

## **XII—INTERNATIONAL ORGANISATIONS**

### **International Court of Justice—withdrawal by United States of acceptance of compulsory jurisdiction of the Court**

On 9 October 1985 the Attorney-General and Acting Minister for Foreign Affairs, Senator Gareth Evans, said in answer to a question without notice (Sen Deb 1985, 895–896):

The United States Government announced on 7 October that it had decided to withdraw its declaration accepting the compulsory jurisdiction of the International Court of Justice. This decision was apparently taken as a direct consequence of the case brought against it by Nicaragua last year alleging a breach of international law in the United States assisting the 'Contra' rebels to lay mines in Nicaraguan waters. The United States had claimed from the outset that the dispute was one which should have been raised in an appropriate international political forum and that it was not one capable of judicial resolution. It was no great surprise, then, when in January this year the United States Administration announced that it was withdrawing from that case entirely.

The latest step, however, is less expected and very disappointing. It reflects both a disillusionment in the United States Government with the International Court of Justice and a wish to ensure that it is not again taken to the Court on what it regards as essentially a political matter.

The United States withdrawal from ICJ jurisdiction is a matter of real regret to the Australian Government. The ICJ is of central importance to the international regime of law and justice, playing a role not only as an arbiter of disputes between states but also as a body widely recognised as competent to clarify and develop the principles of international law. Although the US decision to withdraw is more understandable in light of the fact that fewer than one third of the nations in the world have accepted the Court's jurisdiction, for example, with neither the Soviet Union nor any of its Eastern bloc allies accepting the Court's jurisdiction, it is nonetheless a move which can only undermine the authority of the Court and adversely affect its capacity to influence developments in international law.

On 21 November 1985 the Minister for Foreign Affairs, Mr Hayden, wrote an answer to a question on notice in the House of Representatives: see HR Deb 1985, 2604.

### **International organisations—elections—membership—United Nations bodies**

On 10 April 1984 the Minister for Foreign Affairs, Mr Hayden, announced that Justice Elizabeth Evatt, Chief Judge of the Family Court of Australia, had been elected to the International Committee on the Elimination of Discrimination Against Women for a term of four years: see Comm Rec 1984, 610–611.

On 24 May 1984 Mr Hayden announced that Australia had been elected to the United Nations Commission on Human Rights for a three-year term beginning in 1985: see Comm Rec 1984, 933.

On 13 June 1984 Mr Hayden announced that Dr Richard Manning, a senior

officer of the Australian Development Assistance Bureau, had been elected Chairman of the Executive Board of the United Nations Children's Fund (UNICEF): see Comm Rec 1984, 1067.

On 14 June 1984 the Minister for Employment and Industrial Relations, Mr Willis, announced that Australia had been elected a deputy member of the governing body of the International Labour Organisation for a term of three years: see Comm Rec 1984, 1067.

On 23 October 1984 the Minister for Foreign Affairs, Mr Hayden, announced that Australia had been elected to a seat on the United Nations Security Council for a two-year term beginning on 1 January 1985, having served previously in 1946-47, 1956-57, and 1973-74: see Comm Rec 1984, 2115. On the same day in the Senate the Minister representing the Minister for Foreign Affairs, Senator Gareth Evans, said in answer to a question without notice (Sen Deb 1984, 2202-2203):

As was reported this morning, Australia was elected to the Security Council yesterday for a two-year term beginning on 1 January 1985. The elections for five places took place in the General Assembly of the United Nations in New York. What was not fully reported was that Australia was elected on the first ballot, receiving the highest number of votes among the successful candidates. In fact, we received 146 votes out of a possible 157 in a situation where only two-thirds of the General Assembly was necessary.

It needs to be appreciated that the 15-member Security Council is a most important body in the system of multilateral affairs, charged as it is with the primary responsibility under the United Nations Charter for the maintenance of international peace and security. Australia, as we all know, is a founder member of the United Nations, and has served on the Security Council on three occasions, most recently in 1973-74 under the previous Labor Government.

As a member of the Council, Australia will pursue actively the search for international peace and security, social progress, justice and understanding. We will also be seeking, in co-operation with like minded countries, to promote proposals to make the United Nations system more effective and more responsive to the needs of member states. The election of Australia to the Security Council is a fitting recognition of the standing that Australia once again enjoys in the international community.

On 27 March 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the House of Representatives (HR Deb 1984, 888-889):

Membership of the Board of Governors of the IAEA is determined by Article VI of the IAEA Statute. Amongst other things that article indicates that membership of the Board comprises:

(1) As designated by the outgoing Board of Governors -

(a) the nine member states most advanced in the technology of atomic energy including the production of source materials,

(b) the member state most advanced in the technology of atomic energy including the production of source materials in each of the eight designated regional areas (identified in the Statute) not represented by one of the nine most advanced;

(2) 22 members elected by the General Conference in accordance with the criteria for regional representation provided for in the article.

Since the inception of the IAEA in 1957 Australia, which is in the South East Asia and the Pacific region, has been designated rather than elected as a member of the Board. Membership of the IAEA Board of Governors has assisted Australia to play a prominent and constructive role in international consideration of issues relating to the peaceful uses of nuclear energy, including international safeguards. The Government will continue to give active support to the IAEA and its important task of verifying that the development of peaceful uses of nuclear energy under IAEA safeguards does not lead to diversion of nuclear material to nuclear weapons or other nuclear explosive devices. Australia's continued membership of the IAEA Board of Governors is seen by the Government as a valuable contribution to the work of the IAEA. It is also a major means by which Australia can advance non-proliferation goals in accordance with the Government's very strongly held conviction that there should be no further spread of nuclear weapons or nuclear explosive devices to additional countries.

