II SOVEREIGNTY, INDEPENDENCE, SELF-DETERMINATION

Sovereignty – Australian sovereignty – Ashmore Islands

On 20 November 1990 notice was given under the National Parks and Wildlife Conservation Act 1975 that a Plan of Management in respect of Ashmore Reef National Nature Reserve had come into operation (see *Commonwealth of Australia Gazette*, No GN 449, 12 December 1990, page 3249). Following is an extract from the Plan of Management which describes the Reserve and the legislation applicable to it, and which gives an historical account of Indonesian and European activity in the area, and evidence of Australian sovereignty from 1878 to the proclamation of a National Nature Reserve over the islands and the surrounding reef in 1983.

1.1 Location and Extent

Ashmore Reef National Nature Reserve is located in the Timor Sea at latitude 12^0 15'S and longitude 123^0 05'E, about 840 km west of Darwin and 610 km north of Broome (Map 1). Ashmore Reef forms part of the Australian Territory of Ashmore and Cartier Islands.

The Reserve was proclaimed on 16 August 1983. It covers 583 square kilometres encompassing three islands, reef shelf and the surrounding waters to the 50 m bathymetric contour, with some extensions beyond that contour to regularise the boundaries (Map 2).

[Editor's note: see Maps 1 and 2 in Appendix III]

3.3 Relevant Legislation and Agreements

Ashmore and Cartier Island Acceptance Act 1933, which defines the Territory of Ashmore and Cartier Islands and extends all laws in force in the Northern Territory from time to time to apply to the Territory of Ashmore and Cartier Islands;

Memorandum of Understanding Between the Government of Australia and the Government of the Republic of Indonesia Regarding Operations of Indonesian Traditional Fishermen in Areas of the Australian Exclusive Fishing Zone and Continental Shelf (MOU), which was signed in 1974 and provides traditional fishermen with certain privileges (Appendix I). The operation of the MOU has been reviewed in the Agreed Minutes of a meeting held in April 1989 between officials of Australia and Indonesia and in the Practical Guidelines for the implementation of the 1974 MOU formulated at that meeting (Appendix II);

Petroleum (Ashmore and Cartier Islands) Act 1967, which gives effect to the *Petroleum (Submerged Lands) Act 1967* and directions issued under the Act which control petroleum exploration and extradition activities in the Territory and adjacent areas;

Fisheries Act 1975, which regulates the commercial operations of all persons and boats and non-commercial activities of persons on foreign boats, in respect of the taking of swimming fish in the Territory waters;

National Parks and Wildlife Conservation Act 1975, which applies to all external Territories of Australia and under which the Ashmore Reef National Nature Reserve is declared;

Historic Shipwrecks Act 1976, which enables the declaration and management of historic shipwrecks and of protected zones around them;

Environment Protection (Sea Dumping) Act 1981, which controls sea dumping operations and gives effect to the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters;*

Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and the Navigation (Protection of the Sea) Amendment Act 1983, which give effect to the *International Convention for the Prevention of Pollution from Ships* which came into effect internationally in October 1983. Discharge of oil and noxious chemicals from ships is regulated, whilst discharge of garbage will be controlled from all Australian ships following Part IIIc of the *Protection of the Sea Legislation Amendment Act 1986* coming into effect which is expected in 1990.

Continental Shelf (Living Natural Resources) Act 1968, which regulates the commercial taking of sedentary organisms from the Continental Shelf;

Migratory Birds Ordinance 1980, which gives effect to the *Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment* (JAMBA), signed in 1974 and ratified in 1981. JAMBA obliges respective Governments to take measures to preserve and enhance the environment of birds protected by the Agreement and to prevent damage to such birds and their environment. The *Migratory Birds Ordinance 1980* also gives effect to the *Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment* (CAMBA). This Agreement was ratified in August 1988;

Whale Protection Act 1980, which prohibits the taking, killing, injuring or interfering with all cetaceans in the Australian Fishing Zone;

Wildlife Protection (Regulation of Exports and Imports) Act 1982, which regulates the export and import of wildlife for Australia and its External Territories and gives effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to which Australia is signatory. Under this Act, export of Schedule 1 species, such as all marine turtles and dolphins, is strictly regulated to prevent their becoming more endangered. Export of Schedule 2 species such as dugong and clam may be undertaken only under an approved management program;

Customs Act 1901, which extends to the Territory of Ashmore and Cartier Islands and applies to the import of all goods for revenue control and the import and export of goods deemed to require additional controls;

Australian Heritage Commission Act 1975, which will apply if the Reserve is included on the Register of the National Estate;

Sea Installations Act 1987, which provides a regulatory system for all off-shore commercial ventures in Commonwealth waters in the Continental Shelf beyond the Territorial Sea; and

Quarantine Act 1908, which prevents the introduction or spread of diseases or pests affecting man, animals or plants.

