

COMMONWEALTH HEADS OF GOVERNMENT REGIONAL MEETING IN PORT MORESBY ON 8 AUGUST 1984.

Commonwealth Heads of Government from the Asia-Pacific region met in Port Moresby on 8 August. Eighteen countries attended the meeting: Australia, Bangladesh, Brunei, Fiji, India, Kiribati, Malaysia, Maldives, Nauru, New Zealand, Papua New Guinea, Singapore, Solomon Islands, Sri Lanka, Tonga, Tuvalu, Western Samoa and Vanuatu.

A special welcome was extended to Brunei which had become a member of the Commonwealth at the beginning of the year. The Prime Minister of Papua New Guinea, the Rt. Hon. Michael Somare, was in the chair.

Heads of Government discussed a number of political and economic issues of common concern to the Asia-Pacific region. They were conscious that many of the problems of the region could not be solved without understanding and active co-operation of countries outside it. They condemned the continuation of French nuclear testing in the Pacific and expressed their united opposition to any proposal to dump nuclear waste in the Pacific.

They called for a greater sensitivity by the wider international community to the interdependence of states and the importance of its paying particular attention to the needs and aspirations of small states, of which there are many in the region, and which are especially vulnerable to the vagaries of the current international political, social and economic order. In this context they looked forward to the outcome of the study on the special problems of small states organised by the Secretary-General in pursuance of the decision by the Heads of Government meeting in Delhi last November.

Heads of Government considered that the CHOGRM process served a valuable purpose in facilitating useful consultative and co-operative relationships within the region. They agreed that they would continue to meet on a periodic basis, as occasion warrants, and that their next meeting would be held in Malaysia.

Until their next meeting CHOGRM activities would be co-ordinated by Papua New Guinea as current host government with assistance as necessary from the Commonwealth Secretariat.

Heads of Government agreed that the consultative and working groups, whose reports were before the meeting, should continue to function in the existing areas of trade, industry, energy and agriculture, and that their activities should be the subject of review at senior official level at an appropriate time. They also welcomed the report of the group of experts on maritime issues which they had commissioned at their last meeting and agreed that its recommendations should be carefully examined in capitals.

They also agreed that a working group

co-ordinated by Fiji should be set up to examine ways in which the report's recommendations, subject to acceptance by governments, can be translated into specific programs of action. In the meantime, they asked the Secretary-General to ensure that the report is given wide circulation elsewhere in the Commonwealth and beyond.

They decided that the funding of the activities of the groups should retain its voluntary character and become more widely subscribed by member governments. In this context they requested the Secretariat to circulate proposals for a formula for contributions by governments on the basis of relative capacities.

Heads of Government were particularly appreciative of the opportunity to meet in Port Moresby during the celebrations marking the opening of the new Parliament building and expressed their thanks to Prime Minister Somare and the Government and people of Papua New Guinea for the warmth of their welcome and the excellent arrangements for their meeting.

SIX NATION PEACE INITIATIVE:
The Delhi Declaration

The Delhi Declaration is the second joint statement to be issued by the six heads of state or government of Argentina, India, Greece, Mexico, Sweden and Tanzania. Issued on 28 January after a two day meeting in New Delhi, the Declaration reiterates the call of the original May 1984 Declaration for a nuclear freeze on nuclear disarmament. It also calls for the prevention of an arms race in outer space, and, most importantly from Australia's point of view, for a comprehensive test ban treaty.

The text of the Declaration follows:-

FORTY YEARS AGO, WHEN ATOMIC BOMBS WERE BLASTED OVER HIROSHIMA AND NAGASAKI, THE HUMAN RACE BECAME AWARE THAT IT COULD DESTROY ITSELF, AND HORROR CAME TO DWELL AMONG US. FORTY YEARS AGO, ALSO, THE NATIONS OF THE WORLD GATHERED TO ORGANISE THE INTERNATIONAL COMMUNITY, AND WITH THE UNITED NATIONS HOPE WAS BORN FOR ALL PEOPLE.

ALMOST IMPERCEPTIBLY, OVER THE LAST FOUR DECADES, EVERY NATION AND EVERY HUMAN BEING HAS LOST ULTIMATE CONTROL OVER THEIR OWN LIFE AND DEATH. FOR ALL OF US, IT IS A SMALL GROUP OF MEN AND MACHINES IN CITIES FAR AWAY WHO CAN DECIDE OUR FATE. EVERY DAY WE REMAIN ALIVE IS A DAY OF GRACE AS IF MANKIND AS A WHOLE WERE A PRISONER IN THE DEATH CELL AWAITING THE UNCERTAIN MOMENT OF EXECUTION. AND LIKE EVERY INNOCENT DEFENDANT, WE REFUSE TO BELIEVE THAT THE EXECUTION WILL EVER TAKE PLACE.

WE FIND OURSELVES IN THIS SITUATION BECAUSE THE NUCLEAR WEAPON STATES HAVE APPLIED TRADITIONAL DOCTRINES OF WAR IN A WORLD WHERE NEW WEAPON HAVE MADE THEM OBSOLETE. WHAT IS THE POINT OF NUCLEAR "SUPERIORITY" OR "BALANCE" WHEN EACH SIDE ALREADY HAS ENOUGH WEAPONS TO DEVASTATE THE EARTH DOZENS OF TIMES OVER ? IF THE OLD DOCTRINES ARE APPLIED IN THE FUTURE, THE HOLOCAUST WILL BE INESCAPABLE SOONER OR LATER. BUT NUCLEAR WAR CAN BE PREVENTED IF OUR VOICES ARE JOINED IN A UNIVERSAL DEMAND IN DEFENCE OF OUR RIGHT TO LIVE.

AS A RESULT OF RECENT ATMOSPHERIC AND BIOLOGICAL STUDIES, THERE HAVE BEEN NEW FINDINGS WHICH INDICATE THAT IN ADDITION TO BLAST, HEAT AND RADIATION, NUCLEAR WAR, EVEN ON A LIMITED SCALE, WOULD TRIGGER AN ARCTIC NUCLEAR WINTER WHICH MAY TRANSFORM THE EARTH INTO A DARKENED, FROZEN PLANET POSING UNPRECEDENTED PERIL TO ALL NATIONS, EVEN THOSE FAR REMOVED FROM THE NUCLEAR EXPLOSIONS. WE ARE CONVINCED THAT THIS MAKES IT STILL MORE PRESSING TO TAKE PREVENTIVE ACTION TO EXCLUDE FOREVER THE USE OF NUCLEAR WEAPONS AND THE OCCURRENCE OF A NUCLEAR WAR.

