XI—TREATIES

Treaties—Australian treaty practice—Vienna Convention on the Law of Treaties

On 12 April 1984 the Attorney-General, Senator Gareth Evans, addressed a meeting of the International Law Association (Australian Branch) in Sydney. Part of what he said is as follows (Comm Rec 1984, 591–593):

> I have instituted a wholesale review of Australia's reservations and declarations to the ICCPR, with a view to the speedy removal of all but those in respect of which there are compelling reasons to justify retention.
>
> In reviewing the necessity and desirability of Australia's reservations and declarations to the covenant, it is important to recall two fundamental principles. One relates to the general rules of the observance and interpretation of treaties, and the other relates to the rules for determining what, in international law, is a reservation. These questions are crucial to a proper understanding of the scope of Australia's obligations, how they should be performed, and for determining when, in the light of Australian law and practice, reservations may be necessary.
>
> Australia's treaty practice is governed by the 1969 Vienna Convention on the Law of Treaties. This was acceded to by Australia in 1974 and has been in force since 21 January 1980. As you will be well aware, it lays down rules for the observance and interpretation of treaties, and these are binding on Australia.
>
> Article 26 requires as a cardinal principle that every treaty be performed by the parties in good faith, and article 31 states the general rule of interpretation, paragraph 1 of which, you will recall, is as follows:
>
> > A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> These rules are relevant to Australia's observance of the Covenant in several ways. One of the objects of the Covenant as expressed in its preamble is to promote the universal respect for, and observance of, human rights and freedoms. In pursuing this objective in good faith, states parties to the covenant which have not made a declaration under article 41 (I shall come back to the question of Australia making such a declaration) cannot be acted against by other parties for non-compliance or non-observance or for the varying manner in which they choose to observe their obligations.
>
> Rather the parties take note of differences of interpretation and encourage one another, through the Human Rights Committee, to adopt a more uniform method of reporting and implementation, as part of the promotion of universal respect for human rights.
>
> Where there is doubt, therefore, about the manner in which Australia is implementing its obligations, or whether its laws and practices conform to the requirements of the covenant, it is not necessary to take the over-cautious measure of formally notifying the United Nations Secretariat of these doubts in a legal instrument such as that which contained Australia's reservations and declarations on ratification.

Rather, these doubts, views and practices are quite appropriate for inclusion in the periodic report to the Human Rights Committee and for statements, explanations and arguments to be made before the Committee by Government representatives, and this is in fact what the Government did in October 1982 in its appearance before the Committee.

An exception is where there is a clear and demonstrably justifiable difference between Australian laws and practice and the obligations of the covenant. These are properly the subject of reservations.

As you will again no doubt be aware, article 2(1)(d) of the Vienna Convention defines a reservation as 'a unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state'.

Two important features of this definition are, first, that the nomenclature used in describing the statement is not conclusive of its actual classification as a reservation, and, secondly, that the test is whether the statement purports to exclude or modify the legal effect of the treaty.

A statement in which a state party merely seeks to interpret the treaty or part of it in a particular manner and to indicate its perception of its obligations under the treaty as an interpretative declaration. Unless the state making the declaration purports to make its acceptance of the treaty subject to acquiescence in its interpretation, the statement cannot be regarded as a reservation.

Applying these rules to the Australian 'reservations and declarations', only a few of the statements can properly be regarded as reservations. In respect of the remaining statements, they could appropriately, and without any diminished effect, be removed and placed in our periodic reports submitted to the Human Rights Committee where they could adequately be explained and augmented by other materials and reasoning, if necessary.

Finally, the present Australian Government generally favours adherence to multilateral treaties or conventions without reservations. This is a practice which we have not only sought to follow ourselves but which we have also said we hope would be followed by other governments. This policy is all the more important in relation to the foundation of human rights treaties such as the ICCPR which embody fundamental principles to which Australia is firmly committed.

On 10 December 1984 the Attorney-General, Senator Gareth Evans, announced that Australia had withdrawn certain of its reservations and declarations to the International Covenant on Civil and Political Rights. Part of his statement was as follows (Comm Rec 1984, 2536):

The three reservations which have been retained for practical reasons are:

- a reservation to Article 10, dealing with prisoners' rights, which will permit the States and the Northern Territory to move progressively, rather than immediately, to implement the requirement to segregate accused persons from convicted persons. It will also allow continued segregation of juvenile offenders from adults but only to the extent that such segregation is considered to be beneficial to the juveniles or adults concerned

- a reservation to Article 14(6) which will permit the Commonwealth and the States to continue to meet the obligation to compensate persons for certain miscarriages of justice through administrative measures rather than through legislative means. Administrative procedures are available in all jurisdictions to provide compensation for the types of miscarriage of justice envisaged in Article 14(6) and these procedures are considered satisfactory
- a reservation to Article 20 which requires legislation proscribing war propaganda and racial hatred propaganda. This reservation will be reviewed when the question of legislation proscribing racial hatred propaganda, at present being considered by the Attorney-General's task force on human rights, has been resolved.

For the text of Australia's Instrument withdrawing the reservations, see Appendix, p 671.

Treaties—Australian treaty practice—contribution to survey of State practice

The Australian Government submitted the following answers to the respective questions asked by the European Committee on Legal Co-operation (CJCD) of the Council of Europe in a survey of State practice on treaty-making in October 1986 (CDCJ (86) 24 Addendum, pp 103–106):

1. Which authority, in your country, is vested with the treaty-making power?

In accordance with Chapter 11 of the Australian Constitution, the treaty-making power is vested in the Crown and is exercised by the Governor-General in Council (that is, the Governor-General acting with the advice of the Federal Executive Council). The Federal Executive Council is usually composed of at least two Ministers. The Council's approval must be sought before any treaty action.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

There is no legal procedure required to be fulfilled in order to authorise the negotiation of a treaty. The decision is generally made by ministers.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

(a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and 13 to 15.

