VIII – INTERNATIONAL ECONOMIC LAW

International commodity agreements – International Tropical Timber Agreement

On 28 February 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (HR Deb 1989, Vol 165, p 118):

> Australia and Malaysia are both members of the International Tropical Timber Agreement 1983, which provides an effective framework for cooperation and consultation between tropical timber producing and consuming members for the development of national policies directed at sustainable utilisation and conservation of tropical forests and their genetic resources.
>
> Australian membership provides an opportunity to contribute to the development of responsible forest management policies and practices and to encourage producing countries to pay greater attention to the environmental values of tropical forests, and to maintaining the ecological balance in the regions concerned.
>
> All major producing and consuming countries of tropical timber are members of the Agreement which has been operative since 1 April 1985. It is envisaged that it will develop into an important forum for the attainment of the above objectives.

International agreements for the avoidance of double taxation – agreements with China, Papua New Guinea and Thailand – implementing legislation

On 10 May 1989 the Minister assisting the Treasurer, Mr Peter Morris, introduced the Income Tax (International Agreements) Amendment Bill 1989 into Parliament (HR Deb 1989, Vol 166, pp 2365–6), and explained the purpose of the Bill, in part, as follows:

> I am very pleased to introduce this Bill, which will provide legislative authority for the entry into force of a comprehensive double taxation agreement with the People's Republic of China. The Bill will insert the text of the agreement into the Income Tax (International Agreements) Act 1953 as a schedule to that Act. This agreement substantially accords with the other comprehensive taxation agreements concluded by Australia in recent years. The Government believes it will contribute positively to the strengthening of trade, investment, and wider relationships between Australia and China. The agreement was signed on 17 November 1988, at which time details were announced and copies of the agreement were made publicly available. It deals with all substantial forms of income flowing between both countries, apart from profits on international air transport operations covered by the existing Chinese Airline Profits Agreement. ...

On 2 November 1989 Mr Morris introduced the Income Tax (International Agreements) Bill (No 2) 1989 into Parliament (HR Deb 1989, Vol 169, pp 2421–2), and explained the purpose of the Bill, in part, as follows:

I am pleased to introduce this Bill, which will provide legislative authority for the entry into force of comprehensive double taxation agreements between Australia and Papua New Guinea, and Australia and Thailand. The Bill will also provide legislative authority for the entry into force of protocols to amend Australia's existing comprehensive double taxation agreements with France and Singapore.

The Papua New Guinea and Thailand agreements, which were signed on 24 May 1989 and 31 August 1989 respectively, deal with all substantial forms of income flowing between Australia and the other two countries. The agreements substantially accord with other comprehensive taxation agreements concluded by Australia in recent years. The Government believes the agreements will contribute positively to the strengthening of trade, investment, and wider relationships between Australia and these two countries.

International maritime law – limitation of liability for maritime claims

On 12 April 1989 the Minister for Land Transport and Shipping Support, Mr Robert Brown, introduced the Limitation of Liability for Maritime Claims Bill 1989 into Parliament (HR Deb 1989, Vol 166, pp 1478–9), and explained the purpose of the Bill, in part, as follows:

The Limitation of Liability for Maritime Claims Bill will greatly increase the amount of compensation available to victims of a maritime accident. Australia is currently party to the International Convention relating to the Limitation of the liability of Owners of Seagoing Ships, 1957 and its 1979 Protocol. The Convention and Protocol, which are implemented by part VIIIA of the Navigation Act 1912, establish upper limits for claims arising from a maritime incident in which loss of life, personal injury or property damage occurs. In response to widespread concern that the limits set by the 1957 Convention were too low, in 1976 a diplomatic conference adopted the Convention on Limitation of Liability for Maritime Claims. This Convention entered into force internationally on 1 December 1986. Sixteen countries are now party to the Convention, including the United Kingdom, Japan, Liberia, the Scandinavian countries, France and the Federal Republic of Germany.