IN OUR JOINT STATEMENT OF MAY 27, 1984 WE CALLED UPON THE NUCLEAR WEAPON STATES TO BRING THEIR ARMS RACE TO A HALT, WE ARE ENCOURAGED BY THE WORLD-WIDE RESPONSE TO OUR APPEAL. THE INTERNATIONAL SUPPORT WE RECEIVED, AND THE RESPONSES OF THE NUCLEAR WEAPONS STATES THEMSELVES, HAVE BEEN SUCH THAT WE DEEMED IT OUR DUTY TO MEET HERE IN NEW DELHI TO CONSIDER WAYS TO FURTHER OUR EFFORTS.

THE NUCLEAR WEAPON STATES HAVE A PARTICULAR RESPONSIBILITY FOR THE DANGEROUS STATE OF THE ARMS RACE. WE URGE THEM TO JOIN US IN THE SEARCH FOR A NEW DIRECTION. WE WELCOME THE AGREEMENT IN GENÈVA ON JANUARY 8, 1985, BETWEEN THE SOVIET UNION AND THE UNITED STATES TO START BILATERAL NEGOTIATIONS ON "A COMPLEX OF QUESTIONS CONCERNING SPACE AND NUCLEAR ARMS - BOTH STRATEGIC AND INTERMEDIATE RANGE - WITH ALL THE QUESTIONS CONSIDERED AND RESOLVED IN THEIR INTER-RELATIONSHIP". WE ATTACH GREAT IMPORTANCE TO THE PROCLAIMED OBJECTIVE OF THESE NEGOTIATIONS : TO PREVENT AN ARMS RACE IN SPACE AND TO TERMINATE IT ON EARTH, ULTIMATELY TO ELIMINATE NUCLEAR ARMS EVERYWHERE. WE EXPECT THE TWO MAJOR NUCLEAR WEAPON POWERS TO IMPLEMENT, IN GOOD FAITH, THEIR UNDERTAKING AND THEIR NEGOTIATIONS TO PRODUCE, AT AN EARLY DATE, SIGNIFICANT RESULTS. WE WILL FOLLOW THEIR WORK CLOSELY AND WE EXPECT THAT THEY WILL KEEP THE INTERNATIONAL COMMUNITY INFORMED OF ITS PROGRESS. WE STRESS THAT THE AGENDA FOR AND THE OUTCOME OF THESE NEGOTIATIONS IS A MATTER OF CONCERN FOR ALL NATIONS AND ALL PEOPLE.

WE RETITERATE OUR APPEAL FOR AN ALL-EMBRACING HALT TO THE TESTING, PRODUCTION AND DEPLOYMENT OF NUCLEAR WEAPONS AND THEIR DELIVERY SYSTEMS. SUCH A HALT WOULD GREATLY FACILITATE NEGOTIATIONS. TWO SPECIFIC STEPS TODAY REQUIRE SPECIAL ATTENTION : THE PREVENTION OF AN ARMS RACE IN OUTER SPACE, AND A COMPREHENSIVE TEST BAN TREATY.

OUTER SPACE MUST BE USED FOR THE BENEFIT OF MANKIND AS A WHOLE, NOT AS A BATTLE GROUND OF THE FUTURE. WE THEREFORE CALL FOR THE PROHIBITION OF THE DEVELOPMENT, TESTING, PRODUCTION, DEPLOYMENT AND USE OF ALL SPACE WEAPONS. AN ARMS RACE IN SPACE WOULD BE ENORMOUSLY COSTLY, AND HAVE GRAVE DESTABILISING EFFECTS. IT WOULD ALSO ENDANGER A NUMBER OF ARMS LIMITATION AND DISARMAMENT AGREEMENTS.

WE FURTHER URGE THE NUCLEAR WEAPON STATES TO IMMEDIATELY HALT THE TESTING OF ALL KINDS OF NUCLEAR WEAPONS, AND TO CONCLUDE, AT AN EARLY DATE, A TREATY ON A NUCLEAR WEAPON TEST BAN. SUCH A TREATY WOULD BE A MAJOR STEP TOWARDS ENDING THE CONTINUOUS MODERNISATION OF NUCLEAR ARSENALS.

WE ARE CONVINCED THAT ALL SUCH STEPS, IN SO FAR AS NECESSARY, CAN BE ACCOMPANIED BY ADEQUATE AND NON-DISCRIMINATORY MEASURES OF VERIFICATION.

A HALT TO THE NUCLEAR ARMS RACE IS AT THE PRESENT MOMENT IMPERATIVE. ONLY THUS CAN IT BE ENSURED THAT NUCLEAR ARSENALS DO NOT GROW WHILE NEGOTIATIONS PROCEED. HOWEVER, THIS HALT SHOULD NOT BE AN END IN ITSELF. IT MUST BE IMMEDIATELY FOLLOWED BY SUBSTANTIAL REDUCTIONS IN NUCLEAR FORCES, LEADING TO THE COMPLETE ELIMINATION OF NUCLEAR WEAPONS AND THE FINAL GOAL OF GENERAL AND COMPLETE DISARMAMENT. PARALLEL TO THIS PROCESS IT IS URGENTLY NECESSARY TO TRANSFER PRECIOUS RESOURCES CURRENTLY WASTED IN MILITARY EXPENDITURE TO SOCIAL AND ECONOMIC DEVELOPMENT. THE STRENGTHENING OF THE UNITED NATIONS MUST ALSO BE AN ESSENTIAL PART OF THIS ENDEAVOUR.

IT IS IMPERATIVE TO FIND A REMEDY TO THE EXISTING SITUATION WHERE HUNDREDS OF BILLIONS OF DOLLARS, AMOUNTING TO APPROXIMATELY ONE AND A HALF MILLION PER MINUTE, ARE SPENT ANNUALLY ON WEAPONS. THIS STANDS IN DRAMATIC CONTRAST TO THE POVERTY, AND IN SOME CASES MISERY, IN WHICH TWO-THIRDS OF THE WORLD POPULATION LIVES.

THE FUTURE OF ALL PEOPLES IS AT STAKE. AS REPRESENTATIVES FROM NON-NUCLEAR WEAPON STATES, WE WILL NOT CEASE TO EXPRESS OUR LEGITIMATE CONCERN AND MAKE KNOWN OUR DEMANDS. WE AFFIRM OUR DETERMINATION TO FACILITATE AGREEMENT AMONG THE NUCLEAR WEAPON STATES, SO THAT THE REQUIRED STEPS CAN BE TAKEN. WE WILL SEEK TO WORK TOGETHER WITH THEM FOR THE COMMON SECURITY OF MANKIND AND FOR PEACE.

WE URGE PEOPLE, PARLIAMENTS AND GOVERNMENTS THE WORLD OVER TO LEND FORCEFUL SUPPORT TO THIS APPEAL. PROGRESS IN DISARMAMENT CAN ONLY BE ACHIEVED WITH AN INFORMED PUBLIC APPLYING STRONG PRESSURE ON GOVERNMENTS. ONLY THEN WILL GOVERNMENTS SUMMON THE NECESSARY POLITICAL WILL TO OVERCOME THE MANY OBSTACLES WHICH LIE IN THE PATH OF PEACE. THE WORLD DISARMAMENT CAMPAIGN LAUNCHED BY THE UNITED NATIONS REPRESENTS A VERY IMPORTANT ELEMENT IN GENERATING THAT POLITICAL WILL.

