

X Diplomatic and Consular Relations

Establishment of Diplomatic Relations. Central American countries. North Korea.

On 4 December 1983 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1983, 2091):

The Minister for Foreign Affairs, the Hon. Bill Hayden, announced today that agreement had been reached for the establishment of diplomatic relations with El Salvador, Nicaragua and Honduras on the basis of non-resident accreditation.

Mr Hayden said that Australia intended to address the problems of Central America more directly and that action had already been taken to respond to humanitarian problems through the acceptance of amnestied political prisoners from El Salvador under the Special Humanitarian Program of the Australian Immigration Program. The tensions and instability in the region concerned the Government and many Australians.

Mr Hayden said that the establishment of diplomatic relations would facilitate the maintenance of a closer Australian interest in the area. A more satisfactory framework would be provided for visits to El Salvador, Nicaragua and Honduras by Australian diplomatic representatives in order to provide assessments of the situation in the region and to implement Australian initiatives such as the Program to accept humanitarian resettlement cases.

Mr Hayden noted that a decision to establish diplomatic relations should be seen in the context of the policy towards Central America he announced on 20 July.

On 20 November 1983 Mr Hayden issued the following statement (Comm Rec 1983, 1985):

The Minister for Foreign Affairs, the Hon. Bill Hayden, said today that as a result of the recent Rangoon bombing incident, Australia had ruled out any early consideration of restoration of normal diplomatic relations with the Democratic People's Republic of Korea.

Mr Hayden said that earlier this year there had been indirect approaches from the D.P.R.K. about the possibility of resuming normal diplomatic relations but these had not been followed up by a considered submission, as required by the Australian Government. He said:

In the wake of the deplorable bombing outrage in Rangoon, which claimed the lives of twenty-one people including four Cabinet Ministers of the Republic of Korea, Australia is not now prepared to contemplate the restoration of normal relations. This will remain the case until we are satisfied that the D.P.R.K. is prepared to abide by internationally accepted norms of behaviour and renounce such hostile activities against the R.O.K.

He believed the interests of the region would have been served if the D.P.R.K. had entered into responsible and normal relations with other regional countries and had sought to lessen tension between it and the R.O.K. It was a matter of profound regret therefore that the D.P.R.K. had taken the opposite course.

Diplomatic relations. Accreditation of ambassadors. Effect of martial law.

On 20 April 1982 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, said in answer to a question (Sen Deb 1982, Vol 94, 1278):

The Minister for Foreign Affairs has pointed out that the Polish Ambassador in Australia is, in fact, the representative of the Polish head of state. In that regard his credentials would not have been affected by the imposition of martial law in Poland. The formality of the Ambassador's accreditation to Australia is to be seen separately from the Australian Government's attitude towards the current martial law government in Poland. The Australian Government has condemned martial law in unequivocal terms. It has made its views clear to the martial law authorities now in power in Warsaw.

Diplomatic relations. Restrictions on diplomats' travel in Australia.

The following item appeared in *The Canberra Times* on 8 February 1982, at p.1:

The Government had restricted the movement of Polish diplomats and their staff in Australia, the Department of Foreign Affairs said yesterday.

Travel by embassy workers in Canberra and consular workers in Sydney had been restricted to the two cities. Similar restrictions had been placed on Australian Embassy staff in Warsaw when martial law was introduced and the Australian restrictions would continue till the Polish restrictions were lifted.

Polish diplomats and their staff had been told of the restrictions last week. They now had to apply to the Department of Foreign Affairs if they wanted to travel outside the two cities.

"That is not to say permission would not be forthcoming — we would have to look at the circumstances", a spokesman said.

Diplomatic relations. Acceptable diplomatic behaviour.

On 28 March 1983 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1983, 371):

The Minister for Foreign Affairs, the Hon. Bill Hayden, said that the South African Ambassador, Dr Worrall, had been called in today to the Department of Foreign Affairs in connection with a speech he gave to a joint meeting of Apex Clubs in Kingsgrove, N.S.W., on 22 March 1983.

Mr Hayden said that foreign diplomatic representatives were entitled to present their government's views within Australia. Indeed, they were encouraged to do so. However, it was not appropriate that they should publicly criticize the policies of the Australian Government.

Mr Hayden said that Dr Worrall's statement had included comment which went beyond acceptable limits and that he had therefore instructed his Department to convey his objections to the Ambassador.

On 3 November 1983 the following item appeared in *The Australian* under the heading "Libyan envoy reprimanded":

Foreign Affairs officials have carpeted the Libyan Government representative in Canberra, Mr Suleiman Oreibi, after a written attack on the US President, Mr Reagan.

The official Libyan Government's representative office in Australia, the Libyan People's Bureau, issued copies of a letter from the Libyan leader, Colonel Gaddafi, describing Mr Reagan as "the new world Hitler", after the invasion of Grenada.

The Gaddafi letter, which was delivered to the Prime Minister, Mr Hawke, and was returned "unreceived", broke guidelines of conduct set by the Department of Foreign Affairs for representatives of overseas governments in Australia.

The department delivered what amounted to a sharp slap on the wrists to the Libyan representative in Australia after Mr Hawke refused to accept the Gaddafi letter, describing it as "unacceptable".

The letter said President Reagan presided over "a tyrannical super power" and his leadership was "a setback for humanity" and a return to "incredible savagery".

Diplomatic relations. Expulsion of diplomats. Australian and Soviet diplomats: Iranian diplomats

On 22 April 1983 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1983, 499-500):

The Minister for Foreign Affairs, the Hon. Bill Hayden, today summoned the Soviet Ambassador, Dr Nikolai Soudarikov, and informed him that a First Secretary at the Soviet Embassy in Canberra, Mr Valeriy Nikolayevich Ivanov, had infringed the conventions applying to the proper conduct of diplomats. Mr Hayden requested the Soviet Ambassador to arrange for Mr Ivanov to leave Australia within seven days.

Mr Hayden noted that the representatives of foreign countries serving in Australia were expected to observe long-established norms of diplomatic behaviour. Mr Ivanov had broken these standards by conduct wholly improper for a diplomat and was no longer welcome in Australia.

Mr Hayden said that an accumulation of incidents since Mr Ivanov's arrival in Australia in 1981, now confirmed by information which has come to hand since the change of government, had led the Government to conclude that he is a professional intelligence officer of the Committee for State Security (KGB).

Mr Hayden said that by his actions Mr Ivanov had threatened Australia's national security in a way which could not be tolerated by the Government. He expressed the wish that Mr Ivanov's expulsion would serve as an example to others who might be tempted to work against Australia's interests.