The Bill will enable Australia to become a party to the 1976 Convention. The inadequacy of the 1957 Convention is demonstrated by the fact that the total amount of the compensation fund for claims involving an incident to a ship of 10,000 gross tonnage would be only about $3.22m. If there were 193 claimants – the number of people killed in the *Herald of Free Enterprise* disaster in 1987 in Belgium – the average amount per passenger would be $16,700. The equivalent figures for passenger claims under the 1976 Convention would be $39m and $202,000, a twelvefold increase.

At the seventy-fifth meeting of the Australian Transport Advisory Council in December 1987, Federal, State and Northern Territory Transport Ministers agreed that Australia should accede to the 1976 Convention. Article 6 of the Convention establishes upper limits for two types of claims: claims for loss of life or personal injury and property claims. These limits are expressed in units

of account. A unit of account is the special drawing right of the International Monetary Fund. For personal claims, liability for claims concerning ships with tonnage not exceeding 500 tonnes is limited to 333,000 units of account, or about $520,000. For larger ships, further units of account are added for each tonne in excess of 500, on a sliding scale. Therefore, the limit for a ship of 10,000 gross tonnage would be 3,914,000 units of account or about $6.1m.

For property claims – that is, claims such as for damage to other ships, or property or harbour works – the system of determining the upper limit is similar. The limit for a ship of 500 gross tonnage is 167,000 units of account or about $260,000; for a ship of 10,000 gross tonnage it is 1,753,500 units of account or about $2.7m. On top of this, article 7 of the 1976 Convention provides for the establishment of a separate fund for loss of life or personal injury to passengers. Here the shipowner's liability is limited to 46,666 units of account multiplied by the number of passengers the ship's certificate authorises it to carry to a maximum of 25 million units of account. Therefore, the maximum compensation available to passengers on the *Abel Tasman* would be about $39m. As a trade-off for the vastly increased amounts of compensation available, the Convention provides for a virtually unbreakable system of limiting liability. It declares that a person will be deprived of his ability to limit liability only if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result.

There are several other issues I should mention. First, unlike the 1957 Convention, the 1976 Convention does not permit State parties to exclude damage to harbour works, basins and waterways and aids to navigation from liability. However, parties are permitted to give such claims priority over other property claims in their national law. The Bill includes such a provision. Secondly, the Convention provides that a State party may regulate the system of limitation of liability to apply to ships intended for navigation on inland waterways or which are less than 300 gross tonnage. The Bill is to apply to all seagoing ships, of whatever size. The Bill also contains a savings clause, which will permit any valid State or Northern Territory law which may be passed to apply the Convention's provisions to ships coming within the legislative competence of that State or Territory to the exclusion of Commonwealth law. Thirdly, the Bill provides for the exclusion of limitation for claims in respect of salvage or wreck removal.

Finally, I would mention that the Bill provides for commencement on a day to be fixed by proclamation. This is necessary to allow for Australia's accession to the 1976 Convention and denunciation of the 1957 Convention and 1979 Protocol to coincide with the commencement of the Act. When this Bill receives royal assent, the process for denunciation of the Convention and Protocol will be initiated.

International trading agreements and arrangements – Soviet Union

On 16 June 1989 the Minister for Trade Negotiations, Mr Duffy, provided the following written answer, in part, to a question on notice (HR Deb 1989, Vol 167, p 3734):

> The Australian Government has indicated its preparedness to develop broader and more constructive relations with the USSR and the areas of trade and economic cooperation have been given priority by both Governments. The trade relationship between the USSR and Australia has a solid base, with many emerging prospects for growth. The formal framework for the trade relationship has been provided by Australia/USSR Trade Agreements, which are complemented by other agreements in the fields of Agricultural Cooperation and Scientific and Technical Cooperation. More recently, a Program for the Development of Trade and Economic Cooperation 1988–1995 has been signed to promote bilateral trade during that period.
>
> Further agreements which will directly affect the level of commerce are currently under negotiation in the commodities and fisheries areas. With regard to the former, Australia has for some years been pressing for long-term arrangements to overcome the fluctuation in Soviet purchases of Australian commodities, which make up over 9% of our export. An Australia/USSR Fisheries Agreement will, if signed, open up opportunities for Australian ports to provide servicing facilities to Soviet vessels.
>
> Since Soviet joint venture legislation was introduced in 1987, several Australian companies have actively pursued investment opportunities in both the European and Asian regions of the Soviet Union, with at least three joint ventures already established with Australian capital and technology. Areas of particular interest to Australia are agricultural cooperation, minerals processing, fashion, manufactured goods, and tourism. The Government continues to encourage companies to examine closely opportunities for joint ventures in the USSR.