(b) If the answer is yes, please reply to questions 4 and following.

No distinction is drawn in the domestic legal system between signature not subject to ratification and signature subject to ratification, acceptance or approval in that the approval of the Governor-General in Council is required for all these actions. There is a distinction in terms of implementation covered by question 4 where the treaty action concerned will have the effect of bringing the treaty into force for Australia. Because of the formality involved in ratification of bilateral treaties, Australia prefers that where those treaties are not to enter into force upon signature they be expressed to enter

into force upon an exchange of notes. It is unnecessary to obtain separate approval for the Governor-General in Council for this step.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Australia will enter a treaty that enters into force upon signature alone only where effect can be given to the treaty without amendment of domestic law. Otherwise it would delay signing until the law has been changed as necessary.

5. In what cases is signature subject to ratification required?

Following from the answer to question 4, where amendment of domestic law will be required to give effect to the treaty.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Where a particular treaty requires it.

7. In each of the situations mentioned under 3(a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the state. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

In Australia:

- texts must first be settled between the parties;
- the Australian States and the Northern Territory must be informed of negotiations and they may request consultations;
- if the treaty would affect particular interest groups, these will generally be consulted;
- Cabinet approval *or*, where the proposed treaty falls within existing policy, approval by relevant ministers and the Prime Minister and other Ministers as appropriate informed;
- passage of legislation or making of regulations or other subsidiary legislation where it is necessary to bring domestic law into line with the obligations to be imposed by the treaty;
- if legislation is unnecessary or has not yet occurred so that the Parliament for that reason has not considered a signed treaty, table it in both Chambers of the Federal Parliament;
- approval from the Governor-General in Council of the treaty action required to bind Australia. This approval will authorise the Foreign Minister to prepare an instrument of full powers, accession, ratification etc;
- preparation by the Minister for Foreign Affairs of the appropriate instrument;
- performance of the treaty action required to bind Australia co-ordinated with any action necessary to bring implementing legislation into force at time of entry into force of treaty for Australia.

8. When ratification is necessary, please specify:

(a) Which authority is competent to ratify?

(b) Must it have prior authorisation to ratify. If so, who gives such authorisation and what force does it take?

(c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising

authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

(d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

(a) The Minister for Foreign Affairs when authorised to do so as described in (b) below.

(b) Yes. The Governor-General in Council would authorise the Minister of State for Foreign Affairs to prepare and in the case of a multilateral treaty deposit an instrument of ratification. In the case of a bilateral treaty the Minister would be authorised to prepare and exchange the instrument.

(c) No. But in good time to obtain the approval of the Executive Council and to prepare full powers.

(d) In practice the Governor-General in Council places no time limit on the authority to ratify with the result that ratification can be delayed indefinitely. It is possible for the Governor-General in Council to revoke the authorisation.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether:

(a) Reservations should be made?

(b) Reservations should be withdrawn?

(c) Objections should be presented to reservations made by other States?

(a) Whether Australia should lodge a reservation is considered in conjunction with whether Australia should bind itself to a treaty. Thus the procedure relating to reservations is the same as that described in answer to question 7 above, i.e. this will require the approval of the Governor-General in Council.

(b) Same as above.

(c) Whether an objection should be lodged to a treaty requires the approval of the Foreign Minister though not that of the Governor-General in Council.

11. Do treaties to which your country is a party become incorporated into your country's domestic law?

No. Australia's becoming a party to a treaty does not incorporate the treaty into Australian domestic law. Treaties are implemented in Australian law by appropriate domestic legislation. It is possible to do this by giving the force of law to the terms of the treaty or, more often, to rely upon legislation which while not repeating the exact words of the treaty gives effect to the terms of the treaty.

12. If so, does the incorporation happen by reasons of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

A separate legislative or administrative act is necessary.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Once a treaty is incorporated in Australian law through domestic legislation, that legislation has the same status as other domestic legislation.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

No. However, it represents an indication that Australia is likely to do so.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Whether provisionally or definitively in force Australia must ensure that its domestic law is in accordance with the treaty's obligation. This may require amendments to legislation as mentioned in answer to question 11.

Treaties—declarations—withdrawal

On 29 August 1985 the Australian Embassy in Washington presented the following Note No 393/85 to the United States Department of State (text provided by the Department of Foreign Affairs):

The Australian Embassy presents its compliments to the State Department and has the honour to refer to the Declaration made by the Government of Australia at the time of its signature of the Treaty on the Non-Proliferation of Nuclear Weapons on 27 February 1970.

The Australian Embassy wishes to advise the Government of the United States of America, as a Depository of the Treaty, that certain parts of that Declaration no longer accurately reflect Australia's position. Since the Declaration was not intended to have any further application after Australia's ratification of the Treaty on 23 January 1973, the Australian Government would be grateful if the Declaration was no longer published or disseminated as an expression of Australian policy with regard to the Treaty. Should it be necessary to publish the Declaration, for example, for historical purposes, the Australian Government would be grateful if it contained a caveat to the effect that the Declaration no longer accurately reflects the position of the Government of Australia.

The Australian Embassy avails itself of this opportunity to renew to the State Department the assurances of its highest consideration.

Treaties—form—use of the terms "Australia" and "Commonwealth of Australia" in Australia's bilateral treaties

In the course of negotiations for the Extradition Treaty between Australia and Ireland, signed in Dublin on 2 September 1985, the Australian Embassy sent the following Note to the Irish Foreign Ministry shortly before signature (text provided by the Department of Foreign Affairs):

The Australian Embassy presents its compliments to the Ministry of Foreign Affairs and with reference to conversations between officials concerning the proposed Extradition Treaty between Australia and Ireland has been instructed to convey the following observations concerning suggestions that reference might be made to the 'Commonwealth of Australia' rather than 'Australia' in the proposed treaty.

In the event that a question ever arose before an Irish Court about the validity of the treaty arising from the use of the term 'Australia', the Government of Australia would be prepared to cooperate in providing a

statement in an appropriate form in support of action which it would expect the Irish authorities to take to assert the validity of the treaty.