The Government has therefore given detailed consideration to the provisions of Article VI of the Statute of the IAEA and will continue to monitor international developments as they might affect Australia's designated position. While it would be inappropriate to speculate on possible future developments in this regard, Australia's role as a significant exporter of uranium is clearly of particular importance.

#### **International organisations—membership—elections—Australian membership**

On 27 May 1986 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1986, 835–836):

Australia has won election to two important United Nations bodies: the Commission on the Status of Women and the Committee on Economic, Social and Cultural Rights. The Minister for Foreign Affairs, the Hon Bill Hayden, and the Minister for Education, Senator the Hon Susan Ryan, announced this today following elections in the Economic and Social Council (ECOSOC) of the United Nations in New York.

Mr Hayden and Senator Ryan said that re-election to the Commission on the Status of Women (CSW) reflected wide international recognition of Australia's contributions to the Commission and to the promotion of the status of women at home and abroad. The CSW reports to ECOSOC on women's rights in political, economic, social and educational fields. Australia is a founding member of the Commission and has been represented for five other terms.

The Minister said that Australia would continue to participate actively in carrying forward the objectives of the United Nations Decade for Women. In Australia, this objective would be pursued through the National Agenda for Women, which would set out priorities for Government action to improve the status of women to the year 2000.

Mr Hayden said that Dr Philip Alston, an Australian specialist in human rights who is currently teaching at Harvard Law School in the United States,

had been elected to the UN Committee on Economic, Social and Cultural Rights. He noted that Dr Alston's election was at the top of the ballot against strong competition, reflecting the good credentials of Dr Alston and Australia's standing in UN human rights activities, especially in economic, social and cultural rights. He said he was confident that Dr Alston would make an important contribution to the work of this new Committee.

On 10 September 1986 the Department of Foreign Affairs issued the following news release (AFAR, September 1986, 865):

The Department of Foreign Affairs announced today that Australia had been admitted to full membership of the Committee for Co-ordination of Joint Prospecting in South Pacific Off-Shore Areas (CCOP-SOPAC) on 5 September.

CCOP-SOPAC acts as a co-ordinating body for off-shore marine geoscience research work in the South Pacific. Its work includes arranging geological surveys of the ocean floor, the analysis of data, training in research techniques and publication of technical information. Other work includes studies of harbour development, the marine environment, and beach erosion. Its membership consists of most of the Forum Island Countries, Guam and New Zealand.

The Department said that Australia has long been associated with CCOP-SOPAC and membership reflects both Australia's close ties with the countries of the South Pacific and interest in assisting their development. Australia's instrument of accession was deposited with the Government of Fiji on 8 September.

Australia will contribute \$250 000 in 1986–87 to the core budget of CCOP-SOPAC. The Bureau of Mineral Resources also provides considerable technical assistance.

### **United Nations—membership and observer status—entities other than States**

On 24 October 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the Senate concerning those countries or national entities 'eg Hong Kong, Taiwan, which are not members of the United Nations' (Sen Deb 1984, 2417–2418):

Only independent states may become full members of the United Nations. There are a number of States (eg Kiribati, Republic of Korea, Democratic Peoples Republic of Korea, the Holy See, Nauru, Switzerland, Tonga, Tuvalu) which, for differing reasons, are not members of the United Nations although they participate in the work of various United Nations programs or specialised agencies. There are, in addition, a number of entities which have some characteristics of nation States and also take part in the work of United Nations programs and the specialised agencies, but cannot be members of the United Nations. There are some other entities which are the subject of international dispute and may be recognised as independent states by some UN members and not by others, and are not members of the United Nations. In addition, a number of national liberation movements claiming to represent particular territories are given observer, but not member, status in the United Nations.

**United Nations Security Council—participation of the Palestine Liberation Organization representative in debate—Australian response**

On 11 March 1985 Australia's representative on the Security Council made the following statement on the proposal of Democratic Yemen that the PLO be invited to participate in deliberations of the Security Council on the Situation in the Middle East 'in accordance with the Security Council's usual practice' (S/PV 2572, 9):

MR WOOLCOTT (Australia): Australia has just abstained in the voting on the question before the Council. We did so because, in our view, the representative of the Palestine Liberation Organization (PLO) should properly be invited to participate on the same basis as representatives of other organizations or bodies which are not States. To have supported a measure which would confer upon the Palestine Liberation Organization the same rights as Member States would imply that Australia recognizes the Palestine Liberation Organization. Australia does not recognize the Palestine Liberation Organization and will not do so while it maintains its denial of Israel's right to exist.

Australia acknowledges that the Palestine Liberation Organization, which represents the opinion of a very significant portion of the Palestinian people, would be included in the process of seeking a comprehensive settlement. It believes, however, that the PLO's opportunity to engage productively in such a process is limited, and perhaps non-existent, while it persists in denying Israel right to exist.

Australia does not object in principle to the representative of the Palestine Liberation Organization appearing before the Council. As will be clear, our objection is to the basis upon this was proposed.

**United Nations Security Council and General Assembly—proposals for reform**

On 28 February 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following answers to the respective questions on notice in the House of Representatives (HR Deb 1984, 111):

(1) Has his attention been drawn to an opinion expressed by several nations that certain areas of decision-making in the United Nations Security Council should not be subject to the rule of unanimity according to Chairman Nabil Elaraby of the United Nations Charter Committee in United Nations document L/2483.

(3) What has Australia done to remove from the Security Council and Article 2 of the United Nations Charter, the United Nations reliance on nations to determine their own rights in international disputes using unrestrainable sovereign powers of national leaders.

(1) There have been numerous proposals to this effect from time to time.

