Treaties

Treaties. Signature does not entail obligation to implement

On 18 September 1980 the Minister for Foreign Affairs, Mr Peacock, wrote in the course of an answer providing information on the status of the International Covenant on Civil and Political Rights (HR Deb 1980, Vol 119, 1604):

> It should be noted that signature of an international instrument, in contrast to ratification or accession, does not entail a legal obligation to implement the provisions of the instrument.

Treaties. Ratification. An executive not legislative act

In the Senate on 13 November 1979 in the course of debate on the Human Rights Commission Bill 1979, a Bill which contained the text of the International Covenant on Civil and Political Rights in a Schedule, Senator Missen moved that the following new clause be inserted:

> "5A. Approval is given to ratification by Australia of the Covenant."

The Senator explained that the precedent for his proposed amendment was section 7 of the *Racial Discrimination Act* 1975 which approved the International Convention on the Elimination of all forms of Racial Discrimination, a copy of which was set out in a Schedule to that Act. The amendment was supported by the Opposition, whose spokesman, Senator Evans, said (Sen Deb 1979, Vol 83, 2219):

> The importance of the amendment is, as Senator Missen said, essentially symbolic. It is acknowledged by the Opposition, as it was by Senator Missen, that a provision of this kind, albeit that it does appear in the Racial Discrimination Act, is not technically necessary. In Australia the Executive can, quite without any parliamentary approval, ratify international treaties, unlike the situation in the United States where any treaty ratification has to be with the advice and consent of the Senate.

The Government opposed the amendment and it was defeated. The Attorney-General, Senator Durack, said (Sen Deb 1979, Vol 83, 2221):

> The Government is opposed to this amendment. The position is that the ratification of treaties is an Executive act, not a legislative act. The terms in which ratification is made are a matter for the Executive.

Treaties. Role of the Australian Senate

On 21 March 1979 the Prime Minister, Mr Fraser, said in answer to a question (HR Deb 1979, Vol 113, 944):

> . . . we have introduced a number of changes in the negotiation of treaties and accession to treaties and international conventions in terms of co-operation with the States, in terms of consulting the States and in terms of having their observers present during negotiations and consultations, at the same time seeking where possible to have federal

> clauses built in which are designed to protect the position of the States. I believe that that is the correct course to take in a federation.

On 18 October 1979 the Premier of Queensland, Mr Bjelke-Petersen, said in answer to a question (Parl Deb 1979 (Qld), Vol 279, 1097):

> While I . . . accept that the negotiation of an international treaty is a responsibility of the national Government, I have never made any secret of my firm view that where the subject-matter under negotiation encompasses matters of direct concern to Queensland, I want the views of my Government listened to and taken into account.

On 5 August 1980 the Attorney-General, Senator Durack, said in the course of a press conference given on the occasion of the announcement by the Government of its intention to ratify the International Covenant on Civil and Political Rights:[60]

> The question of implementation of the Covenant throughout Australia is, as I have explained, a co-operative effort. The States have agreed to the ratification. They have been part and parcel of the negotiations throughout. Although they can't do so as a matter of international law, they are assuming and agreeing to the principles of the Covenant with the reservations that we are making. It is essentially up to those States and the Northern Territory, which is now treated as a State for these purposes, to exercise those responsibilities under the Covenant, insofar as it applies to their own laws and practices under them.

Treaties. Conditions precedent to ratification. Compliance by all jurisdictions with treaty obligations

On 25 September 1979 the Minister for Foreign Affairs, Mr Peacock, wrote in answer to a question (HR Deb 1979, Vol 115, 1531):

> It is the Government's view that ratification of as many international conventions as possible is a desirable objective. Successive Australian Governments have, however, taken the responsible view that no such convention should be ratified until an exhaustive examination has shown that law and practice in all jurisdictions is completely in accord with the provisions of the convention. To this end, a full range of consultations takes place at up to and including Ministerial level, to ensure that compliance is put beyond doubt before ratification is proposed. The federal system in Australia thus means that progress towards ratification will be slower than in most centrally-governed states.