International commercial arbitration – UNCITRAL model

On 3 November 1988 the Attorney-General, Mr Lionel Bowen, introduced the International Arbitration Amendment Bill 1988 into Parliament (HR Deb 1988, Vol 163, pp 2399–2401), and explained the purpose of the Bill, in part, as follows:

> The purpose of the Bill I am introducing today is to amend the Arbitration (Foreign Awards and Agreements) Act 1974 to implement the United Nations Commission on International Trade Law (UNCITRAL) model law on international commercial arbitration; and include minor additional provisions to facilitate arbitral proceedings.

Background

> The model law provides a legal framework for the conduct of international arbitrations. It was adopted by the UNCITRAL in 1985 as part of its work in promoting the unification of international trade law. In 1986 the Government established a working group to examine the model law. The working group

comprised representatives of the State and Northern Territory Attorneys-General, the Law Council of Australia, the Attorney-General's Department and the Institute of Arbitrators Australia. The working group recommended adoption of the model law, together with related minor additional amendments to the Arbitration (Foreign Awards and Agreements) Act 1974. The working group's recommendations were considered by the Standing Committee of Attorneys-General in 1987. This bill, which implements the model law, will not replace the present domestic law on arbitration. It will supplement the existing system by enabling international arbitrations to be conducted in accordance with the model law. The Bill will also allow the States and Northern Territory to enact identical legislation should they so wish. To date, the model law has been adopted by Canada, Cyprus and California and is nder active consideration by the United Kingdom, Hong Kong and New Zealand.

Content of the Bill

I refer now to some of the more salient features of the Bill. The Bill will implement the model law by amending the Arbitration (Foreign Awards and Agreement) Act 1974. The Act currently gives effect to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards – the New York Convention – which establishes rules governing the recognition and enforcement, in Australia, of international arbitral awards and agreements. Implementing the model law by amendment to the Act will ensure that all relevant Commonwealth laws relating to international arbitration are comprised in the one instrument. In the event of any conflict being found to exist between the provisions of the model law and the New York Convention, the latter will take precedence.

The Model Law

The model law provides an internationally agreed legal framework for the conduct of international arbitrations. It regulates the arbitration agreement, the composition of arbitral tribunals, the conduct of arbitral proceedings, the recognition and enforcement of awards, and recourse against arbitral awards. International recognition of the model law means that its adoption should assist Australia's efforts to establish itself as a centre for international commercial arbitration. In this regard I note that both Melbourne and Sydney have facilities for conducting international arbitrations with the establishment of the Australian Centre for International Commercial Arbitration in Melbourne and the Australian Commercial Disputes Centre in Sydney.

The model law also complements the UNCITRAL arbitration rules, which are increasingly being used in the conduct of international ad hoc arbitrations. In a more general context, party autonomy is respected and facilitated by the model law. Parties will no longer be frustrated by unknown provisions of national laws which may conflict with their intentions in respect of their arbitration. While the law in Australia at present is relatively modern it may be unfamiliar to some foreign parties and may be perceived to be undesirable by them. Another aspect of the model law worthy of mention is the delimitation

of court assistance and supervision. While the model law recognises the supportive and corrective role to be played by the courts, it will limit judicial intervention and supervision of an arbitration to a greater degree than under present Australian law.