FOR CENTURIES, MEN AND WOMEN HAVE FOUGHT FOR THEIR RIGHTS AND FREEDOMS. WE NOW FACE THE GREATEST STRUGGLE OF ALL -- FOR THE RIGHT TO LIVE, FOR OURSELVES AND FOR FUTURE GENERATIONS.

FORTY YEARS AGO, IN HIROSHIMA AND SAN FRANCISCO, THE HORROR OF NUCLEAR WAR WAS MATCHED BY THE HOPE FOR PEACE. WE WOULD LIKE THIS YEAR OF 1985 TO BE THE YEAR WHEN HOPE BEGINS TO PREVAIL OVER TERROR. WE DARE TO HOPE THAT BY OCTOBER 24, 1985 THE FORTIETH ANNIVERSARY OF THE UNITED NATIONS, WE MIGHT SEE THE FIRST CONCRETE STEPS TO AVERT THE THREAT TO THE SURVIVAL OF HUMANITY.

INTERNATIONAL PROGRESS ORGANISATION

"Brussels Tribunal" on US Foreign Policy*

The International Conference on the Reagan Administration's Foreign Policy convened in Brussels from 28-30 September, 1984 under the auspices of the International Progress Organization. Reports were submitted by international jurists and foreign policy specialists on various aspects of the Reagan Administration's foreign policy. Among the participants of the conference were Seán MacBride (Nobel Laureate, Ireland), Prof. George Wald (Nobel Laureate, Harvard University), General Edgardo Mercado Jarrin (Peru), General Nino Pasti (former Deputy Supreme Commander of NATO) and Hortensia Bussi de Allende (Chile). The reports were presented before a Panel of Jurists consisting of Hon. Farouk Abu-Eissa (Sudan) Attorney, former Foreign Minister, Secretary-General of the Arab Lawyers Union; Prof. Francis A. Boyle (U.S.A.), Professor of International Law from the University of Illinois, Chairman; Dr. Hans Goeran Franck (Sweden), Attorney, Member of the Swedish Parliament; Hon. Mirza Gholam Hafiz (Bangladesh), Former Speaker of the Bangladesh Parliament and currently a Senior Advocate of the Bangladesh Supreme Court; Hon. Mary M. Kaufman (U.S.A.), Attorney-at-Law, prosecuting attorney at the Nuremberg War Crimes trial against I. G. Farben; Dr. Jean-Claude Njem (Cameroon), Assistant Professor at the Faculty of Law, Uppsala University, and a Consultant of the Government; Prof. Alberto Ruiz-Eldredge (Peru), Professor of Law, former President of the National Council of Justice; and Dr. Muemtaz Soysal (Turkey), Professor of Constitutional Law, University of Ankara. An accusation against the international legality of the Reagan Administration's foreign policy was delivered by the Honorable Ramsey Clark, former U.S. Attorney General. The defense was presented by a legal expert of the Reagan Administration.

Based upon all the reports and documents submitted and the arguments by the advocates, the Brussels Panel of Jurists hereby renders the following conclusions concerning the compatibility of the Reagan Administration's foreign policy with the requirements of international law.

A. Introduction

1. **General Introduction.** The Reagan Administration's foreign policy constitutes a gross violation of the fundamental principles of international law enshrined in the Charter of the United Nations Organization, as well as of the basic rules of customary international law set forth in the U.N. General Assembly's Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (1965), its Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (1970), and its Definition of Aggression (1974), among others. In addition, the Reagan Administration is responsible for complicity in the commission of Crimes Against Peace, Crimes Against Humanity, War Crimes and Grave Breaches of the Third and Fourth Geneva Conventions of 1949.

B. Western Hemisphere

2. **Grenada.** The Reagan Administration's 1983 invasion of Grenada was a clearcut violation of U.N. Charter articles 2 (3), 2 (4), and 33 as well as of articles 18, 20 and 21 of the Revised OAS Charter for which there was no valid excuse or justification under international law. As such, it constituted an act of aggression within the meaning of article 39 of the United Nations Charter.

3. **Threat of U.S. Intervention.** In direct violation of the basic requirement of international law mandating the peaceful settlement of international disputes, the Reagan Administration has implemented a foreign policy towards Central America that constitutes a great danger of escalation in military hostilities to the point of precipitating armed intervention by U.S. troops into combat against both the insurgents in El Salvador and the legitimate government of Nicaragua.

4. **El Salvador.** The Reagan Administration's illegal intervention into El Salvador's civil war contravenes the international legal right of self-determination of peoples as recognized by article 1 (2) of the United Nations Charter. The Reagan Administration has provided enormous amounts of military assistance to an oppressive regime that has used it to perpetrate a gross

and consistent pattern of violations of the most fundamental human rights of the people of El Salvador.

5. **Nicaragua.** The Reagan Administration's policy of organizing and participating in military operations by opposition *contra* groups for the purpose of overthrowing the legitimate government of Nicaragua violates the terms of both the U.N. and O.A.S. Charters prohibiting the threat or use of force against the political independence of a state. The Reagan Administration has flouted its obligation to terminate immediately its support for the opposition *contra* groups in accordance with the Interim Order of Protection issued by the International Court of Justice on 10 May 1984.

6. **International Court of Justice.** The Panel denounces the patently bogus attempt by the Reagan Administration to withdraw from the compulsory jurisdiction of the International Court of Justice in the suit brought against it by Nicaragua for the purpose of avoiding a peaceful settlement of this dispute by the World Court in order to pursue instead a policy based upon military intervention, lawless violence and destabilization of the legitimate government of Nicaragua.

7. **Mining Nicaraguan Harbors.** The Reagan Administration's mining of Nicaraguan harbors violates the rules of international law set forth in the 1907 Hague Convention on the Laying of Submarine Mines, to which both Nicaragua and the United States are parties.

*(This document dated 30 September 1984 was released by the International Progress Organisation A-1150 Vienna, Austria, Reindorfsgasse 5. A copy was made available to Australian International Law News by Professor Francis A. Boyle of the University of Illinois College of Law.)

C. Nuclear Weapons Policies

8. Arms Control Treaties. The Reagan Administration has refused to support the ratification of the Threshold Test Ban Treaty of 1974, the Peaceful Nuclear Explosions Treaty of 1978, and the SALT II Treaty of 1979, in addition to renouncing the longstanding objective of the U.S. government to negotiate a comprehensive test ban treaty. As such the Reagan Administration has failed to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament as required by article 6 of the Nuclear Non-Proliferation Treaty of 1968. Similarly, the Reagan Administration's "Strategic Defense Initiative" of 1983 threatens to breach the Anti-Ballistic Missile Systems Treaty of 1972.