On the same day the Leader of the Opposition, Mr Peacock, issued the following statement (Comm Rec 1983, 521):

'The Government's decision to expel Mr V.N. Ivanov is absolutely correct and has the full support of the Opposition', the Leader of the Opposition, the Hon. A.S. Peacock, said today. He said: 'Following past practice, the matter was brought to my attention and I informed the Government of my support for its intended action.'

On 1 January 1983 the following item appeared in *The Age*, Melbourne, under the heading "Two Iranian envoys ordered to leave", p 1:

CANBERRA — The Federal Government has told the Iranian Embassy that two of its officers should leave Australia within three days. This follows the expulsion of two Australian Embassy officials from Teheran.

The Australians were told to leave Iran within 72 hours on Wednesday. No reason was given for the expulsion . . .

The Federal Government believes the actions may be related to concern it has expressed to Iranian officials about statements made by the Iranian Charge d'Affairs in Canberra, Mr Ahmad Jeddi.

Foreign Affairs Department officials are satisfied that the personal actions of the two Australian officials, Mr J.G. Dunn and Mr B.J. MacDonald, were not responsible for their expulsion. Mr Dunn was the chief administrative officer in Teheran and Mr MacDonald was his assistant.

The Minister for Foreign Affairs, Mr Street, said yesterday he was seriously concerned that the Iranian Government had ordered the termination of the two postings.

He said that in response to the Iranian Government's decision, Mr Jeddi had been advised yesterday that two officers from the embassy in Australia should leave. The two officers are Mr Javad Farrakhmehr and Mr Hakim Panah.

On 5 January 1983 the following item appeared in the *Sydney Morning Herald* under the heading "Iranian diplomat wins a reprieve":

CANBERRA — The Foreign Minister, Mr Street, agreed yesterday to postpone the expulsion of one of two Iranian diplomats because his wife is expecting a child.

At the same time the Iranian Charge d'Affairs, Mr Ahmad Jeddi, decided to hold a press conference in Canberra today to discuss the reasons for Iran's expulsion of two Australian officials — the move which prompted Australian retaliation.

So far Iran has not given Australia any official explanation. There have been reports on Radio Teheran that the Australian officials insulted Islamic women by requesting that an Iranian woman applying for a visa remove her veil when being photographed.

Mr Street made his decision after a medical certificate was provided about the condition of the wife of an Iranian administrative attache, Mr Javad Farrokhmehr, who was given until midnight last Monday to leave Australia.

He is now expected to remain with his wife in Australia until the baby is born.

The other Iranian ordered to leave, Mr Hakim Panah, left on Sunday.

Mr Street has insisted that Australia take strictly reciprocal action against Iran. But sources stressed yesterday that Australia was anxious to contain the diplomatic situation and ensure relations did not deteriorate further.

On 6 January 1983 the following item appeared in *The Canberra Times* under the heading "Diplomats expelled because of 'insult' ", p 1:

The Australian Government had insulted Iran by insisting that women be photographed for passports and visas without their traditional 'hejab'

headress, the Iranian Charge d'Affaires in Canberra, Mr Ahmed Jeddi, said yesterday.

He was speaking at a press conference in Canberra to explain his country's position on the expulsion from Teheran of two Australian diplomats and an answering action by the Australian Government.

Mr Jeddi said the Iranian Government would take "whatever action is necessary" to prevent further insults.

No violence against the Australian Embassy in Teheran was expected unless there was any evidence that Australia was "spying on behalf of America".

Speaking through an interpreter, Mr Jeddi refused to rule out the possibility of Iranian reprisals against Australia for expelling two Iranian Embassy officials.

He said the two Australian diplomats from the Australian Embassy in Teheran, Mr Barry MacDonald and Mr John Dunn, had been expelled because they had insulted the Iranian Constitution by insisting that women be photographed for visas and passports without their traditional headdress.

The Australian Government had shown "contempt for Islamic principles and tenets considered inviolable in Iran".

"Under diplomatic practices and convention and usage, no embassy has the power or authority to impose rules and regulations contravening the Constitution of the ruling State," he said.

He said the incident had blown up when two Iranian women attempted to get visas to visit Australia at the invitation of the Australian Moslem Students Federation.

A sign had been posted outside the Australian Embassy in Teheran stating that women had to be photographed without the hejab and the women had objected to this, he said.

He said this was the sole reason for the expulsion of the two Australians. The expulsions also brought diplomatic representation to the same level in the two countries.

The Iranian Government had officially protested against the demand that the women be photographed without their hejabs and the two Australian diplomats were given three days to leave Iran, although neither was in Iran at the time.

The Australian Government had, in effect, given the two Iranians only four hours to leave Australia because of the holiday season. One of them, Mr Hakim Panah, was not a diplomat but a personal assistant to Mr Jeddi, who was disabled.

A spokesman for the Department of Foreign Affairs denied that any such sign had been posted outside the Australian Embassy. The only sign said that for security reasons women could be asked to remove their full-length body veils.

Foreign Affairs sources said that the two women were not, at any stage, asked to furnish photographs without head scarves. One of them had produced a photograph wearing a scarf which had been acceptable to the embassy. They had been refused visas only because they wanted to visit Australia for propaganda purposes.

The sources also denied that Australia had received any official protest from the Iranian Government.

According to the spokesman, the policy on passports and visas was international. It had been discussed with Islamic countries and they had not, at any time, objected to it.

On 14 March 1983 the following item appeared in *The Canberra Times* under the heading "Sequel to Iran expulsion", p 1:

The Iranian Government has issued a visa to an Australian diplomat to replace one of two expelled from the Australian Embassy in Teheran late last year.

A spokesman for the Department of Foreign Affairs refused to divulge the name of the diplomat yesterday, but it is believed to be Mr Terry Berrell, formerly based in Canberra.

Mr Berrell is believed to be due to leave Australia for his new posting today.

A spokesman confirmed that the Australian Government had issued a visa to an Iranian diplomat to replace one of those expelled from the Iranian Embassy in Canberra in retaliation.

Both visas had been issued in the past two days, the issuing of each dependant upon the other.

The spokesman did not know when the Iranian diplomat was due to arrive in Australia.

The department had not yet received an application for the second replacement. Acceptance of the first application had been a Government rather than a departmental decision . . .

One of the Iranians is still in Australia having received an extension of his 72-hour expulsion deadline because his wife was in the advanced stages of pregnancy.

In Parliament on 8 December 1983 the Minister for Foreign Affairs, Mr Hayden, confirmed that Australian diplomats had been expelled from Iran for allegedly requiring women to remove head-dresses for visa photographs (HR Deb 1983, Vol 134, 3608).

