XII. International Organisations

*Tim Reilly**

United Nations—Sixth Committee—International liability and State responsibility

The following is extracted from the statement by Dr Gregory French for the Australian Delegation to the Sixth Committee of the General Assembly on 3 November 1993, concerning the Report of the International Law Commission's forty–fifth session dealing with International Liability for Injurious Consequences arising out of Acts not Prohibited by International Law, and State Responsibility:

> With regard to International Liability, Australia welcomes the progress made at the forty–fifth session by the drafting committee in adopting draft articles relating to scope, use of terms, prior authorisation, risk assessment and measures to minimise risk.
>
> At the same time, Australia believes that the decision of the Commission to concentrate initially on draft articles dealing with preventive measures should in no way prejudice the further development of rules dealing with compensation for acts with injurious consequences. Therefore Australia was not entirely supportive of the decision of the Commission at its forty fourth session to deal exclusively with preventive measures before considering remedial measures. While prevention of transboundary harm is a laudable aim, it is Australia's view that such harm, as long as it continues to occur, should be the subject of rules dealing with remedial measures. The core issue before the Commission is, after all, international liability. The concept of liability encompasses the assumption that an act with injurious consequences has occurred, whereas preventive measures, particularly *ex ante* preventive measures, will only be relevant in those relatively limited number of cases where certain acts and events can be accurately anticipated.
>
> Effective treatment of the issue of liability for injurious consequences will, in Australia's view, require a substantial effort on the part of the Commission to deal with the issue of compensation. Australia would therefore be concerned if a view were to emerge within the Commission, as was expressed by some members at the forty–fifth session, that the work at present being done on prevention of transboundary harm for activities with a risk of causing such harm should represent the whole or a major part of the topic. In Australia's view, consideration of prevention can and must be only the first stage of the Commission's work on this topic. We look forward to progress in the Commission on the issue of prevention so that consideration of the draft articles on remedial measures may be considered as soon as possible.

---

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

We believe that in many ways the work of the Commission on remedial measures will, from a legal perspective, be more important than the work on preventive measures. This is because the present work on prevention is largely focussed on process: notification, approval and assessment. The work on compensation, on the other hand, will need to address fundamental issues as to the consequences when harm actually occurs, with a view to ensuring that injured parties are not left without appropriate compensation. It is in this area in particular that this Committee and the broader international community could be well served by guidance from the Commission.

Madam Chair,

With regard to the character of the obligations which States are expected to assume, Australia is uneasy with the proposition that a State which complies with so-called "due diligence" obligations, that is, a State which enacts and enforces standards for operators undertaking any activity involving a risk of transboundary harm, should not be liable if transboundary harm occurs. While we acknowledge that the relevant activities may be carried out primarily by private entities, it is Australia's view that such activities, by virtue of the risk of harm which they entail, can create certain inescapable obligations upon a State. With regard to the overall nature of the liability regime, in Australia's view a regime of strict liability is best suited to creating a balance of interest between the States concerned and the protection of victims of acts with injurious consequences.

Madam Chair,

Australia wishes to express its considerable concern at the tendency within the Commission to raise the threshold at which acts by individuals or States may become actionable under the drafts before the Commission. Australia is concerned that the adoption of the adjective "significant" instead of "appreciable", both in the articles dealing with watercourses and international liability, has the effect of changing the substance of those articles in a manner which places an unacceptably high burden upon the victims of transboundary pollution and other acts. This undesirable trend is exacerbated when, as in the watercourse articles and in some discussions on the liability articles, it is proposed to couple the use of the adjective "significant" with reference to an obligation of no more than "due diligence".

We would also wish to emphasis that, while we recognise that the principal focus in relation to international liability must be on transboundary harm to other States, damage to the global commons remains an issue deserving of recognition and coverage by the relevant legal rules.

Madam Chair,

With regard to the form of the international instrument to embody the work of the Commission on International Liability, in our view it would be highly desirable for a legally binding treaty to be drafted to dispel, to the extent possible, ambiguity relating to international liability. At the same time we recognise that, as an interim goal, it may be desirable to formulate guidelines or statements of principle.

Madam Chair,

I turn now to the issue of State Responsibility. It is gratifying to see a reinvigoration of the work of the Commission in this area, which is reflected in the adoption of several articles. Australia welcomes the formal adoption by the

Commission of draft articles 6 to 10 bis, falling under the general rubric of reparation, following the provision of commentary on these draft articles.

It is Australia's strong hope that, in view of the substantial progress made at the last session, the Commission will be in a position to complete a revision of the entire set of draft articles on State responsibility by 1995.

Madam Chair,

Australia finds the specific articles dealing with reparation, restitution, compensation and satisfaction to be generally satisfactory. We welcome the specific recognition in Article 6(2) of the need to take account of negligence or the wilful act or omission of an injured State or national of that State which contributed to the damage.

We would suggest that further thought should be given to the possibility that the conduct of other States might affect an award of compensation. This possibility is alluded to in the commentary to Article 6 bis, which mentions the relevance of equitable considerations in providing full reparation. Australia would welcome the drafting of provisions to reflect this possibility.

We have certain reservations concerning Article 7(d), which provides that restitution in kind is not mandatory for the wrongdoing state if it would seriously jeopardise its political independence and economic stability whereas failure to obtain restitution in kind would not have a comparable effect on the injured State. In our view this injects a degree of relativism into the determination of the circumstances under which restitution in kind is appropriate which may not be desirable, at least not in its current form.

Madam Chair,

Australia also welcomes the adoption by the drafting Committee of the draft articles on countermeasures at the last session. This delegation would wish to refrain from commenting on the specific draft articles on countermeasures, that is, draft articles 11 to 14, until such time as they have been supplemented by commentaries and adopted by the Commission. Suffice to say that, while we recognise the inherent inequalities that may arise through the use of countermeasures, Australia accepts the concept of countermeasures as a permissible means of redress in certain circumstances, in the absence of an effective and enforceable global system of dispute settlement. It is our view that, should countermeasures be employed, it is better that they be employed within the structures of an internationally agreed framework.

Madam Chair,

Australia is very pleased to see the emergence in the report of a discussion on dispute settlement mechanisms both in the context of countermeasures and more generally in relation to State responsibility. We support the proposal by the Special Rapporteur for the development of a dispute settlement mechanism to deal with disputes which may arise subsequent to the taking of countermeasures. This is a reasonable approach to addressing circumstances where countermeasures were employed by an allegedly injured State before all avenues of dispute settlement had been exhausted. Australia would welcome further work by the Commission in elaborating such an approach.

Given that we now find ourselves in the United Nations Decade of International Law, and that States are showing a greater willingness to commit themselves to the peaceful settlement of disputes, we would strongly support the

idea contained in the Commission's report that it should take the opportunity to propose what would amount to a workable minimum dispute settlement mechanism. This should not, however, exclude the possibility of States' agreeing to more extensive alternative or supplementary mechanisms, including bilateral treaties or the acceptance of the compulsory jurisdiction of the International Court of Justice.

Madam Chair,

In conclusion, I would like to address briefly our views on the future work of the Commission. Australia supports the decision of the Commission to add two further topics to its future work, that is, the law and practice relating to reservations to treaties as well as state succession and its impact on the nationality of natural and legal persons. Our initial view is that an amendment to the Vienna Convention on the Law of Treaties should not be the aim of discussions on reservations to treaties. Rather a statement of practice, perhaps analogous to the General Comments of the Human Rights Committee on particular articles of the International Covenant on Civil and Political Rights, could be undertaken. On the question of state succession with respect to nationality, Australia agrees with the proposal in the report that the most appropriate path would be one leading to a statement of principles to be adopted by the General Assembly rather than a convention, particularly in view of the history of conventional international law in this area.

United Nations—Sixth Committee—International Criminal Court

The following is extracted from the statement by the Representative of Australia, Mr Matthew Neuhaus, to the Sixth Committee of the General Assembly on 28 October 1993, concerning the Report of the International Law Commission on the draft statute of an International Criminal Court:

Madam Chair,

The Working Group is to be warmly commended for the quality of its draft statute for an International Criminal Tribunal produced at this last session, and for the speed with which it has been working on this pressing matter. It has also been very gratifying to see the way in which the comments of Governments have been taken into account in this highly polished draft.

My delegation believes that the Vancouver seminar organised by the Government of Canada and various Canadian academic institutions earlier this year was also a particularly valuable occasion which facilitated an exchange of views between ILC members, the UN and governments. The seminar has not only borne fruit in the statute of the tribunal for the former Yugoslavia, but even more so, in the draft statute for an International Criminal Tribunal. Australia was privileged to be able to participate in that seminar, and we thank Canada for its generosity and vision.

Madam Chair, we believe that the essence of the draft produced by the ILC develops the proposal for a permanent International Criminal Court in the right direction. Our comments are mostly of a specific nature in order to assist the ILC in producing its final draft and to respond to some of the questions on which the ILC has requested guidance from the Sixth Committee.