(3) To secure these objectives it would be necessary to amend the Charter of the United Nations. Any proposal to this end would require widespread support from member states of the organisation, including the five permanent members of the Security Council. In existing circumstances such a degree of support would not be forthcoming. Nevertheless, as a matter of

policy Australia could support constructive proposals for reform of the Charter.

On 1 December 1985 the Minister for Foreign Affairs, Mr Hayden, issued the following statement, in part (Comm Rec 1985, 4194):

During its period as President of the UN Security Council Australia had worked actively to make the Security Council a more effective body, especially in preventing and containing international conflict, the Minister for Foreign Affairs, the Hon Bill Hayden, said today.

Mr Hayden, in reviewing Australia's presidency of the Council in November, said: 'The important thing is to get the Security Council to act to prevent conflict, not to wait until the fighting occurs'. He emphasised that Australia's Permanent Representative, Mr Richard Woolcott, who was President of the Security Council in November, would continue to work for reform of that body.

Mr Hayden said that he had been concerned for some time about the need to enhance the effectiveness of the Security Council. He had instructed the Australian delegation to pursue this question energetically during November. Australia argued forcefully that the time had come to the Security Council to study the many reform proposals before it in a more focussed and considered manner.

Mr Hayden said he was pleased to report that, in response to Australia's and other countries' proposals, there was widespread agreement at the UN on the need for the Security Council to be more effective.

It was not possible to have all Council members agree to the establishment of formal machinery to undertake this task. An Australian proposal that the Council should hold a series of consultations in 1986 on this question had nevertheless received unanimous endorsement. The United Nations Secretariat had been asked to prepare a summary of reform proposals. This would form a basis for action in 1986.

On 29 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer in part to a question on notice in the House of Representatives (HR Deb 1985, 4194):

The right of veto in the Security Council was a matter much debated at the time of the founding of the United Nations. While Australia and many other member states have reservations about the right of veto, it must be recognised that the crucial participation in the United Nations of the major powers is, to a significant extent, dependent upon their having the right of veto in the Security Council. Removal of that right would be likely to increase tensions among the great powers, with further adverse effects for world security.

On 29 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the House of Representatives (HR Deb 1985, 4193-4194):

The purposes of the United Nations are set out in Chapter 1 Article 1 of the Charter. The maintenance of international peace and security is central. The United Nations Secretary-General, Mr Perez de Cuellar, has said that the Security Council, the body charged with maintaining international peace and security, has not made full and effective use of the measures available to it under the Charter.

While the Government favours procedural reform of both the United Nations General Assembly and the Security Council, it does not believe that revision of the UN Charter towards creating such an international authority with power to override national sovereignties is a practical possibility in the foreseeable future.

I am not aware that there have been any public opinion polls taken in Australia on Charter reform.

While I am not certain what the honourable member means by 'international surveillance systems', Australia participated in several UN peace-keeping operations and in such [organs and] organisations [as] the Security Council, the Commission on Human Rights, the Conference on Disarmament, the International Atomic Energy Agency and Interpol, which in their various ways contribute to the maintenance of international order. Australia urges support for the work of these bodies.

On 10 October 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the House of Representatives about the possibility of the General Assembly setting up a 'second assembly representing peoples and humanity, rather than national interests' (HR Deb 1984, 2094-2095):

Article 22 of the United Nations Charter states:

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

Since its inception, the General Assembly has established over 200 committees, commissions, panels, special representatives, boards and agencies, exercising a wide variety of functions and responsible to the Assembly as a principal organ of the United Nations.

Subsidiary organs are usually composed of member states of the United Nations or their representatives. Some such organs have been composed of experts serving in their individual capacities where the matter under consideration is of a technical or specialised nature.

The purpose of Article 22, as noted, is to allow the General Assembly to set up subsidiary bodies to assist the Assembly to carry out its (that is, the Assembly's) functions. A second assembly of the sort envisaged in the question would be a body of a different character, and presumably of comparable status to the General Assembly—that is it would be equivalent to a principal organ of the United Nations. The principal organs of the United Nations, however, are identified in Article 7(1) of the Charter, so that at the least the establishment of a further principal organ would seem to require an amendment of the Charter.

Articles 2, 3 and 4 of the Charter are specific in providing that the United Nations Organisation is composed of and responsible to member states. There is no suggestion that the General Assembly, or other organ of the United Nations, has the authority to set up a further principal organ of the sort suggested. Such an action would also have significant financial implications. It would seem that, however worthy the idea, there is no basis in the Charter for action by the General Assembly to establish such a body.

**International organisations—membership—universality of membership—  
withdrawal from membership—UNESCO—expulsion of South Africa  
from UPU**

On 27 March 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the Senate (Sen Deb 1984, 753):

- (1) Australia does not intend to withdraw from UNESCO.
- (2) The Government has expressed concern at some aspects of UNESCO's performance. These include the degree of politicisation of some debates, as well as certain inadequacies in the organisation's budget and administration which have detracted from its overall effectiveness. At the same time, Australia believes that UNESCO continues to play an important role in advancing international cooperation in the sciences, education, culture and communications. Such cooperation can benefit all members states, including Australia. The Government is therefore committed to playing an active role in seeking solutions to UNESCO's problems. It intends to work closely with fellow members from all geographical groupings to find practical ways in which improvements can be implemented.

The Government is naturally concerned that the United States has given notification of intention to withdraw from UNESCO at the end of 1984, although it understands the reasons for this step. Such action would deprive UNESCO of a substantial intellectual and practical input into its programs and would mean the loss of a quarter of its financial contributions. The Government hopes that conditions can be created in which the United States may be able to reconsider its decision to withdraw. For its part, the Government will work actively to this end.

On 26 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question in the Senate (Sen Deb 1985, 2309):

Following the withdrawal of the United States from UNESCO at the end of 1984, I confirmed that Australia will continue to work within UNESCO to reform the organisation.