Diplomatic relations. Embassies. Transformation of Libyan Embassy into Peoples' Bureau.

On 15 January 1981 the following item appeared in *The Age*, Melbourne, p 5
CANBERRA — For all the ritual shouting and symbolic marching, for all the throaty chanting of "power to the people" in Arabic, the overthrow of the Libyan Embassy in Canberra yesterday was a peaceful event.

Even the main target, the charge d'affaires Mr Mohammed Baruni, was happy.

The overthrow was inevitable. Libya's diplomatic officers in Australia yesterday became the last of the 104 Libyan missions around the world to become "people's bureaus" run by committees of the masses.

The Libyan masses are not particularly thick on the ground in Australia — there are only about 12 Libyan students in the country — so the new five-member committee has flown in from Tripoli to represent the will of the Libyan people in dealings with Australia.

The will of the people includes the abolition of "all titles of aristocracy and prestige" so the charge d'affaires — the top Libyan diplomat in this country — was the first to go.

The committee secretary, Mr Suleiman Oreibi, said the Australian Foreign Affairs Department had been informed of the committee's takeover two hours before the event. There had been no official response.

A sign that Australia felt the move was predictable was the absence of police to hold back what had been promoted as a "march of Libyan youth to overthrow the entrenched forces of reaction".

Speaking against a backdrop of a large color photograph of Libya's President Gaddafi flanked by two hastily pinned-up oblongs of green material representing the Libyan flag. Mr Oreibi said he expected Australia's relations with Libya to continue much the same as in the past few years.

The Libyan embassy, in the suburb of O'Malley, is one of the biggest and most expensive in Canberra. It is intended to highlight Libya's role as a driving force in unifying the Arab community in Australia since Mr Baruni became his country's first diplomatic representative here about two years ago.

On 26 February 1981 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, said in answer to a question (Sen Deb 1981, Vol 88, 158):

The Department of Foreign Affairs was informed in January that the Libyan Embassy in Canberra had been transformed into a People's Bureau. In the past two years many of Libya's overseas missions have been transformed into People's Bureaus. The Minister for Foreign Affairs instructed the Department to enter into discussions with the People's Bureau to determine whether it could satisfy the Government that it was operating with the authority of the Libyan Government and that it would respect the Vienna Convention on Diplomatic Relations. On receipt of appropriate assurances on these points the Government decided in early February that it was appropriate to enter into normal working relations with the People's Bureau.

On 23 August 1983 the Minister for Immigration and Ethnic Affairs, Mr West, wrote in answer to a question (HR Deb 1983, Vol 132, 81):

There are currently five diplomatic agents and one Administrative and Technical Officer engaged in Australia by the Libyan Government; all have diplomatic immunity.

On 14 September 1983 Mr West said in answer to a further question (HR Deb 1983, Vol 132, 751):

This Government allows, as did the previous Government, a bureau representing the Government of Libya to remain in Canberra, although we do not have a post in Tripoli. The Libyan People's Bureau had been here under the previous Government for a long time. I add that there is significant trade — \$100m Australia's way — with Libya. That is to our advantage.

Diplomatic relations. Embassies. Use of radio transmitters.

On 14 December 1982 the Minister for Foreign Affairs, Mr Street, wrote in answer to a question (HR Deb 1982, Vol 130, 3579):

I am advised that pursuant to the requirement that foreign diplomatic missions must make application to the Department of Communications for approval to operate a radio transmitter, three missions have applied for and have been granted permission to operate a radio. These are the embassies of Indonesia, Switzerland and the United States of America.

Diplomatic relations. Embassies. Temporary closure of Embassy in Beirut.

On 11 June 1982 the Minister for Foreign Affairs, Mr Street, issued the following statement (Comm Rec 1982, 701):

The Minister for Foreign Affairs, the Hon. A.A. Street, said today that the security situation in Beirut was so serious that there were unacceptable risks facing Australian staff. The Government had been compelled to act to close for the time being the Australian Embassy to Lebanon and to withdraw the Australian staff members and their dependents. The Australian Ambassador, Mr David Wilson, would remain in Damascus where he was also accredited.

The Minister said that, even before the current action by Israel in Lebanon, there had been an escalation of violence in Beirut including attacks on diplomatic missions which had represented a grave threat to the safety of the staff of the Australian Embassy. The question of their withdrawal had already been under consideration when Israel air attacks and their subsequent invasion of Southern Lebanon added a further dimension to the dangerous situation confronting residents of the Lebanese capital. Australia did not have the resources of some larger countries in affording appropriate protection to Embassy staff.

Mr Street went on to say that the Government was concerned in the circumstances to maintain its good and close relations with the Government of Lebanon. The functions of the Beirut mission in keeping in touch with the Lebanese authorities, in reporting developments in the local and regional situation and in providing consular services would be assumed by Australian missions in neighbouring countries. The provision of short term visitor visas for Australia — a major responsibility of the Embassy — would be handled in Damascus and other posts as necessary.

On 9 November 1982 Mr Street said in answer to a question (HR Deb 1982, Vol 130, 2842):

I am sure that honourable members will recall the circumstances which led to the closure of our Embassy in Beirut in June this year. Violence in the city, including attacks on diplomatic missions and then the military advance by Israel stopped the small Australian resident mission from doing its job effectively. Its functions were, therefore, transferred to Damascus where the Ambassadors to Syria and the Lebanon remained in residence where they could operate most effectively. Since then the Ambassador, the Charge d'Affaires of the Beirut embassy and several other staff members from the Damascus embassy have made regular visits to Beirut to assess the general political and security situation, to oversee Australian property and to maintain contact with our locally engaged staff in Beirut. I have been encouraged by the fact that the Lebanese Government has made considerable progress in restoring law and order. The Australian Charge d'Affaires was able to return to Beirut on 20 October. Having received his report, I am

happy to be able to inform the Parliament that the Australian Embassy in Beirut will be resuming operations this week.

Diplomatic relations. Status of Australian office in Taiwan.

On 2 November 1981 the following item appeared in *The Canberra Times*, p 9:

An office representing Australian interests in Taiwan would have no diplomatic or consular functions, a Department of Foreign Affairs spokesman said yesterday.

Neither would it be used in negotiations with Taipei over repatriation of the large number of ethnic Chinese who had fled Vietnam then stayed in Taiwan for a considerable time before travelling by boat last month to Australia, via Hong Kong, as suggested in *The Canberra Times* yesterday.

The spokesman said the Australian Chamber of Commerce had announced in November last year that it was considering establishing a Taiwan office and the Minister for Trade and Resources, Mr Anthony, had said the Government welcomed the "initiative".

Diplomatic relations. Diplomatic immunity. Claims of immunity before courts.

