XIII Disputes

Peaceful settlement of disputes. Role of the Charter and the United Nations.

On 21 October 1982 Australia's representative on the Sixth Committee of the United Nations General Assembly, Mr Berry, made a statement on the peaceful settlement of disputes and the role of the United Nations. Part of his statement is reported as follows (A/C.6/37/SR.24, pp 11-13):

> 39. Mr Berry (Australia) said that the United Nations Charter imposed specific and complementary obligations on Member States both to refrain from the threat or use of force and to settle any disputes by peaceful means. Since the adoption of the Charter, there had been established within the United Nations system a wealth of machinery and procedures to facilitate the settlement of disputes by the various means referred to in the Charter: negotiation, inquiry, mediation, conciliation, arbitration and judicial settlement. There could be little doubt that the provisions of the Charter, together with the machinery and procedures established, furnished any State willing to use them with effective means of peaceful settlement. Yet States had only rarely resorted to such means.
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> 40. Thus the international community was faced with a string of unresolved conflicts; in many cases, the pursuit of settlement by peaceful means had been abandoned quickly, and the intent to use or threaten force had been barely concealed. Such so-called ''failures'' of international law, and specifically of the United Nations, became a focus for criticism and popular disenchantment. The system itself, rather than Member States, was held responsible for such failures, the reasons for which lay in the nature of States, and the emphasis placed on relatively narrow perceptions of national interest. Although Article 2, paragraph 3, of the Charter placed on States an overriding specific obligation to seek actively and in good faith to settle their disputes by peaceful means, a State was in principle free to accept or reject any settlement procedure, whether it was proposed by its opponent or by a third party, including the United Nations. Although Chapter VII of the Charter provided the Security Council with certain enforcement powers, the chances of securing the compliance of States with United Nations recommendations often depended on the breaching State's assessment of whether or not the Council would use those powers. In the past, that had been unlikely because of the lack of a collective political will within the Council and the lack of organization of Council resources necessary under Chapter VII for any enforcement action.
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> 41. Under those conditions, Governments had characteristically behaved so as to preserve their maximum freedom of action in resolving disputes. Too often and too readily, States had resorted to armed force, particularly when they had considered that their vital interests were at stake. There was therefore a tendency for Governments to keep the handling of a dispute at a level at which they retained the ultimate power of decision. It was in that respect that objections were made to so-called ''compulsory jurisdiction'' in the settlement of disputes. The core of the problem became the political will

on the part of the States parties to a dispute, and often their major-Power sponsors, to have the dispute settled peacefully.

42. Another factor which had been important, particularly among the newer States, had been uncertainty about international law in that area and its applicability. There was clearly some hesitancy in accepting a régime of international law in the development of which those States felt they had not been involved. That argument was no longer valid. In recent years, international law had known an incredible rate of development and progress, much of it at the impulsion of new States. Most of the major international conventions and declarations had been drafted and adopted only after the most rigorous debate, in which the vast majority of States had participated.

43. His delegation was impressed by the progress made in formulating the draft Manila declaration on the peaceful settlement of international disputes (A/37/33, para. 19). It was also impressed by the useful and logical comments and suggestions made by the many delegations which had actively participated in that exercise. Australia could support the general thrust of the draft declaration. It particularly welcomed the reference to the many existing mechanisms for the settlement of disputes, and in particular the detailed reference to the International Court of Justice in section II, paragraph 5. Australia whole-heartedly supported the role of the Court in the settlement of disputes and had accepted its compulsory jurisdiction. It would encourage other States to consider doing so, and thus would endorse in particular section II, paragraph 5 (a) and 5 (b), of the draft declaration.

44. His delegation also particularly welcomed the suggestion in paragraph 5 that greater use should be made by the United Nations and specialized agencies of the Court's capacity to give advisory opinions within the terms of Chapter IV of its Statute. Between 1920 and 1945, the Permanent Court of International Justice had given 27 advisory opinions. Its successor had not been requested to give advisory opinions to anything like the same extent, despite the fact that there had been a great increase in the number of bodies entitled to request advisory opinions and although the United Nations bodies entitled to request such opinions did not have to do so on the basis of a unanimous decision. While Governments obviously preferred to keep law-creating and law-interpreting processes firmly within their control, it could be worth while to examine better procedures for the formulation and submission of requests for advisory opinions. His delegation hoped that the question would be considered in greater detail by the principal organs of the United Nations and specialized agencies.