9. Pershing 2 Missiles. The deployment of the offensive, first-strike, counterforce strategic nuclear weapons system known as the Pershing 2 missile in the Federal Republic of Germany violates the Non-Circumvention Clause found in article 12 of the SALT II Treaty. The Reagan Administration is bound to obey this prohibition pursuant to the rule of customary international law enunciated in article 18 of the 1969 Vienna Convention on the Law of Treaties to the effect that a signatory to a treaty is obliged to refrain from acts that would defeat the object and purpose of a treaty until it has made its intention clear not to become a party.

10. The MX missile. The MX missile is an offensive, first-strike, counterforce strategic nuclear weapons system that can serve no legitimate defensive purpose under U.N. Charter article 51 and the international laws of humanitarian armed conflict.

11. No-first-use. In accordance with U.N. General Assembly Resolution 1553 of 24 November 1961, the panel denounces the refusal by the Reagan Administration to adopt a policy mandating the no-first-use of nuclear weapons in the event of a conventional attack as required by the basic rule of international law dictating proportionality in the use of force even for the purposes of legitimate self-defense.

12. ASAT Treaty. The Panel calls upon both the United States and the Soviet Union to negotiate unconditionally upon the conclusion of an anti-satellite weapons treaty.

D. Middle East

13. Lebanon. For the part it played in the planning, preparation and initiation of the 1982 Israeli invasion of Lebanon, the Reagan Administration has committed a Crime against Peace as defined by the Nuremberg Principles. Likewise, under the Nuremberg principles, the Reagan Administration becomes an accomplice to the Crimes against Humanity, War Crimes and Grave Breaches of the Third and Fourth Geneva Conventions of 1949 that have been committed or condoned by Israel and its allied Phalange and Haddad militia forces in Lebanon. Such complicity includes the savage massacre of genocidal character of hundreds of innocent Palestinian and Lebanese civilians by organized units of the Phalangist militia at the Sabra and Shatila refugee camps located in West Beirut that were then subject to the control of the occupying Israeli army. The Reagan Administration has totally failed to discharge its obligation to obtain Israel's immediate and unconditional withdrawal from all parts of Lebanon as required by U.N. Security Council Resolutions 508 and 509 (1982), both of which are legally binding on Israel and the United States under U.N. Charter article 25. This includes Israeli evacuation of Southern Lebanon.

14. The Palestinian Question. The Reagan Administration's policy towards the Palestinian people as well as the Reagan "Peace Plan" of 1 September 1982 violates the international legal right of the Palestinian people to self-determination as recognized by U.N. Charter article 1(2). As recognized by numerous General Assembly Resolutions, the Palestinian people have an international legal right to create an independent and sovereign state. The Palestine Liberation Organization has been recognized as the legitimate representative of the Palestinian people by both the United Nations General Assembly and the League of Arab States. The Reagan Administration's non-recognition of the PLO and its attempt to brand

the PLO a "terrorist" group contravene the Palestinian people's right to liberation. The panel denounces the negative attitude of the Reagan Administration towards the call by the United Nations' Secretary General for the convocation of an international conference under the auspices of the United Nations, with the United States and the Soviet Union as co-chairmen, and with the participation of all parties involved in the conflict including the PLO, for the purpose of obtaining a just and lasting peace in the Middle East.

15. Israeli Settlements. The Reagan Administration's declared position that Israeli settlements in the Occupied Territories are "not illegal" is a violation of U.S. obligations under article 1 of the Fourth Geneva Convention of 1949 to ensure respect for the terms of the Convention (here article 49) by other High Contracting Parties such as Israel.

16. Libya. The Reagan Administration's dispatch of the U.S. Sixth Fleet into the Gulf of Sidra for the purpose of precipitating armed conflict with the Libyan government constitutes a breach of the peace under article 39 of the U.N. Charter. The Reagan Administration's policy to attempt to destabilize the government of Libya violates the terms of the United Nations Charter article 2 (4) prohibiting the threat or use of force directed against the political independence of a state.

E. Africa, Asia and the Indian Ocean

17. Apartheid. The Panel denounces the Reagan Administration's so-called policy of "constructive engagement" towards the apartheid regime in South Africa. This specious policy encourages discrimination and oppression against the majority of the people of South Africa; it hampers effective action by the international community against apartheid, and facilitates aggressive conduct by the South African apartheid regime against neighbour states in violation of the U.N. Charter. As such, the Reagan Administration has become an accomplice to the commission of the international crime of apartheid as recognized by the universally accepted International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973. The Panel also denounces the cooperation between the Reagan Administration and South Africa in military and nuclear matters.

18. Namibia. The Reagan Administration has refused to carry out its obligations under Security Council Resolution 435 (1978) providing for the independence of Namibia, as required by article 25 of the U.N. Charter. The right of the Namibian people to self-determination had been firmly established under international law long before the outbreak of the Angolan civil war. The Reagan Administration has no right to obstruct the achievement of Namibian independence by conditioning it upon or "linking" it to the withdrawal of Cuban troops from Angola in any way. Both the U.N. General Assembly and the Organization of the African Unity have recognized SWAPO as the legitimate representative of the Namibian people and the Reagan Administration is obligated to negotiate with it as such.

19. Angola. Cuban troops are in Angola at the request of the legitimate government of Angola in order to protect it from overt and covert aggression mounted by the South African apartheid regime from Namibia. There is absolutely no international legal justification for South African aggression against Angola in order to maintain and consolidate its reprehensible occupation of Namibia. The Angolan government has repeatedly stated that when South Africa leaves Namibia it will request the withdrawal of Cuban troops, and Cuba has agreed to withdraw its troops whenever so requested by Angola. According to the relevant rules of international law, that is the proper sequence of events to be followed. The Reagan Administration's "linkage" of the presence of the Cuban troops in Angola with the independence of Namibia encourages South African aggression against Angola, and thus it must share in the responsibility for South Africa's genocidal acts against the people of Angola.

20. Indian Ocean. The Reagan Administration's continued military occupation of the is-

land of Diego Garcia violates the international legal right of self-determination for the people of Mauritius as recognized by the United Nations Charter. The Reagan Administration has accelerated the rapid militarization of the U.S. naval base on Diego Garcia as part of its plan to create a jumping-off point for intervention by the Rapid Deployment Force into the Persian Gulf. As such the Reagan Administration's foreign policy towards the Indian Ocean has violated the terms of the U.N. General Assembly's Declaration of the Indian Ocean as a Zone of Peace (1971).

