideration of developments in the territory and to respond as and where appropriate. While noting the arguments on the question of reinscription at this juncture, the Forum would seek information from the appropriate organs of the UN on the applicability of the UN Charter and the 1960 Declaration on the granting of independence to colonial countries and peoples. It agreed to give further consideration to this question at its 17th meeting.

The Forum noted that the Ministerial Group established at Tuvalu to discuss Forum views on New Caledonia with the Independence Front and the French authorities had fulfilled its original mandate. It expressed appreciation for the reports circulated to all Forum members on the two meetings which members of the Ministerial Group had held at the end of 1984. The Forum agreed, however, that there was a need for all member countries to remain fully informed of developments in future and decided to establish a Standing Committee of officials to report to the Ministerial Group on a continuing basis over the crucial period before the next meeting of the Forum. The Officials Group should alert the Ministerial Group to any development including political developments in France itself which may call for a reaction or a response by the Ministerial Group or by Forum Governments as a whole.

The Forum agreed that its views should be conveyed formally to the French Government.'

On 2 October 1986 the Permanent Representative of Fiji to the United Nations addressed a letter to the President of the General Assembly (UN Doc No A/41/668) which was stated to be a "background paper" presented on "behalf of the members of the South Pacific Forum that are States Members of the United Nations—Australia, Fiji, New Zealand, Papua New Guinea, Samoa, Solomon Islands and Vanuatu".

On 29 May 1987 the Minister representing the Minister for Foreign Affairs in the Senate, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1987, 3246) concerning the French Government's proposal for a referendum on self-determination for New Caledonia:

> In broad terms it seems clear that the options to be put to the voters in the referendum are: First, independence; or secondly, continued association with France with a statute of internal autonomy. As I understand it, there will be little or no elaboration of the precise implications of the options, particularly the independence option, nor will there be the kind of independence in association with France option that has been utilised elsewhere, most notably with the Cook Islands and New Zealand and which has been thought by many people to be one further possible alternative which might reasonably have been put to the New Caledonian people.
>
> All residents of New Caledonia who have been resident for three years or longer will be entitled to vote. That applies some obvious restriction on the entitlement to vote—which, of course, is welcome. France has made clear that it will not co-operate, however, with the United Nations decolonisation committee in the pursuit of its policy towards New Caledonia. Despite a few small points that can be made in favour of the referendum, such as the three-year proposal, it certainly is the clear view of both the Australian Government and the South Pacific Forum governments that the referendum proposed does not accord with the usual United Nations decolonisation principles or practices. Those principles or practices were spelled out—or one view of them—in a communique issued by the Forum Foreign Ministers who met in New Zealand at the beginning of March when the following points were made, and I quote from the communique of that meeting:
>
> 'In reaffirming their view that independence for New Caledonia is inevitable and desirable the Forum countries base their position on UN principles and practices which are fundamental to a free and genuine act of self-determination. These require:
>
> (a) a free, honest and genuine choice in any act of self-determination;
> (b) the inclusion in the franchise for the act of self-determination of only those who can demonstrate long term residence in and commitment to New Caledonia. It should ensure that the rights and interests of all inhabitants are guaranteed, with special recognition of Kanak rights;
> (c) all options being open; including status quo, integration, internal self-government, associated independence, or unqualified independence;
> (d) political education for the people so that all options are understood and in particular no options are seen to carry punitive consequences.'

On 15 September 1987, following the referendum in New Caledonia, the Minister for Foreign Affairs and Trade, Mr Hayden, said in answer to a question without notice (HR Deb 1987, 55):

> The referendum which was held in New Caledonia over the weekend was certainly held according to principles stipulated by the French administration. Whether it will be regarded as an authentic expression of the aspirations of a pluralistic society is yet to be established. My inclination is that pressures from the independence movement within New Caledonia, the Kanak movement, will continue to be manifested not in spite of but because

of the outcome of this referendum. The referendum was altogether too stark in the alternatives it offered: either to remain with France or to be cast adrift.