Resource Description

4. History and Development

4.1 Indonesian Activity

Indonesian fishermen were fishing for trepang (a holothurian or sea cucumber) off the coast of Northern Australia when Flinders sailed these waters. In 1803 Flinders was informed at Kupang (Timor) that the natives of Macassar (Sulawesi) were accustomed to fish for trepang or beche-de-mer amongst islands in the vicinity of Java and upon a dry shoal lying to the south of Roti (presumably Ashmore Reef) (Flinders, 1814).

Baudin also encountered Indonesian fishermen in April 1803 (Peron and de Freycinet, 1816). About 24 perahus were fishing for trepang 350 km south-west of Ashmore Reef at the Holothuria Banks.

In 1818, King visited Kupang (Timor) and was advised that a fleet of 200 perahus left Macassar in January of each year during the westerly monsoon for the trepang fishery off Northern Australia. He thought the number of vessels may have been exaggerated. The trepang were sold to Chinese merchants in Timor (King, 1827). According to Langdon (1966), Indonesian fishermen were reported to have visited Ashmore Reef in the 1890's.

Crawford (1969) provides extensive documentation of visits by vessels from many Indonesian islands (Timor, Ra'as, Sulawesi, Roti, Bonerate, Madura, Makassar, Aru) in the period 1900-1940. The principle catch was trepang, trochus shell, fish and clam meat with smaller quantities of turtle shell. The majority of vessels were owned by Dutch, Chinese and Arab merchants and crewed by Indonesians.

Recent observations of Indonesian fishing activity at Ashmore Reef date from October 1949 when 30 perahus were sighted by FRV *Warreen* from Seringapatam Reef to Hibernia Reef, including 23 at Ashmore Reef (Serventy, 1952). The islands at Ashmore showed signs of established use with wells and fish drying racks on East Islet and West Island, two graves on

East Islet and piles of sea-bird remains on all islands. Although some trepang was found amongst the fisherman's catch, sun-dried fish and clam meat were the most conspicuous components. Carapaces of hawksbill turtles, *Eretmochelys imbricata* and a considerable quantity of large, good quality trochus shell were also observed.

Serventy (1952) considered that the fishery had revived since World War II as no Indonesian fishing activity had been noticed by Australian servicemen who operated in the area during the war years, or during an inspection by the Minister for the Interior in 1947.

HMAS *Cootamundra* visited the Ashmore Islands in August 1958. Indonesian perahus from Kupang (Timor) were present. Crawford (1960) records a number of vessels from Madura Island at Ashmore Reef in 1967 - 68. They were principally harvesting clam meat but also trepang, fish, trochus and baler shells, and a few turtle eggs and birds. An investigation by HMAS *Diamantina* in July 1974 found Indonesian fishermen using the cays for cooking and drying sea-birds. Sea-bird egg shells and approximately 50 dead turtles were found near fires.

In November 1974 the traditional fishing practices of Indonesians at Ashmore Reef, and at Cartier Island, Scott Reef, Seringapatam Reef and Browse Island were recognised under a Memorandum of Understanding (MOU) between the Governments of Australia and Indonesia (Appendix I).

Under the provisions of the MOU, traditional Indonesian fishermen were permitted to take fish and certain sedentary species within a 12 nautical mile radius of specified islands and reefs: Ashmore Reef, Cartier Island, Scott Reef, Seringapatam Reef and Browse Island. They were also permitted to land on East and Middle Islets for the purpose of obtaining water supplies.

In September 1988 part of the Reserve was closed to the public. The Closure was necessary to ensure that the significant sea-bird breeding rookeries on the islands and the marine wildlife of the reef and lagoons were not disturbed. It was feared that certain species, particularly giant clams, would become extinct at the reef if harvesting restrictions were not imposed.

Officials from Indonesia and Australia reviewed the operation of the MOU at a meeting in Jakarta in April 1989 and adopted Practical Guidelines for its implementation (Appendix II). Under the Guidelines, Indonesian traditional fishermen may land on West Island to obtain water. Landings on Middle or East Islets are prohibited. Boats may fish and anchor in the channel adjacent to West Island for the purpose of rest and to shelter from storms. These restrictions are consistent with those placed on other visitors to the reserve.