F. Conclusion

21. United Nations Action. From the foregoing, it is clear that the Reagan Administration has substituted force for the rule of international law in its conduct of foreign policy around the world. It has thus created a serious threat to the maintenance of international peace and security under article 39 of the United Nations Charter that calls for the imposition of enforcement measures by the U.N. Security Council under articles 41 and 42. In the event the Reagan Administration exercises its veto power against the adoption of such measures by the Security Council, the matter should be turned over to the U.N. General Assembly for action in accordance with the procedures set forth in the Uniting for Peace Resolution of 1950. In this way the Reagan Administration's grievous international transgressions could be effectively opposed by all members of the world community in a manner consistent with the requirements of international law.

Both the Security Council and the General Assembly should also take into account the numerous interventionist measures taken by the Reagan Administration, whether direct or indirect, seeking to impose financial and economic policies which are contrary to the sovereign independence of states, specially in the developing world, which severely damage the quality of life for all peoples.

A NEW CODE ON PROTECTIONISM *

THE MULTILATERAL TRADING SYSTEM : A NEW CODE ON PROTECTIONISM

I attach the paper you commissioned fleshing out and examining the idea of proposing to the Americans that they take the lead in trying to restore credibility to the multilateral trading system. I have also arranged for copies to go to Mr. Anthony, Mr. Howard, Mr. Street and Mr. Peacock.

The paper suggests that the best way of putting the basic idea into practice would be for the US to launch a new Code on Protectionism. It notes that the successful launching of such a Code would be in Australia's long-term interests, although we would have to stand ready to make adjustments and our freedom to take short-term protective action could be constrained. The paper also emphasises domestic and international political obstacles the US Administration can be expected to see with the proposal, and a good deal of space is devoted to developing the context in which it might be presented so as to increase its attractiveness.

Although some judgements are involved along the way, the paper provides a pretty fair case for at least opening the matter up with the US Administration. Mr. Street's impending talks with Shultz provide an opportunity for testing the water in a general way before making a final decision one way or the other. There would also need to be further development of some details before you could formally put it to President Reagan.

G. J. Yeend,
Secretary

*(This is a text of a letter dated 5 January 1983 and enclosure from Mr. G.J. Yeend, Secretary of the Department of the Prime Minister and Cabinet to the then Prime Minister of Australia, the Right Honourable Malcolm Fraser, C.H., on a proposal for a new Code on Protectionism. Shortly after the preparation of the enclosure, there was a change of government in Australia. Its existence was made public in 1984, and this copy was made available by Mr. Malcolm Fraser.)

THE MULTI-LATERAL TRADING SYSTEM : A NEW CODE ON PROTECTIONISM

INTRODUCTION AND SUMMARY

This paper canvasses the possibility of proposing to the United States that it take new and specific steps to reverse the present global trend to protectionism and to restore the basic principles of the multilateral trading system.

1. The basic proposal is that the US declare its preparedness with, and only with, other countries similarly disposed and on a basis of reciprocity:

(i) not to increase protection; and, in a manner to be agreed

(ii) to reduce protection

and its intention to establish and notify to the GATT a new "Code on Protectionism" open to all countries, whether members of the GATT or not.

2 It is considered that in advancing the proposal we could present it as:

- . consistent with Australia's traditional multilateral approach to trade policy issues;
- . the sort of bold and timely action necessary to prevent a further dangerous drift to protectionism;
- . if pursued resolutely by the US, likely to attract wide multilateral support, including, although almost certainly not initially, the EC and other European countries; and
- . if successful in its ultimate objective, in Australia's long run interests despite the shorter-term domestic adjustments that might be involved.

3. It has to be emphasised, however, that the success of such a proposal depends entirely on the willingness of the US Administration to depart significantly from its established approach to trade issues with Europe. It has to be recognised also that, because of the greater shorter-term domestic and international political risks the Administration will almost certainly see in the approach proposed in this paper, it will not be easily shifted from its present course. Much of this paper, therefore, canvasses the broad nature of those risks and the context in which the proposal might be presented so as to increase its attractiveness to the US.

BACKGROUND

4. The Australian initiative for a standstill and windback of all protectionist measures presented to the recent GATT Ministerial was an attempt to prevent protectionism spreading and further exacerbating inflationary pressures and the global recession.

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Although those consequences of increased protectionism were widely acknowledged at the GATT meeting, the declaration to emerge from the meeting was weak and will be little brake to countries wishing to interpret it in their own interests.

5 The European Communities in particular frustrated efforts to obtain firm commitments to halt and reverse the trend to protectionism. The Communities again proved particularly difficult to negotiate with as a group, and were basically content to stalemate negotiations and keep their options open. Thus, unless there were to be a radical and completely unexpected change in the EC attitude, the prospects for progress in any subsequent formal GATT framework seem remote.

6. What is needed, therefore, is a proposal able to surmount the difficulties of the GATT negotiating framework and the intransigence of the EC and other West Europeans. It should aim for initial wide multilateral participation, while acknowledging that, at first, Western Europe will probably not participate. The outcome sought, however, should be of such a nature and have such an impact as ultimately to compel the Western Europeans to take part.

7. The country with the necessary combination of economic weight, position of strength in the free world and commitment to the principles of free trade which might successfully be able to initiate such action is the United States. It is thus ideally placed to take a lead.

FEATURES OF THE PROPOSAL

8 A new Code on Protectionism should aim ultimately to be comprehensive, applying to the full range of trade distorting measures (as did the earlier Australian initiative). Practical considerations alone, however would require its implementation in stages. The initial Code should apply only to measures inconsistent with GATT obligations or falling outside the GATT framework - the so called "illegal" measures, which account for the bulk of increased protectionism. It could be extended to other forms of protection as Code signatories gained confidence in the benefits of further actions.

9. The GATT Ministerial experience suggests that measures to arrest protectionist trends are unlikely to be successfully negotiated in any large multilateral forum. It is proposed, therefore, that the US, perhaps in consultation with a handful of sympathetic countries, draw up the new Code and, as in the case of many of the MTN Codes, open it to participation from interested countries on a take it or leave it basis. The "standstill" component would be implemented immediately. The subsequent "windback" would probably require some negotiation as to timing, phasing and so on.

10. The proposal would not leave the US open to charges of attempting to by-pass the GATT. It could be presented as merely adding to the aggregation of Codes emerging from the MTN. Its purpose would be to strengthen commitment to GATT rules

Strictly speaking, a new Code would (as do some MTN Codes) involve departures from the basic MFN principle in Article 1 of GATT. This has been justified in the case of MTN Codes on the basis of their benefits being available to all who accept their obligations. A similarly constructed Code on Protectionism could therefore be fully defended on the basis of precedents established.

11. Barriers to trade in agricultural products would be included along with barriers to trade in other products. Agriculture is more complicated to embody in a standstill and windback since conventional means of protection, even quotas, are less relevant. The intention in various agriculture measures is first to protect the domestic market and then to subsidise otherwise uncompetitive surpluses into third markets. Thus, there needs to be a halt on both domestic protection and subsidies. This, however, might be too ambitious for a start. The most that might be feasible is a standstill (and windback later) in subsidy levels and in farm price supports. (This would have the dual effect of making subsidised exports gradually less competitive and would gradually discourage high cost production which is the source of the problem).