On 17 October 1980 Judge Robson in the District Court of New South Wales handed down a judgment in *R v Stolpe* on an application for diplomatic immunity (No 1408 of 1979, unreported decision):

HIS HONOUR: Before the trial commenced and in the absence of the jury, after the Crown presented its indictment and before the accused was arraigned, an application was made by counsel claiming that the Court had no jurisdiction because the accused had diplomatic immunity following an appointment by what was described as the Government of Palau as an honorary Ambassador-at-large. It was said that he was such an Ambassador to that Government.

The claim was made under the Diplomatic Privileges and Immunities Act, 1967, as amended. That Act annexes the Schedule of the Vienna Convention on Diplomatic Relations. It therefore becomes part of the law of the Commonwealth. The claim was based on the provisions of Article 31 which reads:

"A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State", and then it deals with other matters. It is unnecessary for me to set out the schedule in great detail. In its preamble it recalls that peoples of all nations from ancient times have recognized the status of diplomatic agents. It refers to the —

"...principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the promotion of friendly relations among nations".

Article 4 deals with the rights of the receiving State in relation to the sending State.

Article 13, which must be read in the context of the whole of the Convention, provides:

"The Head of Mission is considered as having taken up his functions

in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented. The Ministry for Foreign Affairs of the receiving State or such other Ministry as may be agreed in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.”

In Article 1 a diplomatic agent is described as the Head of the Mission or a member of the diplomatic staff of the Mission.

Section 14 of the Act provides:

“That the Minister may give a certificate in writing certifying any fact relevant to the question whether a person is or was at any time or in respect of any period, entitled to any privileges or immunities by virtue of this Act, of an Act repealed by this Act or of the regulations.”

No such certificate has been tendered and no application was made for an adjournment to permit it being obtained.

By consent further material was placed before the Court in the form of documents and the applicant himself gave evidence on oath. The material consists of a document described as a certificate of Appointment of Honorary Ambassador-at-large, Government of Palau, and it reads:

“Based on special trust and confidence in the integrity, ability and discretion of the Honorable Owen Stolpe of Sydney, Australia, and in accordance with Palau Legislature House of Chiefs resolution number 005, the said Honorable Owen Stolpe, Honorary Ambassador-at-large, is hereby authorised, empowered and invested with any and all duties, privileges, and honours to represent and ask for and on behalf of the Government of Palau in Europe and Australia in all fields of endeavour, including but not limited to industrial, marine and tourism development.”

This is dated 22nd August, 1980. It appears to have some sort of seal on it and purports to be signed by the Chairman, House of Chiefs, Seventh Palau Legislature.

There is also a certificate described as Appointment of Consultant on maritime matters which is dated 22nd August, 1980. There is a document purporting to be signed by Daniel J. High, Attorney-General, Trust Territory of the Pacific Islands:

“Be it known and certified that the Honourable Owen Stolpe of Sydney, Australia, and Hamburg, Federal Republic of Germany, has been granted and posted the status of an honorary citizen and Ambassador-at-large for the Palau Islands by virtue of resolution number 005 of the House of Chiefs of the Seventh Palau Legislature, adopted March 6th, 1980, in recognition of his present and future role and efforts in fields of financial and technical assistance and in economic development for the Palau Islands.”

Also by consent is a photostat copy of a document setting out the resolution of “House of Chiefs Resolution”. I do not propose to recite the whole of that except it is important that it recites the 1947 Trusteeship Agreement between the United States and the United Nations:

“The United States assumed full responsibilities to administer and to

enhance the political, economic and social development of the inhabitants of the former Japanese mandated islands in the Pacific until they achieve self governments or independence as they may choose on their own accord."

Then it recites:

"The former administrative districts of the Trust Territory of the Pacific Islands are now divided into three political entities, separate and apart from each other and upon termination of the trusteeship system now scheduled to take place in 1981. The islands and people of Palau will be fully self-governed and be in control of their internal affairs, with the United States providing security and defence responsibilities for Palau under a Contract of Free Association between the two countries."

The document is a lengthy one but reading it as a whole I am satisfied that it does not purport to create the accused as an Ambassador in the sense that that term is understood in international law and particularly having regard to the provisions of the Diplomatic Privileges and Immunities Act, 1967-1973.

The accused said he presented his credentials in May of this year and he has not attempted to do so since. There was passing reference to his being an honorary Ambassador to the Government of Guam but this point was not pursued any further. It is important to note that the accused was asked what he presented in Canberra in May and he indicated Ex.C which is the certificate over the signature of "Daniel J. High, Attorney-General." He was asked:

"Q. Do you know whether your credentials have been accepted? A. We have at the moment, we are at the stage where certain information still has to follow, amongst other things a consent of the United States Government, and then I believe the accreditation will take place."

There is correspondence between the Chief of Protocol in Canberra and the accused and that refers to a letter received by the Department of Foreign Affairs in Canberra from the accused dated 6th June and directed to an officer in Canberra. The letter said:

"We have examined carefully the constitutional situation of Palau within the Trust Territory of the Pacific Islands (TTPI) and the status of that latter territory in international law. We have concluded that the United States Government remains responsible for the foreign affairs of Palau and the other TTPI entities as long as the trusteeship continues in effect. Therefore, any application to the Australian Government for the establishment of any official diplomatic, consular or trade office on behalf of the Palau district of the TTPI must emanate from the United States Government or have express approval of that Government. Until such time as an application sponsored by the United States Government is received, no Australian Government consideration can be given to the establishment of a Palau Trade Office.

As to your own status we have been advised by the United States Government that it has not authorised Palau to appoint 'ambassadors-at-large' and that the designation of 'ambassador-at-large' given to you by the House of Chiefs of Palau does not give you any status as a

representative of the TTPI Administration, of Palau District Government or the Palau Legislature.

We should make clear to you also that the Australian Government does not recognize you as an official Palau representative, nor do you hold any recognized diplomatic or other protected or privileged status in Australia.''

I refer to s.14 of the Act which is the proper way of proving the rights of anyone claiming privileges under that Act. I said that the certificate was not tendered and the question did arise as to whether or not I should stand the matter over on my own motion to have such enquiries made. On the information before me it seemed to me it would be a complete waste of time. As a matter of strict law the accused had the onus of satisfying this Court of his right to diplomatic immunity. He has failed to do so and I dismiss the application. In particular I find that on the material before me there is no evidence that, first of all, there was any attempt to appoint him as a diplomatic agent within the meaning of the Act and, secondly, at the present time the House of Chiefs of Palau has no power in relation to foreign affairs of that type of trust territory within the contemplation of the Act. I repeat, the onus is on the accused and he has not discharged that onus . . .

