

# Recognition

## **Recognition. General principles. Recognition of governments distinguished from approval of policies of those governments. Implied recognition**

On 28 August 1980, the Prime Minister, Mr Fraser, said in answer to a question concerning the Government's recognition of the Pol Pot regime in Kampuchea (HR Deb 1980, Vol 119, 868):

. . . recognition of a government, of a country, does not imply any kind of approval of what that government or country does . . .

There have been many examples through the years of Australia maintaining recognition of a government that has been abhorrent in nearly everything it has done. Idi Amin's Government in Uganda is one example. The Soviet Union's purges in the 1930s is another. It needs to be said quite plainly that recognition of a government does not in any way denote any element of approval of any part of a government's policies or practices.

On 8 January 1979 the Leader of the Government in the Senate and the Minister representing the Minister for Foreign Affairs, Senator Carrick, said in the course of an answer to a question concerning a recent coup in Ghana (Sen Deb 1979 Vol 81, 2927):

I would have to acknowledge that the whole world has had some difficulties in recent years in understanding what principles were adopted worldwide in deciding the difference between de facto and de jure recognition of various nations following a coup or non-legal change of government.

On 22 April 1980, Senator Carrick said in answer to a question concerning the installation of a new Government in Liberia following the assassination of President Tolbert (Sen Deb 1980, Vol 85, 1627):

The Government has not yet recongised the new Government in Liberia and that it will wait to see how the situation develops before making a decision. There is no urgent requirement for the Government to make such a decision.

## **Recognition of Governments. China. Iran. Kampuchea. South Africa "homelands". Uganda. Yugoslavia**

On 11 April 1978 the Minister for Foreign Affairs, Mr Peacock, in answer to a question wrote (HR Deb 1978, Vol 108, 1411):

Australia on 21 December 1972 recognised the Government of the People's Republic of China as the sole legal government of China and acknowledged the position of the Chinese Government that Taiwan is a province of the People's Republic of China. This was accepted by the Chinese Government and remains the position of the Australian Government.

. . . there can be no question of the Australian Government recognising Taiwan as an 'independent nation'.

On 21 April 1980 the Leader of the Government in the Senate and Minister representing the Minister for Foreign Affairs, Senator Carrick, said in answer to a question (Sen Deb 1980, Vol 85, 1582):

In line with Australia's recognition of the Government of the People's Republic of China as the sole legal government of China, official contact with Taiwan has ceased. All trade is conducted through commercial channels. There is no Australian trade office in Taiwan. The establishment of such an office would contravene the terms of Australia's recognition of China, which is one of Australia's major markets. The Government is aware that in the commercial sector there is a view that some form of non-official representation in the province of Taiwan to facilitate trading arrangements between Australia and that province would be very helpful. The Government would not stand in the way of such non-official trade representation and would be prepared to give official guidance to any private sector interests which were considering the establishment of a venture of that kind.

On 16 February 1979 the Minister for Foreign Affairs, Mr Peacock, issued a statement commenting on the situation in Iran which read in part (Comm Rec 1979, 165):

He said that the new Government of Dr Bazargan had been recognised by Australia and an increasing number of other countries, including most Western countries.

On 23 August 1979 the Minister provided the following written answer to a question relating to Kampuchea (Sen Deb 1979, Vol 82, 257):

Australia continues to recognise the Pol Pot administration, since the Heng Samrin regime, established following the Vietnamese intervention, has not yet satisfied the internationally accepted criteria for recognition. Recognition does not imply approval of the policies of the Pol Pot administration.

On 13 September 1979 Senator Carrick said in the course of his answer to a question relating to an Australian contribution to relief supplies for Kampuchea (Sen Deb 1979, Vol 82, 657):

It has been made clear that the Australian contribution would carry with it no implication of recognition of the existing regime.

On 14 November 1979, in the United Nations General Assembly, Australia's Permanent Representative, Mr Anderson, said in the course of debate on the situation in Kampuchea (A/34/PV.63, 51):

I need hardly point out that our present recognition of Democratic Kampuchea carries with it no implication of approval of the policies of the Pol Pot administration. Australia has condemned and continues to condemn the massive violations of human rights which were perpetrated by that regime.

On 22 November 1979 the Minister for Foreign Affairs provided the following written answer to a question (HR Deb 1979, Vol 116, 3506):

The Australian Government continues to recognise the Pol Pot regime of Democratic Kampuchea. The Government has maintained the

recognition that was bestowed by the former Australian Government in 1975. The United States Government never recognised the Pol Pot regime. The Heng Samrin regime of the People's Republic of Kampuchea, which was installed in Phnom Penh following Vietnam's armed intervention in Kampuchea, does not appear to have superior claims to recognition. Only 23 countries, most of which are pro-Soviet, recognise the Heng Samrin regime. There is evidence to suggest that, without Vietnam's active military support and presence, the Heng Samrin regime could not survive.