I will now mention some of the supplementary matters provided for by the Bill. The first of these is the manner in which the model law is to be implemented. The Bill will implement the model law on an 'opt–out' basis. This means it will apply to all international arbitrations unless parties agree, in writing, to exclude its operation. The facilitative provisions of the Bill will however apply on an 'opt–in' basis. In this regard the Bill will clarify and increase the powers of arbitral tribunals in respect of matters such as the payment of interest on awards, costs, and the consolidation of arbitral proceedings. In relation to consolidation, arbitral tribunals will be able, at the request of a party, to consolidate proceedings where, for example, they deal with a common question of fact or law or where the relief claimed arises out of the same transaction. The Bill will thus enable parties to an international arbitration to choose the model law to govern their arbitration, with no additions or amendments, or the model law with all or any of the additional provisions.

Foreign investment – application of foreign laws – legislation

On 21 December 1989 the Attorney–General, Mr Duffy, introduced the Foreign Corporations (Application of Laws) Bill 1989 (HR Deb 1989, Vol 170, pp 3479–80), and explained the purpose of the Bill, in part, as follows:

The Australian Government recently looked at the legal position of companies incorporated abroad which do business in Australia whether through a branch, local subsidiary or otherwise. One finding was that an Australian court may be called upon to make a decision on a dispute involving such companies by referring to foreign laws, and may well find itself in a situation where it has to choose between conflicting laws of two or more foreign jurisdictions. For example, the court may have to address such questions as the validity of the incorporation of a foreign company, the ownership of shares of such a company or, more generally, the rights and obligations of a foreign company. As a result of the examination, the Government concluded that in some circumstances there were no clear and predictable statutory rules which would overcome the uncertainties relating to claims of corporations of unrecognised states and governments.

It is the policy of the Australian Government to encourage foreign investment which it judges to be in the national interest. The Government wishes to ensure that investors can make important decisions in the confidence that their legal rights in Australia will not be adversely affected by extraneous considerations such as the legal status of the territory in which their business is incorporated. The Australian legal system clearly meets this objective in most cases and obviously provides impartial legal services of high quality. However, it has become apparent that the traditional common law approach to the position of foreign corporations under Australian law may not, in some cases,

adequately take account of the changes in the international trading system and foreign investment patterns in Australia.

Within Australia, there are now corporate entities from diverse political and legal systems and with various ownership arrangements. The sums involved in investment are often large and it is understandable that in such circumstances, investors require certainty as to their legal status. In some countries – for example, the United States – the courts have clarified the legal status of companies incorporated in recognised entities. However, this is not the case in Australia and the approach an Australian court would take in dealing with a case involving the rights of foreign corporations from some parts of the world remains unclear. The Foreign Corporations (Application of Laws) Bill 1989 seeks to address these issues. It deals in general terms with the situation where an Australian court has to determine the legal rights of a foreign corporation by reference to foreign law. Thus, when the ordinary rules of private international law require that the rights [sic] of a foreign company be determined by reference to a foreign law, the Bill will ensure that the law to be applied will be determined by the place of incorporation of the company, without regard to the political circumstances, questions of official recognition or otherwise of the Government authorities there, or the legal status of the place of incorporation.

The Bill's approach takes into account the Government's change in recognition policy announced by the then Minister for Foreign Affairs and Trade on 19 January 1988. Under that policy, Australia no longer takes a position on the recognition or non-recognition of particular governments. Australia recognises states only. The Government considers that it would now be appropriate to provide for protection of the legal rights of companies incorporated in unrecognised entities. Australian courts, when confronted with cases in which foreign relations questions are raised, traditionally have attached considerable importance to the attitude of the Executive Government. The Australian Government's view is that as a matter of public policy, the foreign relations considerations would not normally be the overriding factor in the determination of private legal rights, particularly those involving commercial transactions. The Government considers that Australia's public policy interest can be preserved on the one hand, while on the other hand normal commercial relations between private parties can be determined by reference, where relevant, to the law in fact in operation in the place of incorporation.

