II Sovereignty, Independence and Self-determination

Independence. Australian independence. Colonial laws and residual constitutional links with the United Kingdom. Appeals to the Privy Council. Abolition. Evolutionary nature of Australian independence.

On 30 April 1982 the Attorney-General, Senator Durack, addressed the Committee for Economic Development of Australia in Melbourne. Part of his speech is as follows (Comm Rec 1982, 459-460):

Abolition of residual links

We have been talking with the States for some time now about abolishing all colonial links. They have come to be known as ''residual constitutional links'' with Britain.

You will be interested to know that, unless a Federal law or the Constitution is involved, Australia has two final courts of appeal, neither bound by the other. One is the Privy Council in London if the appellant's lawyers choose that forum despite the rigours of overseas travel involved. The other is the High Court of Australia.

The continuance of appeals to the Privy Council has been described by the Chief Justice of the High Court of Australia as ''anomalous and anachronistic''. Thus, if High Court and Privy Council disagree, what do lower courts in Australia do? The continuation, and in fact the increase in the number of, Privy Council appeals is perhaps the most visible and tangible residual link that survives in Australia.

The Privy Council has made some notable contributions to Australian jurisprudence over the years. However, its lack of familiarity with Australian society and law is a fundamental drawback.

The policy of the Commonwealth Government is that all Australian appeals should be settled in Australia by the High Court. The anomaly of two final courts of appeal cannot be long maintained.

The discussions, I need hardly say, do not touch in any way our connection with the Crown. The Queen is the Queen of Australia, just as she is the Queen of Britain. She will of course remain so.

The purpose of the residual links exercise is formally to complete an evolutionary process under which Australia has in fact already attained its status as an independent and sovereign nation. Of the many references I could give, I refer to Sir Victor Windeyer in a 1969 decision *(Bonser v. La Macchia* (1969) 122 CLR, at pp. 223-4). He puts it very well indeed.

> Australia has grown into nationhood. With the march of history the Australian colonies are now the Australian nation. The words of the Constitution must be read with that in mind and to meet, as they arise, the national needs of the ''one indissoluble Federal Commonwealth'' under the Crown. The law has followed the facts. *The Statute of Westminster* has, by removing restrictions, real or supposed, affirmed the legal competence of the Commonwealth Parliament. The Commonwealth has become, by international recognition, a sovereign nation, competent to exercise rights that by the law of nations are appurtenant to, or attributes of, sovereignty.

The residual links exercise is therefore essentially a matter of removing formal legalistic fetters that, while they survive, have limited practical effect.

I have already mentioned Privy Council appeals. The inability of the States to repeal or update anachronistic British laws still applying as part of the law of the States is another matter of practical concern. The continued role of British ministers in advising the Queen on Australian matters that concern the States is now anomalous.

On 25 June 1982, the Attorney-General issued the following statement (Comm Rec 1982, 761-762):

Abolition of appeals to Privy Council

25 June 1982 — The Attorney-General, Senator the Hon. Peter Durack, said today that significant and historical decisions in relation to residual constitutional links with Britain had been taken at the Premiers' Conference today.

In particular, the decisions meant an end to appeals from Australian courts of law to the Privy Council, making the High Court in Australia the final court of appeal for all Australian courts.

Senator Durack said the decisions were designed to bring certain residual constitutional arrangements fully into conformity with the status of Australia as a sovereign and independent nation.

The resolution adopted by the Premiers' Conference made it clear that the connection with the Crown would be preserved, and for the time being the present system under which State recommendations on appointment of State governors went to the Crown through British ministers would remain.

The specific measures agreed upon included severing the remaining constitutional links in relation to:

- the sovereignty, if any, of the United Kingdom Parliament over Australian matters, Commonwealth and State
- subordination of State Parliaments to United Kingdom legislation still applying as part of the law of the States
- the power of the Crown to disallow Commonwealth and State legislation
- appeals to the Privy Council from State supreme courts on State matters
- the marks of colonial status remaining in the instructions to the Governor-General and to State governors.

The Attorney-General said that at the same time as the residual links were removed, any limitations that might exist at present on the extra-territorial competence of the States to legislate for their peace, order and good government were to be removed. This would be subject to the operation of the Commonwealth laws that applied in the offshore area.

The measures were to be implemented by simultaneous and parallel Commonwealth legislation at the request of the States pursuant to section 51 (38) of the Constitution and United Kingdom legislation at the request of and with the consent of the Commonwealth and with the concurrence of all the States. The Australian and British legislation was to come into effect simultaneously.

Senator Durack said the Standing Committee of Attorneys-General had

been instructed to prepare the necessary draft legislation to implement the above matters. The Attorney-General said that the agreement reached represented a significant step in the evolution in the Australian constitutional arrangements.

On 22 June 1983 the Attorney-General, Senator Evans, issued a statement, part of which is as follows (Comm Rec 1983, 891-892):

Residual constitutional links with UK

22 June 1983 — The abolition of residual constitutional links between Australia and Britain was the subject of discussions with the foreign Secretary, Sir Geoffrey Howe, the Minister of State for Foreign and Commonwealth Affairs, Baroness Young, and the Private Secretary to the Queen, Sir Philip Moore. The Attorney-General, Senator the Hon. Gareth Evans, said today:

> The Australian proposal, agreed to by the Commonwealth and States at the 1982 Premiers' Conference, is for the removal of all remaining categories of appeal from Australian courts to the Privy Council, the removal of any remaining capacity in the British Parliament to make laws binding in Australia and the removal of certain remaining colonial fetters on the powers of State Parliament. The position of the Queen as Queen of Australia will remain quite unchanged.
>
> The British Government has confirmed its willingness to provide a place in the Westminster Parliament timetable later this year or, if necessary, early next year, for the necessary UK legislation, to be entitled the Australia Bill. This Bill will be introduced once the necessary ''request and consent'' legislation has been passed in Australia by the Commonwealth and State Parliaments.
>
> One matter left unresolved by the 1982 Premiers' Conference, and on which general agreement remains to be reached, is the question of advice to the Queen on such State matters as the appointment of State governors and the awarding of imperial honours. At present this advice is conveyed by British ministers, a situation universally agreed to be anachronistic.