Australia and other like-minded countries in the region cannot condone Vietnam's use of force to overthrow the legitimate government in Kampuchea. De-recognition of the Pol Pot regime could be interpreted as tantamount to endorsing the right of Vietnam to intervene militarily in the affairs of other states in the region.

The Government's policy towards Kampuchea is based on the belief that only a negotiated settlement, in which all interests are involved, can bring peace and stability to Kampuchea. A pre-requisite for the establishment of an independent, neutral and popular government in Kampuchea, free of Great Power rivalries, is the withdrawal of Vietnamese armed forces. The Government would be willing to support any international efforts to achieve these objectives.

On 14 October 1980 the Minister issued the following statement on Kampuchea:<sup>3</sup>

The Minister for Foreign Affairs, Mr Andrew Peacock, said today that Australia has taken a decision in effect to derecognise the Government of Democratic Kampuchea (the Pol Pot regime).

Mr Peacock said that Australia had today voted to support the recommendation of the Credentials Committee of the United Nations General Assembly to accept the credentials of Democratic Kampuchea. The ASEAN countries, the United States, New Zealand, Japan, China, Canada and the United Kingdom had voted in the same manner. Prior to the vote however the Government had advised those countries that Australia wished to make it clear that its continued recognition of Democratic Kampuchea (Pol Pot) as the Government of Kampuchea would not continue beyond the short term.

Mr Peacock noted that Australia was one of the co-sponsors of the ASEAN draft resolution on Kampuchea which was now before the General Assembly. The main elements of this resolution cover the convening of an international conference on Kampuchea in 1981 with the aim of finding a comprehensive political settlement to the Kampuchean problem; the total withdrawal of foreign troops from Kampuchea within a specific time frame to be verified by the United Nations; and United Nations - supervised free elections in Kampuchea.

Mr Peacock said "While co-sponsoring this ASEAN resolution, which is intended to advance our common objectives, Australia cannot prolong

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3. Minister for Foreign Affairs News Release No M142 dated 14 October 1980.

its recognition of such a loathsome regime as that of Pol Pot”.

This means in effect that the Government has taken a decision to derecognise Pol Pot, the Minister emphasised. “Only the limited time frame remains to be determined”.

Mr Peacock concluded by saying that this decision to derecognise did not imply recognition of the regime of Heng Samrin. “This regime was imposed after Vietnam’s invasion of Kampuchea”, he stressed. “It is maintained in power by the presence of at least 200 000 Vietnamese troops. The Australian Government continues to condemn in the strongest terms Vietnam’s invasion of Kampuchea and the Vietnamese military presence in that country”.

On 27 November 1980 the Minister for Foreign Affairs, Mr Street, said in answer to a question relating to the Australian delegation’s vote in the United Nations General Assembly on 14 October to accept the credentials of the Pol Pot regime in Kampuchea, as follows (HR Deb 1980, Vol 120, 122):

In regard to voting on recognition in the United Nations, the Government is very conscious of the need to avoid any impression whatever of support for the Heng Samrin regime in Kampuchea. At the same time as I explained to our ASEAN neighbours our reason for derecognising Pol Pot I made it clear to them that this in no way implied any recognition of the Heng Samrin regime. We have voted for the credentials question to allow time for the ASEAN countries to see whether they are able to find a suitable solution to the problem which we face. So the two questions are separate.

On 19 August 1980 the Minister for Foreign Affairs, Mr Peacock, in answer to a written question relating to the South African “homelands” wrote (HR Deb 1980, Vol 119, 452):

Australia, along with the rest of the international community, has not recognised the ‘homelands’ created by the South African Government (to date, those declared ‘independent’ are Transkei, Venda and Bophuthatswana). The Government believes that to grant recognition to the ‘homelands’ would be to condone the apartheid system and to accord it an unjustified respectability. The rejection by the majority of the homeland leaders themselves of the policy strengthens our view that the grant of nominal independence to the homelands will not meet the political aspirations of the black people of South Africa.

On 17 April 1979 the Minister for Foreign Affairs announced Australian recognition of the new Government of Uganda headed by Professor Yousufu Lule following the departure of President Idi Amin (Comm Rec 1979, 460). On 22 November 1979 the Minister, in answer to a question on what principles the Government justified its prompt recognition of the Lule Administration in Uganda, wrote (HR Deb 1979, Vol 116, 3507):

On 17 April the Australian Government announced its recognition of the new Government in Uganda headed then by Dr Yousufu Lule and now by Mr Godfrey Binaisa. The Australian Government upholds those general international principles which call for respect for international borders and the sovereign integrity of States, and the settlement of

disputes by peaceful means. For this reason it cannot condone the Tanzanian incursion. There are, however, elements in this situation which make it a special case. The authority of the administration in Kampala extends throughout the country, whereas the Heng Samrin regime in Phnom Penh does not effectively control Kampuchea and would not in any case survive without the support of the Vietnamese armed forces.