The referendum held by France on 13 September was also inconsistent with the requirements of the United Nations for the processes for decolonisation as laid down by the Committee of Twenty-four. It was inconsistent for these reasons: co-operation with the United Nations was refused; there was no political education regarding the options; there was no dialogue among various parties; the choice was restricted, as I mentioned, to two quite stark options; punitive consequences were implicitly, and occasionally explicitly, attached to the independence option; and the French Government campaigned hard for its preferred option, continued attachment to France. A new statute has been foreshadowed following the referendum but the form of that statute has not been elaborated by the French Government.

It seems unlikely that the conflicting positions of the two principal bodies of opinion in the territory will be changed by the referendum. This is a matter of direct concern to the Australian Government. It concerns matters which arise in our immediate region of interest, a region in which we prefer to see stability and amity. We sincerely trust that these problems can be sorted out. We believe that they would have been sorted out satisfactorily if the earlier Fabius and Pisani plans, which provided for an option of independence in association with France, had been proceeded with.

On 22 October 1987 the Minister representing the Minister for Foreign Affairs and Trade in the Senate, Senator Gareth Evans, answered a further question about the Australian Government's position in relation to New Caledonia (Sen Deb 1987, 1115–1116).

On 26 November 1987 Senator Gareth Evans said in answer to a further question without notice on New Caledonia and the recent Pons statute on autonomy for the territory (Sen Deb 1987, 2481):

The passage of that statute will not alter the basic policy stance which we have had and continue to maintain in respect of New Caledonia, which I think can be described as follows. We would like to see a peaceful, orderly transition to multi-racial independence which recognises the rights of the indigenous people and safeguards the rights of all other long term residents. Australia wants to maintain a constructive dialogue with all parties involved in the New Caledonian issue, including the French Government. Australia's position takes into account the strong support for independence in New Caledonia expressed by the South Pacific Forum island countries, as shown in the communique of the Apia forum. Australia supported reinscription of New Caledonia at the United Nations General Assembly No 41 as a means of ensuring that the territory's progress towards self-government and independence was regularly reviewed by the United Nations (UN). The UN Committee of 24 has since considered the question of New Caledonia, and adopted a resolution in August this year.

Australia supports a free and genuine act of self-determination in New Caledonia which is consistent with the universally accepted decolonisation practices and principles of the UN. We take the view that the referendum that was held by France on 13 September was inconsistent with that

requirement. Finally, in general terms, our wish remains to help to ensure that a long term, viable, peaceful political solution can be found to the problems that continue to beset New Caledonia.

Self-determination—Namibia

On 23 March 1984 a statement was issued in Canberra on behalf of the Mission of the United Nations Council for Namibia and the Australian Government, part of which read as follows (AFAR March 1984, 290–292):

> The Mission expressed appreciation to the Government of Australia, an active member of the United Nations Council for Namibia, for its valuable contribution to the work of the Council. The Government of Australia reaffirmed its firm support for the Council as the legal administering authority for Namibia until independence in accordance with General Assembly resolution 2248 (S-V), and expressed its appreciation for the important role played by the Council in the discharge of its responsibilities towards the Namibian people.
>
> The two sides reviewed the situation in and around Namibia, in all its aspects. They reaffirmed the inalienable right of the people of Namibia to self-determination and independence in a united Namibia. They condemned the illegal occupation of Namibia by South Africa in defiance of United Nations resolutions and decisions, and reiterated that Namibia is a direct responsibility of the United Nations until genuine independence is achieved by that territory.
>
> The Mission reaffirmed its conviction that South Africa must comply with the relevant resolutions of the United Nations on the question of Namibia, in particular, Security Council resolutions 385 (1976) and 435 (1978), in their entirety, which constitute the only acceptable basis for a peaceful, just and lasting settlement of the Namibian question. Both sides reaffirmed their strong support for the United Nations plan for the independence of Namibia, as contained in these resolutions, and declared their resolve to pursue every effort aimed at its immediate and full implementation without any preconditions. They reiterated that South Africa's continued and repeated attempts to impose an internal settlement in Namibia were outside the framework of Security Council resolution 435 (1978), and declared all such attempts as illegal, null and void.
>
> The Government of Australia and the Mission deplored South Africa's military attacks against its neighbours, and the use of Namibian territory as a spring-board for these and other actions aimed at destabilising those countries. Both sides agreed that these acts endangered both regional and international peace and security.
>
> The Government of Australia noted with interest recent diplomatic initiatives in southern Africa, and expressed the hope that these moves would lead to a climate of trust and contribute to the development of peace and security in the region. The Mission condemned in the strongest terms, persistent attempts to introduce into the United Nations plans for the independence of Namibia, such irrelevant and extraneous issues as the withdrawal of Cuban forces from Angola. It recalled that both the United