Note: progress on the matter was reported by the Attorney-General in a written answer to Parliament on 20 September 1983: HR Deb, 1983, Vol 132, 1037. For statistics on the number of appeals from Australia to the Privy Council for the years 1972 to 1982, see Sen Deb 1982, Vol 97, 3206.

Sovereignty. Australian sovereignty over Heard Island.

The following letter by a spokesman for the Department of Foreign Affairs was published in the *Sydney Morning Herald* on 27 May 1982, at page 6:

> Sir,
>
> The article ''Falklands strain Antarctic peace'' (Herald, April 21) contained some inaccuracies about Heard Island which need correction.
>
> It is not true, as the article suggested, that ''nobody recognises Australia's claim'' to Heard Island. Both Heard Island and the neighbouring Macdonald Island were transferred from Britain to Australia in 1947 and are administered as an Australian territory through the Heard Island and

Macdonald Islands Act of 1953. There were no international objections at the time of transfer and our sovereignty over these islands is not disputed.

There was an Australian base on Heard Island from 1947 to 1954 and we have since taken administrative action and sent a number of scientific and other expeditions which have consolidated our title to it.

Most recently, we have signed an agreement with France on maritime delimitation which includes islands belonging to the two countries, including Kerguelen and Heard and Macdonald Islands. (The author of the article appears not to be aware of this agreement, as the maritime boundaries agreed upon preclude any "overlap" as he suggests between the 200 mile zones of Kerguelen and Heard Islands.)

Furthermore, in the negotiations that led to the adoption of the Antarctic Marine Living Resources Convention (which applies to Heard Island) our sovereignty was never questioned by the 15 countries involved in these negotiations.

KIM JONES,
Department of Foreign Affairs,
Administrative Building,
Parkes, ACT 2600

May 13

Self-determination. Nature of principle. Application to particular situations.

Following is a statement made by the Australian delegation to the 37th Session of the United Nations Commission on Human Rights held in Geneva in 1981 (PP No 135/1981, 30-32):

The right of self-determination of peoples and dependent entities is a cardinal principle of contemporary international law and is fundamental to the development of friendly relations among nations.

Acceptance of this right by the international community as of paramount importance has a long history. The existence of the right was given express recognition by the United Nations General Assembly in its historic Declaration of 14 December 1960 on the Granting of Independence to Colonial Countries and Peoples. Over the following years the existence of this right has been repeatedly reaffirmed. In a strong restatement on 10 November 1975 the General Assembly adopted a resolution reaffirming, and I quote, "the importance of the universal realisation of the right of peoples to self-determination, to national sovereignty and territorial integrity, and of the speedy granting of independence of colonial countries and peoples as imperatives for the enjoyment of human rights". The right has now been enshrined in the International Covenants on Human Rights and is a component of the international law of human rights accepted by all.

In accepting the existence of this fundamental right, the international community has also accepted a number of correlative duties which have been treated under international law as binding upon States. These duties include the duty to promote by joint and separate action the realisation of the right of self-determination, and the transfer of sovereign powers to the peoples entitled to this right. There is also a duty to refrain from any forcible action calculated to deprive a people of this right.

In the same forum, last year, I expressed in no uncertain terms the seriousness with which the Government of Australia regards the grave violations through foreign military intervention of the right of the people of Afghanistan to self-determination. Last year this Commission ''condemned the Soviet military aggression against the Afghan people'' and called upon ''all peoples and governments throughout the world to persist in condemning this aggression and denouncing it as an aggression against human rights and the violation of the freedoms of people''. The Commission ''demanded the immediate and unconditional withdrawal of all Soviet troops stationed on Afghan territories''. The Australian Government associated itself unconditionally with this demand and it is now with great regret that I find it necessary to reiterate, at the outset of my statement under this very important item on self-determination, the grave concern the Australian Government feels about the fact that repeated calls of the international community have not in any way been heeded. Soviet troops in substantial numbers remain to this day on Afghan soil.

Calls are continuously being repeated by countries of all political persuasions and by regional groups. The communique issued at the conclusion of the Islamic Summit at Taif ''expressed concern over continued Soviet military intervention in Afghanistan and renewed its call for withdrawal of all foreign troops'' from that country. The sentiments of the international community were most recently given expression in the Final Communique issued at the Closing Session of the Conference of Foreign Ministers of Non Aligned Countries in New Delhi. In that document the Ministers ''called urgently for a political settlement on the basis of the withdrawal of foreign troops and full respect for the independence, sovereignty, territorial integrity and non-aligned status of Afghanistan and strict observance of the principle of non-intervention and non-interference''. The non-aligned Ministers also drew attention to the tragic plight of Afghan refugees unable to return to their homes.

My Government is in full agreement with the substance of these comments and will be pleased to see them reflected in the projected draft resolution which has been referred to by my colleague from Pakistan.

Mr Chairman, on a related issue, Kampuchea, which is also of very considerable concern to my Government, this Commission has before it a draft resolution which Australia has agreed to co-sponsor.

As members of this Commission may be aware, on 14 February 1981 the Australian Government announced its decision to derecognise the Government of Democratic Kampuchea (the Pol Pot regime), with effect from that day. This means that Australia now does not recognise any regime in Kampuchea, including the Heng Samrin regime.

Mr Chairman, Australia remains committed to a comprehensive political settlement in Kampuchea. We fully support the provisions of ASEAN sponsored General Assembly resolutions on Kampuchea, which aim for a complete withdrawal of foreign troops from Kampuchea and an act of genuine self-determination by the Khmer people. We have very recently spoken to the Secretary-General of the United Nations in support of efforts

by the ASEAN and other friendly countries to have an international conference convened on the Kampuchean situation.