If such a question arose before an Australian Court, the matter would be settled by the issue of an executive certificate, which would be treated by the Court as sufficient evidence. We would expect, on the basis of our understanding of Irish authorities, that a similar approach would be taken by Irish Courts.

Australia signed the Charter of the United Nations and Statute of the International Court of Justice on 26 June 1945 in the name of 'Australia'. While some Australian treaties have used the term 'Commonwealth of Australia', since 1973 all Australian treaties have been entered into in the name of 'Australia' or 'The Government of Australia'. No objection has ever been raised about the validity of these actions.

In 1973 the then Government adopted the practice of using 'Australia' in all international instruments. This approach was confirmed in 1976 by the then Prime Minister, the Hon Malcolm Fraser, who said: 'The titles "Australia" and "Australian Government" will continue to be used abroad and in relations with foreign countries'.

So far as the Australian constitutional position is concerned, under Section 61 of the Australian Constitution, the authority to conclude treaties is an exercise of the executive power, and resides in the Governor-General who acts on the advice of the Executive Council. The Governor-General in Council has authorised the Attorney-General to sign 'for and on behalf of Australia the Treaty on Extradition between Australia and Ireland'. This authority is effective under Australian constitutional law.

A state may not in all but exceptional cases invoke a provision of its own or another State's constitution or law as an extenuation of an international obligation. This fundamental rule is reflected in Articles 27 and 46 of the Vienna Convention on the Law of Treaties limiting the extent to which a State may rely upon its own constitution as justification of its failure to perform a treaty. So much the more may a State not invoke the constitution or another State for a similar purpose. The point is recognised by the Permanent Court of International Justice in the case of the *Treatment of Polish Nationals and Other Personnel of Polish Origin in the Danzig Territory*, PCIJ Case No. 104 (1932), which stated:

'According to generally accepted principles a State cannot rely, as against another State, on the provisions of the latter's constitution but only on international law and international obligations duly accepted.'

It is a common international practice, to which no evidence of objection has been found, for states to designate themselves for various purposes, including when participating in treaties, by a name other than that used in their constitutions.

The use of the term 'Australia' appears in the style and titles adopted by Her Majesty the Queen as Head of State. The royal style and titles approved in 1973 are 'Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth'. The word 'Australia' was similarly used in the previous royal style and titles adopted in 1953.

The Embassy of Australia avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

Treaties—signature—treaties signed by Australia and the United States
For a list of treaties subscribed to by both Australia and the United States, see the written answer of the Minister for Foreign Affairs, Mr Hayden, in HR Deb 1984, 11 October 1984, 2243–2249. For a list of memoranda of understanding on defence matters, see the written answer of the Minister for Defence, Mr Beazley, in HR Deb 1985, 23 August 1985, 365–366.

Treaties—registration with the United Nations—Charter of the United Nations
On 20 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to the question on notice in the House of Representatives (HR Deb 1985, 3366):

(1) Does the United Nations Charter require member states to register all treaties between them with the United Nations Secretariat.

(2) If so, is he able to state whether the North Atlantic Treaty Organisation, ANZUS and South East Asia Treaty Organisation pacts have been registered; if not, why not.

(1) Yes. Article 102 of the United Nations Charter requires that "every treaty and every international agreement entered into by any member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it".

(2) Yes. The NATO, ANZUS and SEATO pacts were registered with the United Nations Secretariat and published in the United Nations Treaty Series.

Treaties—territorial application—ANZUS Treaty—Papua New Guinea
On 27 March 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the Senate (Sen Deb 1984, 750–751):

The ANZUS Treaty applies to the metropolitan territory and the island territories under the jurisdiction of any of the three Treaty partners. It does not apply to former territories such as, in Australia's case, Papua New Guinea.

Australia does not have a defence treaty with Papua New Guinea and to date neither Government has put forward proposals for such a treaty. The nature of the defence relationship between Australia and Papua New Guinea is spelt out in the 1977 joint statement by Prime Ministers which affirms the intention of both Governments 'to consult', at the request of either, about matters affecting their common security interests and about other aspects of their defence relationship. When he visited Papua New Guinea in June 1983 the Minister for Defence reaffirmed these arrangements on behalf of the present Government and assured Papua New Guinea that the Government saw a need for the two countries to maintain and develop the existing close defence relationship.

From my own contacts with South Pacific leaders, especially during the

meeting of the South Pacific Forum in Canberra in August 1983, I am satisfied that Australian concern for the security and stability of all its South Pacific neighbours is well understood by these countries. Our concern has, moreover, been reflected in successive ANZUS Council communiques. The communique issued after the last ANZUS Council meeting, namely in Washington in July 1983 '...noted that the security of the Pacific Island States is closely related to that of the ANZUS partners are continuing to make a substantial practical contribution to regional security'.

Treaties—implementation—federal arrangements

On 29 May 1986 the Minister for Transport, Mr Morris, provided the following answer to a question on notice concerning the domestic implementation of certain shipping conventions (HR Deb 1986, 4326–4327):

At international law, although the Commonwealth accepts international obligations and benefits from rights under international treaties, the means by which any such obligations are to be given effect domestically is a matter for the Commonwealth. Consistent with international law, responsibility for implementation of such obligations domestically can rest with the Australian States for areas within the jurisdiction of the States. Any question regarding any adverse effect on an Australian citizen of an alleged failure by Australia to comply with international law is a matter to be determined solely in accordance with arrangements in Australian law, both Commonwealth and State.

In relation to those provisions of the Conventions concerning notification of dangers to shipping, co-operative arrangements similar to those described...above exist between the Commonwealth and each of the States. These provisions of the Conventions can be implemented by administrative means and do not require legislation. In relation to other provisions of these Conventions, the broad terms of the agreement between the Commonwealth and the States on responsibility for regulation of shipping and navigation were confirmed as part of the Offshore Constitutional Settlement of 1979. Commonwealth and State legislation reflects these arrangements in giving effect to those provisions of the Conventions which require legislation for implementation.