4.2 European Activity

The first recorded European to sight Ashmore Reef was Captain Samuel Ashmore, commander of the *Hibernia*. He discovered the reef on 11 June 1811. This same captain, who was admired in Sydney for his ability in sailing through the Torres Strait, had discovered Hibernia Reef, 30 km north-north-east of Ashmore Reef, 13 months earlier.

European interest in Ashmore Reef increased with the discovery, attributed to American whalers, of guano. Guano trade was intermittent during the middle and latter half of the nineteenth century on islands off the west and north-west Australian coast.

The earliest official record of guano export was 1847, followed by further small amounts exported in 1855, 1865 and 1872 but the exact location and amount of these is not recorded (Woodward, 1917). Louis Knoop visited Ashmore Reef in 1891 and reported to the Assistant Government Geologist of Western Australia that all guano had been removed and traces of old rails and tanks remained (Fairbridge, 1948).

In 1920 an Australian syndicate obtained from the Colonial Office a seven year licence for the purpose of excavating and exporting guano from the Ashmore Islands. However, the syndicate soon found that the guano was not worth extracting and the islands were again deserted (Langdon, 1966).

4.3 Sovereignty

The sovereignty of certain outlying reefs off the north-west coast of Australia came into question with the rise of guano exploitation.

Rival interests in the guano of the Ashmore islands led to friction and long negotiations between the British Colonial Office and the United States State Department, with Britain finally settling the sovereignty question by annexing the Ashmore islands in 1878 (Langdon, 1966).

In 1923 the Commonwealth referred to the British Government a complaint by the Western Australian Government that Indonesian fishermen were illicitly fishing at Ashmore Reef. After several years, Britain informed the Commonwealth that it would be prepared to transfer the Ashmore Islands and Cartier Island to Australian sovereignty (Langdon, 1966). The Commonwealth accepted.

On 23 July 1931 King George V signed an Order-in-Council to place the islands under the authority of the Commonwealth after legislation was passed in the Federal Parliament. This legislation, the *Ashmore and Cartier Islands Acceptance Act 1933*, came into force on 3 May 1934. Under the legislation, the Western Australian Government was empowered to make ordinances for the new Territory of Ashmore and Cartier Islands. However,

doubt was cast on the constitutionality of this provision and the State Government recognised that the benefits of controlling the islands would be outweighed by the expense of policing them (Langdon, 1966). The Commonwealth Government was asked to assume responsibility for the new Territory.

Legislation to do this and to vest control of the islands in the Administrator of the Northern Territory was duly passed by the Federal Parliament in 1938. When self-government was granted to the Northern Territory on 1 July 1978, administration of the Territory of Ashmore and Cartier Islands was assumed by the Commonwealth and is the responsibility of the Minister for Arts, Sport, the Environment, Tourism and Territories.

4.4 Military History

According to the Australian War Memorial, the Ashmore islands may have been used for bombing practice in World War II. However, this has not been confirmed by the Department of Defence which has noted that the islands were a long way from Darwin for such use. Survival equipment and food caches were placed on islands such as those at Ashmore during World War II. HMAS *Tiger Snake* and HMAS *River Snake* made voyages to Ashmore Reef in 1945, but the purpose is unknown.

4.5 Weather Station

An automatic weather station was erected on West Island in 1962. By 1970 all equipment had been stolen and the inner walls removed. The station was refurbished in 1971 but pilfering and vandalism again resulted in the destruction of the station. It was abandoned in 1973.

4.6 Declaration of the Reserve

Since 1950 there has been increasing public concern within Australia at the potential impact of traditional harvesting on the wildlife of Ashmore Reef (Serventy 1952, Kenneally 1977, McKean 1980 and various newspaper reports).

A number of Commonwealth Government Departments reviewed the situation in November 1982 and the Reef and its islands were inspected in 1982–83 by officers of the Australian National Parks and Wildlife Service (ANPWS) who confirmed severe depletion of wildlife populations. Discussions concerning the matter were held in 1983 with the then Departments of Territories and Local Government, Home Affairs and

Environment, Foreign Affairs, Prime Minister and Cabinet, Resources and Energy, Primary Industry, Transport, Defence and Health. Agreement was reached that, in order to provide a sound legislative basis for the protection of wildlife at Ashmore Reef, it was desirable that the area be declared a National Nature Reserve under the *National Parks and Wildlife Conservation Act 1975.*

In February 1983, a notice of a report recommending declaration of Ashmore Reef National Nature Reserve was published in the Commonwealth Gazette and in various newspapers. Twenty-two representations were received concerning the notice; seventeen supported the proposal, three gave qualified support and two opposed the proposal.