The Bill was assented to on 29 December 1989, as Act No 183 of 1989. The text of the Act is as follows:

Short title

1. This Act may be cited as the *Foreign Corporations (Application of Laws) Act 1989.*

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears:

"**asset**" means property of any kind, and includes:

a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible) in real or personal property ofany description: and

b) any chose in action; and

c) any right, interest or claim of any kind in or in relation to property (whether arising under an instrument or otherwise, and whetherliquidated or unliquidated, certain or contingent, accrued or accruing);

"**Australia**" includes all the external Territories;

"**Australian court**" means a federal court or a court of a State or Territory:

"**Australian law**" means:

a) a law in force throughout Australia; or

b) a law of, or in force in, a part of Australia;

and includes the principles and rules of the common law and equity as so in force;

"**body**" includes an association, entity or society;

"**entity**" includes an executive entity and, in sections 8 and 9, also includes a legislative or judicial entity;

"**foreign corporation**" means a body or person incorporated in a place outside Australia;

"**incorporate**" includes form;

"**law**" includes written and unwritten law;

"**officer**", in relation to a foreign corporation, includes a director, secretary, executive officer, agent or employee of the foreign corporation;

"**place**" means a place that, in practice, applies a separate system of law.

Extraterritorial operation of Act

4. This Act applies both within and outside Australia.

Extension of Act to external Territories.

5. This Act extends to each of the external Territories.

Act to bind Crown

6. This Act binds the Crown in right of the Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island.

Law applied in place of incorporation applicable law in determining questions relating to status of foreign corporation etc.

7. (1) The section applies in relation to the determination of a question arising under Australian law (including a question arising in a proceeding in an Australian court) where it is necessary to determine the question by reference to a system of law other than Australian law.

(2) Any question relating to whether a body or person has been validly incorporated in a place outside Australia is to be determined by reference to the law applied by the people in that place.

(3) Any question relating to:

a) the status of a foreign corporation (including its identity as a legal entity and its legal capacity and powers); or
b) the membership of a foreign corporation; or
c) the shareholders of a foreign corporation having a share capital; or
d) the officers of a foreign corporation; or
e) the rights and liabilities of the members or officers of a foreign corporation, or the shareholders of a foreign corporation having a share capital, in relation to the corporation; or
f) the existence, nature or extent of any other interest in a foreign corporation; or
g) the internal management and proceedings of a foreign corporation; or
h) the validity of a foreign corporation's dealings otherwise than with outsiders;

is to be determined by reference to the law applied by the people in the placein which the foreign corporation was incorporated.

(4) A matter mentioned in subsection (2) or (3) is not to be taken, by implication, to limit any other matter mentioned in those subsec tions.

Certain acts not to be recognised etc.

8. Where an act of a foreign State, or an entity of a foreign State:

a) purports to affect a foreign corporation or its assets or dealings; and
b) the act is based on, or derives from, the assertion of sovereignty or other authority over the place in which the foreign corpora tion was incorporated;

the act is not to be recognised, or in any way given effect to, under Australian law unless it is recognised, and would be given effect to, under the law applied by the people in the place in which the foreign corporation was incorporated.

Recognition or non-recognition irrelevant consideration in application of Act etc.

9. (1) It is the intention of the Parliament that the application of this Act is not to be affected by the recognition or non-recognition, at any time, by Australia:

a) of a foreign State or place; or
b) of the Government of a foreign State or place; or
c) that a place forms part of a foreign State; or

d) of the entities created, organised or operating under the law applied by the people in a foreign State or place.

(2) Without limiting subsection (1), it is also the intention of the Parliament that the application of the Act is not to be affected by the presence or absence, at any time, of diplomatic relations between Australia and any foreign State or place.

International trade law – general developments in Australia

For a comprehensive account of developments in international trade law matters in Australia, see the papers prepared by the Attorney-General's Department and published by the Australian Government Publishing Service in the proceedings of the 15th and 16th International Trade Law Conferences held in Canberra in 1988 and 1989 respectively.