We agree with the approach of the ILC in planning to establish the court as a permanent institution open to State Parties to the statute, but sitting only when

required to consider cases submitted to it. In this way, the tribunal will remain cost effective and efficient and will be used only as necessary. The international system today cannot afford to establish extravagant institutions, but at the same time, it must ensure the highest standards of international justice.

My delegation also strongly believes that it is important for the tribunal to be an institution of the United Nations for the following reasons:

1. to enhance its authority and credibility; and
2. to enable it to relate effectively to the Security Council.

We do not believe that this linkage requires an amendment to the United Nations Charter. Article 92 of the Charter describes the ICJ as the principal judicial organ of the UN. The qualifying word "principal" indicates that other judicial organs are not necessarily precluded. The court could therefore be established under Article 7(2) as a subsidiary organ without the need to amend the Charter. However, even if this view was rejected, we believe it would be sufficient for the tribunal to be linked with the United Nations in the same way as the International Atomic Energy Agency, for example, is linked. We will be interested to see further discussion of this issue in the working group.

Madam Chair, Articles 19 and 20 provide that the rules of the tribunal shall be determined by the judges acting in accordance with the principles of the statute. This makes good sense and is a provision akin to Article 15 of the Statute of the International Tribunal for the Former Yugoslavia. However, although that tribunal was established with a degree of haste, the Security Council in Resolution 827 provides for states to submit comments on the rules of procedure and evidence to the judges of the tribunal for their consideration. We believe it would be appropriate to consider whether a similar mechanism could be created to allow state parties the opportunity to have an input into the making of rules of procedure and evidence for this tribunal. We are not suggesting that it would be necessary or appropriate for the states themselves to draft these rules of procedure as this could only complicate the life of the court and delay the adoption of the statute.

Article 22 of the draft statute lists crimes in respect of which the court may have jurisdiction. We believe this is a useful list and covers the main areas on which, at this stage, there could be general international agreement. We do not believe, however, that this list should be exhaustive. State Parties to the statute should be able to agree at a subsequent stage on additional crimes, including the possibility of conventions which have not yet been drafted

A central article is Article 23 regarding the acceptance by states of jurisdiction over crimes listed in Article 22. We are presented with three alternatives by the working group. Alternative A has been dubbed an opting in approach and Alternative B an opting out approach. Alternative C could be seen as a variation on alternative A. It is a view of my delegation that Alternative A should be preferred for two reasons:

1. While we understand the sentiments behind Alternative B, that the court should have the broadest possible jurisdiction, we believe that in practice it would be more desirable to encourage the greatest number of states not only to sign, but also to ratify the statute. This objective would be best achieved by Alternative A. This alternative allows states to choose those matters on which they are prepared to accept jurisdiction.

2. We also believe sub-paragraph 4 of Alternative A encourages wider participation by permitting states which are not parties to this statute to accept the jurisdiction of the court over crimes referred to in Article 22 on an ad hoc basis. We believe this would promote the use of the court, even by those countries which were reluctant in the first instance to become parties to the statute. Alternative B does not allow for this possibility.

Another significant provision is Article 26, which permits states to confer jurisdiction, in certain circumstances, on the court in respect of crimes not listed in Article 22. While we appreciate that the category "crimes under general international law" may be somewhat imprecise, it should nevertheless be noted that such crimes can only be tried where they are recognised by the international community as possessing a fundamental character. We support this provision as a means of ensuring that the tribunal can have jurisdiction over crimes which have not yet been enacted in treaty, but which have been universally condemned in the international community. To omit such crimes would give rise to an unfortunate lacuna in the draft statute.

In Part Four of the report we are pleased to see that the ILC has included some important rules of procedure relating to the trial. One fundamental principle is that of legality or *nullum crimen sine lege* as provided for in Article 41. This provision is consistent with the requirement of Article 15 of the International Covenant on Civil and Political Rights which states that no one should be found guilty of a criminal offence on account of any act or omission which did not constitute a crime at the time it was committed. We believe the words contained in square brackets in paragraph A should be retained in the final text. These words make it clear that a given treaty provision must have been made applicable to the accused by what ever mechanism different states may adopt. My delegation is also pleased to see the fundamental presumption of innocence guaranteed in Article 43.

We are conscious that the issue of trials in absentia, provided for in Article 44 (1H) did create some debate within the ILC. In principle Australia would be opposed to trials in absentia, particularly as Article 14(3)(d) of the International Covenant of Civil and Political Rights provides that an accused person is entitled to be tried in his or her presence. If we are to continue to have a provision that would allow a trial in absentia, the details of this provision need to be addressed. Would it, for example, include the situation where an accused person is held in custody but refused to participate in proceedings? There needs to be significant procedural safeguards if trials are to be held in absentia, and we would like these details to be further considered by the international law commission.

Draft Article 45, addresses the important issue of double jeopardy or *non bis in idem*. This provision accords with article 14(7) of the international covenant on civil and political rights and provides the fundamental guarantee that no person shall be tried before any court for acts constituting crimes in this statute where he/she has already been tried for those acts. However, we are concerned that draft Article 45 (2a) would allow the court to try a person who has been convicted by another court where the act in question was characterised as an ordinary crime. The issue arises as to whether the principle of *non bis in idem* is really being adhered to in this provision and we would wish the ILC to reconsider this matter.

In Part 5, my delegation supports the right of appeal which is set out in draft Article 55. This also accords with Article 14(5) of the international covenant on civil and political rights which provides that everyone convicted of a crime shall have the right to his/her conviction and sentence being reviewed by a higher tribunal according to law. However, at present the issue as to whether the prosecutor would be able to have a right of appeal is in square brackets. We would support the prosecutor's right to appeal decisions of the court and would request provision be made for him/her to appeal a decision to ensure that the acquittal of an accused is not legally flawed or based on errors of fact. As to the appeals chamber itself, a separate appeals chamber may be preferable. We are flexible on this matter as it will no doubt be determined by the number of judges constituting the court, and the expected case load. However, we are of the view that, at the very least, the judges who sit on the appeal should be different from those who heard the case at first instance.

In Part 6, there is no doubt that international cooperation will be essential to the proper functioning of this tribunal. We are conscious that draft Article 63 which lays down the procedure for the surrender of an accused person to the tribunal may be seen as cutting across generally accepted rules of extradition law. For example, states retain the discretion not to extradite an accused person. However, as regards the tribunal, it may be argued that by specifically consenting to jurisdiction states have already agreed to the tribunal hearing the case and have therefore relinquished the right not to hand over the accused person.

Finally Madam Chair, in part 7 of the statute, draft Articles 65 and 66 address the issue of recognition of judgements and enforcement of sentences. We agree that states should not have the duty of imprisonment inflicted on them but rather should be able to offer facilities for imprisonment as they are able. In some federal systems, it is the constituent states, provinces or cantons that actually run the prisons and the federal government itself may not have prison facilities to offer. No doubt arrangements can be made even in federal systems but we need to retain a degree of flexibility. We would certainly urge states to be prepared to provide prison facilities.

In conclusion Madam Chair, we would like to reiterate our belief that the ILC has done a remarkable job and has our full support. We look forward to it concluding work on the statute in the coming year and then to us moving in the sixth committee to an adoption phase. We believe that there has never been a better time for the establishment of an international criminal court. We must ensure, through this committee and the General Assembly, that having now been given the opportunity of grasping the fruit of our labours in this important area that we do not remain like that creature of mythology Tantalus, seeking to seize this goal but for ever finding it out of reach. The ILC has placed an international criminal court within our reach, and we must seize the opportunity now provided.

Thank you Madam Chair.

United Nations—International Criminal Tribunal for the former Yugoslavia

The following is extracted from joint news releases of the Minister for Foreign Affairs, Senator Evans, and the Attorney-General, Mr Lavarch, of 3 August and 16 September 1993:

"The establishment of the Tribunal signals the determination of the international community to bring to trial those persons accused of committing war crimes in the territory of the former Yugoslavia", Senator Evans and Mr Lavarch said.

The Security Council of the United Nations established the Tribunal under resolution 827, adopted on 25 May. The Tribunal consists of the following organs:

- Chambers, comprising two Trial Chambers (with three judges in each) and an Appeals Chamber (with five judges);
- Prosecutor (and prosecutorial staff); and
- Registry.

A total of eleven judges will be elected by the General Assembly, in late August. The Prosecutor will be appointed by the Security Council on nomination by the Secretary General. The judges in turn will elect a President who will assign the judges to the various Chambers of the Tribunal.

Sir Ninian Stephen has been elected as a judge of the International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia since 1991, the Minister for Foreign Affairs, Senator Gareth Evans, and the Attorney-General, Michael Lavarch, announced today.

"We are proud that Sir Ninian Stephen's outstanding credentials as a jurist have been recognised worldwide. Sir Ninian, a former Governor-General and High Court justice, will make a real contribution to the effectiveness and integrity of the Tribunal", Senator Evans and Mr Lavarch said.

The Tribunal was established by the Security Council in May 1993 to investigate and prosecute persons who have committed serious violations of humanitarian law in the former Yugoslavia since 1991. The Tribunal will have its seat in The Hague and it is expected that investigations will commence in early 1994.