Australia wants UNESCO to become a more efficient organisation, implementing more concentrated and carefully evaluated programs and monitored more closely by its governing bodies. Our efforts are concentrated on working vigorously to ensure more efficient evaluation, identification of priorities and program concentration in areas of greatest member support and need. We emphasise co-operation with other members, especially from developing countries, which support this objective. We also work to reduce politically contentious issues to acceptable levels.

The Government draws some encouragement from the progress towards change made so far. It is important that pressure should be maintained to implement reforms and that our concerns on program concentration and zero budget growth should be reflected in the 1986–87 program and budget. It will be important for all member states to ensure that the momentum for reform is maintained.

The Government looks to the UNESCO General Conference from 8 October to 12 November to confirm substantial reform in a range of management and policy areas. I hope that progress will be sufficient to persuade the United Kingdom to reconsider its decision to withdraw from the organisation at the end of 1985.

On 6 December 1985 the Minister for Foreign Affairs, Mr Hayden, issued the following statement in part (Comm Rec 1985, 2222–2223):

The Minister for Foreign Affairs, the Hon Bill Hayden, and the Minister for Education, Senator the Hon Susan Ryan, said today they regretted that the United Kingdom would be withdrawing from UNESCO, effective on 31 December 1985.

The Ministers believed that the departure of the United Kingdom following that of the United States in 1984 would further deprive UNESCO of a substantial practical, intellectual and financial contribution.

The Ministers were commenting on the British Government's announcement in London on 5 December of the United Kingdom's withdrawal. While acknowledging that UNESCO still had many problems, of both a managerial and a policy nature, the Ministers said that there had been promising progress during the past year in the process of reform.

Australia would continue to encourage vigorous and co-operative action from within the organisation to address the remaining problems so that the impetus for reform was maintained.

#### **International organisations—membership—withdrawal of membership—UNESCO**

On 5 June 1987 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice (Sen Deb 1987, 3709–3710):

As a founding member and supporter of the ideals of UNESCO, Australia will continue to participate in the work of the organisation, with the object of encouraging good management, efficient and effective program delivery, sound priorities and budgetary restraint.

The withdrawal from UNESCO of both the United States and the United Kingdom was due to the professed concern of both governments at significant managerial, budgetary and policy problems within the organisation. Australia recognised that there were grounds for these criticisms, but still considers that there is no justification at present for withdrawal by Australia and that the correct approach is to continue to work for change from within UNESCO. Australia believes that some progress has been made in adopting priorities for programs, containing the growth of the budget, placing greater emphasis on operational programs and decentralisation of authority. The reform process is being overseen by a special committee of the Executive Board of which Australia's representative, Mr Whitlam, is a member.

**International organisations—membership—Universal Postal Union—  
universality of membership—expulsion of South Africa**

Australia made the following declaration upon signature of the Acts of the 19th Congress of the Universal Postal Union in Hamburg on 27 July 1984 (Congress Document 100/Add 10):

Australia's abhorrence of the South African Government's policy of apartheid is well known. However, Australia considers that the decision relating to South Africa which has been taken by the 19th Congress is in violation of the Universal Postal Union Constitution, which contains no provision for the expulsion of members. It is also contrary to the principle of universality of membership of international organizations. Accordingly, Australia considers that the decision is unacceptable and without legal effect.

Resolution C 7 read (Congress Document 75):

**Exclusion of the Republic of South Africa from the UPU Congress**

In view of

resolution C 2 of the 1974 Lausanne Congress concerning the exclusion of the Republic of South Africa from the 17th Congress of the UPU and from all other Congresses and meetings of the Universal Postal Union,

In view of

resolution C 6 of the 1979 Rio de Janeiro Congress concerning the expulsion of the Republic of South Africa from the UPU,

In view of

International Bureau circular 200 of 29 June 1981 announcing the accession of the Republic of South Africa to the UPU in application of article 11, paragraph 1, of the Constitution of the Union.

Considering

that the said country is still applying its obnoxious policy of apartheid contrary to the unanimous will of all free nations.

*Reaffirms*

its unqualified condemnation of the obnoxious policy practised by the racist, minority government of the Republic of South Africa,

*Reaffirms*

the validity of resolution C 6 of the 1979 Rio de Janeiro Congress,

*Confirms*

that the Republic of South Africa is excluded from the Union until a future Congress of the UPU decides otherwise.

*Decides*

that the Republic of South Africa cannot take advantage of its status as a member of the United Nations to obtain readmission to the Union as long as it continues to practise its policy of apartheid.

**International organisations—membership—Asian Development Bank**

On 21 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the House of Representatives (HR Deb 1985, 2600):

The Peoples Republic of China indicated its wish to join the Asian Development Bank in 1983. Taiwan is currently a member of the Bank. The Bank is exploring possible terms of membership for the Peoples Republic of China.

Australia firmly supports the application for membership of the Asian Development Bank by the Peoples Republic of China and has urged expeditious completion of formalities.

**International organisations—privileges and immunities—host States**

On 29 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer in part to a question on notice in the House of Representatives concerning the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (HR Deb 1985, 4199):

Australia is not a party to the convention (which has not yet entered into force) because the privileges and immunities granted under it are considered not to take into consideration adequately the interests of the states which host international organisations.

Australia has not taken steps to have the convention reviewed, but follows closely the work of the International Law Commission on the topic of Relations between States and International Organisations from which a more acceptable multilateral agreement might emerge.