Diplomatic relations. Diplomatic immunity. Waiver of immunity. Azurin case.

On 24 March 1981 a former Filipino diplomat, Mr Joselito Azurin, was found guilty by a jury in the Supreme Court of the Australian Capital Territory of the charge of embezzling \$81,023 from the Philippines Embassy in 1978. Azurin, who had been Chargéd' Affaires at the time, had his diplomatic immunity waived by the Philippine Government. Following the conviction, the Embassy of the Philippines issued the following statement (*The Age*, Melbourne, 25 March 1981, p 22):

The decision of the ACT Supreme Court finding Mr Azurin guilty of embezzlement is a vindication of the good name of the Philippine Government and its leaders and officials who were maliciously accused by Mr Azurin of political persecution after he absconded with embassy funds and sought political asylum in the United States in 1978.

The Philippine Government is grateful to the Australian Government for its determined efforts to extradite Mr Azurin from the United States so that he could face trial for the crime which he committed as charge d'affaires of the embassy of the Philippines in Canberra in 1978.

The Philippines Government also acknowledges with gratitude the voluntary testimony of some 20 Australian citizens from the business and banking communities without which no strong case could have been laid against Mr Azurin.

On 30 March 1981 Azurin was sentenced to four years imprisonment, with a non-parole period of 15 months: *The Age*, 31 March 1981, p 4. He was released on parole on 29 June 1982, and in April 1983 was allowed by the Minister for Immigration and Ethnic Affairs, Mr West, to remain in Australia permanently: *The Canberra Times*, 22 April 1983, p.7. (For details of the circumstances of the charge, see *The Canberra Times*, 12 March 1981, p.8).

Diplomatic relations. Diplomatic immunity. Waiver of immunity. Cowling case.

On 7 January 1983 a former employee of the Australian Embassy in Washington, John Ian Cowling was sentenced in the United States District Court for the District of Columbia to three years imprisonment for interstate transportation of money taken by fraud from the Australian Embassy in violation of the United States Code. Cowling had pleaded guilty to stealing \$US671,802 from the Embassy: *The Canberra Times*, 21 November 1982. Earlier he had been extradited from Rhodes in Greece where a court rejected his claim of diplomatic immunity: *The Age*, Melbourne, 2 April 1982, p 2.

Diplomatic relations. Diplomatic immunity. Indian diplomat.

On 12 May 1982 the following item appeared in *The Canberra Times* under the heading "Diplomatic immunity claimed":

MELBOURNE: An Indian left Australia under the protection of diplomatic immunity last week, three days before he was to have faced a drink-driving charge.

The man, Mr Partap Thakul, who worked for the Indian Government Tourist Bureau in Melbourne, was stopped by police in Russell Street, City, in October with an alleged blood-alcohol reading of .120.

Police said he was to have appeared at the Melbourne Magistrates' Court on Friday. but he went to the Russell Street police station on March 23 with a letter from the Indian High Commission in Canberra, saying he was a member of the commission's staff.

The first secretary of the High Commission, Mr S. P. Jaia, said last night that Mr Thakul was a Delhi-based employee of the Indian Government and was regarded as part of the High Commission's technical and administrative staff and as such was entitled to the protection of his Government.

Diplomatic relations. Diplomatic bag. Inviolability. Australian objections to reservations to the Vienna Convention on Diplomatic Relations.

On 22 February 1983 the Australian Mission to the United Nations in New York presented the following Note No 515/83 to the Secretary-General:¹

The Permanent Mission of Australia to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to the following reservations entered in respect of the Vienna Convention on Diplomatic Relations at Vienna on 18 April 1961.

- On 10 February 1981 the Kingdom of Saudi Arabia acceded to the Convention and made the following reservations: "If the authorities of the Kingdom of Saudi Arabia suspect that the diplomatic pouch or any parcel therein contains matters which may not be sent through the diplomatic pouch, such authorities may request the opening of the parcel in their presence and in the presence of a representative appointed by the diplomatic mission concerned. If such a request is rejected, the pouch or parcel shall be returned back".
- On 2 November 1971, the State of Bahrain acceded to the Convention and made the following reservation: "With respect to paragraph 3 of Article

1. Text provided by the Department of Foreign Affairs.

27, relating to the 'Diplomatic Bag', the Government of the State of Bahrain reserves its right to open the diplomatic bag if there are serious grounds for presuming that it contains articles the import or export of which is prohibited by Law''.

- On 23 July 1969, the State of Kuwait acceded to the Convention and made the following reservation: "If the State of Kuwait has reason to believe that the diplomatic pouch contains something which may not be sent by pouch under paragraph 4 of Article 27 of the Convention, it considers that it has the right to request that the pouch be opened in the presence of the representative of the diplomatic mission (concerned). If this request is refused by the authorities of the sending State, the diplomatic pouch shall be returned to its place of origin''.
- On 7 June 1977 the Libyan Arab Jamahiriya acceded to the Convention and made the following reservation: "In the event that the authorities of the Socialist People's Libyan Arab Jamahiriya entertain strong doubts that the contents of a diplomatic pouch include items which may not be sent by the diplomatic pouch in accordance with paragraph 4 of Article 27 of said Convention, the Socialist People's Libyan Arab Jamahiriya reserves its right to request the opening of such pouch in the presence of an official representative of the diplomatic mission concerned. If such request is denied by the authorities of the sending state, the diplomatic pouch shall be returned to its place of origin''.

The Permanent Mission wishes to inform the Secretary-General that Australia does not regard as valid the reservations made by the Kingdom of Saudi Arabia, the State of Bahrain, the State of Kuwait and the Socialist People's Libyan Arab Jamahiriya, in respect of treatment of the diplomatic bag under Article 27 of the Vienna Convention on Diplomatic Relations.

The Permanent mission of Australia would be grateful if the Secretary-General would bring this communication to the attention of other parties and the Convention.

Diplomatic relations. Diplomatic bag. Australian protest at opening of bag.

On 9 February 1981 the following item appeared in *The Age*, Melbourne, p 8: AMMAN, 8 Feb. — The Australian Government protested to the Government of Jordan late last week after Jordanian officials ordered Australian diplomatic baggage to be opened at Amman airport in front of Jordanian and Australian officials.

The Jordanians had held the baggage at Amman airport for four days late last month while Australian embassy officials kept a night and day guard.

The baggage was marked "Diplomatic mail" and addressed to the Australian Embassy in Damascus. But Jordanian officials held the baggage because they believed its size indicated it contained more than diplomatic mail.

Jordan and Australia normally enjoy extremely friendly relations. Both King Hussein and his brother, Crown Prince Hassan, have visited Australia.