The Reserve was proclaimed on 16 August 1983 (Commonwealth Gazette No G32, 16 August 1983).

Sovereignty – Cambodia – Supreme National Council as the embodiment of sovereignty

On 30 November 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read in part:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, announced formally today the appointment of Mr John Holloway, as Australia's Ambassador, Permanent Representative to the Supreme National Council of Cambodia.

Mr Holloway presented his credentials to the Chairman of the SNC, Prince Norodom Sihanouk, in Phnom Penh last night.

He takes over from Mr Richard Butler, Australia's Ambassador to Thailand, who was appointed Australia's representative to the SNC in July.

The SNC comprises representatives of the four Cambodian parties and will represent Cambodian sovereignty until elections are held under United Nations auspices as part of the Cambodian peace process.

Sovereignty – Cyprus – sovereignty and territorial integrity

On 11 November 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written, in part, answer to a question on notice (Sen Deb 1991, pp 2894–5):

Australia upholds the sovereignty and territorial integrity of the Republic of Cyprus and has been consistently involved in the search for a solution to the island's problems. This long standing and active concern for a solution to the Cyprus problem has been demonstrated by the Government's contribution to the UN Forces in Cyprus (UNFICYP) and by its support of previous UN Security Council Resolutions 541, 550 and 649.

Australia supports the latest UN Security Council Resolution on Cyprus (716/91) and the path towards a just and lasting settlement mapped out in this and previous Security Council Resolutions. Australia also welcomes the

Secretary-General's renewed efforts to achieve a settlement to the Cyprus problem.

On 12 December 1991 the Prime Minister, Mr Hawke, said in the course of a speech in Canberra in honour of the President of the Republic of Cyprus:

> As you know, Australia has always condemned the Turkish occupation of Cyprus. We uphold the sovereignty and territorial integrity of the Republic of Cyprus. And we have supported UN Security Council Resolutions 541, 550, 649 and 716. We have consistently expressed opposition to the unilateral declaration of the Turkish republic of Northern Cyprus in 1983.
>
> We have been extensively involved in efforts to restore peace in Cyprus through our participation in the United Nations peacekeeping force. At present, we have 20 men and women of the Australian Federal Police on duty there.

Sovereignty – Indonesia – East Timor – self-determination

On 26 November 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of a debate in Parliament on East Timor and recent killings there in Dili (Sen Deb 1991, p 3323):

> Some people will say the only thing that could possibly meet the needs and aspirations of the East Timorese people would be the independence of East Timor following a UN-supervised act of self-determination and, presumably, a vote to that effect. That is probably too narrow a view of the situation. There is evidence, and quite a deal of evidence has been accumulating over the years before this incident, that a great many East Timorese people, perhaps a majority, would be content to have a society which involved them living in peace without an omnipresent military authority; which involved them being able to freely practice their religion – they are predominantly Catholic – and to exercise cultural freedom and independence, and gave them a measure of economic opportunity and support.
>
> This was the course of action on which we believed the Indonesian Government was genuinely embarked in order to produce, over time, that kind of society in East Timor. The tragedy of the events of 12 November is that it so comprehensively put at risk the achievement – peacefully and within a reasonable timeframe – of the confident support of the East Timorese people for that kind of situation. We belive – and Australian policy has been firmly embedded in this particular course since 1979 – that the only realistic future for the East Timorese people does lie with their acceptance of Indonesian sovereignty. In the mid-1970's we made very clear our opposition to the circumstances of the Indonesian takeover. In innumerable statements since I have made it perfectly clear that I have not changed my own personal view that what happened in 1975 was indefensible.
>
> The world inevitably, and sometimes unfortunately, moves on. Things which appear to be realistically achievable at one time become less so over

time. The truth of the matter has been that the international community, from the late 1970's onward, lost interest in East Timor, and the prospect of achieving the process of self-determination, which was so widely called for in the mid-1970's, is probably no longer realistic.

On 5 December 1991 he said further in the course of an answer to a question without notice (Sen Deb 1991, p 4275):

> The Prime Minister on the *Sunday* program was simply re-stating what has been clearly articulated Australian Government policy - that is, no policy change at all at the moment. We still recognise Indonesian sovereignty over East Timor, for reasons which have been amply explained previously...
>
> Of course, the question of a referendum on self-determination arises only in the context of a pretty fundamental reversal of Australian and international policy which, so far as the majority of nations is concerned, has been clearly unwilling to go down that path, recognising Indonesian sovereignty as an irreversible reality since the 1970's. But it remains one of the policy issues that we will be prepared to have a look at along with everything else if the process which is presently under way does prove to be unsatisfactory.