**International organisations—privileges and immunities—work in the International Law Commission**

On 21 October 1986 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice (HR Deb 1986, 2485):

The topic of Relations between States and International Organizations has been considered by the International Law Commission in two parts. Draft articles on the status, privileges and immunities of the representatives of States to international organizations were prepared by the International Law Commission in 1971 and referred to a diplomatic conference which in 1975 adopted the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. Many provisions of this Convention considered to be unbalanced in their treatment of the interests of host countries of the major international organizations, and no such host country has become party to the Convention, which has not entered into force.

Following the adoption of this Convention the International Law Commission ceased to give attention to the subject matter of the Convention and no proposals have been made in the Commission to develop the basis of a new convention on the same subject. The International Law Commission is now working on the other part of the topic, namely the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities who are not representatives of States. There has been no significant progress in the preparation of draft articles, which have not been given priority by the Commission in the light of the limited interest shown in the topic by Governments.

**International organisations—privileges and immunities—specialized agencies and the International Atomic Energy Agency—acceptance by Australia of agreements**

On 9 May 1986 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1986, 710):

The Minister for Foreign Affairs, the Hon Bill Hayden, said today that Australia had accepted two important agreements on the privileges and immunities of international organisations. They are the Convention on the Privileges and Immunities of the Specialised Agencies, and the Agreement on the Privileges and Immunities of the International Atomic Energy Agency (IAEA).

The deposit today of the necessary instruments makes Australia the 93rd party to the 1947 Specialised Agencies Convention, and the 59th party to the 1959 IAEA Agreement. Mr Hayden said: 'Acceptance of the agreements is consistent with longstanding Labor policy of supporting the UN and its agencies'. He recalled that it was the Chifley Labor Government in 1949 that had accepted the similar 1946 Convention on the Privileges and Immunities of the United Nations.

The purpose of the agreements is to enable the agencies to enjoy in their member States, in a unified way, such legal capacity and privileges and immunities as are necessary for the fulfilment of their purposes.

Mr Hayden noted that privileges and immunities are also accorded under the agreements to representatives of members and to officials of the agencies, not for their personal benefit, but to safeguard the independent exercise of their functions in connection with the agencies. There is a duty to waive immunity in any case where the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which it is accorded, he said.

Mr Hayden recalled that former Australian governments had sought to deposit instruments of acceptance to the Specialised Agencies Convention (in 1962) and to the IAEA Agreement (in 1972) which contained several reservations. The agencies either queried or objected to these reservations. Australia's instruments were therefore never formally accepted for deposit. The Labor Government had reviewed the agreements, and the positions reflected in the reservations, and had decided to accept the agreements without reservation. He said:

Whilst the agencies at present have no offices in Australia, the Government nevertheless hopes that acceptance of the agreements will facilitate the sending of missions to Australia and the holding of meetings in Australia under the auspices of the agencies, should the agencies so wish. This could be of benefit to Australia as well as to the agencies themselves.

The Convention on the Privileges and Immunities of the Specialized Agencies is published in Australian Treaty Series 1962 No 13.

The Agreement on the Privileges and Immunities of the International Atomic Energy Agency is published in Australian Treaty Series 1973 No 40.

One effect of deposit of new instruments of acceptance by Australia is that the positions reflected in the reservations set out in footnotes to the texts as published are no longer maintained.

Attached to the above statement was the following:

**Applicable specialized agencies**

Australia's instrument of accession to the Convention on the Privileges and Immunities of the Specialized Agencies undertakes to apply the Convention, as modified by the respective Annexes, to the following specialized agencies:

- International Labour Organisation, Geneva—Annex I
- Food and Agriculture Organization of the United Nations, Rome—Annex II (2nd revised text)
- International Civil Aviation Organization, Montreal—Annex III
- United Nations Educational, Scientific and Cultural Organization, Paris—Annex IV
- International Monetary Fund, Washington—Annex V
- International Bank for Reconstruction and Development, Washington—Annex VI
- World Health Organization, Geneva—Annex VII (3rd revised text)
- Universal Postal Union, Berne—Annex VIII
- International Telecommunication Union, Geneva—Annex IX
- World Meteorological Organization, Geneva—Annex XI
- International Maritime Organization, London—Annex XII (revised text)
- International Finance Corporation, Washington—Annex XIII
- International Development Association, Washington—Annex XIV
- World Intellectual Property Organization, Geneva—Annex XV
- International Fund for Agricultural Development, Rome—Annex XVI

The Convention is not at present applicable to the United Nations Industrial Development Organization in Vienna, which became a specialized agency on 17 December 1985, because the procedures specified in Article X of the Convention have yet to be finalized by the Organization.

**Implementing legislation**

Regulations have long been in place giving substantial effect within Australia to the three agreements mentioned in the statement. These regulations have been repealed, and the following regulations, which commenced on 24 April 1986, were made under the International Organizations (Privileges and Immunities) Act 1963 to give full effect to the agreements within Australia:

- International Atomic Energy Agency (Privileges and Immunities) Regulations (Statutory Rules 1971 No 30, as amended by 1986 No 68)
- Specialized Agencies (Privileges and Immunities) Regulations (Statutory Rules 1986 No 67)
- United Nations (Privileges and Immunities) Regulations (Statutory Rules 1986 No 66).

On 3 May 1986, following acceptance by Australia of the two agreements above, a Note in the following terms was presented to each of the specialized agencies and to the International Atomic Energy Agency (text provided by the Department of Foreign Affairs):

The Australian Permanent Mission to the United Nations in Geneva presents its compliments to the Director-General of the World Health Organization and has the honour to refer to Australia's accession on 9 May 1986 to the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly on 21 November 1947, and its undertaking to apply the

provisions of the Convention, as modified by the 3rd revised text of Annex VII, to the World Health Organization.