On 23 November 1979 Mr Peacock wrote in answer to a question asking whether the Government was any closer to ratifying the Agreement on the Importation of Educational, Scientific and Cultural Material (Florence Agreement) adopted in 1950 (Sen Deb 1979, Vol 83, 2989–90):

> The Government continually reviews the general question of Australian accession to international conventions and agreements. The Government already closely adheres to the spirit and letter of the Florence

60. Press Release by the Attorney-General, No 57/80 dated 5 August 1980, 3.

> Agreement and will continue to address its attention to the problems preventing Australian ratification of the Agreement.

On 9 October 1979 the Minister for Industrial Relations, Mr Street, wrote in answer to a question concerning International Labour Organisation Conventions (HR Deb 1979, Vol 116, 1804):

> It is basic to Australia's approach to the ratification of any ILO Convention, the subject matter of which is within the joint legislative competence of the Commonwealth, State and Territorial Parliaments, that the agreement of all relevant jurisdictions be obtained; and that it has been demonstrated that law and practice in all jurisdictions comply fully.

On 11 June 1979 Mr Street addressed the 65th Session of the International Labour Conference of the International Labour Organisation and said in part (Comm Rec 1979, 776):

> But I must reiterate that the ratification of conventions can have little substance unless the requirements of those conventions are fully implemented. This is not to say that the methods by which implementation is achieved must be uniform for all ratifying countries. But the effect of the various methods of implementation should ensure that the obligations which follow ratification of conventions are fulfilled. While there is room for diversity in the way these obligations are arrived at, there should be no diversity in the extent to which they are met.

On 25 May 1979 Mr Street wrote in answer to a question concerning International Labour Organisation Convention No 107 — Indigenous and Tribal Populations, 1957 (HR Deb 1979, Vol 109, 2578):

> Four States have agreed to the ratification of Convention No 107. The States and dates of agreement are as follows: New South Wales, 16 March 1967; Victoria, 12 May 1970; South Australia, 17 February 1967; Western Australia, 17 June 1974.
>
> The Convention has no application in Tasmania.

Treaties. Negotiations. Role of ASEAN and OECD

On 22 November 1979 the Minister for Foreign Affairs, Mr Peacock, wrote in answer to a question (HR Deb 1979, Vol 116, 3530):

> The Association of South East Asian Nations is not a party, as an Association, to any international agreement. While ASEAN may negotiate terms for its members as a group the agreements concluded between the members and other countries are bilateral.

On 20 September 1979 he wrote in answer to a similar question (HR Deb 1979, Vol 115, 1446):

> The OECD as such is not a party to any multilateral international conventions. It has however negotiated a number of bilateral agreements with member countries (for example, in relation to privileges and immunities) and with other international organisations. In addition, several international agreements have been drafted under OECD

auspices and acceded to subsequently by individual member states in that capacity.

Treaties. Territorial application. ANZUS Treaty

On 18 March 1980 the Attorney-General, Senator Durack, said in relation to the Security Treaty between Australia, New Zealand and the United States of America of 1951 (the ANZUS Treaty) (Sen Deb 1980, Vol 84, 722):

> The geographical area of ANZUS is not specifically defined in the Treaty. The Treaty defines specific obligations with regard to contingencies in certain areas, namely, the metropolitan territories of the partners and the Pacific area. There has never been any suggestion that the Treaty applies differently to different parts of Australia's metropolitan territory. . . . If the Treaty applies to the whole of Australia — undoubtedly, it does — obviously there has to be some commitment to areas of Australia which border the Indian Ocean. . . . It applies to the part of Australia bordering the Pacific Ocean as well as that part bordering the Indian Ocean.

On 30 April 1980 the Minister for Foreign Affairs, Mr Peacock, said in answer to a question (HR Deb 1980, Vol 118, 2479):

> The Government rejects absolutely the proposition that an offer to the United States of military facilities in Western Australia, or for that matter in any other part of Australia, is in violation of the spirit or letter of the ANZUS Treaty. Such an offer is entirely consistent with Article II of the Treaty which enjoins the parties by self-help and mutual aid to 'develop their individual and collective capacity to resist armed attack'. Furthermore the implication in the question that the ANZUS Treaty applies to only some undefined part of Australia is totally rejected by the Government. Western Australia as much as the eastern states are part of the metropolitan territory of Australia all of which is covered by the terms of the Treaty. The Government therefore sees no need to seek a legal opinion on these aspects of the ANZUS Treaty. While the Treaty expresses the concerns, objectives and commitments of the parties in broad terms, determination of specific actions to be undertaken is a matter to be decided by governments from time to time.