"Through Sir Ninian Stephen's election to the Tribunal, Australia will be able to make a further constructive contribution towards ending this violence and re-establishing peace in the countries of the former Yugoslavia," Senator Evans and Mr Lavarch said.

United Nations—Sixth Committee—Convention on Safety of United Nations Personnel

The following is extracted from the statement by Dr Gregory French for the Australian Delegation to the Sixth Committee of the General Assembly on 19 October 1993, concerning the question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible are brought to justice:

> The security of United Nations personnel is one of the most important questions facing the United Nations at this time as it embraces its enhanced role in the maintenance of international peace and security. As a result of the increased ability of the United Nations to fulfil its responsibilities as defined in the UN Charter, both the number and the size of UN operations has increased dramatically in recent times. This has led to an even greater exposure of UN personnel to dangers of various kinds.
>
> As noted in the report of the Secretary-General on this matter (A/48/349), a UN staff member is now being killed every two weeks. In addition, 170 military personnel have been killed in UN operations thus far in 1993.
>
> In the view of this delegation, it is essential that the United Nations does everything possible to increase the safety and minimise the risks for personnel participating in UN operations. We strongly endorse the approach proposed by the Secretary-General in his report, through action by the Security Council, the General Assembly and the Secretary-General himself.
>
> Such an integrated approach is essential. An important aspect of this approach, in our view, is a legal instrument which provides for personal responsibility for individuals committing attacks on UN personnel.
>
> Madame Chair,
>
> In this context Australia welcomes and strongly supports the initiative by New Zealand in producing a draft convention aimed at filling this lacuna in international law. In our view it is appropriate to employ, as New Zealand has done, the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, as well as the 1979 International Convention against the Taking of Hostages as templates for the draft convention. We also welcome the useful draft provided by Ukraine and look forward to considering it further in the course of our discussion.
>
> We agree with the central thrust of New Zealand's draft convention, which concentrates on creating personal responsibility for individuals who attack UN personnel by making such an attack a crime punishable under the national laws of states parties. At the same time we would of course welcome efforts by other states to provide suggestions on enhancing this text. In view of the mounting toll of those UN personnel serving in various areas, Australia believes that we should move forward as quickly as possible to elaborate a convention on this subject.
>
> We concur with the suggestions by New Zealand that a working group of the Sixth Committee should be established to work on the drafting of a consolidated text. This work should start immediately and may also need to be continued intersessionally. In our view it should be possible to conclude consideration of such a convention and to adopt it within a relatively short space of time. After all, the general mechanisms which the New Zealand draft foresees are not new to us; for example, the mechanisms reflected in the provisions relating to

establishment of jurisdiction and measures for prosecution or extradition have already found expression in the two conventions mentioned above, as well as, for example, in the IMO Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf.

Madam Chair,

I turn now to consider briefly some of the specific issues raised in the draft convention. With regard to the scope of the persons covered by the draft convention, Australia agrees with New Zealand that the scope should extend to cover personnel deployed by any UN organisation in the course of a UN operation, as well as to personnel of any other humanitarian organisation or agency when it is acting in the context of a UN operation pursuant to an agreement with the Secretary-General. It may however be necessary to define more clearly the circumstances under which the UN personnel shall be deemed to be carrying out activities in connection with a UN operation, particularly where deployment may be under authorisation other than a Security Council resolution. We favour a broad approach to this aspect of protection of UN personnel.

We believe that a legal instrument of the kind envisaged should be widely accepted and would be effective in leaving potential attackers in no doubt as to the fact that they would be internationally and individually accountable for their actions, even if they were perpetrated in areas where there was not host government or no effective host government.

Madame Chair,

In Australia's view such a convention would constitute a significant step forward in creating a more effective system for deterring attacks against UN personnel, thereby increasing the safety of such personnel as well as the effectiveness of UN operations. This would of course in no way preclude other measures aimed at achieving the creation of such a system, such as resolutions or declarations of other appropriate bodies of the UN, but would rather be part of an integrated strategy to better protect UN personnel. This in turn would constitute a significant means of strengthening both the rule of law and the UN system.

We should also never forget those individuals on UN operations whose safety is at the heart of this item. Writing in the foreword to the *Blue Helmets* in July 1990, the former Secretary-General, Pérez de Cuéllar, noted:

> These men and women have carried out their important tasks in a manner reflecting credit on themselves and their countries. We all owe them a large debt of gratitude.

Madame Chair,

We wholeheartedly agree with Pérez de Cuéllar. But we owe these men and women more than a debt of gratitude. We owe them the adoption of concrete steps to give them a measure of protection. This convention will help to do that, and we must not fail them.

United Nations—Sixth Committee—Committee on Review of the Judgments of the Administrative Tribunal

The following is extracted from the statement of the Representative of Australia, Mr Matthew Neuhaus, to the Sixth Committee of the General Assembly on 23 November 1993, concerning the review of the procedure provided for under Article 11 of the Statute of the Administrative Tribunal of the United Nations:

> Two years ago, Australia had the privilege of serving as a Vice President of the General Assembly. In that context, my delegation was introduced to the Committee on Review of the Judgements of the Administrative Tribunal. It is a Committee that many of us would not necessarily come across in our UN service. This Committee, a product of the "cold war", was designed to allow Member States to review whether cases should be allowed to be appealed from the Judgements of the Administrative Tribunal to the International Court of Justice (ICJ). Since the procedure was established in 1955 only three advisory opinions have actually been requested of the International Court of Justice, the last in 1987. In none of these cases did the International Court find the Administrative Tribunal had erred. This is hardly surprising. The grounds on which an appeal can be made are very limited indeed. They are namely that the Tribunal has exceeded its jurisdictional competence or has failed to exercised the jurisdiction vested in it, or has erred in a question of law relating to the provisions of the Charter, or has committed a fundamental error in procedure which occasioned a failure of justice.
>
> Despite this, year after year staff members come before the Committee at great expense and trouble to themselves to appeal judgements of the Administrative Tribunal. The Committee is unable to satisfy them. It is not an appeal body. It is a political body, with all the potential for politicisation of cases that this provides. At the same time it is almost impossible for it, in terms of its legal mandate, to be able to recommend an appeal to the ICJ. Nor would it be a wise use of the time of the heavily pressed ICJ, whose real purpose is to decide on disputes between nations. It might be commented that the United Nations Administrative Tribunal by and large has done an excellent job. But it is always difficult to achieve an ideal system of justice for staff grievances. It is the belief of my delegation that a better system is needed, and one that does not need to involve the already heavily pressed ICJ.
>
> Accordingly, my delegation commends this item to delegations and to the Staff Association to consider what possible alternatives might be devised.
>
> One that would seem to have some attraction would be an Ombudsman, a position that exists in other international bodies such as the World Bank. This position could perhaps look into staff grievances even before they become a subject for the Administrative Tribunal. Also an Ombudsman might well be able to follow-up decisions of the Administrative Tribunal. Other ways might exist for improving the system for addressing staff grievances. An internal appeal system might well be considered.
>
> It is beyond the competence of my delegation alone to devise the ideal plan. That must involve all of us. However, we can make a start, and it is time we did. The UN staff deserve a highly developed system of ensuring that they are treated with equity and justice. Already at this session in this Committee we have begun addressing the issue of the safety of UN personnel. We see this item as fitting into a broader approach dedicated to recognising the value that we place on UN

staff in the context of the reform of the United Nations itself. We look forward to debating this matter further, and we look forward to a reform of this procedure in the not too distant future so that UN staff have a real system of addressing their grievances rather than an illusory and highly politicised potential appeal to the International Court of Justice.

In conclusion it is worth recalling that beast of mythology, the Chimera, which as you came closer to it tended to disappear. Such is the current system we have with the Committee of Review of the Judgements of the Administrative Tribunal as regards providing an appeal mechanism for staff grievances. Let us replace the Chimera with something concrete.

Thank you Madam Chair.

United Nations—Sixth Committee—International terrorism

The following is extracted from the statement by Mr Howard Strauss of the Permanent Mission of Canada to the United Nations, speaking on behalf of Canada and Australia, to the Sixth Committee of the General Assembly on 14 October 1993, concerning measures to prevent international terrorism:

International terrorism is a problem that requires the ongoing and serious attention—and active cooperation—of Member States Indeed, we only have to recall recent events here in New York as evidence that the United Nations itself is no longer immune to the activities of international outlaws.

The international community has responded to instances and threats of terrorist acts with a comprehensive regime of legal instruments, signed and ratified by a gratifying number of Member States. By way of example, I refer to the Conventions relating to air traffic safety developed under the auspices of the International Civil Aviation Organization (ICAO) in 1963, 1970 and 1971, the Montreal Protocol of 1988, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection. Together, these instruments, although often created in response to specific incidents, are the foundation for an effective fight against terrorist violence related to air and maritime traffic.

Madam Chairman, there is no denying that the existing legal framework has not yet succeeded in eradicating the scourge of terrorism. But this should not necessarily be seen as an admission that existing conventions and protocols are flawed or insufficient.