The Minister for Foreign Affairs of Australia, Mr Bill Hayden MP, issued a press statement on 9 May relating to Australia's accession to the Convention, a copy of which is attached herewith, together with copies of Australia's International Organisations (Privileges and Immunities) Act 1963 and the Specialized Agencies (Privileges and Immunities) Regulations.

It will be recalled that on 20 November 1962 Australia presented to the Secretary-General of the United Nations an Instrument of Accession to the Convention containing several reservations. Included among these reservations was one reserving to Australia the right to tax its residents in respect of the salaries and emoluments received by them from the agencies. In view of the objections expressed by the agencies to Australia's reservations, the Instrument was never accepted by the Secretary-General for deposit. Australia carefully reconsidered its position in respect of the Convention before acceding to it on 9 May 1986, and was pleased to have done so without reservation.

Nevertheless, the Australian Government notes that, in accordance with Section 39 of the Convention, it is not prevented from concluding with a specialized agency a supplemental agreement adjusting the provisions of the Convention or extending or curtailing the privileges and immunities thereby granted. In this respect, the Australian Government wishes to draw the attention of the World Health Organization to the established taxation principle in Australia that its residents working in Australia as officials of international organisations should bear Australian tax on their official remuneration. At the time of accession, no specialized agency had an office, or employed Australian residents, in Australia. However, in the event that the World Health Organization proposes to establish a headquarters or office, or employ Australian residents, in Australia, the Australian Government would wish to be informed of such a proposal so that it might consider, at that time, the possibility of concluding a supplemental agreement relating to the exemption of Australian residents from taxation in respect of their salaries and emoluments paid to them by the World Health Organisation.

The Australian Permanent Mission to the United Nations in Geneva avails itself of this opportunity to renew to the Director-General of the World Health Organization the assurances of its highest consideration.

### **International organisations—specialized agencies—transition of UNIDO**

On 18 June 1985 the Acting Minister for Foreign Affairs, Mr Bowen, issued the following statement (Comm Rec 1985, 954–955):

The Acting Minister for Foreign Affairs, the Hon Lionel Bowen, and the Acting Minister for Industry, Technology and Commerce, the Hon Barry O Jones, announced today that Australia had joined with other United Nations members in formally advising the UN Secretary-General that the United Nations Industrial Development Organisation (UNIDO) should be accorded the status of a specialised agency of the United Nations.

UNIDO, established by the UN General Assembly in January 1967 as an autonomous organisation within the United Nations 'to promote and accelerate the industrialisation of the developing countries', co-ordinates all UN activities related to industrialisation. Its headquarters are in Vienna.

UNIDO provides an important forum for problem-solving, including by studying the barriers to industrialisation, and a channel of communication amongst the industrial, financial and governmental bodies of the industrialised world and their counterparts in developing countries on matters related to industrialisation.

It is the principal disburser of aid in the UN system in this field and has assisted more than 120 countries. UNIDO supports developing countries through the implementation of project aid as well as through the provision of experts, training and the holding of seminars and other meetings. Apart from regular budget support, Australia has contributed over \$1m to UNIDO's technical assistance projects since 1980, covering such diverse areas as hydro-electricity, building materials and techniques and the use of solar power in developing countries. Australia is also a member of the Industrial Development Board (IDB), which guides UNIDO's activities.

In making their announcement, the Ministers noted that the change of status, when completed, would mean that UNIDO would have a fully independent financial and administrative system, subject only to the obligation to advise the United Nations General Assembly and the UN Secretary-General of its activities. They welcomed the fact that the new constitutional arrangements for UNIDO would allow for closer direct supervision of the Organisation's activities by member countries, thereby assisting UNIDO to achieve its important goals.

The Ministers said that Australia would continue to play an active role in UNIDO and support a practical orientation in its programs to ensure that maximum benefits are derived by developing countries.

#### **International organisations—Universal Postal Union—Vietnam—privacy of mail**

On 29 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer in part to a question on notice in the House of Representatives (HR Deb 1985, 4056–4057):

Australia Post has also advised that it has not received any enquiries or complaints concerning the interception or confiscation of mail for delivery in Vietnam. It has advised that Vietnam is a member of the Universal Postal Union and as such is bound by the provisions of the Acts, but that there is no explicit provision in the Acts of the UPU which guarantees the privacy of the mails.

Australia Post has advised that any claims that mail is being intercepted and confiscated would, following the normal procedures in such cases, be examined by it on a case-by-case basis.

#### **International organisations—international environmental organisations**

On 25 March 1985 the Minister for Arts, Heritage and Environment, Mr Cohen, presented the Government's response to the Report of the Senate Committee on

Environment and Conservation on its inquiry into Australia's participation in international environmental organisations, part of which was as follows (HR Deb 1985, 821–825):

I wish to inform the Parliament of the Government's response to the report from the Standing Committee on Environment and Conservation on its inquiry into Australia's participation in international environmental organisations. The report was tabled in this House in October 1982. Although preparations were in train to present this statement to the House during the last sittings, this was not possible due to the shortness of the sittings and pressure of other business.

The Standing Committee adopted the approach of being informative as well as being investigatory in preparing this report, by providing detailed descriptions of the role, structure and history of the more significant organisations. The Committee gave particular attention to Australia's involvement in three bodies: The United Nations Environment Program, UNEP; the Environment Committee of Organisation for Economic Co-operation and Development, OECD; and the International Union for Conservation of Nature and Natural Resources, IUCN. Other international bodies considered by the Committee were the World Wildlife Fund, the International Whaling Commission, the Intergovernmental Oceanographic Commission, the International Waterfowl Research Bureau and various United Nations Educational, Scientific and Cultural Organisation programs. The report made 13 recommendations. Before I describe the Government's response to the recommendations I will make some observations on the benefits to Australia of these organisations.