Mr Chairman, my Delegation considers it appropriate that Kampuchea is being considered this year under the item of self-determination. Australia regarded the policies of Pol Pot and other leaders of his regime as abhorrent, and has condemned them repeatedly. The time has now arrived, however, to concentrate attention on the need to create the conditions necessary to see the emergence in Kampuchea of a government truly representative of the Khmer people. Australia very much hopes that its action on derecognising the Pol Pot regime will contribute to that end.

These recent examples of foreign military intervention and occupation in Kampuchea and Afghanistan which result in the suppression of the right of self-determination, have added a new dimension to the debates on this subject. This dimension was apparent at the Commission on Human Rights last year but it was of particular importance in the consideration of the subject at the General Assembly. Resolution 35/35B — which was foreshadowed in the Sub-Commission's resolution 26 (XXXIII) — requested this Commission to give special attention to the violation of the right to self-determination and other human rights resulting from foreign military aggression, intervention or occupation. The General Assembly's resolution reaffirmed that the universal realisation of the people to self-determination was a most fundamental condition for the preservation and promotion of human rights.

Another area of particular concern to the international community is Namibia. As a member of the United Nations Council for Namibia Australia has worked consistently towards the goal of securing for the Namibian people the full exercise of this right. We deeply regret that the recent Pre-Implementation Meeting in Geneva was unable to remove the remaining obstacle in the way of the implementation of the United Nations plan for Namibia because of the intransigence of South Africa. Despite the dissapointing outcome of the Geneva meeting my Government believes that the UN plan offers the best prospects for bringing Namibia to independence and we hope that reason will prevail and that all parties to the dispute will continue to work towards an early negotiated settlement.

In this forum, and at the General Assembly, Australia has supported resolutions calling for a genuine act of self-determination in Western Sahara. We appreciate the role being played by the OAU in investigating the possibilities for a negotiated settlement. The OAU is also seized of other questions which are inextricably related to the realisation of the right of peoples to self-determination, including the question of the Libyan military intervention in Chad.

On a more positive note, Mr Chairman, the successful carrying through of the process of self-determination in Zimbabwe brought great satisfaction to the Australian Government. Within the framework of Commonwealth consultation and co-operation, the Australian Government has played an active role in discussions which led to the historic elections and subsequent independence of Zimbabwe.

It would be remiss of me not to make the point in this statement that the contribution of the Commonwealth, and in particular its Secretary-General (Mr Ramphal), to the restoration of liberty and democracy in Zimbabwe and to recent positive developments in Uganda stands as an example to the rest of the international community which should not be overlooked by this Commission.

Mr Chairman, Australia is a country with a genuine commitment to the achievement of the right of self-determination, and has taken an active interest in the United Nations involvement in the process of decolonisation.

It has participated in the work of the Special Committee of 24, playing an active role in the Sub-Committee on Small Territories.

As this Commission will appreciate, the geographic location of Australia and more importantly the community of interests we share with States in the South Pacific region, makes the work of this Committee of particular interest to us.

Australia particularly welcomed the recent emergence of the New Hebrides as the independent state of Vanuatu in the South Pacific. The general policy of my Government in relation to territories in the South Pacific was stated recently by the Minister for Foreign Affairs, who said: ''We believe that countries have a right to self-determination and making that act of self-determination under conditions which are free from any coercion or pressure. This has always been our view and will continue to remain so.''

Mr Chairman, it might be appropriate if I were to conclude my remarks by drawing attention to — and indeed giving our endorsement to — the observations and sentiments set out in resolution 26 (XXXIII) of 12 September 1980, which was passed by the Sub-Commission at its Thirty-third session. In that resolution the Sub-Commission reaffirmed ''that universal respect for the right of peoples to self-determination is the most fundamental condition for the preservation and promotion of human rights in various parts of the world.'' The Sub-Commission went on to declare its firm opposition to acts of foreign military intervention and occupation which result in the suppression of the right for self-determination and other human rights of peoples in various parts of the world. The Sub-Commission also expressed its sympathy for the plight of the great numbers of refugees who have been driven away from their countries as a result of military occupation and military intervention.

Mr Chairman, the Australian Government shares this opposition and these concerns.

Similar statements were made to the Commission on Human Rights at its 38th Session in 1982 (see PP No 372/1982) and 39th Session in 1983 (see PP No 398/1983). Statements along similar lines have also been made to the Third Committee of the United Nations General Assembly at its 36th Session in 1981 (see A/C.3/36/SR.5, 9-10), at its 37th Session in 1982 (see A/C.3/37/SR.3, 12), and at its 38th Session in 1983 (see A/C.3/38/SR.5, 5-7).

Self-determination. Decolonization. Cocos (Keeling) Islands. Progress towards Act of Self-determination.

On 11 November 1982 Australia's representative on the Fourth Committee of the United Nations General Assembly, Mr Woolcott, is recorded to have said in part during general debate (A/C.4/37/SR.19, 10-11):

> 33. Australia had a creditable record in support of decolonization. Its policy in the Cocos (Keeling) Islands was to bring about conditions, as speedily as possible, which would enable the people of the Territory to exercise their right of self-determination, in accordance with the relevant General Assembly resolutions and the Charter. To that end his Government continued to promote the political, social, economic and educational advancement of the people in accordance with its obligations under the Charter. The working paper prepared by the Secretariat (A/AC.109/693) provided valuable background information on recent developments.