45. His delegation also considered to be of particular interest the provision in section II, paragraph 4 (d), concerning the fact-finding capacity of the Security Council. That provision appeared to be consistent with the suggestions made by the Secretary-General in his report on the work of the Organization, to the effect that more systematic, less last-minute use of the Security Council would be one means of strengthing the system for the peaceful settlement of disputes prescribed in the Charter (A/37/1, p. 5). The Secretary-General proposed to make greater and more systematic use of the fact-finding capacity implicitly given to him by Article 99 of the Charter

(*ibid.*, p. 6); in doing so, he would be co-ordinating his activities with the Security Council and enhancing its effectiveness. The Australian Minister for Foreign Affairs had specifically endorsed that proposal by the Secretary-General in his statement at the 19th plenary meeting of the General Assembly.

46. It was in the context of the foregoing that his delegation found particularly interesting the discussion of proposals 65 and 66 relating to the maintenance of international peace and security (A/37/33, paras. 139-147). His delegation had also studied closely the draft recommendation presented by Egypt on behalf of non-aligned countries of the Special Committee (*ibid.*, para. 188), together with the revision of it presented by Egypt (para. 254). Australia believed that the proposals raised some sensitive issues, the implications of which would need to be made clear. That was particularly so in relation to the paragraph dealing with the unanimity rule.

47. Australia had serious reservations concerning proposals to abolish or amend the unanimity rule in voting on substantive matters. Such action could exacerbate tension and threaten international peace to the extent that the course of action adopted by the Security Council in the absence of the unanimity rule might place the major Powers on the Council in a position of conflict. On the other hand, it had become increasingly apparent that the organs of the United Nations, including the Security Council, must look at themselves dispassionately and systematically so as to identify the exact extent of the powers conferred upon them by the Charter and see how those might be better utilized. In that respect, it was important to remember that Article 27 of the Charter did not make every decision of the Council subject to the unanimity rule. His delegation was therefore interested to note the suggestion, contained in paragraph 221 of the Special Committee's report, concerning one interpretation of the Egyptian proposal, namely, that the Security Council should examine the categories of its decisions or that the United Nations as a whole should make some interpretation of Article 27, paragraph 2, of the Charter in relation to certain categories of decision. His delegation, for example, was studying with interest the suggestion that the establishment of fact-finding missions should be regarded as procedural and thus outside the scope of the unanimity rule. Furthermore, it might be that the veto would be used less if the Security Council was in possession of as many facts as possible. In that regard, the proposal made by France (A/37/33, para. 265) seemed an eminently responsible one. Although such proposals had not yet attracted universal agreement, they merited further consideration.

48. France had also made a suggestion concerning the convening of emergency special sessions of the General Assembly (A/37/33, para. 256). The existing procedure for convening such sessions was laid down in resolution 377 A (V), which had for a long time been criticized. It could be timely to update the procedure for convening such sessions and clear the air of any misunderstanding that might have arisen from the adoption of that resolution. In that context, the French suggestion merited the attention of all.

49. Australia agreed with the Secretary-General that Member States should

use their collective influence to ensure respect for Security Council decisions. It was in the interest of all Members of the United Nations to make the Organization effective. His delegation therefore stood ready to participate actively and constructively in any discussion of the work of the Special Committee or of any other body whose aim was to strengthen the United Nations system and render it more efficient.

Disputes. Maintenance of international peace and security. Australian constitutional provisions.

On 8 December 1983 the Minister for Foreign Affairs, Mr Hayden, said in answer to a question about constitutional provisions for peace and security appearing in the constitutions of the Federal Republic of Germany, Denmark and Japan (HR Deb 1983, Vol 134, 3605-3606):

> I am advised that there is no impediment in the Australian Constitution as presently drafted to Australia's meeting its present and future obligations in respect of maintenance of international peace and security.

United Nations. Peacekeeping forces. Other Peacekeeping forces. Middle East.

On 7 May 1981 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, said in the course of an answer to a question (Sen Deb 1981, Vol 89, 1730):

> The United Nations has had long experience and involvement in peacekeeping operations in the Middle East. At present the following United Nations forces are engaged in peacekeeping operations in the Middle East: The United Nations Disengagement Observer Force, the United Nations Truce Supervisory Organization and the United Nations Interim Force in Lebanon.
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> Australian Army officers have served for many years as military observers with UNTSO and in this capacity are associated also with the operations of the Disengagement Observer Force and the Interim Force in Lebanon. In addition, an Australian helicopter unit known as Austair was an important component of the United Nations Emergency Force whose mandate to patrol the Sinai concluded in 1979.