Our two delegations are convinced that the instruments already agreed upon by Member States can be an effective response to the challenge. We do believe, however, that their effectiveness could be enhanced. Having laws on the books is not enough. In order for these laws to come to life, to deter and control the behaviour of those it seeks to regulate, laws must be implemented, applied and obeyed.

The legal means to quell many terrorist activities are in our hands already. For example, the provisions of the Montreal Convention on the Marking of Plastic Explosives, if ratified, implemented, respected and enforced by Member States, would go a long way to depriving those who would resort to violence of the means to do so.

Our two delegations urge Member States to allow the existing instruments to become effective tools in the fight against terrorism not only by becoming parties, but by ensuring respect for the obligations they contain through strong domestic legislation; through bilateral and regional cooperation on enforcement; and in due course, we hope through acceptance of the jurisdiction of a permanent International Criminal Court over terrorist offences as contained in agreed international conventions.

Madam Chairman, efforts to reach an effective international consensus in the fight against terrorism as a crime have often been greatly complicated by the connection that exists between the legal and political dimensions of the issue. As our two delegations have stated previously, a conference, or even a working group within this Committee, that endeavours to define terrorism is likely doomed to failure.

A debate on such divisive issues as "state sponsored terrorism" and the threshold between terrorist activities and the legitimate pursuit of the right to self-determination would be highly politicised, not legal, and could easily undermine that achievements we have made to date. Our two delegations believe that the answer to terrorism is not to define it; the answer is to defeat it.

Our two delegations, therefore, reiterate our support for a resolution on this item that would contain a balanced and detailed summary of international achievements and goals in the struggle to eliminate terrorism. We also support the unequivocal condemnation of all acts, methods and practices of terrorism, as without that resolve all our efforts will be futile. Most importantly, however, our two delegations call for all Member States to sign, ratify, respect and enforce the legal instruments that have been so carefully negotiated and that are already in place.

We hope that the upcoming resolution on this item will be adopted once again by consensus. If we cannot speak with one voice on this grave matter, we should not speak at all.

United Nations—UNESCO—Forum of Reflection

The following is extracted from a news release by the Minister for Foreign Affairs, Senator Gareth Evans, made on 29 January 1993:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, today welcomed the election of the President of the Australian Law Reform Commission, Justice Elizabeth Evatt, to chair the newly established Forum of Reflection, an initiative of the United Nations Educational, Scientific and Cultural Organisation (UNESCO)...

"The Forum of Reflection's objective is to produce radical ideas to generate fresh intellectual credibility and momentum in the United Nations system. Justice Evatt's election is a tribute to her national and international achievements in the field of law, and to the respect and esteem in which she is held in the international community"...

The Forum of Reflection, holding its first meeting this week at UNESCO's Paris headquarters, is a gathering of many of the world's leading intellectuals. They are drawn from the fields of literature, the sciences and the art.

Membership includes Gabriel Garcia Marquez, winner of the Nobel Prize for Literature; George Palade, winner of the Nobel Prize for Medicine; Michael

Serres, French philosopher of science; and the German economist, Reimut Jochimsen.

United Nations—Security Council Reform

On 5 October 1993 the Minister for Foreign Affairs, Senator Gareth Evans, gave the following reply to a question without notice concerning the United Nations Security Council (Senate, *Debates*, vol 160 (1993), p 1631):

> The case for reforming the United Nations Security Council is not based in any way on the ineffectiveness of the security council's current operation. In fact, it has been more effective, more cohesive and has acted with more cooperation than at any previous time in its history. The case is based on a fear that unless there is some change made within a relatively short period to the composition of the council, and in particular to its permanent membership, its credibility may well erode.
>
> The legitimacy of the security council really does depend on its perceived representativeness so far as the other nations in the United Nations are concerned. Back when the UN was founded, the creation of a security council with five permanent members was at a time when there were just over 50 members of the UN as a whole. We still have a UN Security Council not very much larger than it was back in 1946, and with still only five permanent members, but with now over 180 members of the United Nations. It is obviously the case that the balance of the security council does not reflect in its membership—in particular its permanent membership—the character of the world as a whole or the UN as a whole.
>
> There is an emerging consensus that there needs to be change. My own judgment of where that consensus is presently poised is that it is very much in the kind of direction that Australia has indicated support for; namely, an increase not of a large number—maybe from 15 up to 20 members—of the security council, with an additional five permanent members of the council added to the existing five but without there being any additional veto power conferred on those new five members.
>
> While I was away there was some speculation in the press suggesting that Australia was embarked upon some new adventure in this respect and that we are espousing a somewhat unique, innovative, and perhaps a little peculiar policy. It is a view that is shared by a great many other members of the UN that it would be inappropriate to extend the veto power any further. Historically, Australia, through Dr Evatt, opposed the allocation of the veto power to any member of the UN. I think that considering the way the organisation was so deadlocked for so long, the wisdom of that initial judgment is well made out.
>
> The evolution of the security council's collective security role has over the years been somewhat diminished because of the operation of the veto power. Misuse of it now or in the future could further hinder the effective decision making process. We would regard the extension of the veto power as inconsistent with the kind of diminishing use we have seen of it in the much more cooperative atmosphere that now exists for collective security decision making. We would not want to see the power extended in that way.
>
> Finally, a lot of the argument about reform of the UN has focused on the question of the security council. In my own judgment that is really almost a second order issue, as compared with some of the reform priorities which are

necessary elsewhere, including restructuring the secretariat, resolving the funding problems of the organisation, and in particular, on the security side, in improving the management of the peace operations and giving a much greater priority to preventive diplomacy and peace building, rather than after the event clean-up action of one kind or another. These are themes that I was at pains to spell out last week, and I think it is fair to say that they have had a very positive response.

United Nations—Funding

On 26 October 1993 Senator Loosley (NSW, ALP) asked the Minister for Foreign Affairs, Senator Evans, a question without notice concerning the United Nations Budget. The question and answer were as follows (Senate, *Debates*, vol 160 (1993), p 2472):

(Q) My question is directed to the Minister for Foreign Affairs and relates to the budget of the United Nations. What is the Australian Government's evaluation of the determination of the Congress of the United States to reduce US funding for the United Nations regular budget and for peacekeeping operations? What impact will this decision have on the ability of the United Nations to live up to increased expectations which the international community now has for that organisation's role in the maintenance of international peace and security? Finally, how will this decision influence necessary organisational reform in the UN—a goal which the government of the United States has publicly stated it shares?

(A) The Australian government believes that all UN member states, without exception, should pay their assessed contributions in full and on time as is our practice. It is a basic obligation for member states under the UN charter to make these payments.

The Australian government is concerned that the 1994 budget bills passed by the US Congress last week, 21 October, will mean that the US will, in fact, drop further behind in its payments of UN regular budget and peacekeeping contributions. This can only have a negative impact on the ability of the UN to fulfil the heightened expectations that now exist of its role in the maintenance of international peace and security. Nor do I believe that the conditions that have been set by the US are likely, in practice, to contribute much that is helpful to the UN reform process. I will come to that point if I have time at the finish.

The government is aware that the Clinton administration is working very hard to improve the US record in making financial contributions to the UN and we very much appreciate that the challenge that it is facing in this respect is coming more from Congress than from inside its own administration ranks. In fact, the Clinton administration on 6 October made a very substantial contribution of something over $500 million to clear the US pre-1993 regular budget arrears, and to also make a substantial payment towards its peacekeeping arrears. The trouble is, however, that new obligations continue to accrue, in particular, so far as peacekeeping operations are concerned, of which currently 17 such operations are in progress.

Last week the administration requested the US Congress to appropriate $291 million for its 1993 regular budget payment and $66 million as a contribution to catching up on its arrears to the UN and a range of specialised agencies which were accumulated during the 1980s. President Bush had undertaken to clear

those arrears by 1995. President Clinton himself repeated that commitment, including in his recent address to the UN General Assembly.

Last week Congress appropriated the $291 million for the 1993 regular budget, but directed that 10 per cent of this figure should be withheld, pending the appointment by the Secretary-General of an inspector-general as a watchdog against fraud and waste. It also decided to cancel entirely the $66 million in repayment of arrears. Moreover, so far as peacekeeping is concerned, the administration sought $619 million for peacekeeping operations in the year ahead, which was itself something of a low estimate, given that the anticipated requirement of the US will be in the order of $1.2 billion.

Congress has appropriated only $401.6 million of that and, in the process, directed the US administration to continue to work to reduce the US share of new peacekeeping operations to no more than 25 per cent of the total, whereas the United States' current assessment is 31.7 per cent. What all that means in hard percentage terms is that the US Congress has made provision for only about 30 per cent of the likely US UN peacekeeping bill this year. It has withheld 10 per cent of the US assessment to the regular budget and it has not made provision for any arrears payment in 1994.