On 29 November 1982 the Minister for Home Affairs and Environment, Mr McVeigh, issued the following statement (Comm Rec 1982, 1748-1749):

> *Self determination proposals for Cocos Islands*
>
> 29 November 1982 — Details of the options from which the community of the Cocos (Keeling) Islands in the Indian Ocean will choose in an act of self determination to be supervised by the United Nations were released today by the Minister for Home Affairs and Environment, the Hon. D. T. McVeigh, who is in the Cocos (Keeling) Islands to give the Cocos Malay community information (to be translated into Cocos Malay) on which to base their judgment.
>
> In accordance with UN requirements for non-self governing territories whose development is supervised by the UN Special Committee on Decolonisation (known as Committee of 24), the Islanders are to choose between independence, free association with Australia and integration with Australia — probably about the middle of next year. Mr McVeigh said:
>
> > The Cocos (Keeling) Islands Council had conducted its affairs in a highly satisfactory way since its inception in 1979, following the purchase by the government of nearly all the interests of Mr Clunies-Ross in the Cocos (Keeling) Islands . . .
>
> Under the independence option, the islanders would be completely responsible for all aspects of their lives, including their relations with other countries and defence matters.
>
> There are less than 250 adults in the remote and isolated community, whose leaders have informed the Minister that they doubt the practicability of independence as an option.
>
> Under free association, Australia would conduct defence and foreign affairs matters on behalf of the community, and Australia would negotiate with a new Cocos government the way it could assist that government to take full responsibility for the wide range of functions undertaken by Australia at present. These include health, education, transport, quarantine, radio communication and the conduct of the airfield at Cocos.
>
> Under integration the islanders would have the rights, privileges, obligations and standards of living of other Australian citizens:
>
> • local arrangements would be modified to give the Cocos (Keeling) Islands

Council wider powers and ownership in trust for the benefit of the people of plantation lands at present leased by the Commonwealth to the Cocos Co-operative.

- the electors of Cocos would be included in the Fraser electorate for the purpose of House of Representatives and Senate elections and national referendums
- appropriate Commonwealth legislation not already applying would be extended to Cocos, including the Social Security and Health Acts
- a review in three years time would examine introduction of tax. At present levels of income, the Cocos Malay people are under the existing income tax threshold and therefore they would not pay income tax in present circumstances.

Attached to the Minister's statement was the following paper (Backgrounder, No 361, 1 December 1982, annex):

DRAFT PAPER TO BE SUBMITTED TO THE UNITED NATIONS AND THE COCOS MALAY COMMUNITY ON THE OPTIONS FROM WHICH THE COMMUNITY WILL CHOOSE IN A U.N. SUPERVISED ACT OF SELF DETERMINATION

Preamble

1. As a non self-governing territory, the Cocos (Keeling) Islands are covered by Article 73 of the U.N. Charter obliging metropolitan powers to ensure, with due respect for the culture of the peoples concerned, the political, economic, social and educational advancement of non self-governing territories under their control and the development of self-government in those territories; by U.N. Resolution 1514 stating that all peoples have the right to self determination and calling for the transfer of all powers to the peoples of non self-governing territories; and by Resolution 1541 stating that a non self-governing territory can be said to have reached a full measure of self government when it achieves either independence, free association with an independent state, or integration with an independent state.

2. The elected representatives of the Cocos Malay community have now formally requested that a U.N. supervised Act of Self Determination be conducted as soon as possible. Arrangements are being made for a U.N. mission to visit the Territory for this purpose and it is expected that they will arrive between March and May 1983.

3. The elected representatives have expressed the wish that the Act be conducted in accordance with the traditional practices of the community, i.e. by extensive community discussions leading to a consensus. The Australian Government takes the view that in such a small community, the process suggested by the elected representatives would be the most appropriate and is seeking to have the community views respected in this regard. A brief explanation of each Self Determination option and how it could be expected to affect the Cocos Malay community, follows —

Independence

5. Under the independence option, the Cocos Malay community would be

completely responsible for all aspects of their lives, including foreign affairs and defence. It would be up to them to determine how they would govern themselves, how they would raise revenue to buy supplies, and the level and method of funding of services, including education and health, that would be provided to the community. The community would own all the land and hence all the facilities in the Territory and would be responsible for their upkeep including the airfield and communications with the outside world.
6. In keeping with her policy of helping independent states, particularly in her own area of the world, Australia could be expected to supply advice, materials and money to the newly-independent state. Australia would not, however, have an obligation to provide Australian levels of services and standards of living, as she would be obliged to do under the integration option.
7. The newly-independent state would be entitled to apply to join the United Nations and its agencies. Some assistance could be expected from these agencies but contributions would be levied for membership.

Free Association

8. Principle (vii) attached to U.N. Resolution 1541 provides that free association should be the result of free and voluntary choice by the peoples of the territory concerned and they should have the freedom to alter the arrangements if they want. The Principle also says that people should have the right to determine their own internal arrangements without outside interference.
9. Under this option, an agreement would be negotiated between Australia and the Cocos Malay community under which Australia would conduct, on behalf of the community, all matters relating to defence and relations with the outside world. As with the independence option, the community would have to determine how they were to govern themselves, the standards of service that would be provided and the ways by which revenue would be raised to pay for these things and for imports.
10. Similarly, too, Australia would provide advice, materials and financial support but would not be obliged to provide Australian levels of service and standards of living.
11. The Cocos (Keeling) Islands would not be eligible for U.N. membership but Australia, as part of its stewardship of foreign affairs, would seek to obtain whatever U.N. assistance was available.

Integration

12. Principle (viii) attached to U.N. Resolution 1541 provides that integration with an independent state should be on the basis of complete equality between the peoples of the territory in question and those of the independent country with which it is to be integrated. Equality should include opportunities for effective participation at all executive, legislative and judicial levels.
13. Under this option, Cocos Malays would continue to be Australian citizens with the right to reside permanently in Australia. They would have the rights and privileges of all Australian citizens and, of course, the obligations of all Australian citizens. For instance, in due course, when

their incomes rise to the level at which other Australians pay income tax, they could be required to pay income tax. Because the economy of the Islands has not yet developed fully, it is intended to review in three years time the existing exemption from income tax.

14. Australia, as a multi-cultural society committed to respecting the rights and traditions of minority cultures, would continue to protect the Islanders' rights in this regard. Assistance would be given in maintaining traditional arts, crafts and other cultural pursuits including the museum.

15. As has been the practice in relation to other communities, the Australian Government would have an obligation to raise the Cocos Malay services and standard of living to Australian levels; as part of this commitment Australia would continue to help the community examine ways of broadening the Island's economic base by developing alternative industries and measures aimed at greater self-sufficiency. Philatelic revenues would continue to be passed to the Council for community use.