Under international diplomatic procedure the Australian Government can expect normally that foreign Governments will not open diplomatic baggage.

While the baggage was held at Amman airport, it is understood

Australian officials told Jordanian security officers that the baggage did in fact hold telex equipment as well as diplomatic mail. This was proved correct when the baggage was opened. The Jordanians made no attempt to read the mail.

It is believed the Jordanian officials initially questioned the marking "diplomatic mail" under tight new security measures which in part stem from a deterioration of relations between Jordan and Syria.

The Australian baggage had been sent from Cairo to Amman en route to Damascus. At present Jordan does not have good relations with either Syria or Egypt.

Australia's protest note referred to the fact that the courier was travelling on a diplomatic passport, and stated: "He was carrying several diplomatic safehand bags clearly identified and sealed in accordance with international practice". The Note continued by stating that the diplomatic bags "contained material essential for maintaining normal diplomatic operations in Australian missions. The material carried, and the activities of the courier, were entirely in accordance with the letter and spirit of the Vienna Convention on Diplomatic Relations": text provided by the Department of Foreign Affairs.

Diplomatic relations. Protection of diplomats. International measures.

On 20 October 1981 Australia's representative on the Sixth Committee of the United Nations General Assembly, Dr De Stoop, made a statement on effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives, which is reported as follows (A/C.6/36/SR.25, 2-3):

3. MR DE STOOP (Australia) said that the international obligation of States to protect diplomatic and consular missions and representatives in their territory was a basic prerequisite for the orderly conduct of relations between States, and it was in the common interest that the international standards should be observed and reinforced by each State. Yet the protection, security and safety of diplomatic and consular missions and representatives had been increasingly challenged in recent years. In 1980 alone there had been 400 incidents involving diplomatic and consular personnel in 60 countries, and in 1981 the rate of incidents continued to be very high. Diplomats, consuls and other official representatives had become easy and popular targets for malcontents and terrorists. That was very serious not only because innocent lives were lost but also because such incidents could lead to disputes between States which endangered the maintenance of international peace and security.

4. Much could still be done to provide better protection for diplomatic and consular missions and representatives. In particular, States which had not already become parties to the relevant international conventions should be asked to do so. They should also be called upon to adopt effective preventive measures at the domestic level and to ensure the prompt pursuit, prosecution and severe punishment of offenders.

5. Even the most effective laws could not always prevent well-organized and determined terrorist attacks. He was sad to report that incidents involving missions and representatives of foreign countries had also occurred in Australia in recent years. The most tragic incident had occurred

on 17 October 1980, when the Turkish Consul-General in Sydney and a consulate official had been assassinated by two terrorists. The justice commandos of the Armenian genocide had claimed responsibility, and a full investigation had immediately been launched by the authorities. The police were pursuing their inquiries, and a coroner's inquest would be held when they were completed. The fact that the matter was *sub judice* prevented any detailed comment for the time being. The Government was treating the incident as a terrorist-related crime, and had worked in co-operation with the state authorities to provide the strongest protective measures to safeguard Turkish diplomatic and consular officers in Australia.

6. His Government was fully aware of its responsibilities under the Vienna Conventions on Diplomatic Relations and on Consular Relations, which had been given effect in domestic law and were scrupulously applied. Australia was also a party to the New York Convention, which was implemented in the Crimes (Internationally Protected Persons) Act, 1977, providing for uniform domestic legislation and more severe penalties for attacks against internationally protected persons.

7. In the belief that offences against diplomatic and consular missions and representatives should never be considered political offences, his Government was resolved to stand firm in the face of terrorist blackmail. It believed that the international community must take firm action to counter activities that threatened internationally protected persons, and hoped that consultations would lead to an agreement on the resolution adopted at the preceding session.

Diplomatic relations. Embassies. Bombing of American Embassy in Beirut.

On 19 April 1983 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1983, 498-499):

The Minister for Foreign Affairs, the Hon. Bill Hayden, said today he was appalled by the massive bomb explosion at the American Embassy in Beirut which had claimed so many lives. He extended his deepest sympathy to the victims of the explosion and their families.

Mr Hayden condemned acts of violence directed against diplomatic missions. He said that no circumstances could justify the Beirut explosion which was an outrage against all civilised norms of behaviour.

Diplomatic relations. Embassies. "Croatia House".

On 11 October 1983 the Minister for Immigration and Ethnic Affairs, Mr West, said in answer to a question about the removal of a sign outside a building in Melbourne (HR Deb 1983, Vol 133, 1540):

I am aware that Croatia House in Victoria displays the coat of arms of one Dr Ante Pavelic. The House will be aware that in World War II Pavelic was the leader of the State of Croatia set up under the connivance of the Axis powers. I suppose honourable members will be aware also that many people of Yugoslav descent who hold permanent residence and citizenship in Australia find this completely offensive, and I can understand that. I understand that the Ethnic Affairs Commission of Victoria has informed the Croatian Australian Association that this display causes offence to many Australians, but the Association's requests and information have not been to

any effect. I do not approve of the public flaunting of former Axis collaborators' coats of arms within Australia. I believe that does cause division and that it is very negative and backward looking. I think the majority of public opinion supports my view. However, I cannot and will not take authoritarian action in this regard because the Government believes in the free expression of political views within Australia, providing that that free expression creates no risk to political violence or terrorism within Australia. I think the best way for this matter to be resolved is for those people who are displaying the emblem of the former State of Croatia to realise that they do not have public approval for it, that public opinion is against them and that they should turn away from old conflicts and negative behaviour. I ask that the supporters of Dr Pavelic take those views into consideration.

Diplomatic relations. "Information Offices" distinguished. National liberation movements. Representatives in Australia.

On 30 September 1983 the Acting Minister for Foreign Affairs, Mr Bowen, issued a statement announcing certain Government decisions following a general review of relations with the Middle East. Part of that statement is as follows (Comm Rec 1983, 1600):

The Government will maintain its refusal to recognize the PLO while it maintains its denial of Israel's right to exist. The Government acknowledges that the PLO, which represents the opinion of a significant portion of the Palestinian people, should be included in the process of seeking a comprehensive settlement. It believes, however, that its opportunity to engage productively in such a process is limited and perhaps non-existent while it persists in denying Israel's right to exist. Australian Ambassadors in relevant posts will be authorised to include PLO representatives in their range of political contacts.

The Government will sympathetically consider, in the light of overseas practices, any application to establish an Arab League representation in Australia. It will insist, however, that no PLO members or representatives are appointed to or employed at any such place.

