Sovereignty, Independence, Self-determination

Sovereignty. Independence. Appeals from High Court of Australia to Privy Council in England. Residual constitutional links between Australia and Britain

On 16 September 1980 the Attorney-General, Senator Durack, in answer to the following questions

> (1) Has the Attorney-General's attention been drawn to reported remarks of His Honour Mr Justice Zelling, a senior member of the South Australian Supreme Court, in the unreported case of *Crook v Mason* (1980) Reform at page 78, that appeals to a foreign Court are demeaning to the status of Australia as a sovereign nation which no Australian Government should permit to continue and that he believed speedy steps should be taken to end a state of affairs which was contrary to the dignity of Australia so that ultimate appeals from Australian Courts would go to the High Court of Australia, whose proper status had been recently re-emphasised to all Australians by the opening of its new building at Canberra by Her Majesty the Queen, as Queen of Australia.
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> (2) Is there substance to these remarks; if so, what steps does the Attorney-General propose to take for the purpose of expediting the attainment of the objective stated by Mr Justice Zelling.

answered as follows (HR Deb 1980, Vol 119, 1357):

> (1) Yes.
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> (2) The Commonwealth Government supports the establishment of the High Court as the final Court of Appeal in all cases, and it has supported discussions in the Standing Committee of Attorneys-General with a view to producing that result. These discussions are proceeding.

On 17 April 1980 the Attorney-General in answer to a question wrote (HR Deb 1980, Vol 118, 1960):

> The review of residual constitutional links between Australia and Britain (other than the Crown) is being carried out by the Standing Committee of Attorneys-General for the next Premiers' Conference. While it would be inappropriate, and premature to make a detailed statement at this stage, I can say that progress is being made in the exercise. In this connection, I set out the relevant part of a press release by me on 14 February last on the meeting of the Standing Committee of Attorneys-General on 13–14 February.
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> > 'Senator Durack said the Standing Committee considered residual constitutional links between Australia and Britain other than the Crown.
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> > The Premiers Conference last year sought a report from the Standing Committee on such links and fetters surviving from the time when Australia and the Australian States were colonies and subordinate to British authorities.

The report adopted by the Committee examined particular residual links including —

The subordination of State Parliaments to British legislation still applying as part of the law of the States,

The role of British Ministers in formal advice to the Crown on State matters,

The role of British Ministers in appointment and removal of State Governors,

The power of the Crown to disallow Commonwealth and State Acts, and

Appeals to the Privy Council from State Supreme Courts on State matters.

The report also lists possible legal options as to ways and means for removing the residual links. Further work has been directed on the relative legal feasibility of the options. The Standing Committee's Report will be forwarded to the Premiers Conference where it will be considered later this year.'

The purpose of the review is to examine matters that need change to bring them into line with the autonomy and independence that Australia undoubtedly enjoys. The status of the Australian community, vis a vis Britain, was defined as follows in the 'Balfour Declaration' adopted at the 1926 Imperial Conference on the status of the fully self-governing communities of the British Commonwealth:

'They are autonomous Communities within the British Empire', equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nation'.

Self-determination. Principle interpreted

On 10 February 1978 the Australian representative on the United Nations Human Rights Commission, Mr Davis, is reported as having said (E/CN 4/SR 1435, 3–4):

. . . the right to self-determination was not easily capable of precise definition. Although it was a basic principle of human relations, enshrined in the Charter of the United Nations and in the Covenants on Human Rights, it must be considered within the context of the particular circumstances of the people demanding to exercise it . . .

The frequently expressed view that self-determination was a prerequisite for the enjoyment of all other human rights was too sweeping: some economic and social rights, albeit minimal, might be enjoyed by a people which had not yet achieved self-determination. It was a fact, however, that no people could enjoy full or even substantial civil, political, economic and social rights until they had achieved complete self-determination. For that reason, the right to self-determination should be universally supported.

On 12 October 1978, the Australian representative in the Third Committee

of the United Nations General Assembly, Mr Lavett, is reported as having said (A/C 3/33 /SR 15, 2):

> 1. . . . the history of his country as one composed of colonies had enabled it to gain an understanding of the powerful forces impelling people to strive for their independence and national identity. That understanding had been strengthened by insights gained from Australia's work as an administering Power under League of Nations Mandates and United Nations Trusteeship Agreements.
> 2. Those experiences had led Australia to view the whole question of self-determiniation as one which, in terms of the Charter, was more a basic principle than a precise and well-defined right as such. The nature of the principle was evident from the Charter, which saw the principles of equal rights and self-determination as factors upon which friendly relations among States were based and which contributed to international peace. The United Nations and its Members clearly had a responsibility to work for the fulfilment of the right to self-determination and his country was pledged to assist in that process.