On 22 October 1981 the Prime Minister, Mr Fraser, made an announcement about Australian participation in a Sinai Peacekeeping Force (HR Deb 1981, Vol 125, 2418-2423). Part of his statement was as follows:

> I wish to announce today to honourable members the Australian Government's decision on the question of Australia's participation in the proposed Sinai peacekeeping force. In doing so, I want to set that proposal against the background of the history of the Middle East over the last 30 years, for it is only against that background that the importance of the proposal can be judged and the decision relating to it understood.
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> The Australian Government believes that while it would have been preferable for the Sinai peacekeeping force to be established under a United Nations mandate — if that is ruled out by the position taken by the Soviet Union — then in terms of what is at stake, in terms of peace in this highly sensitive region, it is infinitely preferable that there should be an international peacekeeping force created outside United Nations auspices

than that the whole peace process should be frustrated by the absence of any force at all..

Granted that the need for a peacekeeping force to support the continuation of the Israeli-Egyptian peace treaty is accepted, the question remains as to whether Australia itself should participate in such a force.

While there are weighty considerations on both sides a number of factors have led the Government to the view that Australia must be prepared to contribute to the multinational peacekeeping force. The starting point is that Australia has a clear and strong national interest in the progress of peace in the Middle East. It is first and foremost a matter of deciding what it is in our own national interest to do, and then acting accordingly.

Without question, the continued progress towards peace in the Middle East is of enormous significance to Australia. An outbreak of conflict would have repercussions not only for the region but also for the peace of the world which would affect us profoundly and in manifold ways. It would affect our allies and friends in ways which could not but impinge greatly on our international relationships and with risks for the strategic balance of great moment to our national security. Australia's interest is in seeing what is probably the single most serious threat to world peace removed. Further warfare in the Middle East could trigger off a much wider war. Australia has a legitimate interest in preventing this. This point is so evidently true that I believe it does not require elaborating here. There is also the economic fact that Egypt is Australia's largest single trading partner in the Middle East.

A central part of the Camp David process is the establishment of a peacekeeping force in the Sinai. The Government is aware that many Arab governments have stated public opposition to the Camp David Accords. The Government believes, however, that there is support for the concept of returning Arab land to Arab sovereignty: in this case returning Sinai to its rightful owner, the Government of Egypt.

Egypt, Israel and the United States — the nations which signed the agreement in August this year providing for the establishment of a multinational peacekeeping force — have made it clear that they would welcome Australian participation in the force.

This Government has never taken the view that Australia should refrain from doing what it can to create a better and more peaceful world. Within realistic limits we have consistently argued that Australia has responsibilities, and must recognize those responsibilities in its actions.

Australia has had recent involvement in peacekeeping in the Middle East; Australian forces were part of the United Nations peacekeeping forces in the Sinai from 1976 to 1979 and were withdrawn only when the Soviet Union indicated that it would veto an extension of the force's United Nations mandate.

On 12 October I wrote to President Reagan informing him that the Australian Government would agree to participate in the peacekeeping force if certain conditions were met. I informed President Reagan that the Government has decided that Australia will agree to participate in the Sinai peacekeeping force subject to Britain and Canada also agreeing to participate.

> Apart from the membership of the peacekeeping force there are other matters which the Government believes are important to provide full protection for Australia's independence and sovereignty, and which were set out in my letter to President Reagan. As is usual practice, we would need to instruct the commander of any Australian contingent that if he received orders from the commander of the force which he believed were contrary to, or went beyond, the agreed purposes of the force, he should not comply with them until he had consulted with Australian authorities. No part of the peacekeeping force — including the United States component — should have any association with the United States Rapid Deployment Force. A solution to the Palestinian issue is clearly central to the future stability and peace of the Middle East. In participating in the Sinai peacekeeping force we would be concerned that our contribution would have the maximum positive influence in continuing and broadening the peace process in the Middle East. Australia has consistently supported the continuing peace process but we have been disappointed by the lack of progress and prospects for further movement in the autonomy negotiations.
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> Our participation in the peacekeeping force would be on the understanding that all the parties to the Accords abided by word and deed with their provisions, and press forward with a continuing peace process in the Middle East.
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> The decision that Australia would participate under the conditions I have already outlined was taken on 12 October.
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> The Government's decision about participation in the peacekeeping force and the conditions for that participation were conveyed by letter to the President of the United States and the Prime Ministers of Great Britain and Canada on 12 October, and the Prime Minister of New Zealand was subsequently advised of our position.