For details of the countries in which the PLO had offices in 1982, and the status accorded PLO representatives in such countries, see the written answer of the Minister for Foreign Affairs, Mr Street, in HR Deb, Vol 127, 1838-1839 (22 April 1982).

On 26 October 1983 the Minister for Foreign Affairs, Mr Hayden, issued a statement detailing the Government's policy on sporting contacts with South Africa (Comm Rec 1983, 1789-1790). Part of his statement was as follows:

ANC-SWAPO offices

Mr Hayden said that the Government had received a number of approaches seeking our reaction to the possible establishment in Australia of an information office for the African National Congress (ANC) and for the South-West Africa People's Organisation (SWAPO). These two organisations maintained offices in several European and Third World countries. Their primary function was to disseminate information on apartheid and conditions within South Africa. They carried out a role which to some

extent countered the barrage of propaganda put out by the South African Government.

Mr Hayden continued that the Australian Government did not condone the armed struggle. It did, however, understand why opponents of apartheid had turned to it. He said: "We hold the apartheid system itself responsible for the escalation of tension, confrontation and violence in South Africa."

The Australian Government would be prepared to see the establishment in Australia of information offices of the ANC and SWAPO. Such offices would not be granted a privileged status, nor would their staff be given special standing. However, the Government believed that information activities by such offices were legitimate and accorded with the operation of a free democratic society.

On 31 October 1983 the following letter from Mr Hayden was published in *The Canberra Times*:

Sir. — On October 27 your paper, and I recognise in good faith, reported as follows: "Mr Ali Kazak, representative of the Palestine Liberation Organisation in Australia since 1981, was received yesterday for the first time by an Australian Minister for Foreign Affairs".

Mr Kazak was not received by me as representative of the Palestine Liberation Organisation in Australia as stated. He was received by me as an Australian citizen who operated the Palestine Information Office. I am disappointed that Mr Kazak has misrepresented the basis of his meeting with me and I have taken steps to communicate this disappointment to him.

Furthermore I have pointed out to him that as this misrepresentation has taken place I would not be prepared to risk exposing myself to a similar misrepresentation in future and accordingly would not find it possible to meet him again.

BILL HAYDEN
MP

Parliament House,
Canberra.

On 2 November 1983 Senator Evans, the Minister representing the Minister for Foreign Affairs in the Senate, said in answer to a question (Sen Deb 1983, Vol 100, 2079-2080):

The Government will ensure that no Palestine Liberation Organisation representatives will work in any Arab League office which may be established and will do so by making clear that this condition applies to the establishment of any Arab League representation. It can, of course, make use of the visa issuing power. As Senator Grimes indicated in his answer, the establishment of an Arab League office would also be conditional on assurances that an office would not be involved in promoting boycotts of Australian firms. The Prime Minister has said that the activities of any such office would be carefully monitored.

On 9 November 1983 Senator Evans added (Sen Deb 1983, Vol 100, 2367):

The Minister for Foreign Affairs announced in the last week of October that the African National Congress and the South West Africa People's Organisation would be allowed to establish information offices in Australia. An Australian resident, said to be the Pan-Africanist Congress represen-

tative, already operates an information office in this country. The Government's position on this can be further spelt out as follows: The African liberation movements already maintain offices in a number of Western and Third World countries. Their primary function is to disseminate information on apartheid and, to a large extent, counter the propaganda put out by the South African Government. It is true that SWAPO, the ANC and the PAC have each at times perpetrated acts of violence which have been properly condemned by this and previous governments.

While not condoning the arms struggle, the Government nevertheless understands why opponents of apartheid have turned to it. The Government believes, and has said so over and over again, as, to give him his credit, did Mr Fraser, the previous Prime Minister, that apartheid itself is the root cause of the escalation in tension, in confrontation and violence in South Africa. Any liberation movement offices that are established in Australia will not be granted a privileged status; nor will their staff be given any special standing. They will have to abide fully by Australian laws. The Government would require and obtain an undertaking from any ANC and SWAPO representatives seeking to come to Australia that they would not advocate violent means of obtaining change. The Government would retain the right to withdraw permission to stay in Australia from any representative who failed to respect such an undertaking. No definite proposals for the establishment of ANC or SWAPO offices, however, have yet been presented to the Government.

On 18 November 1983 Australia's Permanent Representative to the United Nations in New York, Mr Woolcott, said during debate on the apartheid policies of the Government of South Africa (A/38/PV.62, p.13):

Another outcome of the Australian Government's policy review is that the Government is prepared to see the establishment in Australia of information offices of the African National Congress of South Africa (ANC) and the South West Africa People's Organisation (SWAPO). The Government believes that information activities by such offices are legitimate and accord with the operation of a free democratic society. Their primary function would be to disseminate information on *apartheid* and conditions within South Africa and through that activity to counter to some extent the barrage of propaganda put out by the South African Government.

I should also point out that there is already an office that operates on behalf of the Pan Africanist Congress of Azania (PAC) in Australia.

Consular relations. Attack on consular officers. Turkish Consul-General. Greek Consul-General.

On 2 February 1982 the following statement was issued (Comm Rec 1982, 86):

The Attorney-General, Senator the Hon. Peter Durack, and the New South Wales Minister for Police and Minister for Services, the Hon. Peter Anderson, jointly announced today that the reward offered for information leading to the arrest and conviction of the person or persons responsible for the murder of the Turkish Consul-General, Mr Sarik Ariyak, and his bodyguard, Mr Engen Sever, had been increased to \$250,000.

This is a substantial increase on the original joint reward of \$100,000 which was offered shortly after the assassinations took place in December 1980. The increased reward reflects the fact that despite intensive police investigation no person has been charged with the assassinations. The Minister expressed the hope that the substantial increase in the reward could operate as an inducement to persons to come forward with information which would assist the police with their investigations.

The assassination of the Turkish Consul-General and his bodyguard was the first occasion when diplomatic representatives in Australia have been killed by terrorists. The increased reward demonstrates the determination of both the Commonwealth and N.S.W. Governments to clamp-down on the activities of terrorist organisations.

On 14 November 1981 the Greek Consul-General in Sydney was murdered by two men, who were subsequently tried, convicted and sentenced to terms of life imprisonment: see *The Canberra Times*, 3 November 1982, and *The Sydney Morning Herald*, 4 and 27 November 1982.

The men were charged under the ordinary criminal law of New South Wales and not under the Crimes (Internationally Protected Persons) Act 1976 of the Commonwealth which gives effect within Australia to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

Consular relations. Consular assistance given to Australians abroad.