Treaties—implementation—federal implementing legislation since 1979

On 16 September 1986 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice asking which treaties and agreements had been implemented by federal legislation since 1979 (HR Deb 1986, 640–642):

I am informed that the following table sets out in the first column particulars of Acts enacted by the Commonwealth Parliament since March 1979 for the purpose of giving effect to, or of enabling effect to be given to, the international conventions, treaties and agreements set out in the second column.

Short Title of the Act	Title of Convention, Treaty or Agreement to which Act listed opposite relates
Navigation Amendment Act 1979	Convention on the International Regulations for Preventing Collisions at Sea, 1972. International Convention relating to the limitation of the liability of owners of sea-going ships, 1957. International Convention for the Safety of Life at Sea, 1974 and Protocol of 1978. International Convention for Safe Containers, 1972. International Convention on Tonnage Measurements of Ships, 1969.
Lighthouse Amendment Act 1979	International Convention for the Safety of Life at Sea, 1974.
Patents Amendment (Patent Co–operation Treaty) Act 1979	Patent Co-operation Treaty, 1970.
Income Tax (International Agreements) Amendment Act 1980	Agreement between the Government of Australia and the Government of the Republic of the Philippines for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 1979. Agreement between the Government of Australia and the Swiss Federal Council for the avoidance of double taxation with respect to taxes on income, 1980 and Protocol of 1980. Protocol of 1980 to the Agreement between the Government of the Commonwealth of Australia and the Government of the United Kingdom for the avoidance of double taxation and the prevention of fiscal evasion with respect of taxes on income and capital gains, 1967.
Income Tax (International Agreements) Amendment Act (No. 2) 1980	Convention between the Government of Australia and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 1980.

Income Tax (International Agreements) Amendment Act 1981	Agreement between the Government of Australia and the Governments of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 1980. Agreement between the Government of Australia and the Government of Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 1981.
Antarctic Marine Living Resources Conservation Act 1981	Convention of the Conservation of Antarctic Marine Living Resources, 1980.
Protection of the Sea (Civil Liability) Act 1981	International Convention on Civil Liability for Oil Pollution Damage, 1969 and Protocol of 1969.
Protection of the Sea (Discharge of Oil from Ships) Act 1981	The amendments concerning the protection of the Great Barrier Reef of 1971 and the amendments concerning tank arrangements and limitation of tank size of 1971 to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954 as amended by the 1962 and 1969 amendments.
Protection of the Sea (Powers of Intervention) Act 1981	International Convention Relating to Intervention on the High Seas in Cases of Pollution Casualties, 1969. Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil, 1973.
Navigation (Protection of the Sea) Amendment Act 1981	The amendments concerning the protection of the Great Barrier Reef of 1971 and the amendments concerning tank arrangements and limitation of tank size of 1971 to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954 as amended by the 1962 and 1969 amendments.
Environment Protection (Sea Dumping) Act 1981	Convention on the Prevention of Marine Pollution by Dumping of Wastes and

	Other Matter, 1972 as amended by the Resolutions of 1978 and 1980.
Christmas Island Agreement Amendment Act 1981	Agreement between the Government of Australia and the Government of New Zealand to amend the Christmas Island Agreement, 1958, of 1981.
Crimes (Currency) Act 1981	International Convention for the Suppression of Counterfeiting Currency, 1929 and Protocol of 1929.
Income Tax (International Agreements) Amendment Act (No 2) 1981	Agreement between the Government of Australia and the Government of the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 1981.
Statute Law (Miscellaneous Amendments) Act (No 2) 1982	Protocol of 1979 amending the International Convention relating to the limitation of the liability of owners of sea-going ships, 1957.
	1981 Amendments to Annex 1 of the International Convention for Safe Containers, 1972.
Wildlife Protection (Regulation of Exports and Imports) Act 1982	Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973.
World Heritage Properties Conservation Act 1983	Convention for the Protection of the World Cultural and Natural Heritage, 1972.
Christmas Island Agreement Amendment Act 1983	Agreement between the Government of Australia and the Government of New Zealand to provide for the termination of the Christmas Island Agreement 1958-81, 1982.
Navigation (Protection of the Sea) Amendment Act 1983	International Convention for the Prevention of Pollution from Ships, 1973 as modified and added to by the Protocol of 1978.
Protection of the Sea (Prevention of Pollution from Ships) Act 1983	International Convention for the Prevention of Pollution from Ships, 1973 as modified and added to by the Protocol of 1978.
Income Tax (International Agreements) Amendment Act 1983	Convention between the Government of Australia and the Government of the United States of America for the avoidance of double taxation and the

	prevention of fiscal evasion with respect to taxes on income, 1982.
	Agreement between the Government of Australia and the Government of the Republic of India for the avoidance of double taxation of income derived from international air transport, 1983.
	Agreement between the Government of Australia and the Government of Ireland for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital gains, 1983.
	Convention between Australia and the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 1982 and Protocol of 1982.
	Convention between the Government of Australia and the Government of the Republic of Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 1982 and Protocol of 1982.
	Convention between Australia and the Kingdom of Norway for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, 1982 and Protocol of 1982.
Family Law Amendment Act 1983	Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, 1973.
	Convention on the Civil Aspects of International Child Abduction, 1980.
Sex Discrimination Act 1984	Convention on the Elimination of All Forms of Discrimination Against Women, 1979.
Torres Strait Treaty (Miscellaneous Amendments) Act 1984	Treaty between Australia and the Independent State of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as Torres Strait, and related matters, 1978.