On 19 August 1980 the Prime Minister, Mr Fraser, wrote (Sen Deb 1980, Vol 86, 84):

> I have never implied that any or all military activity in the Indian Ocean would necessarily occur under ANZUS or that the ANZUS Treaty would necessarily cover events anywhere in the Indian Ocean. Nor have I implied that no military activity in the Indian Ocean could attract the provisions of the ANZUS Treaty. Given that the ANZUS Treaty does not discriminate between the Australian States, and since Western Australia has a long Indian Ocean coastline, the ANZUS Treaty obviously has a relevance to the Indian Ocean.

On 15 September 1980 the Leader of the Government in the Senate, Senator Carrick, said (Sen Deb 1980, Vol 86, 958):

The ANZUS alliance is a co-operative alliance between the United States of America, Australia and New Zealand and is the fulcrum for the long term peace and safety of Australia.

Treaties. Enforcement. Nuclear safeguards agreements

On 9 May 1978 the Minister for Foreign Affairs, Mr Peacock, said in the course of his answer to a question concerning controls on the export and transfer of Australian nuclear material (HR Deb 1978, Vol 109, 2022):

> . . . we do not start from the assumption that countries will seek to breach their important treaty obligations to us or to the International Atomic Energy Agency, or under the Nuclear Non-Proliferation Treaty. . . .
> If a country breached its treaty obligations towards Australia we could draw on all the diplomatic, political and legal procedures available to governments in any case where the treaty is broken.

Treaties. Termination. Merchant Shipping Agreement 1931

On 14 July 1978 the Minister for Transport, Mr Nixon, and the Minister for Foreign Affairs, Mr Peacock, issued a joint statement announcing that Australia had decided to withdraw from the British Commonwealth Shipping Agreement of 1931. The statement continued (Comm Rec 1978, 880):

> The Ministers said that the Agreement had served its purpose and was no longer appropriate to modern conditions. It was entered into as part of the arrangement under which the United Kingdom gave the Dominions, including Australia, independence in shipping matters through the Statute of Westminster . . .
> Withdrawal from the Agreement will clear the way for Australia to adopt its own system for the registration of ships in place of the present U.K. system. The United Kingdom, Canada, New Zealand and other Commonwealth countries have also agreed to withdraw from the agreement, which will therefore be terminated.
> Australia's notice of intention to withdraw was delivered to the British Government on 30 June 1978 and the withdrawal will take effect in twelve months time.

Treaties. Arrangements other than treaties. Interpol Constitution. Gleneagles Agreement 1977

On 1 May 1979 the Minister for Administrative Services, Mr McLeay, wrote in answer to a question concerning the passing of information by the Commonwealth Police to Interpol (HR Deb 1979, Vol 114, 1714):

> . . . Commonwealth Police files are kept separate from those of the National Central Bureau. In its dealings with ICPO — Interpol, Commonwealth Police abides by Article 3 of the ICPO — Interpol Constitution which states that the organisation's field of activity is limited to crime prevention and law enforcement in connection with offences against general criminal law. Commonwealth Police only pass on information in accordance with those criteria. Further Article 3 of the constitution states that 'It is strictly forbidden for the Organisation to

undertake any intervention or activities of a political, military, religious or racial character'.

On 22 March 1979 the Prime Minister, Mr Fraser, said in answer to a question concerning sporting contacts with South Africa (HR Deb 1979, Vol 113, 1029):

> The Australian Government welcomes the attitude taken by the Australian Rugby Union. That attitude is consistent with the Government's policy, which was made clear to all major sporting organisations in Australia following the Gleneagles agreement at the 1977 Commonwealth Heads of Government meeting. I add only that apartheid is a policy that the Government has condemned, and that is not a new approach. It was condemned first by an Australian Prime Minister, Sir Robert Menzies, in 1960 or 1961.