As to the implications of all this for UN reform, which is part of the justification for the congressional attitude, let me say that while we certainly agree with a number of the specific objectives the US has in this respect—in particular, we are sympathetic to the proposal to appoint an inspector-general to combat fraud and waste—we do, nonetheless, take the strong view that reform can occur only in an atmosphere of mutual confidence based on member countries meeting their obligations. The UN really would become unworkable and consensus for reform unachievable if countries withdrew unilaterally their financial support. We certainly hope that the majority of members of Congress will recognise that the United States' capacity to influence UN reform simply is not aided by a failure to meet its financial obligations to the UN.

The following is extracted from the 13 September 1993 edition of the Department of Foreign Affairs and Trade's *Insight* Magazine:

UN facing an expectations gap, says Ambassador

The United Nations (UN) faced a big gap between the expectations that the world had of it in the post-Cold War period and its resources and ability to do the things that the world wanted it to do, Australia's Ambassador to the UN, Richard Butler, said during a recent interview in Australia.

Speaking on the ABC's *Daybreak* program, he said it was a very serious gap demanding reform of the UN and that Australia was working very hard on that reform because Australia firmly believed in the organisation.

Mr Butler said that reform was needed in the Secretary General's staff in New York which had became pretty accustomed to treading water waiting for the Cold War to end.

"They need to be shaped up. They need to be made tighter, tougher, better trained and they need to be redeployed into the new priority areas. Many more people, for example, are needed in peacekeeping than was ever the case in the past and there's also the question of the cash flow, the money," Mr Butler said.

He said the UN had become a seriously entrenched bureaucracy and he believed the Secretary General was determined to change it.

Australia was giving the Secretary General every support possible but did not understate the size of his task deepened by the problems of entrenched interests and long-established habits that didn't suit the modern world.

"He's got to crack that nut and reform the place. I think we'll do it, but I don't underestimate the difficulty of the task," Mr Butler said.

Asked about reports of corruption in the UN, Mr Butler said that, sadly, there had been some accurate reports on some money and some resources having gone west, as it were.

"But I would want to be extremely careful about blowing that out of proportion. The UN is not alone in suffering the problems of any institution where there can be a sudden injection of money that wasn't there before, big tasks that haven't been done before.

"But I would want to be very cautious about blowing it out of proportion. Let me use Cambodia as an example. Cambodia was budgeted for $1.8 billion to put the country back together in the way that only the UN could do."

"Based on Senator Gareth Evans' plan, it did the job magnificently and, you know, it came in under budget $1.6 billion."

"We're great believers in paying in full and paying on time, and Australia does that as far as these contributions are concerned. Sadly, there's one and a half billion dollars out there now that has not been paid up by other countries and that's a big problem."

"None of us, I think, are going to stop urging that be fixed. But this falls on the secretariat side too. The budgeting process at headquarters is, to some extent, horse and buggy, it's old fashioned. It's too slow. It's not transparent enough and we're working very hard in that part of the UN to shape up the budgeting process and make it clearer and make it more effective."

Mr Butler said the UN was in an ironic situation. Never before in its history had it been asked to do so much, but its resource base hadn't really changed very much.

"Now that's the recipe, quite simply, for creating a yawning gap. We've got to close that gap, obviously, by giving it more resources. But perhaps, more importantly, by shaping it up and making it more efficient in the use of the resources that it has."

"Maybe another way too, is to think more carefully about throwing every job that comes up in the world at the UN.

"I'm hopeful that with a lot of hard work, we will bring about those changes," Mr Butler said.[1]

---

1 See also the speech delivered by Senator Evans to the 48th General Assembly of the United Nations on 27 September 1993, extracted in Practice Section, Chapter XIV, pp 663–67 of this volume.

United Nations—Sanctions—Australian legislation

On 6 May 1993, Senator Faulkner, Minister for Veterans; Affairs and Minister for Defence Science and Personnel, introduced the Charter of the United Nations Amendment Bill 1993 with the following speech (Senate, *Debates*, vol 158 (1993), p 208):

> The purpose of this Bill is to amend the Charter of the United Nations Act 1945. The amendments will allow the Governor-General in Council to make regulations allowing for more comprehensive implementation of Australia's obligations under the United Nations Charter than existing legislation permits. They also provide for the imposition of fines for breach of the regulations and allow the Attorney-General to seek injunctions to restrain such a breach.
>
> During the Cold War era, the rivalry between the Soviet Union and the Western powers meant that the Security Council was seriously hampered in addressing international crises. The end of the Cold War has seen the Council begin to function in the way the founders of the United Nations envisaged it would. It has taken action in regard to a number of the world's most troublesome conflicts—in the Persian Gulf, in Cambodia, in Somalia and in the Balkan conflict, to name some of the most prominent. In some cases the Security Council has determined that the imposition of economic sanctions is necessary in order to bring to an end a breach of international peace and security.
>
> In recent times, such sanctions have been imposed against Iraq, Libya and Yugoslavia (Serbia and Montenegro). A failure by member states of the United Nations to implement those sanctions would inevitably erode respect for, and the authority of, those decisions. It is therefore important that Australia play its part in strengthening international peace and security by placing itself in a position fully to implement obligations that may arise from measures mandated by Security Council decisions. Further, Australia, as a member of the United Nations, is required as a matter of international law by Article 25 of the Charter to implement those decisions.
>
> Security Council resolutions imposing sanctions generally decide that "states shall prevent" specified transactions with the offending state. Australia's obligations under such resolutions have previously been implemented by way of the making of regulations under the Customs Act 1901, the Air Navigation Act 1920, the Banking Act 1959 and the Migration Act 1958 and by way of appropriate directions issued by the Treasurer to the Governor of the Reserve Bank. Up until now, the Australian Government has been able to use those methods to implement, directly or indirectly, sanctions mandated by the United Nations against Iraq and Libya and those mandated against the Federal Republic of Yugoslavia (Serbia and Montenegro) last year. However, recent events have shown that this ad hoc utilisation of legislation designed to be used for other purposes is no longer adequate.
>
> The Security Council adopted Resolution 820 on 17 April 1993. The Resolution provides for the imposition of strict new sanctions on the Federal Republic of Yugoslavia as from 26 April. The Government has been advised that Australia lacks a legislative basis by which it could ensure compliance with the obligations imposed by the Resolution in a number of important respects—for example, the freezing of funds held in Australia by the Government of the Federal Republic of Yugoslavia or companies based in the Federal Republic of Yugoslavia. Nor, under existing legislation, can the Government prevent

Australian individuals or firms from providing services—such as accounting services or the installation of computer software—to the Federal Republic of Yugoslavia. The High Court held as long ago as 1973 that the Commonwealth did not have the executive power to cut off the telephone and mail services of the "Rhodesian Information Bureau" in Sydney, pursuant to a Security Council resolution. A failure to comply with the Resolution would place Australia in breach of its international obligations.

In examining its options in relation to the implementation of those sanctions, the Government had regard to the ways in which other countries have done so. The United States, Canada, the United Kingdom and New Zealand have had facilitating legislation in place since the 1940s designed to allow a quick response to an obligation to implement Security Council sanctions. The Canadian and New Zealand legislation is particularly close in its wording to that proposed in the Bill.

The central provision in the Bill before honourable Senators is the insertion of a new section 6 in the Charter of the United Nations Act 1945. The section will enable the Governor-General in Council to make such regulations as are necessary or convenient for applying measures adopted by the Security Council pursuant to Chapter VII of the Charter. The Government will thereby be able to implement promptly by way of regulation economic sanctions introduced by the Security Council. As Honourable Senators would be aware, the Senate Standing Committee on Regulations and Ordinances agreed in its Ninety–third Report of December 1992 (Scrutiny of Regulations Imposing United Nations Sanctions) that it was appropriate that Australia's obligations under Security Council resolutions be implemented by way of regulation. The reason for their conclusion was the need for speed and flexibility in the implementation of the sanctions and the fact that the regulations merely filled out the details of Australia's existing international legal obligation to comply with the sanctions.

The legislation will be based on the external affairs power of the Commonwealth. It is not intended that the legislation replace existing regulations: rather, it will enable the Governor-General in Council to make regulations dealing with situations which fall outside the present regulatory framework.

The legislation will not have the effect of taking away from the Government or the Parliament the power to decide whether the imposition of sanctions against a particular foreign state is in Australia's national interests. It would only be after the making of regulations under the legislation, which would be subject to the normal provisions regarding disallowance in the Parliament, that sanctions would be implemented. It would be open to persons aggrieved by a decision to make particular regulations to claim that their making was neither necessary nor convenient for applying measures adopted by the Security Council.

Mr President, the other amendments to the Act are directed to ensuring that regulations made under the Act as amended will properly implement Australia's international legal obligations. The proposed Section 3 will ensure that regulations implementing Australia's obligations under the Charter can be enforced in Australia's external territories. The proposed section 4 makes it clear that the Crown in the right of the Commonwealth and of the States and Territories is bound by any regulations made pursuant to the Act.

Security Council resolutions may provide that member states of the United Nations shall prevent their nationals from engaging in specified conduct. Section 7 will allow the Government to implement such provisions effectively.