On 27 May 1982 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, said (Sen Deb 1982, Vol 94, 2551):

... the statement by the then Minister for Foreign Affairs to the House of Representatives on 26 May 1978 describes in some detail the services provided by the Government. It must be remembered that Australia provides consular services to its citizens overseas in accordance with established international practice and as provided for under the Vienna Convention on Consular Relations, to which Australia is a party. I believe we can say that the assistance available to Australians is at least equal to that provided by other countries to their citizens. A statement in 1978 by the then Minister for Foreign Affairs makes clear that it is an important consular duty to ensure that Australian citizens arrested overseas are treated with due process in accordance with the laws of the State where the offence may have occurred and that they receive the same benefits of the law which the foreign state affords its own subjects.

In the course of assisting Australians in gaol, Australian consular officials assist a broad range of welfare activities. They help with the delivery of mail, the transfer of funds, communication with the outside world, medical problems and other such matters. This work is carried out as part of the very broad-ranging responsibilities of the limited number of consular officers in each post. These include the giving of assistance to the many Australians travelling abroad who find themselves in difficulties for a whole range of reasons, as well as a number of formal functions such as performance of marriage, the registration of births and citizenship activities.

On 5 October 1983 the Attorney-General, Senator Evans, said in part (Sen Deb 1983, Vol 99, 1116):

On 31 May I responded to a question from Senator Missen concerning the Australian Government's responsibility to its citizens abroad and in particular to those Australians who come into conflict with the laws of another country.

A letter dated 20 April 1982 was sent to the then Foreign Minister by Mr G. Harris, the secretary to the Government members law and government committee, of which Senator Missen was a member. A response was provided by the previous Government in September 1982. I take the opportunity now to table these documents. As I explained in my reply on 31 May, Australian consular officers do their utmost to ensure that their fellow Australians are not discriminated against in their dealings with the laws and judicial processes of another country, but there are limitations to such assistance set both by international law and practice and by the need to be cautious about interfering in the legal processes of another sovereign state. Such interference could result in the opposite effect to that sought. The letter tabled by the Attorney-General reads in part as follows:¹

13 September 1982

Dear Mr Harris,

I refer to the Acting Minister's letter of 19 May, 1982, in response to your letter of 28 April regarding Australia's responsibilities to its citizens who have contravened the laws of another country.

Your letter of 28 April referred to the following passage in a letter from the Attorney-General to Mr Peacock of 30 December 1981:

"With regard to the conduct of the trial, the Australian Government has consistently taken the view that, when an Australian citizen becomes involved in normal judicial processes of another country, the Government will not attempt to interfere where the laws and procedures involved are applied without discrimination against Australians, notwithstanding that differences exist between the laws and procedures of that country and Australia."

The passage quoted above is not, and does not purport to be, a complete summary of the Commonwealth's practice on consular protection of an Australian citizen overseas who has offended against the laws of a foreign country. It refers to "the conduct of the trial". As you suggest, there are circumstances in which we have in the past, and would again in the future, make representations about the treatment of an Australian citizen by a foreign government. Such circumstances might arise, for example, where an offender is subjected to forms of torture or where contrived political charges have been laid against him.

The decision on whether or not to intervene is frequently a sensitive one. Any country will vehemently defend its sovereign right to administer its laws within its own borders as it sees fit and it is virtually certain that if an attempt is made to interfere in the judicial processes of that country by representations or pressure outside the judicial system it will bring a rebuke

1. Text provided by the Senate.

— particularly if it could be taken as implying that a different system of law must mean an inferior standard of justice to that applied in Australia. And it may also produce an unwanted result. If the position were reversed Australia would reject any attempt at interference by another country in the administration of justice here.

In some instances where Australian citizens have been charged with drug offences there is another important factor which must be taken into account. In respect of countries like Thailand, western countries have been concerned about the devastating effect of narcotics trafficking, and have for many years been anxious that strong measures be taken to stop the flow of drugs at their source. Thailand has responded to this concern consistently with its obligations under the Single Convention on Narcotic Drugs, to which Australia is also a party. Australia cannot now adopt a stance which appears critical of action taken by Thailand in discharge of its international responsibility.

It is thus a matter for careful judgment in each case whether and how far representations can be pressed. Each case must be, and is, carefully considered on its own merits, taking into account all the circumstances. In your letter you have suggested that, beyond the question of ensuring justice for an Australian citizen, the Government also has a duty to interfere so far as possible to ensure that acceptable legal representation is arranged and that communication is provided with Australian diplomatic representatives and/or the family of the accused and, if he is imprisoned, he has adequate health care. As you indicated elsewhere in your letter, Australian officials are already active in this area. If an Australian national is arrested overseas for an offence against the law of a foreign country the legitimate concern of the Australian mission is firstly to see that he has the same access to the legal system of that country, and is fully accorded the same rights under that system, as a national of that country. If he requires legal assistance the mission will help him obtain it; but the costs of that assistance must be handled by the accused person in the same way as they would be in any other litigation. Arrangements therefore have to be made about meeting the cost. At the same time the local authorities have certain responsibilities in respect of the arrested person and his communication with his local representative. These responsibilities are set down in the Vienna Convention on Consular Relations and it is a function of the Australian mission to monitor their observation and to take action if they are not observed. If the Australian citizen is committed for a term of imprisonment every effort is made by the Australian mission, within reasonable limits, to attend to his welfare. The Department of Foreign Affairs provides facilities for the transfer of funds for incidental expenses, consular officers visit all Australian prisoners regularly and their reports on these visits are normally made available to the families of prisoners. Australian consular officers in some missions abroad spend a large proportion of their time on such matters, often in circumstances in which it is difficult for them to obtain satisfactory results. Officers of my Department both in Canberra and overseas do their utmost not only to see that the rights to which an Australian citizen is entitled in a foreign country are protected but also to

ensure that if he is committed to prison his circumstances are made as bearable as reasonably possible. I would not, however, describe any of this action on the part of Australian consular officers as "interference": it accords with generally accepted international practice and is consistent with the provisions of the Vienna Convention on Consular Relations.

Yours sincerely
(Signed) A. A. Street.

Mr Graham Harris MP
Secretary
Government Members Law and Government Committee
Parliament House
Canberra ACT 2600

For responses to particular cases of persons detained overseas and the constraints on Australian Government action, see HR Deb 1981, Vol 124, 15 September 1981, 1360; HR Deb 1983, Vol 131, 24 May 1983, 904; Sen Deb 1982, Vol 93, 23 February 1982, 370.

For statements in response to the killing of Australians abroad, see HR Deb 1981, Vol 122, 1556-1557 9 April 1981, (murder of an aid worker in the Philippines), and HR Deb 1981, Vol 124, 1467, 17 September 1981 (murder of a journalist in Zambia).