There are several reasons for Australia's participation in international environmental organisations. First, many of the issues considered by these organisations are inherently international because they are global in nature and cannot be resolved solely at the national level. The problems of atmospheric carbon dioxide levels, destruction of the ozone layer, contamination of the oceans, control of hazardous chemicals and protection of endangered wildlife are clear examples. Secondly, scientific knowledge necessary to solve many environmental problems is still scarce and the sharing of information and experience between countries is essential. Thirdly, consultation between nations is important to help avoid the possibility of differing national environmental policies leading to international trade distortions and affecting the competitive positions of industries in various countries. Fourthly, the close connections between the environment and economic, social and political considerations are increasingly recognised as important both within countries and between them. Finally, countries can benefit from each other's experience in a great many aspects of environmental monitoring, planning and management. Such benefits are particularly relevant to Australia because many environmental problems are acute in other countries well before they become significant in Australia.

...

I wish now to address each of the recommendations in turn, and seek leave to have the text of the Committee's recommendations tabled and incorporated in *Hansard* at this point.

Leave granted.

*The document read as follows –*

Recommendations

The Committee recommends that:

...

9. the adoption of the May 1981 Draft Principles and Procedures for Commonwealth/State Consultation on Treaties be discussed at the earliest available Premiers Conference.

10. the Commonwealth Government monitor and actively pursue the implementation of international treaties and agreements relating to environmental protection and conservation; and

the Minister for Home Affairs and Environment ensure that the Council of Nature Conservation Ministers and the Australian Environment Council regularly examine the implementation of new and existing treaties and agreements relating to environmental protection and conservation.

...

The terms of the Committee's ninth recommendation, that the 1981 draft principles and procedures for Commonwealth-State consultation on treaties be discussed at the earliest available Premiers Conference, have already been met. The draft principles and procedures were drawn up by a Commonwealth-State officials committee in 1980, following an initial decision at the Premiers Conference in 1977 that there was a need to establish sound guidelines for consultation on treaties. The draft principles and procedures were subsequently examined by Premiers and were adopted at the Premiers Conference in June 1982. In November 1983 the Prime Minister (Mr Hawke) advised Premiers that the Government endorsed the principles and procedures, subject to certain important modifications. These modifications were designed to ensure that ratification of treaties was not unduly delayed and that Australia would not be seen in the international arena as attempting to use its constitutional structure as a shield to avoid or limit its acceptance of treaty obligations.

The Committee's tenth recommendation is that the Government actively pursue the implementation of international treaties and agreements relating to environmental protection and conservation. Within my portfolio, treaties and agreements relating to environment and conservation will be monitored. The Council of Nature Conservation Ministers and the Australian Environment Council will be consulted closely in regard to existing and proposed new treaties and agreements.

### **International organisations—treaty-making—Vienna Convention on the Law of Treaties between International Organisations and States**

On 2 November 1987 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to the respective questions (HR Deb 1987, 1869):

Mr Hollis asked the Minister for Foreign Affairs and Trade, upon notice, on

21 September 1987:

(1) Did Australia attend a UN conference which, on 21 March 1986, adopted the Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations.

(2) Was Australia among the 127 states which voted in the UN General Assembly on 3 December 1986 in favour of a resolution expressing the hope that states would consider taking the steps necessary to become parties to the Convention at an early date.

(3) Was the Convention open for signature until 30 June 1987.

(4) Did Australia sign the Convention.

Mr Hayden—The answer to the honourable member's question is as follows:

(1) Yes.

(2) Yes.

(3) Yes. According to notifications received from the UN, it was signed by that date by 27 States and 10 international organisations. The Convention is no longer open for signature. States and international organisations may now become parties to it by means of accession.

(4) No. However the question of possible Australian accession is now being considered.

#### **International organisations—International Court of Justice—support by Australia for peaceful settlement of disputes**

On 24 April 1986 the Acting Prime Minister and Attorney-General, Mr Bowen, sent the following message to the President of the International Court of Justice to mark the 40th anniversary of the inauguration of the Court (Comm Rec 1986, 625):

On the occasion of the fortieth anniversary of the inauguration of the International Court of Justice, I would like to extend to you and your fellow judges the congratulations of the Australian Government on the achievements of the Court in the first forty years of its existence. As the principal judicial organ of the United Nations, the International Court has a vital function to perform as an instrument for the settlement of disputes by peaceful means. The Australian Government has strongly supported the activities of the Court and will continue to encourage the effective realisation of the Court's role under the United Nations Charter, reflecting our high esteem for the contribution the Court has made to international jurisprudence and respect for the rule of law.

#### **International organisations—liability of members for debts of the organisation—International Tin Council**

On 17 July 1986 the Minister for Trade, Mr Dawkins, issued the following statement (Comm Rec 1986, 1167):

The Minister for Trade, the Hon John Dawkins, today dismissed as incorrect and misleading a press report concerning Australia's liability and actions in relation to the collapse of the International Tin Agreement (ITA). The report (*Australian Financial Review*, 17 July) alleged that Australia faced a likely liability of up to \$50m and repeated claims by the Opposition Trade

spokesman that the Department of Trade had 'misappropriated' \$11m set aside for an International Tin Council (ITC) rescue plan.

In relation to legal action the firm of JH Rayner (Mincing Lane) Limited has taken out a writ against the twenty-two countries that are ITA members but it has yet to be served on the Australian Government. The question of what action would be taken if and when such a writ is served will be a matter for consideration by the Government and its legal advisers. No member country has admitted liability for the debts of the International Tin Council (ITC) and the extract from the ITC document mentioned in the report provides no basis for the view taken in the report about the prospects of defending any legal action taken by ITC creditors against member countries.