The wording of Section 8 reflects the fact that the sanctions introduced by regulation are those currently mandated by decisions of the Security Council. Once the Security Council decides that sanctions against a particular state are no longer necessary, it would obviously be inappropriate for the regulations implementing those sanctions to remain in force. Whilst prompt action will be taken to repeal or amend the regulations formally in line with the decision of the Security Council, this section will make it clear that they cease to have effect as soon as the sanctions are lifted by the Security Council. It also makes it clear that the Government may decide, consistent with the position regarding the introduction of sanctions, that the continued implementation of particular sanctions is no longer in the national interest.

Consistent with the position that we are obliged by international law to give effect to decisions of the Security Council, the proposed new sections 9 and 10 are intended to guarantee that regulations implementing sanctions are not read subject to existing legislation nor later found to have been accidentally repealed by subsequent legislative action. Unless such provision is made, Australia could inadvertently find itself in breach of its international legal obligations and be subject to international criticism.

As I stated earlier, Mr President, the Government has previously implemented, and will continue to implement, United Nations sanctions by way of Regulations under the Customs Act, the Air Navigation Act, the Banking Act and the Migration Act. Doing so confers substantial advantages in regard to the administration of the regulations and the imposition of more appropriate penalties than are available under this Bill. This Bill is intended to supplement, not replace, that existing pattern of legislation and regulation. Section 11 makes it clear that regulations made under the legislation referred to above will continue in force.

The Bill includes provisions for penalties for breach of regulations made under it and for the Attorney-General to seek injunctions to prohibit prospective breaches of the regulations. The Bill will come into force on Royal Assent. I commend the Bill to honourable members.

On 18 May 1993 the Minister for Foreign Affairs, Senator Gareth Evans, also spoke on the Charter of the United Nations Amendment Bill 1993. Following are extracts from that speech (Senate, *Debates*, vol 158 (1993), p 753):

We have managed to do without such legislation for a long time by means of relying on the Customs Act, the Air Navigation Act, the Banking Act, the Migration Act and similar regulation conferring enactments to implement the sanctions regimes of the past. But as the world becomes a more complicated place, as the UN plays the role that we—and Senator Chamarette conspicuously among us—have been arguing it should play, it has become apparent that the sanctions mechanisms, the machinery available to the UN, need to be flexible and potentially very wide ranging in order to fully explore all of the options that are available short of taking armed intervention action to deal with particular situations.

That has been the history of the situation in Yugoslavia, where, until very recently, the sanctions provisions that have been urged upon the international community by the Security Council have been able to be implemented effectively but as the situation has further deteriorated, as people have sought desperately to find measures short of open and unrestrained armed international intervention to deal with this situation, so too the sanctions provisions have become more complex and far-reaching and have now exceeded the bounds of Commonwealth legislative capacity to deal with them.

As the second reading speech makes clear, we do lack a legislative basis by which we can ensure compliance with at least some of the new provisions imposed by UN Security Council resolution 820 on 17 April, which came into effect on 26 April, which means that we have already been, for some days, in breach of our obligations by virtue of our inability to implement these measures including the freezing of funds held in Australia by the Government of the Federal Republic of Yugoslavia or companies based there, and also so far as our capacity to prevent individuals or firms from providing various services is concerned.

Senator Chamarette raised the question as to whether or not we had been down that track before, so far as South Africa is concerned. The short answer is no. The South African trade sanctions regime has been quite a limited one. As has been required of us by the Commonwealth and by the United Nations, it certainly has not extended thus far, and certainly we have never put any similar provision in place. Quite briefly, all I can say is that we need this kind of authority to be able to respond in this way. What we are seeking is not unique so far as the rest of the world is concerned. Again, the second reading speech makes clear that legislation like this has been in place in the United States, Canada, the UK and New Zealand since the 1940s. It is only now that we are getting round to giving ourselves the weaponry, legislatively, that we need. And we need it as a matter of urgency, which is why it comes before us tonight.

I fully understand the concerns of people like Senator Harradine about possible overuse, abuse or misuse of the external affairs power under the Constitution. I think Senator Harradine himself acknowledges that, notwithstanding his views on this legislation, what is proposed here is squarely, on any view, within the intent of the external affairs power. There is no hint of legislative artifice so far as this particular exercise is concerned. It is wholly to do with the implementation of what are, on any view, clear-cut international obligations. I am indebted to Senator Harradine for his acknowledgment in this respect. I do take the point that he makes, that it is only in the most exceptional circumstances that one would contemplate giving oneself the capacity to implement, by way of regulations, international obligations of this kind. It may be that exceptional circumstances could arise again in the future. I cannot anticipate that, but certainly I can assure him that it is not proposed in any way at all that this be a routine way in the future of implementing treaty or other international obligations; far from it. We acknowledge the gravity of the issues that are here involved.

Senator Hill, in the course of expressing the Opposition's general support for this legislation, indicated his desire that an opportunity be made available at some stage for a fuller debate on the whole question of the UN security role in the post cold war world: peacekeeping, peacemaking, peace enforcement, preventative diplomacy and all the rest. I very much sympathise with that

suggestion. We will do our best to make the time available. A lot depends on the capacity of this chamber to organise its business over the next session so that we have time to do something other than legislate and squabble about irrelevancies, but we will do our best to create that opportunity.

United Nations—Sanctions—Libya

The following is extracted from a press statement released by the Department of Foreign Affairs and Trade on 12 November 1993:

> The United Nations Security Council has adopted a new resolution which imposes additional sanctions on Libya following that country's failure to comply with earlier Security Council Resolutions.
>
> Under paragraph 3 of the new resolution, member states are required to prohibit banks holding funds of the Libyan Government (or its undertakings) from using those funds to make payments on Libya's account. Banks will also be prohibited from granting any further funds or credit to the Libyan Government.
>
> Under the new sanctions the Libyan Government will only be able to pay for goods and services, not proscribed under the sanctions, by direct payment from Libya to the supplier. There may, therefore, be potential difficulties in obtaining payment under contracts with the Libyan Government, especially where the funds out of which payment is to be made are held by banks in third countries...
>
> The earlier resolutions (UNSCRs 731 and 748) called on Libya to cooperate with investigations into the bombing of Pan Am Flight 103 and UTA Flight 772 and demanded that Libya cease all forms of assistance to terrorist groups. Libya has not complied with these resolutions. It has not transferred the Pan Am 103 (Lockerbie) suspects to Scotland or the United States. It has not complied satisfactorily with the demand that it cooperate with the French judiciary over the downing of UTA 772.
>
> UNSCR 748 of 30 March 1992 had imposed an air and arms embargo against Libya, as well as a reduction in the levels of diplomatic representation between Libya and UN member states. The new resolution imposes a freeze on Libyan funds and financial resources, an embargo on the supply to Libya of certain key oil-related equipment; a tightening of existing sanctions on Libyan aviation; and a reaffirmation of existing diplomatic sanctions against Libya.
>
> Decisions of the Security council are binding on all UN member states.
>
> Neither Australia nor Libya maintain diplomatic missions in each other's country. No other forms of sanctions (such a specific trade embargo) have been imposed on Libya.
>
> The new sanctions will come into force on 1 December 1993.

United Nations and Commonwealth of Nations—Sanctions—Lifting of sanctions against South Africa

The following is extracted from a news release by the Minister for Foreign Affairs, Senator Gareth Evans, made on 24 September 1993:

> The Minister for Foreign Affairs, Senator Gareth Evans, today announced in New York the immediate lifting by Australia of all trade, investment and financial sanctions against South Africa

Senator Evans said the Government's decision followed agreement in the South African Parliament yesterday, 23 September, to legislation providing for the establishment of a Transitional Executive Council (TEC). "This will enable representatives of the major parties to participate in transitional arrangements that will pave the way for full non-racial democratic government in South Africa", Senator Evans said.

Senator Evans said the Australian Government was satisfied that the passage of the legislation on the TEC fulfilled the conditions that had been agreed by Commonwealth Heads of Government in Harare in 1991 for lifting trade and investment sanctions against South Africa.

Senator Evans said that Mr Mandela's statement at today's meeting of the UN Special Committee Against Apartheid that the time had come for all remaining economic sanctions to be lifted cleared the way for the lifting of financial sanctions as well. The Harare decision had made lifting of financial sanctions conditional either upon agreement being reached on the text of a new constitution or upon a recommendation being made by the parties to the negotiations: and Mr Mandela's statement—following earlier statements by the other major parties—meant the latter condition was now satisfied.

Australia's decision was made after consultation, by telephone and in New York, with the Commonwealth Secretary-General and other members of the Commonwealth Committee of Foreign Ministers on Southern Africa.

"The Commonwealth's sanctions policy was designed to encourage real political change in South Africa", Senator Evans said. "Lifting of trade, investment and financial sanctions is linked to concrete achievements in the negotiation of a transition to democracy".

Senator Evans said the only remaining sanction applied by Australia was the arms embargo imposed by the UN Security Council: this would continue until a new democratically elected government was installed.

"Commonwealth sanctions have played a crucial role in ending apartheid", Senator Evans said. "They have contributed substantially to international pressure against the apartheid system and demonstrated that the international community would not tolerate a government based on institutional racism. This international consensus has helped to sustain the tireless and courageous efforts of all those South Africans who are working to bring about a democratic society."