Nations General Assembly and the Security Council had rejected any 'linkage'. The Mission regarded such attempts on the part of South Africa as tactics deliberately aimed at perpetuating its illegal occupation of Namibia, in defiance of the will of the international community. The Australian Government expressed its rejection of any linkage, and reiterated its view that the implementation of the United Nations Plan for the independence of Namibia should be without preconditions.

The Mission declared that Walvis Bay, the Penguin and other offshore islands of Namibia were integral parts of Namibian territory and must form part of an independent Namibia. Both sides agreed that the territorial integrity and unity of Namibia must be preserved.

The Mission reiterated its strong solidarity with the Namibian people in their struggle by every available means, including the armed struggle, for self-determination and independence under the leadership of SWAPO, their sole and authentic representative. The Government of Australia acknowledged SWAPO as one of the major nationalist groups in Namibia and one which had an essential role to play in the settlement negotiations.

The Government of Australia reaffirmed its commitment to the principles of the United Nations Charter in promoting Namibia's accession to independence, renewing its call for a peaceful settlement of the Namibian question as well as for the speedy implementation of the organisation of free and democratic elections under Security Council resolution 435 (1978).

The Mission expressed its appreciation to the Government of Australia for its recent decision inviting SWAPO to open an information office in Australia. This decision was viewed by the Mission as a great step towards dissemination of information in Australia and the struggle of the Namibian people for self-determination, freedom and independence in a united Namibia.

Both sides reaffirmed their support for the arms embargo imposed against South Africa by Security Council resolution 418 (1977), which Australia fully observes, and called for its full and effective implementation.

The Mission strongly denounced the continued illegal exploitation of Namibian uranium and other resources by foreign companies which worked in partnership with the illegal South African regime in Namibia, in utter violation of United Nations General Assembly and Security Council resolutions and decisions, in particular, Decree No 1 for the Protection of the Natural Resources of Namibia, enacted by the Council for Namibia.

The Mission emphasised that such activities contributed to the maintenance of South Africa's illegal occupation of Namibia. It emphasised the urgent need for the adoption of effective measures by governments to ensure that no Namibian uranium and other resources are imported into their countries. In this connection, the Mission recalled the resolutions of the United Nations General Assembly, the Organisation of African Unity (OAU) and the Conferences of Non-Aligned Countries, calling for the imposition of comprehensive mandatory sanctions against South Africa.

On 30 November 1984 Australia's Permanent Representative to the United Nations said in debate on the Question of Namibia (A/39/PV 81, p 51):

> *Mr WOOLCOTT* (Australia): Australia is fully committed to the achievement of the earliest possible independence for Namibia.
>
> South Africa's occupation of Namibia is illegal and must be terminated. It is continued in defiance of rulings of the International Court of Justice and decisions of this General Assembly.
>
> As a member of the Council for Namibia Australia has worked assiduously to achieve the objective of Namibian independence. We are fully committed to the implementation of the United Nations plan as outlined in Security Council resolutions 385 (1976) and 435 (1978), which provide for a peaceful transition to independence in Namibia through free and fair elections under the supervision and control of the United Nations...