12. Perhaps what needs to be emphasised above all is that the success and worth of the proposal depends very heavily on US willingness to embrace and resolutely pursue it on a take it or leave it basis. If the Americans were attracted, it would have to become for all practical purposes a US initiative. Her natural instinct may be to consult major trading partners - Japan and the EC - but if that led to negotiations and opportunities to emasculate the proposal it would not have been worth pursuing.

AUSTRALIA'S INTERESTS

13. Any action that led to the restoration of the basic principles of the multilateral trading system would be beneficial to Australia's long term interests. It is within a well functioning multilateral trading system that:

global and hence our own growth prospects will be most favourable;

- . inflation and budget deficits around the world can be best contained;
- . industries in all countries will better adjust to competitive pressures;
- . we can best pursue our interests as a significant trading nation, including with the dynamic and rapidly growing countries in our region; and

the Western strategic alliance, of which we are part, will be strongest and most stable.

14 Of course, participation in a new Code on Protectionism would require a willingness on our part first not to increase and, later, to reduce trade barriers in Australia.

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Such obligations would be somewhat less at the outset, if the Code applied initially only to "illegal" measures, though, to be fair, our so-called tariff quotas (like other countries' VER's) probably fall within the compass of "illegal" measures. Against that there could also be a period when, as the initial proponent of the Code, we were one of only a handful of participating countries and at a time when unemployment in Australia was at record levels. We would also have to be prepared for increased competition in third markets, including agricultural products.

15. The sort of adjustments that we might be called upon to make cannot be anticipated but, as always, there would always be winners and losers. It also has to be noted that business - certainly representatives of some peak business Councils - have been relieved to see the Australian initiative fail at the GATT Ministerial, would be opposed to Australia advancing any similar proposal, and would presumably oppose our participating in any Code. Although we would, as already noted, gain overall in the long-run from a more open world trading system, the Code could also restrict our freedom in the near-term to extend temporary assistance.

16. The extent to which Australia would stand to lose credibility by unsuccessfully promoting such a proposal with the US is a matter of judgement. It could be argued that our international reputation would suffer little by raising a well prepared and argued proposal to reverse the drift to protectionism, particularly when attempts to do so through more conventional channels (the GATT) have proved such a failure. Mr. Street's discussion with Secretary of State Shultz could also provide an opportunity for testing the water in a general way before finally committing ourselves. On the other hand, the Europeans in particular would represent the proposal as yet another example of an unrealistically "purist" approach.

17. There is also the question of the ~~implications~~ of advancing such a proposal for our overall political relations with Western Europe. It would have to be emphasised that we were not in the business of promoting increased trans-Atlantic tensions, but given our recent differences with the Europeans in the trade field it would be difficult to persuade some of them initially that the proposal was not aimed at embarrassing and isolating them. In the end, of course, the real test would be whether they could ultimately be persuaded to participate.

US REACTION

18. The key question is the likely US reaction to the proposal. The US could, in-principle, be expected to be sympathetic to a proposal that sought to re-invigorate the multilateral trading system, would readily acknowledge the potential benefits to world trade and growth, dealing with inflation and budget deficits, the benefits to developing countries and so on. In practical terms, however, its reaction to the proposal is likely to be conditioned by three things:

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- . the domestic US economic and political consequences;
- . the chances of success - ie. winning wide multilateral support; and
- . possible strategic implications, particularly with European NATO partners.

Domestic Considerations

19. Domestic political difficulties for the US Administration in pursuing such a proposal should not be under-estimated. This would be especially so if the EC were not part of the Code, though making it clear the EC would not get a free ride would help. The Administration is nevertheless under substantial farmer, industry and Congressional pressure to take additional protectionist measures. Given the President's dependence on the co-operation of Congress (in which the Democrats have the majority in the House of Representatives) he could be expected to give great weight to possible wider implications for his relations with Congress.

Possible Participants

20. Possible participation is difficult to predict with any confidence and in any event would be importantly conditioned by how resolutely the US was prepared to pursue the idea in the face of inevitable opposition. However, if, and only if, determinedly pursued by the US the overall outcome might, in time, be along the following lines:

- . The EC and EFTA countries would almost certainly not agree to participate initially, particularly if agriculture were included. Widespread participation by other major trading countries, however, would put significant economic and political pressure on those countries subsequently to participate.
- . Canada would probably have no option but to participate (around two thirds of its trade is with the US).
- . Japan would quickly realise that many existing and potential protectionist measures are directed against it, although it would have to weigh that against the difficulties of reducing its own non-tariff and agricultural protection. It would not relish "having to take sides" in a US/EC divergence of view. But, with 25% of Japanese exports going to the US, its incentive to participate would be substantial.

ASEAN countries would be similarly uncomfortable with a US/EC divergence, but if Japan participated their trade links with Japan and the US (together accounting for over 50 per cent of extra-ASEAN exports) would make participation very hard to resist

- . US, Japanese, ASEAN, Canadian, Australian and New Zealand participation, would encourage further developing country participation especially among those interested in trade eg. Korea, Sri Lanka and some Latins. Some Convention countries (African and Caribbean) would be reluctant in the absence of EC participation. It is unlikely that Brazil and Argentina would easily be persuaded to join but given the parlous state of their economies they ultimately would probably come in. India, too would be a reluctant but probable participant.

Earlier Commonwealth Heads of Government Meetings suggest widespread participation by Commonwealth countries.

Strategic Considerations

21. Maintaining Western strength and cohesion for strategic reasons will bear heavily on US thinking. It will not easily embrace a proposal putting such pressure on the EC in the trade area, which it may well regard as increasing tensions within the Western Alliance.

22. New Secretary of State, Shultz, has also put a lot of personal effort into mending fences (eg. the pipeline embargo) with the Europeans, including trying to repair the non-achievements of the GATT Ministerial. For those reasons Shultz in particular may prefer to build on what common ground the US can identify with the Europeans, rather than strike out in new directions. The question then is whether he and other senior members of the Administration could be persuaded that, while the bilateral approach to Europe is appropriate and effective in many areas, the time has come for a fresh approach to protectionism.

23. In summary, the US Administration will see the proposal as involving a departure from its established approach to Europe on trade issues, perhaps involving international and domestic political risks. Our task, therefore, would be to persuade the US to the contrary, and to convince it that our proposal offers more hope of reducing its underlying trade and strategic tensions with its European trading partners than the "fence-mending" course on which it has already embarked.