16. Educational facilities and opportunities, especially for adult Cocos Malays who have been disadvantaged in the past, would be progressively improved with the aim of equipping Cocos Malays to take over official positions at all levels. Government employment of Cocos Malays would be progressively expanded, with particular emphasis in the early years on maritime activities. Health facilities including aerial evacuation would be maintained and improved.

17. Australia proposes to extend all appropriate Commonwealth laws to the Territory which at present do not apply including social security and health legislation.

18. In pursuing these objectives, however, the Australian Government would be conscious of the dangers of overly-rapid change for the community and would consult closely with the elected representatives of the community about any proposed measures.

19. The aim would be to leave the community, through its elected representatives, to manage its own affairs to the greatest extent possible and, without interference in its culture, traditions, religion and land use, to give the Cocos Malay community democratically elected representation at Territorial and Federal levels appropriate to their circumstances. To this end, Australia would expand the powers and functions of the Cocos (Keeling) Islands Council to include appropriate responsibilities going beyond local government powers in areas affecting their daily lives. The jurisdiction of the Council would be expanded to include the entire Territory. The Council would continue to have an advisory role on any matters affecting the Territory beyond their proposed powers. In addition, all adult Islanders would have a vote in Federal elections and national referenda.

20. Australia would continue to be responsible for the defence of the Islands.

21. The Australian Government recognises the profound significance of the land for the Cocos Malay community and would, by deed of grant upon trust for the benefit of the community, transfer to the ownership of the Council the land at present leased to the Co-operative.

22. Cocos Malays would continue to have access to all levels of the Australian judicial system including avenues for appeal or objection to administrative decisions.

On 6 December 1983 Australia notified the United Nations that the Australian Government expected to conduct the act of self-determination in respect of the Cocos (Keeling) Islands during 1984: UN doc. A/38/695. The Annex to the document read as follows:

ANNEX

Letter dated 8 November 1983 from the Minister for Foreign Affairs of Australia to the Secretary-General

I am pleased to inform you that the people of the Cocos (Keeling) Islands, through their leaders, have formally advised the Australian Government that they are now ready to participate in an act of self-determination to decide their future political status.

Accordingly, I should like to extend, through you, an invitation for a United Nations mission to visit the Cocos (Keeling) Islands to observe the act of self-determination. The modalities and timing of such a visit would be matters for futher discussion, but I am sure that a date could be determined which would be mutually convenient for the people of Cocos, the United Nations and the Australian Government.

I look forward to your advice on this matter.

(Signed) Bill Hayden, MP

Self-determination. Namibia. Role of the Council for Namibia. Status of SWAPO. Prospects for an independent Namibia.

On 31 May 1983 Australia's Permanent Representative to the United Nations in New York addressed the Security Council on the question of Namibia. Part of his speech was as follows (S/PV.2449, 6-11):

Australia's commitment to a free and independent Namibia is unquestioned and unequivocal. There can be no doubt that South Africa's occupation of the Territory is illegal and that this is a position held by the international community.

The question is not whether Namibia should be free and fully independent — on that there is international consensus — but rather when that should occur and under what conditions . . .

My delegation, therefore, expresses its emphatic conviction that resolution 435 (1978) should now be implemented as soon as possible to allow the people of Namibia to determine their own future and set about the task of reconciliation and nation building.

Australia's policy on this question is predicated on support for Security Council resolutions 431 (1978), 432 (1978) and, as I have already mentioned, 435 (1978). In resolution 431 (1978) there was a call for the early independence of Namibia through free elections under the supervision and control of the United Nations. In resolution 432 (1978) Walvis Bay was recognized as an integral part of an independent Namibia, while resolution 435 (1978) provided a means of fulfilling the pledge contained in resolution 431 (1978) . . .

Many speakers have made reference during this debate to the escalating cycle of violence in southern Africa. This violence is to be deeply deplored, as are the continuing efforts of South Africa to destabilize its neighbours. Australia cannot condone the indiscriminate use of violence and, as the Australian Prime Minister, Mr. Robert Hawke, said in the Australian Parliament as recently as 24 May:

> "The Australian Government unequivocally condemns the latest use by South Africa of its air force to attack a sovereign neighbouring country."

Australia cannot support the endorsement of armed struggle as a means of achieving independence for Namibia, as this would be inconsistent with the Charter of our Organization. We are committed as a matter of principle to a peaceful, negotiated settlement of the question of Namibia.

At the same time, however, the Australian Government understands the frustrations that have led many countries and people to take the view that, if peaceful methods do not produce the necessary results, force may inevitably occur, as a last resort, to end institutionalized discrimination in southern Africa. South Africa must quickly agree to remove its armed forces not only from the Territory of Namibia but also from the sovereign State of Angola. It is essential that all States in the region can be confident about their security without the threat of South African incursions.

As a member of the United Nations Council for Namibia, Australia recognizes the Council has the sole, legal administering authority of the Territory until independence. We shall continue to work actively and constructively within the Council. We believe that the Council could be a force for good in the complex and delicate negotiating process and we shall continue to oppose efforts by some Council members to push it into an obstructionist position . . .

On 8 September 1983 the Minister for Foreign Affairs, Mr Hayden, responded to the report of the Joint Committee on Foreign Affairs and Defence concerning Namibia. Part of his speech was as follows (HR Deb 1983, Vol 132, 580-581):

> In 1975, South Africa acknowledged that the territory has a separate international status and from 1977 it accepted that the ultimate status of Namibia was as an independent state. The arguments since then have focused on how best to bring Namibia to independence. The historical background to the question and the point at conflict are clearly outlined in the Committee's report . . .
>
> Australia has followed closely the progress of negotiations towards Namibian independence. We have supported calls for early independence for Namibia through free elections under the supervision and control of the United Nations, and the efforts of the Contact Group to negotiate a settlement in accordance with Security Council Resolution 435, which endorsed proposals for a ceasefire and a political settlement . . .
>
> While the Australian Government appreciates the Contact Group's efforts to secure a settlement in Namibia, we share the concern of other interested parties that the implementation of resolution 435 has been delayed for so long. It is clear now that the essential elements of a settlement in accordance with resolution 435 have been accepted and that the independence of

Namibia is being held up by the introduction of other issues not encompassed in the United Nations plan. This is an unfortunate development, which we hope will not prove insurmountable.