On 17 March 1982 the Minister for Foreign Affairs, Mr Street, tabled the terms of the agreement on Australia's participation in the Sinai Multinational Force and Observers (MFO) (HR Deb 1982, Vol 126, 1066-1067). The documents concerned were published in *Australian Foreign Affairs Record* in March 1982 at pages 134-138). In tabling the documents, Mr Street said that the total number of Australian military personnel in the Sinai MFO would be 109, and that the contribution would be for an initial period of two years. He also said:

> In the negotiations with the MFO it was important to ensure that Australia's contribution be integrated carefully with the contributions of the other participating countries and for terms and conditions of operations to be broadly similar. The agreement we have negotiated with the MFO is, on key issues, in equivalent terms to those which the MFO has negotiated with European countries and New Zealand, and maintains Australian sovereignty over Australia's contribution. In addition, the directive issued by the Chief of Defence Force Staff to the Australian commander specifically requires him to consult with Australian authorities if he receives orders which he believes are contrary to, or go beyond, the agreed purposes of the force. I table the directive. There is provision in the agreement for the Australian contingent to withdraw after giving adequate prior notification. What Australia and other participating states would regard as adequate prior

notification would depend on the circumstances prevailing at the time.

On 18 August 1982 Mr Street said in the course of an answer to a question about withdrawing the Australian contingent from the MFO (HR Deb 1982, Vol 128, 468):

> Peace between Egypt and Israel by negotiation rather than military conflict is the most outstanding achievement to date in the search for peace and stability in the Middle East. Israel's withdrawal from the Sinai and the establishment of the Sinai MFO was, and remains, quite vital to the process of maintaining confidence and peace between two countries which, until the peace treaty, had settled their differences on the battlefield.
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> The Government's objectives are the achievement of a negotiated settlement in Lebanon to stop the loss of life and the destruction there, to restore the sovereignty of the Government of Lebanon over its own country and to ensure that the legitimate rights of the Palestinian people are achieved and that the security of Israel is maintained with secure and recognized boundaries.
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> I believe that the Sinai MFO and Australia's participation in it are a significant contribution to peace between Egypt and Israel and the broader goal of a comprehensive settlement in the Middle East. In short, the Government does not intend to withdraw its contingent to the Sinai force.

On 17 November 1982 Senator Dame Margaret Guilfoyle, the Minister representing the Foreign Minister in the Senate, said (Sen Deb 1982, Vol 96, 2398-2399):

> The Australian Government believes that a resolution of the Palestinian issue is central to the future stability and peace of the Middle East and the long term security of all states in the region. The Government believes that a comprehensive settlement of Middle East problems should be based on the principles expressed in United Nations Security Council resolution 242: That is, recognition of the right of Israel and other states in the area to live in peace within secure and recognized boundaries and withdrawal of Israel from territories captured in 1967. Such a comprehensive settlement should also be based on recognition of the legitimate rights of the Palestinian people, including their right to a homeland alongside Israel, with the corresponding responsibility to live in peace with their neighbours, together with the right to participate directly in decisions affecting their future.
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> On the matter of Jerusalem, Australia, along with many other governments, has supported long-standing United Nations resolutions calling for an international regime for the city with appropriate protection for the holy places. However, as the question that has been raised today implies, the status of Jerusalem is one of the most sensitive matters in dispute between the parties to the Middle East conflict. It is difficult to envisage that the comprehensive political settlement that we all hope for in the Middle East would not, among other things, address the question of the status to be given to the city of Jerusalem. The Australian Government believes that whatever should be agreed for Jerusalem should give adequate protection for access to the holy places.

On 5 May 1983 the Prime Minister, Mr Hawke, said in the course of an answer (HR Deb 1983, Vol 131, 264):

I say unequivocally to the House that my Government attaches very, very fundamental significance to the attainment of a just, comprehensive and lasting peace in the Middle East on the basis of mutual respect, the right of Israel to exist behind secure and recognized boundaries and a recognition of the rights of the Palestinian people. We base our approach on an acceptance of resolutions 242 and 338 of the Security Council and on the Camp David processes.

Disputes. Cyprus.