Torres Strait Fisheries Act 1984	Treaty between Australia and the Independent State of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as Torres Strait, and related matters, 1978.
Patents Amendment Act 1984	Budapest treaty on the International Recognition of the Deposit of Micro Organisms for the purposes of Patent Procedure, 1977 and Regulations annexed thereto.
Income Tax (International Agreements) Amendment Act 1984	Protocol of 1984 amending the Agreement between Australia and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 1977.
	Agreement between Australia and Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 1984.
Marriage Amendment Act 1985	Chapter II of the Convention on Celebration and Recognition of the Validity of Marriages, 1978.
Statute Law (Miscellaneous Provisions) Act (No 1) 1985	Convention for the Conservation of Antarctic Seals, 1972.
	1984 Amendments to the Annex to the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973.

Treaties—implementation—domestic legislation—Hague Convention on Marriages

On 22 February 1985 the Minister representing the Attorney-General, Senator Gareth Evans, introduced the Marriage Amendment Bill 1985 into the Senate. Part of his second reading speech was as follows (Sen Deb 1985, 57–60):

> The principal purpose of this Bill is to give legislative effect in Australia to the Convention on Celebration and Recognition of the Validity of Marriages signed by Australia in July 1980. The Bill represents a significant step for Australia in that it is the first of the Hague Conventions Australia has signed and will be the first to which Australia has given effect.
>
> In addition, the Bill proposes certain other amendments to the Marriage Act 1961 with which I will deal at a later stage. The Bill is, for the most part, substantially the same as that introduced last year.

The Hague Convention

For many years it has been recognised that marriage is such a fundamental and universal human institution that, wherever possible, a marriage celebrated in one country should be recognised as valid all over the world. Nevertheless, there are limits to the extent to which the policy of one country is acceptable in another. To reconcile these conflicting goals, a complex set of rules has developed in the common law, governing recognition of marriages involving parties whose domicile is not Australia, or marriage celebrated outside Australia.

In 1983 35% of all marriages taking place in Australia involved one party who had been born overseas. The common law rules as they now stand would refer the validity of those marriages where one party was still domiciled outside Australia, partly to the law of the domicile. If a marriage takes place overseas, it might be necessary to refer to the law of a number of countries to determine its validity in Australia. The Hague Conference on Private International Law in 1976 finalised the Convention on the Celebration and Recognition of the Validity of Marriages ('the Hague Convention') to facilitate the recognition in one country of marriages solemnised in another country.

Treaties—implementation—UNESCO World Heritage Convention—Australian forests

On 7 June the Prime Minister, Mr Hawke, issued the following statement in part (Comm Rec 1985, 862–863):

> The Prime Minister, the Hon RJL Hawke, and the Premier of New South Wales, the Hon NK Wran, announced today that the New South Wales rainforests would be nominated to the World Heritage List. The nomination will be lodged with the secretariat of the World Heritage Committee in Paris and will be considered by the UNESCO Committee during 1986.
>
> The world Heritage List, established under the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention), identifies areas of 'outstanding universal value', the disappearance or destruction of which would constitute a 'harmful impoverishment of the heritage of all nations of the world'.
>
> Eighty-three countries have signed the World Heritage Convention and to date there are some 188 properties on the World Heritage List. These properties range from the Grand Canyon in the USA; the Pyramid Fields of Egypt; Chartres Cathedral, France; and the Taj Mahal in India, to the Sagarmatha National Park (containing Mt Everest) in Nepal.
>
> Five Australian properties are already on this list—the Great Barrier Reef, Kakadu National Park, the Willandra Lakes Region, the Lord Howe Island Group and the Western Tasmania Wilderness National Parks.
>
> The rainforests now nominated comprise seven areas of New South Wales totalling 205 ,000 hectares. They contain nine national parks, five nature reserves and three flora reserves.

Treaties—signature, ratification, accession—Action by Australia
For statements made by Ministers on signature, ratification or accession of agreements and arrangements, see the following:

Nuclear safeguards agreement with Switzerland
- signature (Comm Rec 1986, 28 January 1986, 92–93);

Reciprocal Social Security Agreement with New Zealand
- signature (Comm Rec 1986, 2 April 1986, 464);

Taxation agreement with Finland
- entry into force (Comm Rec 1986, 4 April 1986, 592);

Social Security agreement with Italy
- signature (Comm Rec 1986, 23 April 1986, 624–625)
- signature of administrative arrangements (Comm Rec 1986, 6 June 1986, 914);

UNESCO Convention on recognition of diplomas
- ratification (Comm Rec 1986, 13 August 1986, 1302):

Nuclear safety convention
- signature (Comm Rec 1986, 25 September 1986, 1635–1636);
- ratification (News Release of the Minister for Foreign Affairs and Trade, No M 128 dated 22 September 1987);

Revised social security agreement with New Zealand
- signature (Comm Rec 1986, 5 October 1986, 1718):

Fishing agreement with Taiwanese fishing interests
- signature (Comm Rec 1986, 7 October 1986, 1752);

Migratory Birds agreement with China
- signature (Comm Rec 1986, 20 October 1986, 1860):

Nairobi Convention on co-operation in customs offences
- accession (Comm Rec 1986, 5 November 1986, 1996);

Agricultural co-operation agreement with the USSR
- signature (Comm Rec 1986, 19 November 1986, 2115);

Arrangement on mutual relations with the USSR
- signature (AFAR, March 1987, 162–163);

Budapest Treaty on patents for micro-organisms
- accession (Comm Rec 1987, 14 April 1987, 553);

Space agreement with Japan
- signature (Comm Rec 1986, 4 June 1987, 864–865); and

Science agreement with Thailand
- signature (Media Release by the Minister for Science dated 6 July 1987).

Treaties—International Labour Organisation recommendations and conventions
For information on Australia's voting on, and ratification of, ILO Conventions, and of supporting ILO recommendations, from 1972 to 1985, see the written answer of the Minister for Employment and Industrial Relations, Mr Willis, on 11 February 1986 (HR Deb 1986, 44–50).

Treaties—United Nations Conventions
For a list of UN treaties and conventions ratified by Australia, see the written answer of the Minister for Foreign Affairs, Mr Hayden, on 16 September 1986 (Sen Deb 1986, 466–479).