Australia for its part has played an active role in relation to United Nations efforts to bring independence to Namibia. Australia has been a member of the United Nations Council for Namibia since 1974, and is one of only four Western Members of the Council. Australia was also represented at the International Conference on Namibia at Paris in May of this year. Thus the Government accepts, and is in fact acting in accordance with, the Committee's recommendation that Australia continue its efforts to exercise a moderating influence in respect of Namibia at the United Nations . . .

A chapter of the Committee's report deals with the status of Walvis Bay, a South African enclave within Namibia. The Government has no difficulties with the Committee's comments on this subject. The Government believes that the enclave should form part of a united and independent Namibia. This policy is based not on whether South Africa has a legal or historic right to administer Walvis Bay, but on moral and pragmatic considerations. Australia therefore supports Security Council Resolution 435 of 1978, which calls for the integration of Walvis Bay into independent Namibia.

The report rightly devotes considerable attention to the role of the South West Africa People's Organisation, SWAPO. Australia acknowledges SWAPO as one of the major nationalist groups in Namibia and one which has an essential role to play in the settlement negotiations. We are unable, however, to recognise SWAPO as the "sole and authentic representative" of the Namibian people, as the United Nations General Assembly has done. We believe that it is for the Namibian people to decide in a free vote who should govern them, and Australia does not, as a matter of principle, accord "sole representative" status to any political party.

Australia is also unable to endorse armed struggle as a means for achieving independence for Namibia. Nonetheless, we understand the frustrations which have led many countries and people to conclude that armed struggle may inevitably occur as a last resort to end institutionalised racial discrimination in southern Africa. Australia continues to make modest contributions to the United Nations Fund for Namibia and the Commonwealth Special Fund for Namibia. Honourable members will know that the Jackson Committee is currently reviewing the Australia aid program, including the question of aid to southern Africa . . .

Self-determination. East Timor.

On 23 February 1982 the Minister for Foreign Affairs, Mr Street, provided the following written answer to the following questions (Sen Deb 1982, Vol 93 306):

(4) Has not the United Nations General Assembly repeatedly pointed out that its Charter clearly states the rights of nations to self-determination.

(5) Why then has the Australian Ambassador to the United Nations been instructed to vote against moves by the United Nations to study the

Timorese situation and to report on all aspects of East Timor, including how independence for the Timorese can be achieved.

(6) Did Australian officials hope that the issue of East Timor self-determination would become dormant and thus save any embarrassment for Australia.

(7) How can the Minister justify this seemingly hypocritical action in supporting Kampuchean self-determination yet blocking East Timor self-determination.

...

(4) Article 1 (2) of the United Nations Charter endorses the principles of the self-determination of peoples. In addition, Articles 1 of both the U.N. Covenants on Human Rights establish the right of all peoples to self-determination.

(5) and (6) Australia has voted against resolutions on the East Timor question since the 1978 General Assembly because we consider them to be unrealistic and to serve no practical purpose. The Government considers that the incorporation of East Timor into Indonesia is now a reality and that the Indonesian Government is the authority in effective control.

(7) The situations in Kampuchea and East Timor are not comparable or analagous.

On 10 November 1982 the Australian representative, Mr Hutchens, addressed the Fourth Committee of the United Nations General Assembly on the question of East Timor. He is reported in part to have said (A/C.4/37/SR.18, 8):

29. In January 1978, his Government had decided to accept East Timor as a part of Indonesia, although it remained critical of the means by which integration had been achieved. It had considered it unrealistic to continue to refuse to recognize that East Timor was a part of Indonesia. It had, nevertheless, made clear at the time its position to Indonesia's use of force.

30. Australia had supported United Nations involvement in finding a solution to the problem that had developed in East Timor following the Indonesian intervention in December 1975. It had supported the efforts by the Security Council to reach a solution, including the despatch of a special envoy of the Secretary-General. It had voted against resolutions on East Timor since 1978, believing that they did not reflect a realistic appreciation of the situation in East Timor. The fact was that East Timor was now a province of Indonesia, and it was ignoring reality to refuse to recognize the fact. Those genuinely concerned with the well-being of the people of East Timor, as his Government was, would do better to concentrate on helping the province by contributing to its development.

Note: see also under "Territory. Incorporation of East Timor into Indonesia" below.

Self-determination. Puerto Rico.

On 25 November 1981 Australia's representative in the General Assembly, Mr Hutchens, said in the course of a debate on decolonization (A/36/PV.72, 47):

In the case of Puerto Rico, Australia has for many years argued in the Committee of 24 that this is not a question of decolonization, since the General Assembly, in 1953, took a decision that the people of Puerto Rico

had effectively exercised their right to self-determination. For this reason, we do not consider that any delegation should press to bring the question of Puerto Rico before the General Assembly and we are firmly opposed to any such move.

Independence. Non-interference in internal affairs. Central America. Northern Ireland. Poland. Yugoslavia.

The Minister for Foreign Affairs, Mr Hayden, wrote in answer to a question on 8 December 1983 (HR Deb 1983, Vol 134, 3607-3608):

> The Australian policy statement on Central America which I presented to the Australia, New Zealand and United States ministerial conference in Washington of 18-19 July includes the point that Australia looks to the United States to balance its legitimate right to be concerned about security in Central America with a real concern for economic and social reform in the area and the promotion of stable democratic governments. Australia affirmed the position adopted by the UN Security Council earlier this year, that Nicaragua and all the other countries of Central America have the right to live in peace and security, free from outside interference.