At the 36th Session of the United Nations Commission on Human Rights held in Geneva in 1980 the Australian representative said (PP No 72/1980, 24):

> The question of the right to self-determination has long been recognised as central to international stability and co-operation. The right of peoples to self-determination, enshrined in the Charter of the United Nations, the International Covenants on Human Rights, and the Declaration on the Granting of Independence to Colonial Countries and Peoples, is one of the fundamental principles of contemporary international law. When we are talking about the right to self-determination at its most elementary level, we are talking about the right to national sovereignty and territorial integrity of all States. The concept has however been evolving over time and it has been drawn into the consideration of human rights questions in recognition of the fact that no people can securely enjoy full civil and political rights as well as economic and social rights until they achieved complete self-determination. Recent resolutions adopted by the General Assembly, such as Resolutions 32/130 and 34/46, elaborate this perspective, and in fact make it clear that the United Nations system should, in its approach to human rights questions, accord priority to the search for solutions to mass and flagrant violations such as those resulting from refusal to recognise the fundamental rights of peoples to self-determination and from intervention and interference in the internal affairs of States. The same perspective is also available from the Declaration on the Inadmissability of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, adopted by the General Assembly in 1965 in Resolution 2131 (XX).

Decolonization. Self-determination

On 21 December 1979 Australia's Permanent Representative to the United

Nations, Mr Anderson, addressed the General Assembly (A/34/PV 101, 51–2):

> Australia's position on the question of decolonization is a clear one which has been demonstrated by our active role in the Committee of 24 and the Council for Namibia, by our participation in debates on decolonization and by our voting record on resolutions addressed to this question. In short, Australia supports the right of peoples of Non-Self-Governing Territories to exercise freely their right to self-determination . . .
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> Decolonization can sometimes be a difficult and delicate process. Above all, it is a serious enterprise which requires a strong sense of co-operation and a real exchange of views. For this reason, we reject proposals which would offer a single solution to all cases of decolonization. It is our view that each case has to be taken on its merits. It follows that there can be no specific time-table which says when and how a particular Non-Self-Governing Territory should be decolonized. It must be for the people of a particular Territory to decide for themselves when and how the process of self-determination must occur. It is the role of the United Nations to assist them in exercising their own freely expressed wishes.

Right to development

On 2 March 1979 the Australian Representative on the United Nations Commission on Human Rights, Mr Davis, is reported as having said (E/CN 4/SR 1504, 8):

> His delegation had some reservations about the right to development, since it was not yet convinced that it existed as a legal right recognized by international law or that it created specific and corresponding obligations. His delegation also questioned whether the right to development could be regarded as a human right analogous to those recognized in the Universal Declaration of Human Rights, the Charter of the United Nations, the covenants on human rights and other relevant instruments. One of the problems was that it was difficult to define precisely the concept of "development".

Self-Determination. Irian Jaya (West Irian). Australian support for 1969 act of free choice

On 31 May 1979 the Minister for Foreign Affairs, Mr Peacock, in answer to a question, wrote (HR Deb 1979, Vol 114, 2805):

> The agreement between Indonesia and the Netherlands in 1962 to hold an act of free choice in Irian Jaya (West Irian) was put into effect in 1969 with United Nations participation. The General Assembly subsequently agreed to note the Secretary-General's report on it. Following the act of free choice in 1969, successive Australian Governments, and indeed the international community, have regarded Irian Jaya as an integral part of Indonesia.

Independence. Emergence to independence of Vanuatu. Australian support of territorial integrity and unity of Vanuatu

On 28 February 1978 the Minister for Foreign Affairs, Mr Peacock, said in the House of Respresentatives (HR Deb 1978, Vol 108, 203):

> We welcome the determination of the administering powers of the New Hebrides — that is, Britain and France — to advance the territory to independence by 1980. I hope that this will be achieved in full accordance with the wishes of all the people of the New Hebrides. However, the Australian Government has been disappointed to note that the peaceful transition of the New Hebrides to independence currently appears threatened by the failure of the parties concerned to reach full agreement. In particular, we have observed with some concern the manner of the establishment of a so-called provisional government. Whilst it is not for us to interfere in the internal affairs of another country or territory, we feel as a neighbouring member of the South Pacific region that it is our duty to urge all the parties concerned to endeavour to reach a harmonious solution to the difficult situation which now exists in the New Hebrides.

On 19 October 1978 the Minister wrote in answer to a question (HR Deb 1978, Vol 111, 2167):

> My Government's view is that the two Administering Powers have an obligation to make adequate financial arrangements to ensure smooth transition to independence and political, economic and social stability in the post independence period. We would expect the British and French Governments to ensure that existing services, including education are maintained.