Export controls – uranium – nuclear safeguard agreements

On 20 April 1988 the Minister for Primary Industries and Energy, Mr Kerin, said in the course of a statement on Australian nuclear safeguards (HR Deb 1988, Vol 160, pp 1858–60), as follows:

Australia's safeguards agreements are the strictest in the world. They provide for the most stringent controls to ensure that Australian obligated uranium is used only for peaceful – that is, non-weapons – and non-explosive purposes. Australia's bilateral safeguards agreemenst, 11 of which are in force – with the United States, the United Kingdom, France, Canada, Japan, the Republic of Korea, the Philippines, Finland, Sweden, Euratom and the IAEA – are binding international treaties and have been tabled in the Parliament. They are public documents. The dates on which these agreements entered into force are set out in the [Australian Treaty List].

The physical and chemical processes involved in making nuclear reactor fuel on a commercial scale involve very large plants and necessitate the commingling of material from several sources. In the first stage uranium oxide or yellowcake, which is a dense powder, is converted to a gaseous form known as uranium hexafluoride. In the next stage – enrichment – the content of the isotope U235, which is the isotope of uranium which enables nuclear fission to take place, is increased from its naturally occurring level of 0.7 percent to about 3 percent. This process typically involves cycling the gas several thousand times through centrifuges or diffusion barriers. In the third stage, the gas is chemically processed to produce uranium dioxide, a powder which is compacted into fuel pellets which are loaded into tubes. A collection of tubes is then assembled into a fuel element. Nuclear material can undergo these various processing operations at plants in a number of different countries subject to the safeguards obligations which are attached to the material involved. These processes are described schematically in the diagram contained in the document which I table.

Continued identification of individual atoms is not possible in commercial operations of this type. Consequently, at the conclusion of each processing stage, it becomes necessary to allocate safeguards obligations to the product

material in strict proportion to the input from each source. The basis of the measure of equivalence is the number of atoms of U235. In this way material is assigned as being of particular national origin and the safeguards obligations that each exporting country requires are applied to that material. In Australia's case this material becomes known as Australian origin nuclear material, or AONM. In other words, AONM is the label attached to nuclear material which is subject to Australian safeguards obligations.

From the point of view of international safeguards, the important thing is that a quantity of nuclear material equivalent to the amount originating in an exporting country remains subject to the safeguards obligations imposed by that country. As the nuclear material passes through the nuclear fuel cycle an amount equivalent to the quantity of material originally exported will remain subject to the safeguards of the exporting country. That remains the situation even though the volume of the material and its chemical composition will change according to the type of process to which the material is subjected. So, for every 50 tonnes of Australian material that enters the European system the equivalent of that 50 tonnes always carries safeguards obligations to Australia. These safeguards obligations ensure that the AONM is locked into the civil program and cannot be diverted from peaceful use without being detected.

The equivalence principle recognises that the individual atoms are indistinguishable from each other. A simple analogy would be that of a bank depositor who maintains control over a given sum of money. The depositor does not expect to withdraw precisely the same banknotes that were deposited with the bank but only a sum of money equivalent to the amount deposited. In the same way Australia does not seek to identify the individual atoms in uranium which is exported to a given country. This is consistent with international practice.

Export controls – Co-ordinating Committee on Multilateral Export Controls (COCOM) – Australian membership

On 14 April 1989 the following joint Ministerial news release was issued:

Australia has accepted an invitation from the Chairman of COCOM (Coordinating Committee on Multilateral Export Controls) to become a full participant in the work of the Committee.

In a joint announcement, Senator Evans (Minister for Foreign Affairs and Trade), Mr Beazley (Minister for Defence) and Senator Button (Minister of Industry, Technology and Commerce) said that Australia had for many years cooperated with the Western strategic community in controlling the export of particularly sensitive dual use technology which might be used to strengthen the military potential of Warsaw Pact countries, and to a lesser extent China.

However, Australia had not previously participated otherwise than as a spectator in the work of COCOM – the informal group through which the major industrialised countries coordinated their controls – and had as a result minimal influence on the content of the guidelines applied.

The Ministers noted that Australia's growing exports of equipment and technology which had dual military and civilian applications and its reliance on imports of this technology from COCOM countries had led the Government to review its position on the issue of participation in COCOM.

The Ministers said that notwithstanding the major recent thaws in East–West relations, the underlying rationale for COCOM still existed and was accepted by Australia.