Treaties—tabling in Parliament

For a debate in the Senate on the tabling and scrutiny of treaties by Parliament, see Sen Deb 1986, 19 February 1986, 625–628.

Treaties—copyright conventions—action by Australia

On 17 February 1987 the Attorney-General, Mr Bowen, provided the following written answer to a question on notice in the Senate (Sen Deb 1987, 14–15):

> Australia has not acceded to the Rome Convention. The issue of performers' protection is currently being considered by the Copyright Law Review Committee. The Committee hopes to complete its report on this reference by the end of this year or early in 1987. Consideration of Australia's accession to the Rome Convention will be made in the light of the Committee's Report.
>
> Australia has not acceded to the Brussels Convention. The question of accession to the Convention is a matter for which my colleague, the Minister for Communications, has primary responsibility. He advises that the question is kept under periodic review.
>
> Australia has not acceded to the Madrid Convention. The Government is not, at this stage, convinced that accession to the Convention is justified.
>
> **Rome Convention**
>
> Adoption of the Rome Convention would result in certain protections for performers beyond those which are presently available under Australian law. As indicated above, the issue of performers' protection, including the possible adoption of the Rome Convention, is presently being examined by the Copyright Law Review Committee.
>
> **Brussels Convention**
>
> The Brussels Convention does not establish copyright in programme-carrying satellite signals. It merely requires member States to prevent piracy of such signals made from one country by distributors in another country. (In this context 'piracy' means unauthorised interception of the signal and subsequent broadcast of the programmes received.) As a result of Australia's size and geographic isolation, there is no problem of piracy in Australia of signals from other countries. The risk of piracy in other countries of Australian signals is very small, compared with the position in Continental Europe, or the Americas, for example. Further, there are only 11 members of the Convention, of which one is the US, and 3 only are from Europe. None of our near neighbours is a member.
>
> **Madrid Convention**
>
> That Australia has not acceded to the Madrid Convention does not mean that Australian artists, authors or performers are disadvantaged. The treaty is not yet in force as there has been accession by less than the required 10 states. Only 4 countries—Egypt, India, Iraq and Czechoslovakia—have ratified the Convention. In any event, there are strong arguments that the existing bilateral double taxation agreements, together with the existing unilateral provisions of the *Income Tax Assessment Act* 1936, provide a more precise and efficient means of eliminating the problem of double taxation. In this context, the number of Australia's bilateral double taxation agreements is growing rapidly and already covers Australia's major trading partners.

Treaties—interpretation—ANZUS Treaty

On 12 August 1986 the Department of Foreign Affairs issued the following news release (AFAR, August 1986, 739):

> Text of the actual letters exchanged by the Australian Minister for Foreign Affairs, Mr Bill Hayden, MP, and the United States Secretary of State, Mr George Shultz, in San Francisco on 11 August 1986, at the conclusion of the Australia-United States ministerial talks. The letter from Mr Shultz read:
>
> > Your Government will be aware that the United States has indicated today, August 11, that United States is suspending its security obligations to New Zealand under the ANZUS Treaty due to the continuing failure of that country to restore normal access to allied ships and aircraft.
> >
> > I wish to reaffirm the view of the United States that the commitments between the United States and Australia under the ANZUS Treaty remain unaltered in any way.
> >
> > I would be grateful for your confirmation that the Australian Government shares this view.
>
> Mr Hayden replied:
>
> > Thank you for your letter of August 11. I wish to confirm that the Australian Government shares and affirms the view of the United States Government that the commitments between Australia and the United States under the ANZUS Treaty remain unaltered in any way.

Treaties—arrangements other than treaties—termination

On 5 December 1985 the Report of the Royal Commission into British Nuclear Tests in Australia was presented to Parliament (PP No 483/1985). Following is an extract from Vol II of the Report (589–592):

> 14.6 Who Should Pay for the Clean-up of Maralinga?
>
> 14.6.1 The Memorandum of Arrangements between Australia and the UK which established the atomic testing ground at Maralinga provided, inter alia that 'the United Kingdom Government accepts liability for such corrective measures as may be practicable in the event of radio-active contamination resulting from tests on the site' (RC 800, p 661057).
>
> 14.6.2 In a conventional legal context, the essential difficulty with the obligation which the UK accepted would be to determine the measures which may be 'practicable'. As was detailed previously, following the decision to close the Range, investigations were undertaken to determine the nature and extent of the contamination of the Range. A decision was then taken which the Royal Commission criticises for a number of reasons (see Section 13.2).
>
> 14.6.3 Three fundamental problems remain with the contaminated areas. First, the presence of contaminated fragments; second, the wide dispersal of fine particles of plutonium; and third, the presence of plutonium and plutonium-contaminated items in pits. The present necessity for fencing and patrolling of the areas must be eliminated. It would have been and remains practicable to achieve this objective. It is the belief of the Royal Commission, that the UK was and is obliged to accept responsibility for achieving this objective under the terms of the Memorandum of Arrangements.
>
> 14.6.4 The Memorandum of Arrangements was purportedly terminated on

23 September 1968 when a release was executed. It provided, inter alia, that

(a) The UK government have completed decontamination and debris clearance at the Atomic Weapons Proving Ground Maralinga to the satisfaction of the Australian Government.

(c) With effect from 21 December 1967, the United Kingdom Government are released from all liabilities and responsibilities under the Memorandum of Arrangements...(with some exceptions not presently relevant). (RC 800, p 680067).

14.6.5 A further Agreement was executed on 4 January 1979 which eventuated because of the desire to repatriate half a kilogram of plutonium that was buried at Maralinga. It provided that

(a) The Australian Government accepts, on the basis of the joint Australian/British assessment of the position at Maralinga, represented by the agreed record of discussions 26th October to 1st November 1978, and as set out in the 1968 Pearce Report, that there is no question of the United Kingdom having further responsibility to repatriate waste from Maralinga. The United Kingdom would however be willing, as we have always been in the past, to provide technical advice if requested on any further on-site operations which may be undertaken by the Australian Government at Maralinga to reduce surface contamination. (RC 800, p 790002).