Independence and non-interference - relevance in human rights - Kurdish people - Iraq

On 9 April 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1991, p 2024):

> Resolution 688 of the Security Council, passed last week, deals quite specifically with the humanitarian issues confronting the present plight of the Kurdish people. That is now being used as the basis for the suggestion from, among others, the United Kingdom Prime Minister, John Major - endorsed earlier today, I believe, by the European Community - that some safe haven concept should be developed pursuant to the open-ended terms of that resolution which would make it possible for the UN to get involved in oversighting the present very unhappy position of the Kurds within Iraq. That issue opens up another very complex series of jurisdictional and legalistic questions about what the precise capacity of the United Nations is, and should be, to act in these areas when one is dealing with internal matters rather than external aggression.
>
> Certainly, the UN charter is very clear that military authority does not extend to matters of this kind. But equally clearly, under UN practice and tradition there is no doubt at all that the international community can apply a great weight of influence, both directly and through the United Nations, in relation to internal humanitarian tragedies and problems of this kind. I go into this detail, Mr President, because it is an extremely complex issue as to just how to handle this.

> Might I say for the record that Australia supports the continuation of sanctions until such time as the human rights of the Kurdish people are guaranteed to the international community's reasonable satisfaction. We support in principle the concept of some kind of safe enclave if that could be made to work consistently with the United Nations charter and with the assessment of the international community of its practicability.

He added in the course of an answer to a further question (Sen Deb 1991, pp 2028–9):

> The most substantial part of the question was about whether or not the Australian Government should support calls for a Kurdish homeland and an independent state. That raises very difficult questions for the entire international community. Historically, the area referred to as Kurdistan was part of the Ottoman Empire. It was not an internationally recognised separate entity. It cannot be said, accordingly, that the Kurds were ever actually displaced from a state of their own; nor is it the case, on my own understanding, that the Kurds were actually displaced from the particular land area that they physically occupied. On both counts, I guess their situation is a little different from that of the Palestinian people.
>
> Rather, the Kurds were, and are, an ethic minority in five countries of the Middle East and central Asia and, as such, are citizens of those countries. In Iraq they comprise three million out of a population of 17 million; in Turkey about 10 million out of 55 million; in Iran about six million out of 56 million; in the Union of Soviet Socialist Republics about half a million out of 290 million – a very small minority there; and in Syria about half a million out of 13 million.
>
> It also needs to be borne in mind that the areas in which the Kurds live in those respective countries are not exclusively Kurdish; many other ethnic groups live there as well. To contemplate the creation of a new state in this region out of sections of five other sovereign states, or even out of just a proportion of those, is really unrealistic in our judgement since it would be resisted by the states concerned and, moreover, it would also establish an international precedent that few other United Nations (UN) member states would accept. Obviously, there are many countries around the world within which very substantial minority groups are resident and they might be minded from time to time to do as the Kurds have done and take up arms against their host country.

On 17 April 1991 he said in the course of an answer to a question without notice (Sen Deb 1991, pp 2575–6):

> Yesterday, President Bush announced that following consultations with the United Nations (UN) Secretary–General and the leaders of Britain, Turkey, France and Germany, he had directed the United States of America military to establish what he described as five or six 'encampments' in northern Iraq from which relief supplies could be distributed to Kurds.

Authority for the action in question derives from Security Council resolution 688, which requests the Secretary-General to 'use all resources at his disposal' to urgently address the needs of the refugees and further 'demands that Iraq cooperate with the Secretary-General to these ends'.

Australia very much welcomes this development as a positive and timely step in the right direction in that it better directs the emergency relief effort in the short term and encourages a return to Iraq by the refugees in the longer term.

On 4 June 1991 the Minister for Defence, Senator Ray, said in the course of an answer to a question without notice (Sen Deb 1991, p 4198):

Yesterday I agreed to withdraw the Australian Defence Force contingent from Operation Habitat in northern Iraq. Our forces have been serving with those from other nations, particularly the United Kingdom, for the displaced Kurdish population returning from Turkey. They were initially deployed for 30 days with the possibility of an extension of up to three months if required.

I am advised that in our area of operations the task is almost complete, with 90 per cent of humanitarian relief now being handled by the United Nations High Commissioner for Refugees and other non-government organisations. Australia has joined the other major coalition commanders in developing a withdrawal plan to take effect shortly. It is anticipated that the Australian contingent will return home shortly after its withdrawal from Iraq.