On 24 July 1980 the Minister issued a statement (Comm Rec 1980, 1082) which

> welcomed the joint action by the administering authorities, Britain and France, initiated to restore the authority of the New Hebrides Government on Santo Island prior to the New Hebrides becoming independent on 30 July.
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> The Minister recalled that the Australian Government and the South Pacific Forum had in recent weeks placed emphasis on the unity of the New Hebrides and the constitutional authority of its Government and had called on the British and French to act, as the responsible powers, to end all defiance of the authority of the elected Government.
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> The Minister said that, according to reports he had received, the British and French troops had landed on Santo in a joint operation to reinstate the authority of the New Hebrides Government and to enable the French and British Governments in accordance with the joint policy, to grant independence to the New Hebrides on 30 July on the basis of territorial integrity.

On 12 August 1980 the Minister for Foreign Affairs, Mr Peacock, and the Minister for Defence, Mr Killen, issued a statement (Comm Rec 1980, 1207) which announced that

the Government had agreed to formal requests from the Governments of Vanuatu and Papua New Guinea that a number of Australian servicemen, on loan with the Papua New Guinea force, be included in the Papua New Guinea deployment to Vanuatu.
The Ministers said that the servicemen would be used in non-combatant roles, such as transport, maintenance of equipment and logistic roles. About twenty servicemen had been sought although the precise number may vary depending on the particular skills required from time to time. The Australians would be deployed to Vila, unless otherwise agreed.

The formal request from the Government of Vanuatu came in the form of a letter dated 12 August 1980 from the Prime Minister of Vanuatu to the Australian High Commissioner in Vanuatu, as follows:[1]

H.E. the Australian High Commissioner,
Port Vila,
VANUATU

His Excellency,
As you know, my Government has just entered into an agreement with the Government of Papua New Guinea for a contingent from the PNG Defence Force (PNGDF) to be stationed in Vanuatu in a peace-keeping role.
I understand that Australian servicemen are on loan to the PNGDF under an agreement between your two countries and that the PNGDF may wish to assign some of your loan personnel to logistical and support duties as part of PNGDF operations in Vanuatu.
I would therefore be grateful if you would convey my request that your Government agree to the engagement of Australian loan personnel on such duties. I can assure you that Australian servicemen will be most welcome in Vanuatu in that role.
May I assure your Excellency of my highest consideration.

W.H. Lini
Prime Minister

On 20 August 1980 the Minister for Foreign Affairs said in the House of Representatives (HR Deb 1980, Vol 119, 486–7):

Arrangements have been made to provide a legal status for the Australian loan personnel serving with the Papua New Guinea Defence Force in Vanuatu. These arrangements consist of two parts. The bilateral Status of Forces Agreement between Australia and Papua New Guinea has been extended to cover Australian loan personnel in Vanuatu. A separate arrangement has also been made between Australia and Vanuatu confirming that Australian loan personnel in that country form part of the Papua New Guinea Defence Force contingent and confirming Australian standing and interest in their deployment . . .

1. Text provided by the Joint Parliamentary Committee on Foreign Affairs and Defence, Sub-Committee on Defence Matters.

> . . . the Government of Vanuatu considers that it has evidence that a number of foreigners, including possibly three Australian citizens, have been active supporters of the Santo secessionist movement. It has asked those concerned to leave the country voluntarily or face deportation . . . Whilst the Australian Government is not in a position to make judgments about the evidence against the three citizens, it wishes to remind Australians abroad of their obligation to abide by the laws of the countries in which they are temporarily or, indeed, permanently resident.

On 31 August 1980 the Acting Minister for Foreign Affairs, Mr MacKellar, issued a statement which welcomed reports that the rebellion on Santo Island had ended and continued (Comm Rec 1980, 1317):

> The Minister recalled that Australia had consistently given strong support for the unity and territorial integrity of Vanuatu, both in the United Nations and in other forums. More recently, and in particular since the present troubles began, Australia had actively supported the democratically elected Government of Father Walter Lini in its actions against military groups on Espiritu Santo which had sought by physical means to overturn the electoral process.
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> Mr MacKellar also noted that Vanuatu was now the ninth independent state in Australia's South Pacific neighbourhood. He said that Australia had an interest in the general welfare and stability of the area, including the exercise of the right of self determination by the peoples of the region.

On 8 December 1980 the Acting Prime Minister of Australia, Mr Anthony, and the Prime Minister of Papua New Guinea, Sir Julius Chan, issued a statement which read in part (Comm Rec 1980, 1893):

> The Ministers warmly welcomed the independence of Vanuatu as an independent neighbour in the South Pacific and a partner in the Commonwealth and the South Pacific Forum. They looked forward to the further development of close relations between Vanuatu and their two countries.
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> The Minsters expressed their pleasure that the illegal armed rebellion on the island of Santo had been ended quickly and efficiently.