14.6.6 Both the 1968 and 1979 agreements were intended to operate as a general release of the UK with respect to the obligation imposed under the original Memorandum. As such, their effect may be limited and will only operate with respect to the matters in the contemplation of the parties at the time when the release is given.

14.6.7 In *London and South West Railway Co v Blackmore* (1870) LR HL 610, Lord Westbury said (at 623):

> The general words in a release are limited always to that thing or things which were specially in the contemplation of the parties at the time when the release was given. But a dispute that had not emerged, or a question which had not at all arisen cannot be considered as bound and concluded by the anticipatory words of a general release.

14.6.8 This decision was followed by the High Court of Australia in *Grant v John Grant and Sons Pty Ltd* (1954) 91 CLR 112. See also *In Re William McPherson* (1913) SALR 207.

14.6.9 In the opinion of the Royal Commission, it is clear that, at the time of the execution of both releases, matters now relevant were not in the contemplation of the parties. It would appear that no one was aware, and certainly not the Australian authorities, of the nature and extent of the contaminated fragments. This was almost certainly due to the technical difficulty of detecting them. Furthermore no one seems to have appreciated the significance of the movement toward the granting of land rights to Aboriginal peoples. It is certain that no thought was given to the problem of establishing the safety of the land over many thousands of years. All that appears to have exercised the minds of the decision makers at the time of execution after release was an immediate need to alleviate the obvious problem. No one gave thought to the control of that problem beyond a period of about twenty years.

14.6.10 As a consequence, neither of the purported releases would operate to excuse the UK from a responsibility to eliminate the present problems. In the opinion of the Royal Commission, the UK remains liable for the total cost of rendering the contaminated areas safe without fences or patrols.

14.6.11 The Royal Commission also believes that there is an overwhelming moral obligation on the UK. It has become clear to everyone that Operation Brumby was neither prudent nor effective. It was poorly conceived, carried out without proper consideration being given or a decision made with respect to its objective. It exacerbated the hazard rather than alleviated it.

14.6.12 It would, in the opinion of the Royal Commission, be grossly irresponsible of the UK Government if it did not now accept that it has a continuing obligation to clean up the contaminated areas so that they are acceptable for unrestricted access. No one can foresee how the area will be used over the coming thousands of years. It is incumbent on the UK to accept the responsibility which it undertook in return for being allowed to use Australian land for its weapons development program.

Conclusions

14.6.14

(a) The cost of clean-up of the Maralinga Range should be borne by the UK Government because the previous clean-up in 1968 was clearly inadequate and based on insufficient information.

(b) The UK included the Emu site in Operation Brumby. If any further clean-up of Emu is found to be necessary by the Maralinga Commission, then the cost of this treatment should be met by the UK Government.

On 23 January 1986 the Minister for Resources and Energy, Senator Gareth Evans, issued the following statement, in part, in London (Comm Rec 1986, 62–63):

The first round in what is likely to be an extended series of ministerial and official talks on the recommendations of the Royal Commission into British Nuclear Tests in Australia concluded satisfactorily here today.

Satisfactory progress was made not only in identifying the matters on which the Australian and UK Governments have, at this stage, differing views, but—more importantly—on establishing procedures and processes which may ultimately enable those differences to be resolved.

...

The Australian Government's position, as put by me to the UK Ministers, is that the statement in the original 1956 Memorandum of Arrangements relating to the Maralinga site is still an appropriate description of both the legal and moral responsibility of the UK Government, viz, that 'the UK Government accepts liability for such corrective measures as may be practicable in the event of radioactive contamination resulting from tests on the site'.

The UK Government's position, as stated to me, is that it remains to be convinced—in the light of the clean-up of the site which did take place in 1967 and the release signed by the Australian Government the following year—that it has either a legal or moral responsibility.

Although some preliminary discussions have taken place on these issues, both Governments have agreed that at this stage the most constructive course

would be to put to one side the question of liability for clean-up costs and to focus attention on what are in fact 'practicable' solutions—in cost/benefit terms—to the remaining contamination problems.

On 17 September 1986 the Minister for Resources and Energy, Senator Gareth Evans, presented the Government's response to the Report of the Royal Commission, and in respect of the recommendation on liability for clean-up of the Maralinga site, he said (Sen Deb 1986, 501–502):

Recommendation 6: United Kingdom to bear Clean-Up Costs

The Australian Government's position, as put by me to the United Kingdom Ministers in London in January, is that the statement in the original 1956 memorandum of arrangements relating to the Maralinga site is still an appropriate description of both the legal and moral responsibility of the United Kingdom Government; namely, that:

> The United Kingdom Government accepts liability for such corrective measures as may be practicable in the event of radioactive contamination resulting from tests on the site.

The United Kingdom Government's position is that it remains to be convinced—in the light of the clean-up of the site which did take place in 1967 and the release signed by the Australian Government the following year—that it has either a legal or a moral responsibility. Although some preliminary discussions have taken place on these issues, both governments agreed that at this stage the most constructive course would be to put to one side the question of liability for clean-up costs and to focus attention on what are in fact 'practicable' solutions—in cost-benefit terms—to the remaining contamination problems. The immediate need has been a full-scale scientific evaluation of the measures needed, and the costs involved, in order to achieve varying possible degrees of access to, and habitation of, the contaminated test sites. This was recognised by the Royal Commission itself when it said, at conclusion 182:

> Various options for clean-up were considered but the Royal Commission has not been able to make detailed recommendations because insufficient data were tendered on the levels of risk, options for clean-up and the associated costs.