On 22 April 1985 the Minister for Foreign Affairs, Mr Hayden, issued a statement saying that any unilateral moves to transfer power in Namibia that were not in accordance with the United Nations Security Council Resolution 435 would be null and void (Comm Rec 1985, 552). Australia's representative in the Security Council, Mr Hogue, made a statement to that effect on 13 June 1985 (S PV 2588, 21–24). Australia explained its vote in support of Security Council Resolution 566 (1985) on 19 June 1985 (S/PV 2595, 14–16). For a speech to the CARE conference on Namibia held in Canberra on 30 August 1985, by Senator Gareth Evans, Minister assisting the Minister for Foreign Affairs, see Comm Rec 1985, 1462–1465.

Australia further expressed its views on Namibia in the Security Council on 14 and 15 November 1985 (S/PV 2626, 39–47 and S/PV 2629, 31).

On 11 March 1986 the Acting Minister for Foreign Affairs, Senator Gareth Evans, said in answer to a question without notice concerning the implementation of a settlement plan for Namibia (Sen Deb 1986, 758):

> The Government has noted President Botha's announcement last week on 4 March that South Africa is prepared to begin implementing the United Nations Security Council Resolution 435 on 1 August if a firm and satisfactory agreement about the withdrawal of Cuban troops from Angola can be reached by then. Australia of course strongly supports the early independence of Namibia and takes the view that the United Nations Security Council resolution remains the only acceptable and agreed basis for an internationally recognised settlement in Namibia. We are deeply concerned that a Namibian settlement has been delayed for so long and that extraneous factors have so far prevented the early implementation of the United Nations settlement plan. Australia continues to be concerned that the linking of Namibia's independence to the withdrawal of Cuban forces remains an element in South African Government's latest proposal. This Government has consistently rejected that kind of linkage as a precondition for the implementation of Resolution 435.
>
> The Government hopes that the South African Government's reaffirmation of its commitment to the United Nations settlement plan will lead to the unconditional implementation of Resolution 435 without delay. The Australian Government rejects any moves to pre-empt or bypass the United Nations settlement plan and would regard any such measures by the South African Government in relation to the establishment of constitutional

bodies and the transfer of power in Namibia to be null and void. I mention finally that on 19 June last year Australia voted for the United Nations Security Council Resolution 566 on Namibia, which called on member states to consider the imposition of selective voluntary sanctions against South Africa should South Africa not give immediate effect to United Nations Security Council Resolution 435.

Self-determination—Falkland Islands (Malvinas)

On 1 November 1984 Australia's representative in the General Assembly (Mr Rowe) said on the Question of the Falkland Islands (Malvinas) and the related draft resolution A/39/L 8 (A/39/PV 46, p 31):

> Australia favours the resumption of contact and co-operation between the United Kingdom and Argentina, leading to eventual agreement on the future of the Falkland Islands. Australia welcomed the direct talks between the two countries in Berne in July. We regret that these talks have been suspended and hope that a direct dialogue between Britain and Argentina will be resumed in due course.
>
> Yet it is also necessary—and the United Kingdom and the Falkland Islanders no doubt have this in mind—that the islanders find their place in the South Atlantic in ways that can be accepted by their Latin American neighbours. Australia supports the rights of the islanders to be consulted about their future. The draft resolution is deficient in this respect. It reproduces the language of last year's resolution requiring only that "due account" be taken of "the interests of the population". Australia continues to regard this formula as inadequate. For this reason, my delegation will abstain on the draft resolution.

On 17 March 1987 various written answers were made to questions on notice: see HR Deb 1987, 981–982.