Asked whether Australia would intervene in the civil strife in Northern Ireland, the Prime Minister, Mr Fraser, said on 29 April 1981 (HR Deb 1981, Vol 122, 1690):

> These matters are properly the responsibility of the United Kingdom Government. I think we in this House all know that the difficulties in Northern Ireland have been extreme for many, many decades. I do not see that we would advance the cause of peace and stability in Northern Ireland by seeking to intervene from Australia. The United Kingdom Government would have total concern for the well-being of all the people of Northern Ireland in its considerations and these matters ought to be left in its hands.

On 31 March 1981 the Prime Minister, Mr Fraser, said in answer to a question (HR Deb 1981, Vol 122, 1087):

> The Government is clearly following developments in Poland closely and with a very great deal of concern. Over recent weeks we have been in very close touch with a number of other countries in relation to Poland. It would now seem that the general situation is being aggravated by increased external pressure, notably from some of Poland's so-called allies in the Warsaw Pact. We are concerned that the Soviet media has recently reported Polish developments in tendentious terms. We are concerned with the pressure that has apparently been placed upon Poland by the Soviet Union or Warsaw Pact countries. We view this as an unhelpful intrusion in Polish internal affairs.

In the District Court in Sydney on 9 October 1981, a person associated with the so-called Croatian Revolutionary Army was sentenced to four years' imprisonment for having trained a group in military exercises, the use of arms and explosives. Sentencing the offender, Judge Thorley said:

> The Commonwealth has been used more than once as a base for the training of people in guerilla warfare and revolutionary conduct for the purpose of going to a foreign country and exhibiting that training.

Ethnic groups should be warned that this country will not be seen as a base for hostile revolution against any foreign land.

The Weekend Australian, 10-11 October 1981, p 5

Sovereignty. Presence of foreign troops. Cyprus. Declaration of the "Turkish Republic of Northern Cyprus".

On 16 November 1983 the Prime Minister, Mr Hawke, said in answer to a question (HR Deb, 1983, Vol 134, 2780-2782):

The Government learned with great concern last night that the self-styled Turkish Federated State of Cyprus had passed a resolution approving the establishment of a so-called Turkish Republic of Northern Cyprus and a declaration of independence. The Foreign Minister immediately brought this matter to my attention last night and issued a statement, a copy of which I seek leave incorporate to in *Hansard.*

Leave granted.

The document read as follows —

CYPRUS

The Australian Government is gravely concerned at reports tonight that the Turkish Federated State of Cyprus has passed a resolution approving the establishment of a so-called Turkish Republic of Northern Cyprus and a declaration of independence.

Australia condemns this declaration and calls for it to be withdrawn.

Australia will be taking immediate steps to urge upon the Government of Turkey to use whatever influence it might have with the Turkish Federated State of Cyprus to withdraw this declaration.

At the same time the Australian Government will be urging on all parties in this matter the need for restraint in the face of a potentially inflammatory situation.

The Australian Government would additionally strongly support and encourage the UN Secretary-General in efforts to achieve a solution.

Our greatest concern is that the civilian authorities should not be undermined or the general stability of the region be put at risk by renewed disorder.

Australia's commitment to UNFICYP (United Nations Force in Cyprus) and the presence in Cyprus of the AUSTCIVPOL (Australian Civilian Police) contingent automatically involves us in international efforts to deal with the situation created by this action.

The Australian Government will be carefully monitoring the situation and if AUSTCIVPOL were placed in jeopardy by an outbreak of hostilities a decision would have to be taken whether to withdraw the contingent.

Unfortunately we have since learned that the Government of Turkey has recognised this unilateral declaration of independence by the Turkish community on Cyprus. This morning the Secretary to the Department of Foreign Affairs called in the Turkish charge-d'affaires to express regret at this action by the Turkish Government. The establishment of this so-called republic is in violation of international law. It is in specific violation of a number of United Nations Security

> Council resolutions to which Australia subscribes and it endangers the peace and stability of this troubled area.
>
> The division of Cyprus since 1974 has caused a great deal of human suffering which can only be worsened following this recent development. Australia's commitment to a United Nations force in Cyprus and the presence in Cyprus of the Australian civilian police contingent automatically involve us in international efforts to deal with the situation created by this irresponsible action. I am certain that I will be speaking for the whole of the House when I say that we hope that a negotiated settlement can be achieved as soon as possible which will ensure the unity, sovereignty and territorial integrity of Cyprus and which will safeguard the legitimate interests of both communities on the island. We will strongly support international efforts to this end, including through the United Nations. We urge on all parties restraint in this dangerous situation . . .

On 17 November 1983 Australia's representative to the United Nations in New York, Mr Joseph, addressed the Security Council (S/PV.2498, 61-62):

> The attitude of the Australian Government towards the matter now under consideration is clear and unequivocal. We reject and condemn the unilateral declaration of independence by the leadership of the Turkish Cypriot community in Cyprus. As the Australian Prime Minister said in the Australian Parliament on 16 November:
>
> > "The establishment of this so-called republic is in violation of international law. It is in specific violation of a number of United Nations Security Council resolutions to which Australia subscribes and it endangers the peace and security of this troubled area."
>
> Mr Hawke went on to underline the conviction of the Australian Government that the illegal declaration must be withdrawn. My country is in fact gravely concerned that this latest development can only lead to an increase in tension in a country that has already experienced too much violence and loss of life. We must appeal to all concerned to exercise maximum restraint in the face of a potentially inflammatory situation.
>
> The Australian Government has no intention of recognizing the illegal state declared by the Turkish Federated State of Cyprus. We continue to recognise only the legal Government of the Republic of Cyprus, led by President Kyprianou. We express the very strong hope that all other members of the international community will also withhold recognition from this illegal entity or, if they have already extended recognition, will withdraw it promptly.
>
> It is the firm view of the Australian Government that a negotiated settlement should be sought as a matter of urgency. Such a negotiated settlement would need to ensure the unity, sovereignty and territorial integrity of Cyprus, as well as safeguarding the legitimate interests and concerns of both communities in Cyprus. We believe that there continues to be a significant role for the Secretary-General in the search for a peaceful settlement and we are confident that he will spare no efforts on a problem on which he is so uniquely well equipped. It would be appropriate for the Security Council to renew and reinforce his mandate.