The Ministers said that participation in COCOM was being accompanied by some related amendments to Australia's export controls, and foreshadowed that an announcement on those amendments would be made next week.

On 22 December 1989 the Minister for Defence, Mr Beazley, provided the following written answers to the respective questions (HR Deb 1989, Vol 170, pp3664–5):

[questions]

(9) Given that COCOM has been in operation since the 1960's, why did Australia decide to join COCOM this year when Eastern Bloc countries are taking steps to reduce secrecy and become more democratic.

(10) Which countries are members of COCOM.

(11) Which countries are listed as not being able to receive listed items under the COCOM regulations.

[answers]

(9) COCOM has, in fact, been in operation since the late 1940's. None of the reforms in the Eastern bloc had begun, or been anticipated, when Australia joined COCOM.

(10) Australia, Belgium, Canada, Denmark, France, Greece, Italy, Japan, Luxembourg, Netherlands, Norway, Spain, Portugal, Turkey, United Kingdom, United States and West Germany.

(11) The proscribed countries are Albania, Afghanistan, Bulgaria, China, Czechoslovakia, East Germany, Hungary, Romania, Mongolia, North Korea, Poland, USSR and Vietnam.

Export controls – cultural material – restoration of stolen object – refusal of export permit.

Export controls – cultural material – restoration of stolen object – UNESCO Convention on Cultural Heritage – legislation

On 23 October 1989 the following joint Ministerial news release was issued:

A 2000 year old Peruvian burial mantle was today formally returned to the people of Peru at a special ceremony at the Australian National Gallery in Canberra.

The Minster for Foreign Affairs and Trade, Senator Gareth Evans and the Minister for Arts, Tourism and Territories, Clyde Holding, presented the mantle to the Peruvian Ambassador, His Excellency Mr Gonzalo Bedoya.

The textile, known as the Paracas Mantle, was purchased in good faith from a well known art dealer in the United States by the Australian Government in

1974. In 1989 the Peruvian Government presented irrefutable evidence to the Australian Government that the mantle was one of a group of textiles stolen from the National Museum in Peru in 1973.

Senator Evans said the return of the Paracas Mantle reflected the friendly relations between Australia and Peru, and would help to further strengthen the relationship.

"It was a nice gesture for the Government of Peru to allow the Mantle to be displayed at the Australian National Gallery for one month to allow the Australian public to view this ancient work of art before its return to Peru," he said.

Clyde Holding explained why the Government had decided to return the mantle.

Mr Holding said "the Protection of Movable Cultural Heritage Act 1986, which facilitates the return of stolen cultural property to the country of origin, does not apply to the Paracas Mantle because it was purchased and imported into Australia prior to 1986. However, I believe it is important to abide by the spirit of the legislation and return this significant piece of Peru's cultural heritage to the people of Peru".

On 4 October 1989 the Minister for the Arts, Tourism and Territories, Mr Holding, issued the following news release:

The Minister for the Arts, Tourism and Territories, Clyde Holding, announced today that he has refused a permit for John Glover's painting, 'The Bath of Diana' to be exported under the Protection of Moveable Cultural Heritage Act 1986.

This is the first time a permit to allow a cultural heritage object to be exported has been refused since the scheme came into full operation in August 1988.

The painting was sold to an American citizen at auction in April 1989 for $1.76 million, the highest price ever paid for an Australian painting.

'The Bath of Diana' is based on the classical myth of Diana and Actaeon and symbolises the Tasmanian Aborigines living in an idyllic state on the eve of the destruction of their society by the arrival of Europeans. It shows Tasmanian Aborigines at a rock pool. In the myth, Diana swims while Actaeon, a hunter, looks on unnoticed with his dogs. Once discovered and splashed by Diana, he will be turned into a stag and torn to pieces by his own dogs.

Mr Holding said that he had accepted the advice of the National Cultural Heritage Committee that the painting is unique and of outstanding importance from a historical and artistic standpoint. Its export would significantly diminish the cultural heritage of Australia. Under the Act, an export permit cannot therefore be issued.