On 19 June 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1991, p 5001):

I can say that, as a general principle, Australia does support a stronger role for the UN in strengthening collective security arrangements, but the UN does not have carte blanche to unilaterally intervene in a nation's domestic affairs. United Nations action which impinges upon the domestic jurisdiction of a member state is governed by article 2.7 of the Charter, which states:

Nothing in the Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State, or shall require the members to submit such matters to settlement under the present charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

What all that means is that the UN, unless it undertakes enforcement action of the kind that we saw, for example, in the Gulf conflict, has to have the agreement of the respective member state to take any action in relation to questions of self-determination. Thus, UN involvement in the resettlement of the Kurds in northern Iraq has resulted from an agreement between the UN and the Iraqi Government to enable such a UN role to be established.

The Australian Government's general approach to the resolution of questions of self-determination in areas of conflict has been necessarily to address these on a case by case basis with respective governments, while

indicating that we respect the sovereignty and territorial integrity of those governments.

On 23 September 1991 he said in the course of a speech to the United Nations General Assembly:

In the aftermath of the Gulf War we have seen the UN revisit the key question of intervention in the internal affairs of other countries. The Charter notes explicitly that the United Nations is not authorised "to intervene in matters which are essentially within the domestic jurisdiction of any state". Yet there are also basic goals in the UN Charter, in particular in the social and humanitarian area, which have always qualified the principle of non-intervention – the monitoring machinery successfully being developed by the Commission on Human Rights is but one example of how the balance struck between considerations of sovereignty and humanitarian imperatives has evolved.

Today we can readily endorse the Secretary-General's view in this year's annual report that "the principle of non-interference with the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity." The UN's role in Iraq following the war, while governed by the enforcement provisions of Chapter 7 of the Charter, underlined nevertheless that sometimes such UN action is needed in the face of great humanitarian emergencies which threaten international peace and security, even though there may be no agreement from the member state most directly concerned. We are not yet at the stage where we can prescribe new activity or indeed Charter amendment for the UN to enable it greater flexibility to cope with such situations. But we have to recognise that there may be cases where a more flexible approach is in fact needed if the UN is to meet successfully its global objectives.

Independence and non-interference – Indonesia-Papua New Guinea border dispute

On 17 September 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (HR Deb 1990, Vol 172, p 2030):

I am aware of press reports of recent Indonesian incursions into PNG territory. The Australian government has not commented on these, believing that the management of their joint border is a matter for Indonesia and Papua New Guinea to work out in cooperation with each other.

I have no information to indicate that the deportation of Salosa was not legally well founded. Salosa did not have refugee status. His extradition was sought by the Indonesian government for his alleged involvement in an attack on a transmigration camp in Irian Jaya which resulted in the death of a large number of civilians. Salosa was arrested in Papua New Guinea in December last year for the illegal possession of weapons. Before his deportation he was

appearing before a PNG court on a charge of illegal entry. I believe that Papua New Guinea's deportation of Salosa did not contravene its obligations as a signatory to the United Nations Convention on Refugees.

Independence - unilateral declarations of independence - Bougainville, Papua New Guinea

On 17 May 1990 the Acting Minister for Foreign Affairs and Trade, Dr Blewett, issued the following news release:

> The Acting Minister for Foreign Affairs and Trade, Neal Blewett, today stated that Australia did not acknowledge any unilateral declaration of independence by the Bougainville Revolutionary Army in North Solomons Province.
>
> Dr Blewett noted that the legitimate constitutional governing authority in Bougainville is the Papua New Guinea National Government.
>
> Australia supports the territorial integrity of the sovereign state of Papua New Guinea, which includes Bougainville.
>
> "Since Papua New Guinea's independence in 1975 we have maintained a consistent policy which supports a united Papua New Guinea," Dr Blewett said. "In response to a similar situation in September 1975, the then Prime Minister, Mr Whitlam, affirmed Australia's support for a united Papua New Guinea, saying that Australia would give no support in any form to any group in Papua New Guinea working to undermine the country's unity. That remains the Government's policy."
>
> The Australian Government supports the policy of the Government of Papua New Guinea of seeking a long-term resolution to the Bougainville problem by negotiation.