PRESENTATION TO THE US

24. As regards strategic questions, the proposal could be presented to the US along the following broad lines:

- . The multilateral trading system served the world well for the first two and a half decades after World War II. It is now seriously threatened;

The last decade has seen a steady drift to protectionist measures, which has accelerated disconcertingly in the last few years;

The recent GATT Ministerial has done little or nothing to ~~arrest that trend~~ - nor will the EC/US bilateral talks get at the fundamental problems;

- . If the drift to protectionism is allowed to go on the risk of the world drifting into a 1930's style "trade-war" and depression will rise correspondingly. Not only does protectionism impede growth and trade flows, it also impacts adversely on the capacity of heavily indebted developing countries to service debts by exporting and this threatens the payments system as well. Hence the possibility of a drift to the 1930's;
- . What is needed, and is proposed, is an initiative capable of surmounting the difficulties of the GATT negotiating framework,
 - one that offers the EC full rights of participation and seeks their participation sooner rather than later.
- . The US is the only country capable of successfully taking the lead.
- . If the US does not take the lead because of its concern that European reactions may go beyond purely trade issues then, in effect, Europe will be allowed to continue imposing its inward looking and protectionist view of organising the trading system on the rest of the Western world, a view which is philosophically alien to many and economically damaging to all,
 - in other words it will be allowed to usurp the US's traditional leadership role and to take the West in the direction of a breakdown of the trade and payments system, with all the implications that could have in the moderately longer term for the strength of the Western alliance.
- . Australia recognises that the proposal, if it were to lead to the short-term isolation of the EC in the trading system, may temporarily strain relations between Europe and North America but so would a "trade-war" which may follow doing nothing.
- . If the US pursues the proposal resolutely, however, other major trading powers eg. Japan, ASEAN, Canada, Australia and many developing countries will support it, thus leaving the Europeans either to follow suit or be the "odd men out". In those circumstances the pressures on it to participate would include:
 - growing political discomfort in standing apart from a worthwhile and widely supported multilateral agreement,
 - the growing cost to many of its industries not benefitting from reductions in trade barriers between Code signatories,
 - the weight added to anti-protectionist forces within EC countries, and

- the different attitudes to the proposal that would exist between more (eg France) and less (eg FRG) protectionist countries within the EC.
- . Present bilateral efforts to defuse tensions within the alliance are understandable and necessary, but when Europe steadfastly refuses to move on trade issues in any negotiating context then there is no real alternative to this sort of multilateral pressure if an already fast deteriorating situation is not to get worse. In other words, continued compromise and accommodation to European protectionist leanings on strategic grounds may well involve significantly greater long term risks to the strength and cohesion of the Western alliance.
- protectionism undermines the strength of the Western economic system, its capacity and resolution to maintain an adequate defence capability and its very philosophical base,
- continued erosion of multilateral trading rules, increasing resort to "beggar-thy-neighbour" policies and continued lack of prosperity will create tensions and instabilities, reaching beyond Europe into such areas as the ASEAN/Pacific, which could only be to the political and strategic advantage of the enemies of the West.
- . Nor does international stability depend solely on the cohesion of Western-aligned States. Continued inaction against protectionism will frustrate the integration of developing countries into the world economy, and may well force ASEAN and Pacific countries to be increasingly inward looking.*
- . In summary, Australia believes that a firm display of US leadership to bring the trading system back on course offers longer-run benefits for the world economy, the Western alliance and international stability far outweighing any shorter-run tensions that might arise.

25 As regards US domestic political problems, the following sorts of points may help the President present the proposal including to the Congress, in a positive light:

- . as just noted, there would be wider economic, strategic and political benefits to the US if it could successfully launch the proposal;
 - . market opportunities would be opened up for US producers, both directly and as a result of the general boost to world trade and growth;
- domestic.../

* As an aside in this context, US co-operation with the region would be enhanced by giving greater support to the development of commodity agreements such as tin and rubber upon which considerable store is set

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- . domestic hostility to the proposal may be allayed to the extent that while the Europeans do not participate they cannot receive the benefits;
- . a multilateral Code on Protectionism may prove a practical and positive counter to domestic pressures for more protection - which would presumably have its own political consequences among anti-protectionist lobbies;
- . if those domestic pressures can be headed off the possibility of any trade war is clearly diminished
 - if they cannot, and the EC holds to its present views, will the trade disputes that will increasingly flare up with the EC (perhaps even a trade war) not cause their own domestic political problems?

FORM OF APPROACH

26. Given that a bold and significant change in direction is being suggested, the President would rely heavily on the advice of advisers such as Shultz and Brock. If it were decided to proceed with the proposal, it would be important that it be put to the President personally by the Prime Minister as soon as possible. This would help ensure that the benefits to the world trading system, to the Western alliance and to US leadership and standing in the world were given appropriate emphasis from the outset.

27. As already pointed out, the support of Shultz and Brock would also be crucial and they would need to be appropriately and personally briefed before the Prime Minister saw the President, or he would be in no position to react. It seems desirable, therefore, that during his visit to the US, 11-14 January, Mr. Street begin to open up the question with Shultz in a general way, canvassing in particular some of the points in paragraph 25 above. A decision would also be required as to how the personal briefing of Brock was to be conducted.

THE WILLIAMSBURG SUMMIT

28. The potential role seen for the proposal at the Summit in June needs careful consideration. It almost certainly would not be helpful, for example, for the proposal to be taken to the Summit by the US for discussion/negotiation with European Summit participants. The Europeans would presumably reject the idea and it would then be more difficult to proceed with it. It may be more productive if the US were encouraged either:

- . to launch the new code multilaterally in advance of the Summit; or, preferably
- . launch it immediately following the Summit if European participants again resist meaningful commitments on protectionism which could be floated by the US there

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THE HOBART CONFERENCE (25-28 MARCH)

29. Once the proposals were put to the US it would be difficult to prevent it becoming known publicly. The question then arises how could this be handled in relation to the Hobart trade meeting. If the US accepted the idea it could be explained as part of the further background to a discussion of how this region might relate to a wider world. If a significant part of the wider world was likely to become less protectionist then it might want to relate in a particular way. If however, the US could not take the lead suggested then it is more likely that the world will be moving in a more protectionist direction. This presumably would elicit a different response from the regional group meeting in Hobart.

30. In any event, some appropriately timed contact in Western Pacific capitals may be necessary to avoid giving rise to perceptions that it was cutting across the Hobart concept, was motivated by any purely bilateral considerations with the US, or was not consistent with our support for the multilateral trading system.

5 January 1983.

GATT - US RULES OF ORIGIN*

At the Council's meeting on 2 October, textile-exporting developing countries drew attention to measures taken by the United States in this sector. On 4 and 5 September¹ these countries had already expressed before the Textiles Committee their concern about the serious repercussions that the measures could have on their exports.

Speaking on behalf of the textile-exporting developing countries, the representative of Pakistan said that the Council had an important rôle to play in overseeing commitments in regard to protectionism and increased trade liberalization, *inter alia* in the textile area, as well as strict observance of the rules of the Multi-Fibre Arrangement, in accordance with undertakings given at the Ministerial session of November 1982.