The following is extracted from a statement by the Department of Foreign Affairs and Trade issued on 25 September 1993:

Commonwealth policy on sanctions

The Commonwealth Heads of Government meeting (CHOGM) in Harare in October 1991 laid down a precise time-table for the phased removal of Commonwealth sanctions against South Africa. In accordance with this time-table it was agreed that:

- Restrictions on people-to-people contacts (visa issue, tourism, airlinks, cultural and scientific boycotts) would be lifted immediately after the 1991 Harare CHOGM.
- Trade and investment sanctions would be lifted when "appropriate transitional mechanisms have been agreed which would enable all the parties to participate fully and effectively in negotiations".

- Financial sanctions would be lifted when "agreement is reached on the text of a new democratic constitution" unless a contrary recommendation is made by the parties to the negotiations.
- The arms embargo would be lifted when "a new post-apartheid South African Government is firmly establishes, with full democratic control and accountability".

Trade and investment sanctions to go

In relation to the lifting of trade and investment sanctions, the following items will be removed from Customs Regulations subject to established amendment procedures:

From Customs (Prohibited Import) Regulations Schedule 7A, Regulation 4Q:

- Item No 4 (coins, including Krugerrands, that are, or have at any time been, currency in the Republic of South Africa).
- Item No 12 (goods classified under a heading in Section I, II, III or IV of Schedule 3 of the Customs Tariff Act 1987).
- Item No 13 (goods (being coal or another fuel) classified under heading 2701, 2701, 2703.00.00 or 2704.00.00 of Schedule 3 of the Customs Tariff Act 1987).
- Item No 14 (goods (being iron and steel and articles thereof) classified under:
  (a) heading 7201 or any of the headings 7203 to 7229 (inclusive) of Schedule 3 to the Customs Tariff Act 1987; or
  (b) subheading 7301.10.00 or any of the headings 7302 to 7306 (inclusive) of Schedule 3 to the Customs Tariff Act 1987.

From Customs (Prohibited Exports) Regulations Schedule 14, Regulation 13C:

- Item No 3 (computer hardware, including central processing units). These items will continue to be subject to general controls.
- Item 5 (printed circuit board assemblies suitable for use in or with goods referred to in item 3).
- Item 8 (crude oil, petroleum and petroleum products).

The remaining items relate to paramilitary goods which fall under the UN arms embargo (UN Security Resolutions 418 of 1977 and 591 of 1986) and will be retained.

The ban on new investment/reinvestment of profits by Australians in South Africa will be lifted.

Restrictions on government contracts with South African majority owned companies or South African government agencies or for South African sourced goods will be removed.

The ban on the importation or sourcing of uranium from South Africa will be lifted but the importation of uranium from South Africa will remain subject to general controls on the importation of uranium. These controls are contained in Regulation 4R of the Customs (Prohibited Imports) Regulations.

The ban on new contracts for the sale and export of nuclear goods, materials and technology to South Africa will be lifted. The export of nuclear goods, materials and technology to South Africa will, however, remain subject to general controls on the export of non-defence related nuclear goods and

technology. Export of these goods and technology is governed by Regulation 11 of the Customs (Prohibited Exports) Regulations.

Financial sanctions to go

The following bans on trade finance to companies trading with South Africa will be lifted:

- Ban on new loans to South Africa, whether to the public or private sectors (including the lifting of the "90 day rule" which defines credit in excess of 90 days as a new loan).
- The requirement that in making provisions for loan losses, South African country risk be treated no more favourably than that of the most heavily indebted countries.
- The requirement that rescheduling arrangements on existing loans not exceed one year at a time.

Australia will discontinue any objection to the provision of International Monetary Fund or World Bank assistance to South Africa.

The arms embargo to remain

In accordance with Commonwealth policy Australia will continue to observe, until a new democratically elected South African government is in place, the United Nations arms embargo, enforced by UN Security Council Resolutions 418 of 1977 (on the export of arms), 558 of 1984 (on the import of arms) and 591 of 1986 (strengthening the arms embargo to include spare parts and military related equipment). The arms embargo will continue to be administered in Australia by the Department of Defence through Regulation 13B of the Customs Regulations.

UN Security Council Resolutions 418 of 1977 and 591 of 1986 require UN member governments to ban cooperation in the nuclear field with South Africa which will contribute to the manufacture and development by South Africa of nuclear weapons or nuclear explosive devices. Australia will continue to observe the Security Council requirement. Australia's obligations under these Resolutions will continue to be enforced by the Department of Defence through Regulation 13E of the Customs Regulations.

UN Security Council Resolution 591 of 1986 requires UN member governments to refrain from visits and exchanges by government personnel when such visits or exchanges maintain or increase South Africa's military or police capabilities. Australia will continue to observe the Security Council requirement.

International Organisations—Unidroit—Meeting of Governing Council

Mr C Hollis (ALP, Throsby) put to the Attorney-General, Mr Lavarch, questions upon notice, on 18 August 1993, concerning Unidroit Governing Council and the Attorney-General answered 16 November 1993. Questions and answers were as follows (House of Representatives, *Debates*, vol 190 (1993), p 2950):

(Q1) Where and when have there been sessions of Unidroit's Governing Council, committees and working groups since his predecessor's answer to question No. 881 (Hansard, 8 October 1991, page 1472).

(Q2) Which states were represented.

(Q3) Which Australians attended and in what capacity did they attend.

(Q4) What were the results.

(A) I am advised the answer to the honourable member's question is as follows:

(1)-(4) Since 8 October 1991, sessions of Unidroit's Governing Council, committees and working groups have met as follows.

The Governing Council:

The Governing Council met at Genoa for its 71st session from 22 to 24 June 1992. Unidroit's "Report on the Activity of the Institute 1992" does not indicate which members of the Governing Council attended the meeting. The current members of the Governing Council come from the following states: Australia, Austria, Canada, China, Finland, France, Germany, Greece, Hungary, India, Italy, Japan, Mexico, Netherlands, Nigeria, Portugal, Russian Federation, Senegal, Spain, Switzerland, Turkey, United Kingdom, United States of America, Venezuela and Yugoslavia. Members of the Governing Council of Unidroit are elected by reason of their personal expertise and standing and not as representatives of Member States. Mr Patrick Brazil, the elected member from Australia, attended the meeting.

Unidroit's "Report on the Activity of the Institute 1992" indicates that at its 71st session, the Governing Council proceeded to consideration of the state of implementation of the Work Programme for the triennial period 1990–1992 on the basis of which it adopted the Programme for the 1993–1995 triennium. After rejecting three items for retention in the new Work Programme, namely the hotelkeeper's contract, relations between principals and agents in the international sale of goods and the forwarding agency contract, the Governing Council decided that the Programme should consist of the following:

1. Principles of international commercial contracts
2. International protection of cultural property
3. International aspects of security interests in mobile equipment
4. International franchising
5. Inspection agency contracts
6. Civil liability connected with the carrying out of dangerous activities
7. Legal issues connected with software
8. Programme of legal assistance
9. Organisation of an information system or data bank on uniform law
10. Organisation of a congress or meeting on uniform law during the triennial period from 1993–1995

The Governing Council took note of information furnished by its members concerning the prospects for acceptance of Unidroit Conventions, approved the estimates for expenditure proposed by the Secretariat for the 1993 financial year and decided that its 72nd session should be held in Rome.

The Governing Council met at Rome for its 72nd session on 15 to 18 June 1993. Unidroit's "Draft Summary of Conclusions" does not indicate who attended the meeting. Mr Patrick Brazil of Australia attended the meeting.

Unidroit's "Draft Summary of Conclusions" indicates that at its 72nd session the Governing Council covered administrative and general matters and noted the schedule proposed for completion of the work on the Principles for international commercial contracts which would be submitted to the Council for final approval at its 73rd session in 1994. The Governing Council noted the progress made at the third session of the committee of governmental experts on the international protection of cultural property regarding preparation of the preliminary draft Unidroit Convention on stolen or illegally exported cultural objects. The Council authorised the Secretariat to decide, in the light of the outcome of the fourth session of the committee, whether the text was ripe for submission to a diplomatic Conference and, if so, to pursue consultations with a view to the possible convening of such a Conference by the Government of Mexico in autumn 1994.

The Governing Council also noted the progress accomplished by the study group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment and authorised the Secretariat to look into the feasibility and desirability of drawing up a model law in the more general field of security interests. The Governing Council decided to set up a study group on international franchising. In addition the Governing Council deliberations covered civil liability connected with the carrying out of dangerous activities, a brief Secretariat paper relating to legal issues connected with software and the Secretariat's paper regarding the implementation of the Institute's program of legal assistance and scholarships.

Permanent Committee:

The Permanent Committee consists of the President and five members nominated by the Governing Council from among its own members. The Australian member on the Governing Council is not a member of the Permanent Committee.

The Permanent Committee met at Genoa for its 93rd meeting on 22 June 1992. Unidroit's "Report on the Activity of the Institute 1992" does not indicate who attended the meeting, but does indicate that the Permanent Committee considered a number of staff issues and approved the provisional agenda for the 46th session of the General Assembly.