The United Kingdom Government agreed to participate in the required scientific evaluation being carried out by the technical assessment group, with its two United Kingdom representatives—on a completely 'without prejudice' basis, and the Australian Government willingly accepted this. As indicated above, approaches have been made on a possible contribution by the United Kingdom Government to the research program needed to identify clean-up options, but any such contribution would again be without prejudice to the question of responsibility for payment for the final clean-up.

Treaties—termination—air services agreement with South Africa

On 21 October 1986 the Minister for Foreign Affairs, Mr Hayden, issued the following statement (Comm Rec 1986, 1933):

> The Minister for Foreign Affairs, the Hon Bill Hayden, said today that the Government has taken steps to terminate Australia's Air Services Agreement with South Africa. The termination will be effective from 31 October 1987 because under the Agreement one year's notice of termination is required.

Mr Hayden said that after careful consideration the Government had decided at this stage to act in accordance with the provision of the bilateral Agreement between the two governments. Mr Hayden noted that the Government does not rule out further action within the period of twelve months should this be appropriate.

Mr Hayden recalled that the Prime Minister had announced in Parliament on 21 August the Government's intention to ban air links with South Africa in accordance with measures accepted by Australia at the meeting of seven Commonwealth Heads of Government in London from 3–5 August. In his statement Mr Hawke had said that further consideration of the means of implementing this measure, taking into account the provisions of the Australia-South Africa Air Services Agreement, would be undertaken.

Mr Hayden said that the South African Government had been given formal notice by the Australian Government terminating the Agreement. The International Civil Aviation Authorities in Montreal have been informed of the Australian decision.

Treaties—repeal of related legislation—effect on treaties—Treaty of Peace Acts

On 16 April 1986 the Attorney-General, Mr Bowen, said in the course of his Second Reading Speech on the Statute Law (Miscellaneous Provisions) Bill (No 1) 1986 which proposed, among other things, to repeal the various Treaty of Peace Acts (HR Deb 1986, 2366):

> No comment is necessary about most of the Acts being repealed. As 1986 is the International Year of Peace it is appropriate that I briefly mention the background to the repeal of the various treaties of peace Acts. They were passed after the Second World War to give Parliament the opportunity of discussing the treaties with ex-enemy states and to enable the then Government to make regulations to give effect to the treaties. As it turned out, it was not necessary to make any regulations and the Acts can be repealed without affecting the operation of the treaties themselves.

Treaties—arrangements other than treaties—Gleneagles Declaration—OECD Guidelines on Privacy

On 4 October 1984 the Minister for Immigration and Ethnic Affairs, Mr West, provided the following written answer in part to a question on notice in the House of Representatives (HR Deb 1984, 1725):

> The Australian Government is of the view that sport in South Africa is subject to apartheid and that therefore equal opportunities do not exist for non-white sportsmen and women. Persons representing South African organisations, or South Africa, are thus representative of the apartheid system. The Government's policies of restricting sporting contacts with representative South Africans are consistent with the Gleneagles Agreement and are designed to persuade the South African Government to abandon apartheid.

On 8 October 1985 the Acting Minister for Foreign Affairs, Senator Gareth Evans, said in part in answer to a question without notice in the Senate (Sen Deb 1985, 780–781):

I conclude by saying that in keeping with its obligations under Gleneagles it has been Australian Government policy to strongly oppose and discourage sporting contact with South Africa. The Government deplores the action of sportspersons in engaging in any sporting contact in or with South Africa.

On 10 December 1984 the Attorney-General, Senator Gareth Evans, issued the following statement, in part (Comm Rec 1984, 2537):

I am announcing today, Human Rights Day, that Australia proposes formally to adhere to the Organisation for Economic Co-operation and Development (OECD) Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data. Our Ambassador to the OECD, Mr Fred Argy, will inform the Secretary-General to the OECD of this fact.

Australia's adherence reaffirms the Government's commitment to human rights—in this case the protection of an individual's privacy. The guidelines attempt to balance the protection of an individual's privacy with the advancement of free flows of personal data across international boundaries.

The guidelines, adopted by the Council of the OECD on 23 September 1980, were developed by a committee of experts under the chairmanship of Mr Justice MD Kirby, previously Chairman of the Australian Law Reform Commission and now President of the Court of Appeal of New South Wales.

The OECD initiative arose from the knowledge that differences in national legislation within OECD member countries could put barriers in the way of the free flow of data across country boundaries, causing disruption in the business sector of the community and possible interference in trade, particularly in areas such as banking and insurance.

The guidelines are intended to harmonise privacy protection laws and practices amongst member countries by establishing minimum standards to be applied in handling personal information. These standards relate to the collection, quality, use, disclosure, registration and security of personal information and provide that individuals should have a right of access to information about themselves.

The guidelines also recognise economic benefits which can result from the flow of information across national boundaries and call for the adoption of certain privacy protection measures as well as require that those measures do not restrict transborder flows of personal data.

Treaties—multilateral treaty-making process—conclusion of United Nations study

The United Nations General Assembly concluded its consideration of the Multilateral Treaty Process, an item that had been included on the agenda of the United Nations at Australia's initiative. See General Assembly Resolution adopted at the 99th plenary meeting on 13 December 1984 (Res 39/90). The Final Document of the Working Group on the Review of the Multilateral Treaty-making Process is contained in A/C 6/39/L 12, annex. For the final statement by Australia's representative in the Sixth Committee of the General Assembly, Mr Nolan, on 29 November 1984, see A/C 6/39/SR 59, 8–9.

On 27 May 1986 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer in part to a question on notice in the Senate (Sen Deb 1986, 2796–2797):

The Government's attitude to sporting links with South Africa is firmly based on Australia's support for the 1977 Gleneagles declaration of Commonwealth Heads of Government in which they undertook a firm commitment to discourage sporting contacts with South Africa or with any other country practising racial discrimination in sport. South Africa, as the only country to institutionalise a policy of racial discrimination affecting all aspects of social life, including sport, by incorporating discrimination within its Constitution, is the only country affected by the Gleneagles declaration.