On 9 October 1990 the Prime Minister, Mr Hawke, said in the course of a statement to Parliament (HR Deb 1990, Vol 173, pp 2425-6):

> The relationship with Papua New Guinea remains one of our most important. Papua New Guinea is the largest recipient of Australia's bilateral aid; it is the fourth largest export market for Australia's manufactured products; it is our sixth largest overseas investment destination, with total net investments of about $1.8 billion, a figure which could be well in excess of $4 billion if major resource projects in Papua New Guinea proceed as planned. Over 11,000 Australians reside in Papua New Guinea and, over the past decade, some 2,000 Papua New Guineans have studied here under Australian Government scholarships and training awards.
>
> Since 1983 my Government has worked hard to develop constructively and positively the relationship with our nearest neighbour. In December 1987 I signed with then Prime Minister Wingti the landmark Joint Declaration of Principles. In May last I signed with Prime Minister Namaliu a five-year development assistance agreement. During my visit to Port

Moresby an agreement for the protection and promotion of investment was signed.

The Joint Declaration of Principles spelled out that the relationship between Australia and Papua New Guinea is one between two independent nations each responsible for its own destiny. A fundamental purpose of my visit to Papua New Guinea at this time was to underline this simple but vital fact, the significance of which is still sometimes not fully grasped and understood in parts of Papua New Guinea, Australia and elsewhere.

Throughout my visit, I stressed that Australia had no wish to intervene in solving Papua New Guinea's problems. If effective solutions are to be found, they must be solutions which emerge from within Papua New Guinea and are implemented by Papua New Guineans.

The problem of Bougainville does, of course, remain. In my discussions in Port Moresby, I reiterated the Australian Government's position that Bougainville should remain an integral part of Papua New Guinea and that we fully support the Papua New Guinean Government's commitment to a political solution. I also reiterated our willingness to assist in the rehabilitation of Bougainville once an agreement has been worked out.

I raised again the Australian Government's concern about reported human rights abuses, both by the Papua New Guinean authorities and the Bougainville Revolutionary Army. In this context, I am disappointed that Bougainville leaders have, to date, declined the offer by the Papua New Guinean Government to invite an outside body to investigate allegations involving both sides.

On 8 November 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (Sen Deb 1990, p 3846):

Papua New Guinea's policy on Bougainville is an internal matter for the Government of Papua New Guinea and has always been regarded so by the Australian Government. The Australian Government supports the Papua New Guinea Government's stated policy of negotiating a peaceful solution to the Bougainville problem.

Bougainville is not a matter for unilateral action by Australia. There has been no scope for Australian 'mediation' in this internal PNG issue. But the Australian Government has always made clear its readiness to consider any practical help which might facilitate a solution, and that it is prepared to help where it can in reconstruction on Bougainville once a settlement has been reached. Australia has also offered to provide humanitarian assistance, should our help be required.

On 27 November 1990 Senator Evans added in a further written answer (Sen Deb 1990, p 4621):

The Australian Government's view that the Bougainville situation is an internal matter for the PNG Government to resolve remains unchanged. As

the Prime Minister has publicly stated, there will be no direct involvement of Australian troops in response to the dispute.

Self-determination and decolonisation – United Nations Special Committee

On 21 August 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (Sen Deb 1990, pp 1874–5):

The territories to which the Declaration on Decolonisation continues to apply and which are thus listed by the UN Special Committee on the Implementation of the Declaration on Decolonisation (Committee of Twenty-four) are:

Western Sahara
American Samoa
East Timor
Guam
New Caledonia
Pitcairn
Tokelau
Anguilla
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands (Malvinas)
Gibraltar
Montserrat
St Helena
Turks and Caicos Islands
United States Virgin Islands

The Trust Territory of the Pacific Islands, being a strategic area under United Nations trusteeship arrangements, falls within the responsibility of the Security Council.

The Australian Government continues to support the UN's role in implementing the Declaration on Decolonisation and in monitoring self-determination processes in the remaining listed territories.

Independence – transition to independence – Namibia – United Nations Security Resolution 435 (1978)

On 21 March 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a News Release which said in part:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, today congratulated Namibia on its independence and announced the lifting of sanctions imposed against Namibia.

In 1966, the UN General Assembly terminated South Africa's trusteeship of the territory and transferred responsibility for it to the UN Council for Namibia. In 1971, the International Court of Justice declared South Africa's continued presence in Namibia illegal. In 1978, the UN Security Council adopted under Security Council Resolution 435 a comprehensive settlement plan providing for a UN supervised transition to independence. The full range of political and economic sanctions implemented by the Australian Government against South Africa were extended to Namibia from 1 July 1987.

Despite repeated deadlines for South African withdrawal, however, the process envisaged by Resolution 435 could not be implemented until April 1989, following peace accords between South Africa, Angola and Cuba.

The successful completion of the transition program envisaged in Resolution 435 reaffirms the constructive role that the UN can play in finding durable solutions to major international problems.