Economic sanctions – non-mandatory sanctions – South Africa

On 28 February 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice concerning the draft resolution voted on (but not adopted) by the UN Security Council on 8 March 1988 (HR Deb 1989, Vol 165, p 102):

Australia has taken action on all the measures specified in operative paragraph 4 of the draft resolution. In most cases, this has been done by Customs regulations or by executive action.

In relation to OP1 on investments, new investment in South Africa by the Government and public authorities, except where necessary for the maintenance of Australian diplomatic and consular representation in Southern Africa, has been suspended. The Government has requrest Australian banks and other financial institutions to suspend new loans to borrowers in South Africa and has called on Australian investors to refrain from new investment, or reinvestment, in South Africa.

Operative paragraph 4 of the draft resolution read as follows:

4. *Decides*, under Chapter VII of the Charter and in conformity with its responsibility for the maintenance of international peace and security, to impose the following mandatory sanctions against South Africa, in accordance with Article 41:

a) Cessation of further investment in, and financial loans to, South Africa;
b) Ban on the importation of iron and steel;
c) An end to all promotion of and support for trade with South Africa;
d) Prohibition of the sale of kruggerands and all other coins minted in South Africa;
e) Cessation of all forms of military, police or intelligence cooperation with the authorities of South Africa, in particular the sale of computer equipment;
f) Cessation of the export and sale of oil to South Africa;

International development assistance – United Nations target – Australia's level of official development assistance

International development assistance – United Nations target – Australia's level of official development

On 3 March 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to questions on notice (Sen Deb 1989, Vol 132, p 441):

According to the 1988 Annual Report by the Chairman of the Development Assistance Committee (DAC) of OECD, Australia's level of official development assistance (ODA) in calendar year 1987 was 0.33 percent of GNP which was only slightly below the ratio of total ODA to total GNP for all DAC member countries (0.35 percent in 1987).

The Government adheres to a long-term ODA/GNP target of 0.7 percent set by the United Nations and will endeavour to maintain its ODA at the highest level consistent with the needs of developing countries and Australia's economic circumstances and capacity to assist.

International development assistance – Australian contributions to IBRD

On 18 February 1988 the Minister for Science, Customs and Small Business, Mr Barry Jones, introduced the International Bank for Reconstruction and Develop-

ment (Share Increase) Bill 1988 into Parliament (HR Deb 1988, Vol 159, pp. 187–8), and explained the purpose of the Bill, in part, as follows:

> The purpose of this Bill is to obtain parliamentary approval for Australia to take up an increase in its capital subscription to the International Bank for Reconstruction and Development (IBRD). Honourable members will be aware that the main activity of the bank, which was established in 1947, is lending to developing countries. ...
>
> In May 1986, governors approved a resolution authorising a further share allocation in the final phase of the supplementary share allocation. Australia was one of the countries affected by this resolution. The text of the resolution, including the number of shares to which affected members are entitled to subscribe, is included in the explanatory memorandum to this legislation, which I now table. Australia voted in favour of the resolution authorising the final phase of the supplementary share allocation. Members, including Australia, are entitled, but not obliged, to subscribe to this authorised increase.
> ...
>
> The IBRD is an effective and efficient institution in the provision of development assistance to developing countries, and it plays an important role in the South East Asian region. This has been recognised by Australian governments over the years since the bank's establishment. ...
>
> Australia's membership of the IBRD brings substantial commercial benefits. On a cumulative basis Australia has received more from procurement by the IBRD, including IDA, than it has given in contributions to the bank and IDA. I believe it to be in Australia's interest to continue its policy of support of the IBRD by taking up, in full, the increase in our capital subscription to which we are entitled.

International development assistance – suspension and resumption of assistance – Fiji

On 3 March 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (Sen Deb 1989, Vol 132, p 440):

> The Australian Government deplored both Fiji coups and took action to suspend the provision of aid to Fiji (with the exception of training assistance). However on the return to civilian government in Fiji selected aid activities were resumed in early 1988.