The situations in East Africa, East Timor and Indo-China are not comparable or analogous.

On 7 March 1978 the Minister for Foreign Affairs was asked whether Australia gave continuing support for the independence, territorial integrity and unity of Yugoslavia and whether Australia still did not recognise the independence of Croatia. On 2 May 1978 he answered "Yes" (HR Deb 1978, Vol 109, 1675). On 3 May 1978 he was asked whether Australia had ever recognised the independence of Slovenia and whether the Government's view on Croatia as a part of a united Yugoslavia also applied to Slovenia. On 23 May 1978 he answered "No" and "Yes" respectively (HR Deb 1978, Vol 109, 2270).

#### **Recognition. Liberation Movements. Palestine Liberation Organisation. South West Africa People's Organisation**

On 15 March 1978 the Minister for Foreign Affairs said in the course of an answer to a question relating to a recent Palestine Liberation Organisation attack on Israel (HR Deb 1978, Vol 108, 736-7):

The Australian Government has never given any specific recognition to the PLO. It will not do so while the PLO maintains its denial of Israel's right to exist as expressed . . . in the Palestinian national charter. However Australia's diplomatic representatives in relevant capitals do have informal contacts with PLO representatives as circumstances sometimes require that in the role of Australian diplomatic work.

On 18 March 1980 the Minister said (HR Deb 1980, Vol 117, 833):

We have never given any specific recognition to the PLO and we will not do so while it maintains its absolute denial of Israel's right to exist.

Our policy towards the Middle East remains, if I may state it very succinctly, that it is essential to devise a peace which satisfies all interested parties and which puts an end to terrorism. We therefore base our policies on the need for negotiations starting from the principles of Security Council resolutions 242 and 338. Israel's right to exist within secure and recognised boundaries must be accepted. The legitimate rights of the Palestinian people to a homeland alongside Israel and the corresponding responsibility that they live peacefully with all their neighbours must also be recognised. That policy is clear and unequivocal.

On 11 July 1980 the Leader of the Opposition, Mr Hayden, met with the Chairman of the Palestine Liberation Organisation, Mr Yasser Arafat, and part of Mr Hayden's statement issued on the same day is as follows (Comm Rec 1980, 1029-30):

Mr Hayden said he had made it firmly clear to Mr Arafat that the Australian Labor Party was committed to Security Council Resolutions 242 and 338 as bases for a settlement. The Australian Labor Party insisted that the integrity of the State of Israel must be recognised. At the same time, the ALP opposed Israel's illegal settlements in occupied territory. It believed that the Palestinian people were entitled to a homeland and self-determination, and until this was achieved, there could be no lasting settlement of the Middle East situation.

Mr Hayden said he had established that the Australian Government had regular contact at a high diplomatic level with the Palestinian Liberation Organisation and Mr Arafat.

On 20 February 1980 the Minister for Foreign Affairs, Mr Peacock, provided the following written answer to the question whether the United Nation's Council for Namibia acknowledged the South West Africa People's Organisation as the sole and authentic representative of the Namibian people (Sen Deb 1980, Vol 84, 168):

United Nations General Assembly, in its resolution 31/146 adopted on 20 December 1976, recognised SWAPO as the sole and authentic representative of the Namibian people. This decision binds the United Nations Council for Namibia since the Council is an integral organ of the United Nations.

Australia expressed a firm reservation against the decision of the General Assembly to accord SWAPO this 'sole and authentic' recognition. This reservation remains current. Indeed, Australia has not recognised any liberation movement as the 'sole' representative of a people awaiting self-determination.

### **Recognition. Incorporation of territory. Baltic States. East Timor**

On 15 March 1978 the Prime Minister, Mr Fraser, spoke at a reception celebrating the 60th Anniversary of the Declaration of Independence of Latvia, Estonia and Lithuania, and said (Comm Rec 1978, 241):

Sixty years ago, the leaders of these three nations proclaimed a Declaration of Independence which restored a sovereignty that they had enjoyed in earlier times. Unfortunately, this independence was to be short lived.

It was one of the first steps taken by my Government on coming to office in December 1975 to withdraw *de jure* recognition of the incorporation of the Baltic states into the USSR.