In the view of the representative of Pakistan, neither the regulations defining new rules of origin applicable to textile imports into the US, nor the countervailing investigations opened against thirteen developing countries take account of the objectives of the Ministerial declaration on the MFA. He underlined that recourse to restrictions additional to those already provided by the MFA was strictly limited by Article 9 of that instrument. The new rules of origin alone could affect trade representing \$3 billion.

Several developed countries, in particular the European Community and Japan, shared the concern of developing countries regarding the new United States rules of origin, the complexity of which could give rise to problems of interpretation and have a protectionist impact. The EEC asked the US to withdraw the new rules, and expressed the view that, with respect to countervailing duties, the essential issue

lay in the United States' acceptance of the criterion of injury to countries not parties to the Code on Subsidies and Countervailing Duties.

The United States representative recalled that his country's regulations on rules of origin had been amended; their implementation had been postponed; concerning the countervailing duty petitions, the time-limit for presenting preliminary determinations has been extended. Nevertheless, he stressed that United States textile imports were continuing to rise.

At the request of Finland, the Council decided to establish a panel to examine the anti-dumping duty imposed by the

New Zealand authorities on imports of *electrical transformers from Finland*, since bilateral consultations on the matter had failed to yield a satisfactory result.

The Council adopted the report of the working party on the *Australia/New Zealand closer economic relations trade agreement*; in line with usual practice regarding regional arrangements, the parties to this agreement are to report to the Council every two years on its implementation.

The Chairman of the Council announced that informal consultations are continuing on trade in counterfeit products.

* (This is the text of an item that appeared in the GATT Newsletter Focus September/October 1984.)

INTERNATIONAL BANKING - MONETARY AUTHORITY OF SINGAPORE AND JARDINE FLEMING (SINGAPORE) PTE LTD*

On 4 Oct 84, the Monetary Authority of Singapore ("th Authority") withdrew its approval for JFS to operate as a merchant bank in Singapore. This decision was taken following a review of JFS's operations in Singapore and after careful consideration of the explanations given by JFS.

Breach of Section 133 of the Companies Act and Inadequacy of Internal Controls

2. In late 1981 and early 1982, the Authority conducted an inspection on JFS. Besides weaknesses in the credit administration and internal control procedures, JFS was found to have granted substantial clean credit facilities to its then Managing Director in contravention of Section 133 of the Companies Act. These serious breaches would have warranted the withdrawal of the approval for JFS to operate as a merchant bank. However, in view of JFS's assurance to improve its internal controls, no legal action was instituted against it, except the withdrawal of its Asian Currency Unit (ACU) permit.

Inadequate Advice to the Minority Shareholders of Singapore Land (SLL)

3. In 1981, SLL proposed to acquire 5 cargo vessels from the Ocean Shipping Group which was effectively controlled by SLL's major shareholders. The minority shareholders of SLL however protested against the acquisition. Despite the depressed condition in the shipping industry and the consequent doubt as to the vessels' long term profitability, JFS, as an adviser to the minority shareholder, had recommended that the vessels, then aged 4 - 7 years, be bought at a total price of US\$53 million compared to an original cost of US\$52 million to the vendor. SLL later withdrew the transaction at the insistence of the Securities Industry Council.

4. The Authority has found little reason to believe that JFS had arrived at its recommendation after due and careful consideration of all pertinent factors. In particular, JFS had failed to take full account of the prevailing market conditions, future industry trend and the potential earning capacity of the vessels, and to ensure that possible conflict of interest of the controlling shareholders of SLL

* (This is the text of a Press Release dated 4 October 1984 made by the Monetary Authority of Singapore. The decision of the Authority was reported widely in the financial press)

and Ocean Shipping Group was sufficiently mitigated JFS contended that "it is normal practice in transactions of this type for the acquisition price to be based on present-day market value rather than some indeterminate future value".

5. JFS also argued that its obligation was to ensure compliance with mandatory stock exchange requirements such as the provision of an independent valuation, disclosure of interests of any interested parties and disfranchisement of the latter's voting rights. The Authority cannot agree that a minority adviser's role is confined to ensuring technical compliance with regulations. Nor can the Authority accept that the adviser should seek refuge in valuation technicalities without satisfying itself that the acquisition price takes into account the prevailing and prospective market conditions.

Poor Standard of Advice to Keppel Shipyard Ltd (Keppel)

7. In May 1983, JFS was appointed to advise Keppel on negotiations to acquire a 58% stake in Straits Steamship Co Ltd (Straits). As adviser, JFS delivered 2 reports dated 28 Apr 83 and 4 Jun 83 to Keppel. These reports contained serious deficiencies.

8. In the April Report, JFS estimated Straits to be worth between \$2.71-\$2.94 per share. The estimate was inflated by some S\$81 million (or 32 cents per share) because JFS omitted to exclude the minority interests in properties not 100% owned by Straits. JFS disclaimed responsibility for this gross oversight on the ground that the April Report was an internal document prepared for its own use. The Authority considers it quite unacceptable professional behaviour that a merchant bank should deem it proper to furnish a client with documents that have not been properly researched. Even if the documents might be of some use to the client, the adviser is expected to expressly point out to the client that the documents contain data that had not been fully investigated into and could be erroneous.

9. The June Report also contained another gross error in that JFS's valuation of Straits' holdings in Bukit Timah Plaza at S\$127 million was some 200% higher than the property's book value as at 31 Dec 82. It was also some 200% higher than a professional valuation of the same property made in June 1983. JFS's valuation of Straits'

properties was thus inflated by some S\$72 million (or 29 cents per share). JFS admitted that its estimate was too high but again disclaimed responsibility on grounds that it was not a professional valuer and that at no time did it become financial adviser to Keppel - its role was confined to providing assistance to Keppel as and when requested. The Authority finds these disclaimers difficult to accept; not only does it call into question JFS's professional competence, but it also stretches credulity to believe that JFS was to be paid a fee of S\$400,000 merely to assist Keppel in the collation of facts synthesized with meagre commentaries without being expected to advise on the worth of Straits and be responsible for the accuracy of information furnished to Keppel.

10. In both Reports, JFS had estimated Straits' pre-tax profit for the year ended 31 Dec 83 to be S\$35 million, a 6% increase over 1982's profit of S\$33 million. The actual 1983 profit turned out to be only S\$3.9 million, 1/9th of JFS's estimate! Although merchant bankers are not expected to be clairvoyant, it is difficult to see how JFS could have justified forecasting an increase in Straits' 1983 profit when difficult business conditions were noted in JFS's June Report.

11. The Authority is satisfied that JFS's conduct of its merchant banking activities has been unsatisfactory in that it failed to meet the high standards of professional competence and care expected of a merchant bank. In the circumstances, the Authority considers it appropriate, in the public interest, to take the unusual step of withdrawing its support for JFS to continue operating as a merchant bank in Singapore.

4 October 1984