Independence – self-determination – Palau

On 13 February 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer, in part, to a question on notice (Sen Deb 1991, p 536):

It is incorrect to state that the people of Palau have not yet had a chance to express their right to self-determination. Since 1983 Palauans have voted on seven separate occasions on a Compact of Free Association agreement negotiated between the governments of Palau and the United States. On each occasion a clear majority of voters has supported the proposed Compact, always less, however, than the 75 percent majority necessary to override the non-nuclear provisions of the Palau Constitution. Palau therefore remains under United States administrative authority as the last component of the Trust Territory of the Pacific Islands. The Australian Government considers that a decision on the Compact and the termination of the Trusteeship with respect to Palau is a matter for the Government and people of Palau.

Self-determination – Australian Aboriginals – distinction between "self-determination" and "self-management"

On 13 September 1990 the Report of the House of Representatives Standing Committee on Aboriginal Affairs entitled "Our Future Our Selves – Aboriginal and Torres Strait Islander Community Control, Management and Resources" was presented to Parliament. Following is an extract from the report (pp 3–4):

Self-determination and Self-management

1.8 The referendum of 1967 provided the Constitutional basis for Federal Government involvement in Aboriginal affairs. In this period the Federal Government was moving away from assimilation towards a policy that would give Aboriginal people the right to retain their own values and lifestyles and determine their own future within the Australian community. This change in direction was reflected in a statement by Prime Minister McMahon of a new Aboriginal policy for his Government that would encourage and assist Aboriginal people 'to preserve and develop their own culture, languages and traditions and art'. Aboriginal people were also to have 'effective choice about the degree to which, and the pace at which, they come to identify themselves with [Australian] society' and be encouraged increasingly to manage their own affairs – 'as individuals, as groups and as communities at the local level'.[6]

1.9 This change in policy direction was taken further by the Whitlam Government elected in late 1972 and became incorporated in a policy of 'self-determination'. The approach of self-determination, as enunciated by the Labour Government, recognised the authenticity of Aboriginal culture as a distinctive part of Australian society. Self-determination was concerned with achieving greater equality and equality of opportunity for Aboriginal people. It also envisaged Aboriginal people deciding the pace and nature of their future development within the broader framework of Australian society.[7]

1.10 The concepts of 'self-management' and 'self-sufficiency' were first enunciated during the period of the Fraser Government, and, although the terms are often used interchangeably, the shift from self-determination to self-management and self-sufficiency represents an increasing emphasis on Aboriginal people being responsible as managers of their own affairs in addition to being involved in decision making and determining their own future.

Difference between self-determination and self-management

1.11 A consultant to the Committee noted in a seminar conducted to discuss issues relating to community management and control that:

> ... there is a distinction ... in broad terms between self-determination, which I think has a self-governing component to it, and self-

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6 Quoted in W Sanders, From self-determination to self-management; in P Loveday (ed), *Service Delivery to Remote Communities,* NARU, Darwin, 1982, p 5.

7 Ibid, p 6 and L Lippmann, *Generations of Resistance: for Aboriginal Struggle for Justice*, Longman Cheshire, Melbourne, 1981, p 73.

> management which is a much more administrative notion which I think fits a framework of local government.[8]

1.12 The distinction between the terms is important with 'self-management' focusing on efficient administration of communities and organisations. 'Self-determination', on the other hand, goes beyond this and implies control over policy and decision making, 'especially the determination of structures, processes and priorities'.[9]

1.13 The difference between the two concepts often provides a dilemma for government agencies. If an Aboriginal organisation encounters problems pressure is placed on government officials to intervene in the self-management process and rectify matters. By doing this, however, Aboriginal people may end up sacrificing self-determination as control of their affairs is transferred out of their hands.

1.14 From a government perspective the term 'self-determination' is often used to indicate the involvement of Aboriginal people in decision making. On the other hand, Aboriginal people have used one or other of the terms as a yardstick in order to demonstrate where government policy falls short of such expectations. At times Aboriginal people and governments have talked past each other because they have used terminology loosely.

1.15 This report is about both self-determination and self-management. It is about how Aboriginal people can have more effective control over decision making processes which affect their communities and be in a stronger position to determine priorities. It is about governments and agencies negotiating with Aboriginal people on the policies and programs affecting their social and economic status rather than seeing a continuation of what has hitherto been seen as consultation. It is also about how Aboriginal people can more effectively and efficiently manage and administer their organisations and communities.

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8 Transcript of proceedings of seminar in Brisbane, 11-12 January 1990, p 4.

9 Dr J Bern, Community Management and self-determination, p 3.