Mr Dawkins also said that claims by Opposition spokesman Braithwaite that the Trade Department had 'misappropriated' \$11m were bizarre, baseless, mischievous and irresponsible, especially coming from a qualified accountant and someone who should be familiar with the process of parliamentary appropriations. The facts are that Australia and other ITA member countries had been involved in discussions from October 1985, which led to the TINCO proposal in February 1986 for the handling of the ITC debts, the disposal of ITC tin stocks and the orderly resumption of tin trading. The Government announced on 3 March that it was prepared to accept the TINCO proposal and contribute financially to it provided all other member countries did so. Consistent with that decision funds were appropriated in favour of the Department of Trade.

In the event the TINCO proposal was not accepted by two ITC members and it lapsed, precipitating the reported legal action against individual members of the ITC. In accordance with the provisions of the Audit Act the appropriate, which consequently remained unspent at 30 June 1986, lapsed and the funds remained in the Consolidated Revenue Fund.

On 13 November 1986 the Minister for Trade, Mr Dawkins, provided the following written answer to the respective questions (HR Deb 1986, 2938):

Mr Braithwaite asked the Minister for Trade, upon notice, on 19 August 1986:

(1) Has his attention been drawn to the actions of the International Tin Council (ITC) entering into a commercial transaction which resulted in financial obligations to bankers and brokers associated with the London Metal Exchange; if so, does he support this action.

(2) Has any person or organisation ever suggested the Government has or had (a) an obligation or (b) a legal liability, either on its own or jointly with the ITC, to meet the financial liabilities the ITC is unable to discharge; if so, what steps is the Government (i) taking or (ii) planning to take to meet promptly any liability.

(3) Is the Government unconcerned by any suggestion of liability; if so, why.

(4) Will the Government (a) agree to and (b) initiate action to refer the question of any obligation it has for the debts to an impartial, arbitral or judicial determination.

(5) Has his attention been drawn to a statement made by the Executive Chairman of the ITC on 28 October 1985 that the amounts involved may mean that some brokers who have continued to do business with the ITC may go out of business if the ITC does not meet its commitments; if so, does he agree with this statement.

(6) Has the Government a moral obligation to pay its share of the ITC indebtedness; if not, why not.

(7) Will the Government initiate or participate in discussions with ITC creditors in an attempt to resolve the matter.

(8) Is he aware of the urgency of the problem, not only in terms of the need to improve the climate of commodity trading, but also to reduce exposure to interest payments on the debt presently accruing at an estimated rate of approximately \$A1.5 million per week.

(9) Did he instruct that action be taken to limit Australia's liability for purchases by the ITC in excess of member country contributions; if so, what were his instructions.

Mr Dawkins—The answer to the honourable member's question is as follows:

(1) It is well known that the International Tin Council (ITC) entered into borrowing arrangements with a number of banks to help finance buffer stock operations under the Sixth International Tin Agreement which also involved the purchase and sale of tin through brokers associated with the London Metal Exchange.

(2) Yes. The banks and brokers that are creditors of the ITC, for example, have claimed that ITC member countries, including Australia, have obligations and/or legal liabilities to either contribute to or meet the debts of the ITC. One broker has commenced legal proceedings against member countries. The Government does not accept that it has any obligation or liability for the debts of the ITC. This is also the position of other members of the ITC. Nevertheless, the Government was prepared, without any admission of liability, to accept a proposal, known as the TINCO proposal, and to contribute Australia's share of the funds required to implement the proposal provided it was accepted by all the other parties involved. In the event, the TINCO proposal was not accepted by all the parties and it lapsed. The Government does not intend to take any further action in that regard.

(3) No.

(4) Legal proceedings are in train. See (2) above.

(5) Any question of what information might have been made available within the proceedings of the ITC is one on which I cannot comment because member countries have an obligation to keep such information confidential. I am not aware of any relevant public statement by the Executive Chairman of the ITC.

(6) and (7) See (2) above.

(8) An improvement in the climate of commodity trading depends on a wide range of factors unrelated to the ITC situation. See also (2) above.

(9) The question of specific instructions to limit Australia's liability to the ITC did not arise because member countries are not considered to have

any liability beyond the financial contributions made in accordance with the provisions of the Sixth International Tin Agreement.

On 28 November 1986 the Minister for Foreign Affairs, Mr Hayden, provided the following answer to the respective question on notice (HR Deb 1986, 4069):

Mr Braithwaite asked the Minister for Foreign Affairs, upon notice, on 21 October 1986:

Did his Department tender advice that Australia should not honour its obligations to the Tin Rescue Plan (TINCO); if so why?

Mr Hayden—The answer to the honourable member's question is as follows:

The Department of Foreign Affairs was certainly involved in the examination by officials of the TINCO Plan. However, it is not appropriate for me to reveal advice tendered by officials to ministers. As you will be aware the Government's position was that Australia should accept the TINCO proposal and, subject to all other parties signifying similar acceptance, contribute Australia's share of funds needed to implement the proposal.

On 13 May 1987 the Minister for Trade, Mr Dawkins, said in answer to a further question from Mr Braithwaite (HR Deb 1987, 3078):

The views and activities of the honourable member for Dawson on this matter are quite extraordinary. He has sought to admit Australia's liability whereas Australia's position, and my position, has been to leave that matter to be resolved through the normal court processes. The honourable member is fully aware that this is a matter which is being currently litigated. It is a matter which the Australian Government is obviously involved in as a member of the Tin Council. I do not intend to prejudge what might be the results of that court action which has been taken. However, at all times we acted responsibly. Of course, we could not act unilaterally. We are members of the Council, and we acted in concert with the other members of the Council. I think that in every way we have acted to limit Australia's liability. But if, in the end, it comes to the point that there is a liability established for Australia in relation to this matter, we will have to consider the position at that time.