Independence. Non-interference in affairs of other countries

On 27 September 1978 the Minister for Foreign Affairs, Mr Peacock, in the course of a written answer to a question concerning alleged human rights violations in the Philippines occurring during the planning or construction of a nuclear power plant wrote (HR Deb 1978, Vol 111, 1975–6):

> The Government necessarily has to use its judgement . . . on the need to avoid actions which might lead to accusations of undue interference in the affairs of another country.

On 13 April 1978 the Minister said in answer to a question concerning the death sentence imposed on the former Pakistan Prime Minister, Mr Bhutto (HR Deb 1978, Vol 108, 1482):

> I did not wish to act in a way which would be seen as a direct interference in the legal process and in a manner which could prejudice the appeal.

> But, having considered all those factors, I instructed our Ambassador to make representation on behalf of the Australian Government to the Pakistan Ministry of Foreign Affairs seeking commutation of the death sentence. The Ambassador was instructed to state that in seeking such clemency the Government had taken into account the close and friendly relations which exist between Pakistan and Australia and which, indeed, enabled us in my view, to express concern at the death sentence without, we would hope, its being taken as interference in Pakistan's internal affairs. The representations made by the Ambassador stated that while the Australian Government appreciated that the judicial process had not yet been completed, we felt compelled to seek clemency.

On 19 February 1980 the Minister in answer to a question concerning allegations of violence, torture, killings and disappearances in Guatemala wrote (HR Deb 1980, Vol 117, 1399):

> The Government is concerned about the extent of the violence and repression in Guatemala. In December 1979, on my instructions, the Australian Ambassador in Mexico City, who is accredited to Guatemala, registered with the Guatemalan authorities the concern felt by many Australians at the continued violations of human rights in Guatemala.

On 6 June 1979 the Minister for Foreign Affairs provided the following written answer to a question concerning the expiry on 31 December 1979 of the 30-year period imposed in the Federal Republic of Germany by the Statute of Limitations on prosecutions for murder (which covered war crimes) (Sen Deb 1979, Vol 81, 2817):

> Although many governments, including the Australian Government, have a deep and abiding interest in the application of the Statute of Limitations to war criminals, this question is essentially one lying within the domestic jurisdiction of the Federal Republic of Germany.
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> Nevertheless, on 2 January 1979, the Embassy of the Federal Republic of Germany was officially informed that Australia hoped some means could be found to ensure that former war criminals would not be permitted to escape justice simply because of a lapse of time.

In the House of Representatives on 18 September 1980, in the course of a statement on the Government's response to the report of the Joint Parliamentary Committee on Foreign Affairs and Defence on *Human Rights in the Soviet Union,* the Minister for Foreign Affairs, Mr Peacock, referred to the suggestion that the inquiry constituted interference in the Soviet Union's internal affairs as follows (HR Deb 1980, Vol 119, 1484):

> In his preface to the report Senator Wheeldon, the Chairman of the Sub-Committee, addresses the question of why the Committee should study the situation of human rights in one country, namely the Soviet Union, when it appears that there are numerous countries throughout the world where human rights and civil liberties are denied. The Government considers the Chairman's justifications to be most convincing. In the first place, not only is the Soviet Union a superpower with world-wide interests and ambitions, but also it promotes its own

> social and political system as the road to be taken sooner or later by all mankind. It does this not just through propaganda, but by patronage of revolutionary movements seeking to impose communism and by the use of its military might wherever opportunities arise. Australia of course has for long been the object of such attention in the form of the Soviet Union's continuing support for the communist movement in this country. Australian communists, whose declared purpose is to see our parliamentary democracy replaced by revolutionary means, are received with honour in Moscow and decorated for their efforts. But notwithstanding these considerations, the Soviet Union of course rejects all outside criticism of its own system as illegitimate interference in its internal affairs. The Government, needless to say, finds such a proposition spurious, and thus unacceptable.

On 9 November 1979, the day following the presentation of the Parliamentary Committee's report to Parliament (PP No 278/1979), the Press Office of the Embassy of the USSR in Australia issued a statement, part of which read:[2]

> Apart from the fact that the charges of the so-called "violation of human rights" in the USSR are preposterous, they represent an attempt to lecture other governments on matters of internal policies thus violating one of the basic principles of international law and normal relations among sovereign states.

On 25 October 1979 the Minister for Foreign Affairs said in answer to a question concerning the gaoling of Czechoslovak dissidents in Prague (HR Deb 1979, Vol 116, 2476):

> The Australian Government has called on governments to abide by the important principles of human rights embodied in the United Nations instruments, including the International Covenant on Civil and Political Rights and the 1975 Helsinki Accords. I have noted earlier that Czechoslovakia is both a party to that Covenant and a signatory to the Helsinki Final Act. This latest action alone puts Czechoslovakia in clear breach of its obligations under those instruments.

2. Text provided by National Library of Australia.