On 14 December 1982 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, said (Sen Deb 1982, Vol 97, 3431):

On 9 December, Senator Mulvihill asked whether Australia had supported the call of other United Nations countries for Turkey to withdraw its troops from Cyprus. The Minister for Foreign Affairs has advised that the Australian Government has voted for all United Nations resolutions on the Cyprus issue except in 1979, when an abstention was recorded, because it was considered that the resolution contained provisions which could impinge on the good offices role of the United Nations Secretary General and distract attention from the central role of the intercommunal talks. I note in particular that Australia voted in favour of the General Assembly's 1974 resolution on Cyprus, which urged 'the speedy withdrawal of all foreign Forces . . . from the Republic of Cyprus and the cessation of all foreign interference in its affairs'. This remains the Australian Government's position. The Government has consistently urged a negotiated settlement of the Cyprus question at the intercommunal talks. The Government continues to maintain its civilian police contingent in Cyprus and provides financial support for the United Nations Peacekeeping Force.

Disputes. Former German prisoners of war. Compensation.

On 27 November 1981 the Minister for Foreign Affairs, Mr Street, provided the following written answers to the respective questions (Sen Deb 1981, Vol 92, 2759):

(1) Has an agreement been reached between New Zealand and the Australian Governments over a joint approach to the Federal Republic of Germany for the compensation of servicemen illegally held in concentration camps during the Second World War, if so:

(a) was the approach ever made; and

(b) what was the response from the Federal Republic of Germany; and

(c) what stage have negotiations reached.

(2) Were British victims of this action, which contravenes international law, compensated in the 1960's.

(3) Are Australian servicemen who were imprisoned in German concentration camps still waiting to hear what, if any, progress the Australian Government has made on their behalf.

(1) Yes.

(a) Yes.

(b) and (c) Negotiations have progressed to the stage where the authorities in the Federal Republic of Germany have suggested that some specific cases could now be examined with a view to determining whether

or not the claimants would be likely to succeed with claims for compensation under the German Federal Compensation or Indemnification Law (Bundersentschadigungsgesetz (BEG), as amended.

(2) An agreement between the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland concerning Compensation for United Kingdom Nationals who were Victims of National-Socialist Measures of Persecution was signed on 9 June 1964. The distribution of funds provided under the Agreement was left to the discretion of the British Government.

(3) Australian servicemen are being informed of the response referred to in (1) (b) and (c) and are being asked for the documentation required by the authorities in the Federal Republic of Germany so that specific cases can be examined.

Disputes. Soviet Union. Sanctions imposed by Australia.

On 23 March 1982 the Minister for Foreign Affairs, Mr Street, provided the following information in answer to a question about the cultural, sporting, scientific, economic and other sanctions and restrictions applied to Australian relations with the Soviet Union since December 1979 (Sen Deb 1982, Vol 93, 1077-1078):

Measures	Date of Implementation
(a) Suspension of bilateral scientific exchanges	9.1.80
(b) Soviet research vessels refused permission to operate in Australian waters	9.1.80
(c) Suspension of bilateral cultural exchanges (including sporting exchanges)	9.1.80
(d) Suspension of bilateral academic exchanges	9.1.80
(3) Suspension of regular officials talks at Foreign Ministry level	9.1.80
(f) Suspension of fisheries co-operation	0.1.80
(g) Suspension of Soviet proposals in aviation, including the denial to Aeroflot of access to Australia	9.1.80
(h) Suspension of meetings of the bilateral Mixed Commission on Trade and Economic Co-operation	9.1.80
(i) Suspension of official visits between Australia and the Soviet Union by Ministers and senior officials	9.1.80
(h) Australian support for the US partial grains embargo	9.1.80
(k) Support for Western campaign to boycott the Moscow Olympics in 1980	9.1.80
(f) Suspension of negotiations for the reciprocal allocation of land and the building of new Embassies in Canberra and Moscow	15.1.80
(m) Cancellation of the Soviet trade promotion exhibit at the 1980 Royal Agricultural Show, Sydney	15.1.80
(n) Suspension of consideration of new Soviet maritime initiatives	14.2.80

(o) Withholding of Special Government marketing and promotion assistance to Australian exporters to the Soviet Union	14.4.80
(p) Banning Soviet cruise ships from using Australian ports	31.5.80
(q) The provisions of the Travel Notification Scheme affecting the movements of Soviet diplomatic and official personnel based in Australia expanded to apply to Soviet visitors to Australia.....	5.3.81
(r) Soviet Embassy advised that its application to open a commercial office in Melbourne would not be allowed.....	12.6.81

(3) The above measures remain in force, with the exception of Australia's support for the US partial grains embargo which was lifted on 25 April 1981. This follows the US decision to end the partial grains embargo, a development which effectively removed the basis for Australian action.

On 19 January 1982, the Minister for Foreign Affairs, Mr Street, announced that the Government considered that the need to retain the measures imposed after the Soviet invasion of Afghanistan had been reinforced by events in Poland.