Self-determination—Indonesia—people of Irian Jaya and East Timor

In the House of Representatives on 4 September 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer, in part, to a question on notice (HR Deb 1984, 562–563):

> Indonesia's claim to Irian Jaya arose after the Indonesian Republic achieved independence in 1949. The Indonesian claim was based on the grounds that Irian Jaya had always been an integral part of the Dutch East Indies and, as the successor state to the Dutch East Indies, it should have sovereignty over the territory.
>
> In 1950 negotiations between the Netherlands and Indonesia concerning the status of Irian Jaya broke down, and eventually the matter was submitted to the United Nations General Assembly in 1954. Following further inconclusive diplomatic manoeuvres and armed conflict between the Netherlands and Indonesia, the Netherlands agreed to transfer the territory to the United Nations on 1 May 1962. Administration of Irian Jaya was subsequently transferred to Indonesia in May 1963.
>
> There was a provision in the transfer for an 'Act of Free Choice' to be held under the United Nations auspices. A plebiscite took place in 1969 which was found to result in a vote in favour of integration with Indonesia.

Like the great majority of the international community, the Australian Government recognises Irian Jaya as an integral part of the Republic of Indonesia.

Concerning East Timor, you will be aware that during my visit to Indonesia in April 1984, I noted on behalf of the Australian Government that East Timor had been incorporated into the Republic of Indonesia, but expressed the Government's deep concern that an internationally supervised act of self determination had not taken place. The Indonesian Government maintains that the status of East Timor as a province of Indonesia was decided in a vote on integration held in East Timor in July 1976.

Self-determination—national autonomy—Kurdish people

On 5 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to the respective questions on notice (Sen Deb 1985, 1609):

(1) Has Australia either raised or spoken on the Kurdish right to national self-determination in any United Nations (UN) forum since 1945.

(2) Will the Government raise the Kurdish question at any of the UN forums given the right to national self-determination of the Kurds under:

(a) the Charter of the UN (Chapter XI);

(b) the Universal Declaration of Human Rights (Article 15, Article 21);

(c) the Declaration on the Granting of Independence to Colonial Countries and Peoples 1960 (Article 1, 2);

(d) the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the UN 1970;

(e) the Helsinki Declaration 1975 (Article VIII);

(f) the International Covenant on Economic, Social and Cultural Rights 1976 (Article 1); and

(g) the International Covenant on Civil and Political Rights 1976 (Article 27).

There was correspondence with the honourable senator on the situation of the Kurdish people earlier in the year. As was said at that time, it seems clear that the Kurds, as a minority population in a number of countries, do suffer discriminatory measures. The Government has a good record in responding to clear cases of such discrimination and, in relation to the Kurds, has raised problems brought to its attention both in bilateral contexts and in multilateral human rights fora, most recently at the 41st session of the Commission on Human Rights earlier this year.

As to the issue of a Kurdish right to self-determination, the Australian Government does not consider it is appropriate to view the problems of the Kurds in the context of self-determination as it is understood in the international instruments referred to. The problem is not one of national autonomy but rather, where it occurs, the oppression of members of a minority group who should freely be able to enjoy their cultural and ethnic diversity within the dominant society.

The Government has not hesitated to assist the cause of numerous oppressed ethnic and religious groups. As specific violations are brought to our attention, appropriate action will be considered.

Self-determination—Aboriginal peoples

In the course of its report on Aboriginal Customary Law, tabled in the Senate on 12 June 1986 (Sen Deb 1986, 3833), the Australian Law Reform Commission commented on the concept of self-determination in relation to Australian Aboriginals as follows (PP Nos 1986/136 and 137, para 28):

Self-Management or Self-Determination. In recent years the policy of the Commonwealth has been based on what has been described as 'the fundamental right of Aboriginals to retain their racial identity and traditional lifestyle or, where desired, to adopt wholly or partially a European lifestyle,[31] and has encouraged Aboriginal participation or control in local or community government, and in other areas of concern. This approach, variously described as a policy of self-management or self-determination, has been accompanied by government support programs managed by Aboriginal organisations. For example the Aboriginal Development Commission was established in 1980[32] to help further the economic and social development of Aboriginal people, to promote their development and self-management and to provide a base for Aboriginal economic self-sufficiency. The functions of the Aboriginal Development Commission are to assist Aboriginal people to acquire land, to engage in business enterprises and to obtain finance for housing and other personal needs.[33] Other Aboriginal organisations, both governmental and non-governmental, are proving increasingly important: these include land councils, incorporated community support groups, child care agencies, alcohol rehabilitation services, medical services, hostels, legal services and cultural organisations. Attempts have continued to establish a body which can represent Aboriginal and Torres Strait Islander opinion on all matters of policy, through giving advice to the Commonwealth and in other ways.[34] The Commonwealth's policy has been formulated by the Federal Minister for Aboriginal Affairs in the following way:

> This Government...looks to achieve further progress for the Aboriginal and Torres Strait Islander people through the two principles of consultation and self-determination, that is, with the involvement of the Aboriginal people in the whole process...All our policies, each of our programs and projects, have been and will continue to be fashioned in discussions with Aboriginal people and their organisations at national and community levels.[35]

---

31 Hon RI Viner MHR, Minister for Aboriginal Affairs, Commonwealth of Australia (HR Deb 1978, 3442).

32 Aboriginal Development Commission Act 1980 (Cth), replacing the former Aboriginal Land Fund Commission and the Aboriginal Loans Commission.

33 s 8. See Aboriginal Development Commission, *Annual Report 1980-81,* AGPS, Canberra, 1982, 3.

34 See para 3.

35 Hon C Holding MHR, Commonwealth of Australia (HR Deb 1983, 3487).

There are, clearly enough, differences between the phrases 'self-management', 'consultation', and 'self-determination'.[36] Full self-determination in a particular field implies more than either management by or consultation with the 'self' involved.

In October 1987 the Australian Government submitted comments to the International Labour Office in Geneva on the Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No 107). Following are extracts from the general comments submitted by the Government (International Labour Conference 75th Session 1988, Report VI (2)):

It is no longer appropriate that the basic thrust of the Convention should be towards integration of indigenous and tribal peoples through governmental activities. It is recommended, therefore, that the preamble to the Convention be amended to remove integrationist language and to acknowledge the rights of indigenous people to determine freely their own economic, social and cultural future.

Concept of "Peoples"

It has been strongly urged that the term "populations" in the Convention should be replaced by the term "peoples". Such a change would be consistent with the rejection of the integrationist approach which characterises the present Convention. It would also more appropriately convey the notion of distinctive identity on which the revision of the Convention is based. It is significant that the term "peoples" or its equivalent is already used by many countries in their internal legislation dealing with indigenous affairs. However, we also recognise that in the United Nations context, the term "peoples" has a particular meaning which would be out of place in a Convention intended to cover indigenous peoples with a high degree of political autonomy, even a right to political self-determination and independence, as well as indigenous peoples which are part of a larger nation. In considering whether to replace "populations" with "peoples" we suggest that careful consideration be given to how the meaning of "peoples" can be defined so as to include indigenous groups whose political status may vary widely from country to country.

Concept of "Self-determination"

Self-determination is an extremely important concept in international relations and constitutes a fundamental human right of "peoples". It is intrinsic to that right that all peoples freely determine their political status, as well as freely pursue their economic, social and cultural development. "Self-determination" has also been used in another sense by governments, including the Australian Government, in the municipal context to refer to the conduct by indigenous peoples of their own affairs. In this sense "self-determination" has not necessarily included the rights to determine political status as that right is usually understood at the international level. There may

36 For comment on 'self-management' as a policy see J von Sturmer, 'Aborigines in the uranium industry: toward self-management in the Alligator Rivers region?' in RM Berndt (ed) *Aboriginal Sites, Rights and Resource Development,* University of Western Australia Press, Perth, 1982, 69.

however be situations in which a right to "self-determination" would in fact include the right of an indigenous people to freely determine its political status as provided in the Human Rights Covenants.

In examining how reference should be made to "self-determination" in the Convention it will be necessary to take into account the diverse political circumstances of indigenous peoples.