For our own part, and at the direction of the Foreign Minister, we have been active in both Canberra and the capitals concerned to make clear our deep anxiety at the situation and the implications for stability.

Australia has been a contributor to the United Nations Peace-Keeping Force in Cyprus (UNFICYP) since it was established in 1964. This commitment automatically involves us in this debate in the Security Council today. We are keeping a very close watch on the safety of UNFICYP and call upon all the parties to allow it to carry out its mandate unimpeded. I should say that if the Force were to be placed in jeopardy, the Australian Government would have to review the participation of its contingent . . .

Sovereignty. Presence of foreign forces. Lebanon.

On 23 August 1983 the Minister for Foreign Affairs, Mr Hayden, wrote in part in answer to a question (HR Deb, 1983, Vol 132, 127):

The Australian Government strongly believes that Lebanon should be free from outside interference and that it should remain a sovereign and independent State. We would support moves which would enable the Lebanese authorities to regain sovereignty over the whole of their territory. We would agree that the alleviation of the human suffering of Lebanon cannot await the resolution of the Arab-Israel conflict. On 18 May 1983 the Government welcomed the conclusion of an agreement between Lebanon and Israel on the withdrawal of Israeli troops from Lebanon. I subsequently wrote to the Lebanese and Israeli Foreign Ministers to welcome the agreement and to express Australian support for the concept of negotiations to resolve the problems of the area. On 27 June I wrote to the Syrian Foreign Minister to express the hope that Syria, through negotiations with the Government of Lebanon, would agree to withdraw its troops from Lebanon. I said the withdrawal of all external forces would contribute to a reduction in tension and the lessening of the potential for conflict in the region.

Sovereignty. Call for recognition of the colonial status of the Ukraine.

On 23 August 1983 the Minister for Foreign Affairs, Mr Hayden, wrote in answer to a question concerning the status of the Ukraine (HR Deb 1983, Vol 132, 75):

As I am sure honourable members will be aware, the Ukraine was a founding member of the Union of Soviet Socialist Republics, established by treaty in December 1922 and confirmed in the 1924 Constitution. Australia has not contested the legality of this arrangement. In the light of this, the Government does not consider it appropriate more than sixty years later to attempt to ascribe colonial status to the Ukraine.

This does not mean, of course, that the Australian Government condones the repressive actions of the Soviet authorities towards assertions of nationalist identity in the Soviet Union. The Government will continue to condemn violations of human rights, from which Ukrainian dissidents have suffered particularly severely. We will thus continue to urge the Soviet Union, both in the United Nations and elsewhere, to observe the internationally recognised standards relating to human rights and cultural freedom.

On 1 December 1983 the Prime Minister, Mr Hawke, further informed Parliament (HR Deb 1983, Vol 134, 3163-3164):

> The Commonwealth heads of government unanimously condemned the unilateral declaration of independence by the Turkish Cypriot authorities on 15 November and the purported creation of a secessionist state in northern Cyprus. The Commonwealth heads of government endorsed the United Nations Security Council resolution 541, denouncing the purported declaration as being legally invalid, and reiterated the call for non-recognition of the declaration of member states of the United Nations and for the immediate withdrawal of the UDI.
>
> The assembled heads of government pledged their support for the independence, sovereignty, territorial integrity, unity and non-alignment of the Republic of Cyprus and expressed their solidarity with President Kyprianou, who was present at our meeting, of course. I intervened to argue strongly that the Commonwealth should do all that it could to restore the unity, sovereignty and territorial integrity of Cyprus, as well as safeguarding the legitimate interests of the two communities on that island. I indicated the support of our Government for the efforts of the United Nations in that regard and indicated the particular reasons that Australia had for the position. In addition to our general considerations, the reasons were twofold: Firstly, the very large community in Australia comprising people of Cypriot origin; and secondly, the long-standing Australian participation in the police force contingent as part of the United Nations effort on Cyprus.

Independence. Self-determination. Palestinian people.

On October 1983 the Minister for Foreign Affairs, Mr Hayden, in the course of his address to the General Assembly of the United Nations, said (A/38/PV.17, 78):

> The tragedy of Lebanon has also served to emphasize yet again the continuing and pressing need for a comprehensive, just and lasting settlement of the Middle East dispute. For Australia this means the need to sustain the right of Israel to exist behind secure and recognized borders. That is an absolute commitment. But, equally, it means recognition of the central importance of the Palestinian issue in any settlement. The Australian Government acknowledges the right of self-determination of the Palestinian people, including their right, if they so choose, to independence and the possibility of establishing their own independent State. The Australian Government also recognizes that whatever arrangement is finally agreed upon will evolve from processes involving the peoples of the immediate region, including those of Syria and Jordan. The roles and views of the super-powers cannot be ignored in any such process.

Self-determination. Independence. New Caledonia.

On 24 May 1983 the Minister for Foreign Affairs, Mr Hayden, said in answer to a question without notice (HR Deb 1983, Vol 131, 842-843):

> For some time we have expressed a commitment to independence for New Caledonia, determinined according to the wishes of the people of New Caledonia. However, we have acknowledged — I certainly acknowledged it privately and publicly in Paris — that the process is fraught with great

difficulties. The socialist Mitterand Government of France has inherited a very complex and difficult situation in New Caledonia. First of all, what was once a Melanesian majority in the indigenous population of New Caledonia has, as a consequence of migration policies undertaken from the early to mid-1950s, been reduced to a minority, albeit a large one, of about 43 per cent to 45 per cent of the population of New Caledonia. This, in itself, creates a situation of some tension, when the future of New Caledonia is discussed, in terms of whether it will have an association with France, some form of self-determination, or independence.

On 1 December 1983 the Attorney-General, Senator Evans, said in answer to a question without notice (Sen Deb 1983, Vol 101, 3124):

> As is well known, Australia is committed to the independence of New Caledonia, determined according to the wishes of its inhabitants. Our main concern is that independence, which we see as inevitable, should be achieved peacefully.