It is anticipated that any meetings of the Permanent Committee held in 1993 will be reported in Unidroit's "Report on the Activity of the Institute 1993" which is not yet available.

Finance Committee:

The Finance Committee met for its 45th session at Rome on 29 September 1992. Representation was from Australia, Austria, France, Germany, India, Japan, Mexico, Poland, Romania, Spain, Switzerland, United Kingdom, and the United States of America. Australia was represented by Mr Trevor Peacock of the Australian Embassy, Rome. The Finance Committee agreed that the currency for payment of contributions should be the Italian lira from 1994. The Committee decided against a proposed amendment of the Unidroit statute which would have effectively deprived chronic non-payers of membership.

The Finance Committee met for its 46th session at Rome on 12 October 1993. Australia was represented by Mr Trevor Peacock of the Australian

Embassy, Rome. A report of this meeting, indicating which states were represented and the outcome, is not yet available.

The working group for the preparation of Principles for international commercial contracts:

The working group for the preparation of Principles for international commercial contracts met for its sixteenth meeting at Miami on 6 to 10 January 1992. Mr Patrick Brazil of Australia attended the meeting in his personal capacity.

The working group met for its seventeenth meeting in Rome from 29 June to 3 July 1992. Mr Patrick Brazil of Australia attended the meeting in his personal capacity, and chaired the meeting.

The Summary of Records for each of the above two meetings and Unidroit's "Report on the Activity of the Institute 1992" do not contain information as to the attendance at the meetings but experts attended in their personal capacities, not as representatives of Member States.

Unidroit's "Report on the Activity of the Institute 1992" advises that in respect of the sixteenth meeting the main item on the agenda was consideration of the introductory chapter dealing with the scope of the Principles. The working group was able to agree on the substance of the various provisions to be included in the chapter.

The seventeenth meeting was devoted to a final reading of Chapter I: General Provisions, as well as to a discussion of comments and suggestions made by the Governing Council with respect to the relevant draft chapters examined by it at its 71st session. The meeting also saw the conclusion of the final reading of the draft Principles. The reporters are now in the process of preparing a revised version of the comments on the various chapters which will then be reviewed by co-reporters chosen from among other members of the Group. The finalisation of both the texts and the comments will be the task of a restricted editorial group assisted by the Secretariat. The final draft of both text and comments is expected by Unidroit to be ready for formal approval by the Governing Council at its 73rd session in 1994.

The committee of governmental experts on the international protection of cultural property:

The committee of governmental experts on the international protection of cultural property met for its second session at Rome from 20 to 29 January 1992. States represented at the session were Australia, Austria, Belgium, Canada, China, Colombia, Denmark, Egypt, Finland, France, Germany, Greece, Holy See, Hungary, Ireland, Islamic Republic of Iran, Israel, Italy, Luxembourg, Mexico, Netherlands, Nigeria, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, San Marino, Senegal, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America and Uruguay. The meeting was attended by observers from Benin, Burkina Faso, Cyprus, Gabon, Indonesia, Kingdom of Nepal, Madagascar, New Zealand, Philippines, Thailand and Zimbabwe. Ms Jan Linehan, then of the Attorney-General's Department, attended the meeting as Australia's representative. The session dealt with the restitution of stolen cultural objects and the return of illegally exported cultural objects.

The committee of governmental experts on the international protection of cultural property met for its third session at Rome on 22 to 27 February 1993.

States represented at the session were Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Denmark, Egypt, Finland, France, Germany, Greece, Holy See, Hungary, India, Ireland, Israel, Italy, Luxembourg, Mexico, Netherlands, Nigeria, Norway, Pakistan, Poland, Portugal, San Marino, Senegal, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom and United States of America. The meeting was attended by observers from Angola, Burkina Faso, Cyprus, Croatia, Indonesia, Latvia, Malaysia, Mali, Malta, Morocco, Mauritius, Nepal, New Zealand, Papua New Guinea, Slovenia and Thailand. Dr Rosalie Balkin of the Attorney-General's Department attended the meeting as Australia's representative. The main business of the session was the continued consideration of the draft Unidroit Convention on Stolen or Illegally Exported Cultural Objects with a view to finalising the draft at the Fourth session of the Committee.

The committee met for its fourth session at Rome on 28 September 1993 to 8 October 1993, and a report of this meeting is not yet available.

Security interests in mobile equipment:

The restricted exploratory working group to examine the feasibility of drawing up uniform rules on certain international aspects of security interests in mobile equipment met at Rome on 9 to 11 March 1992. Participants in the restricted exploratory working group do not attend as representatives of member states. There was no Australian participation.

Unidroit's "Report on the Activity of the Institute 1992" provides details of the outcome of the meeting, indicating that the working group considered a number of questions including the utility and feasibility of the project, the security interests which might be covered by a future Convention, the creation of a new international interest in mobile equipment under the Convention and alternatives thereto, and the establishment of an international public notice system.

International Organisations—World Bank and International Monetary Fund—Australian membership

The following is extracted from the Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade entitled "Australia, the World Bank and the International Monetary Fund", tabled in the Senate on 30 September 1993:

Origins of the Bank and Fund

1.1 The International Monetary Fund (IMF) was conceived in July 1944 when members of 44 nations met in Bretton Woods, New Hampshire, USA to finalise negotiations for establishing a mechanism to promote international monetary cooperation. It formally came into being on 27 December 1945 and began operations in May 1946. Australia was one of the founding members of the Fund, formally joining in August 1947.

1.2 The World Bank was also conceived at the Bretton Woods conference and given primary responsibility for financing economic development. The Bank began operations in December 1945 and today comprises the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). The Bank has two affiliates: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

1.3 The IBRD's basic objective is economic development achieved through the instrument of a bank which, on the basis of capital contributed by member countries, borrows on world markets and then lends funds to governments for development purposes. On the other hand, the IDA lends on much more concessional terms to the least; developed countries utilising funds which are not borrowed commercially but which are contributed through replenishments from members.

1.4 The original development objective of the Bank has been supplemented over the years by cross-cutting objectives which include concerns for the environment, women in development and human resources development, particularly poverty alleviation.

1.5 There are many similarities between the Bank and the Fund. For example, both institutions concern themselves with economic issues and concentrate their efforts on broadening and strengthening the economies of their member nations, particularly through policies of structural adjustment. The two institutions hold joint annual meetings, seminars and missions and staff often appear at the same international conferences. They are both are headquartered in Washington and until recently were located in the same building near the White House.

1.6 Despite these similarities, there is a fundamental difference between the Bank and the Fund: the Bank is primarily a development institution whereas the Fund is a cooperative institution that seeks to maintain an orderly system of payments and receipts between nations. It is important to recognise that the World Bank is first and foremost a bank. Its function should not be confused with that of agencies designed to provide aid to developing countries...

Membership of the Bank and Fund

1.10 Membership of the Fund is open to every state that controls its own foreign relations and is prepared to fulfil the obligations contained in the Articles of Agreement. Since 1946 membership has grown from an initial 39 countries to 177 at the end of April 1993.

1.11 Membership of the Bank is conditional upon members' willingness to submit themselves to supervision by the Fund. The IBRD is currently owned by The governments of 174 countries and membership in its affiliates is only open to those countries. At the end of April 1993, 150 countries had joined IDA and 154 the IFC.

1.12 Australia joined the International Bank for Reconstruction and Development in 1948, the International Finance Corporation in 1956, the International Development Association in 1960 but is not currently a member of the Multilateral Investment Guarantee Agency.

1.13 By the end of April 1993, 121 countries had signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Although Australia signed the Convention in 1975, it was not ratified until 1991 because of questions raised over taxation privileges and immunities to be granted to ICSID officials and employees.

Australia and the multilateral investment guarantee agency

1.14 A final decision has not yet been taken as to whether Australia should join MIGA by the government. Ministers and their advisers in Treasury, Department of Industry, Technology and Regional Development (DITARD) and the Export

Finance Insurance Corporation (EFIC) have yet to resolve the question of whether membership is warranted by the potential benefits relative to the cost...

Legislative basis for fund membership

...

1.23 In the case of Australia, the legislative basis for membership is the International Monetary Agreements Act 1947, which also provides for the Treasurer to be Governor of the Fund for Australia, the Treasury to be the "fiscal" agent, and the Reserve Bank to be the "depository" for Australia's financial balances with the Fund. Australia supported the proposed quota increase under the Ninth General Review through the International Monetary Fund (Quota increases and Agreement Amendments) Act 1991...

Legislative basis for World Bank group membership

1.56 The authority for membership of the World Bank group is covered under various Acts which provide for Australia's subscription to shares. For example, membership of the IBRD is covered under the International Monetary Agreement Act 1947, the IFC by the International Corporation Act 1955 and IDA by the International Development Association Act 1960. Authorisation for subsequent capital increases has been provided for in specific legislation as required, for example in the International Bank for Reconstruction and Development (General Capital Increase) Act 1989 and the International Financial Institutions (Share Increase) Act 1986.