On 19 June 1978 the Opposition Spokesman for Industry and Commerce, Mr Hurford, announced a recent decision of the Labor Caucus in the Commonwealth Parliament, part of which reads as follows:<sup>4</sup>

As so many Australian citizens and residents of Baltic origin know, during the time of the Whitlam Government, the recognition of the "de facto" incorporation of Estonia, Latvia and Lithuania into the USSR was converted into a "de jure" recognition.

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4. Text provided by the office of Mr Hurford.

This conversion was cancelled early in 1976 — so the recognition at the present time under the Fraser Liberal National Country Party Government is of “de facto” status only.

The Labor Caucus decision of May 30 made it explicit that we would not, on taking over Government, alter the present status.

The “de jure” recognition was motivated, I believe, by a desire to break down barriers in the hope that this would achieve the objectives I have stated. But the decision was not arrived at in a democratic way. It was a decision of very few and, however good the motives, it is now seen to be a wrong decision.

The Caucus resolution, in effect to make it explicit that we would not convert in future to “de jure” recognition, was not only arrived at democratically but also it was voted for unanimously by those present on May 30.

On 20 January 1978, the Minister for Foreign Affairs issued the following statement (Comm Rec 1978, 25–6):

The Minister for Foreign Affairs, Mr Andrew Peacock, announced today that the Government has decided to accept East Timor as part of Indonesia . . .

. . . The Australian Government had deplored these developments, above all the use of force by Indonesia. “The Government had made clear publicly its opposition to the Indonesian intervention and has made this known to the Indonesian Government,” Mr Peacock said.

“Since November 1975 the Government has made every effort to seek a peaceful solution of the problem. In this it has espoused neither the ambitions of any particular East Timorese political movement nor the position of the Indonesian Government. Movement for international intervention whether by the United Nations or other countries has never gained the required support. Since November 1975 the Indonesian Government has continued to extend its administrative control over the territory of East Timor. This control is effective and covers all major administrative centres of the territory.”

In conclusion Mr Peacock noted that the future progress of family reunion and the rehabilitation of Timor were important ingredients in a practical contribution to the peace of the area. He emphasised that in order to pursue these objectives Australia will need to continue to deal directly with the Indonesian Government as the authority in effective control.

“This is a reality with which we must come to terms”, Mr Peacock said.

“Accordingly, the Government has decided that although it remains critical of the means by which integration was brought about it would be unrealistic to continue to refuse to recognise de facto that East Timor is part of Indonesia.”

On 24 January 1978 the Leader of the Opposition in the Senate and Opposition Spokesman on Foreign Affairs, Senator Wriedt, issued a statement in response to the Minister’s statement of 20 January, part of which read as follows (Comm Rec 1978, 79):

The Australian Labor Party do not accept the Australian Government's decision to grant de facto recognition to the Indonesian takeover of East Timor . . .

An act of military aggression cannot be classed as integration. The right of conquest exists no longer. It is clearly established by the consensus of civilised communities that military conquest is not a ground of acquisition of territory. The Australian Labor Party stands by its policy that the people of East Timor have a right to self determination. Until such time that this is permitted, East Timor cannot become part of Indonesia. Indonesia has no valid claim to sovereignty over the area.

On 23 February 1978 the Minister explained further (HR Deb 1978, Vol 108, 108):

. . . we recognise the fact that East Timor is part of Indonesia, but not the means by which this was brought about. My statement on 20 January gave the reasons . . .

Firstly, that Indonesian control is effective and covers all major administrative centres; secondly, that it is necessary to press on expeditiously with the question of family reunion; thirdly, that it is necessary to do the same with the rehabilitation of Timor; and fourthly, that to carry out the last two matters in particular we need to have more extensive direct dealings with the Indonesian Government as the authority in effective control. It was therefore a reality with which we had to come to terms. Any other matters to be negotiated are not, were not, and have never been salient considerations at all . . .

On 5 April 1978, Senator Wriedt said (Sen Deb 1978, Vol 76, 827-8):

Recognition of the Indonesian takeover of East Timor is wrong as it is in violation of our international obligations. As a founding member of the United Nations, Australia has a particular obligation to adhere to the principles set out in the charter of that body. That charter obliges member nations to take account of the political aspirations of the people of various nations, particularly those seeking self-government, and to have respect for the culture of the people of various nations, including their political, economic and social development. The acceptance of the actions of the Indonesian Government in East Timor is a breach of our obligations under that charter . . .

Aggression, killing and the committing of atrocities are so much against the charter of the United Nations that it is the duty of governments throughout the world to oppose those acts. Any connivance with actions of that type seriously weakens the international community. Realism requires that changes in government as a result of such acts are usually eventually recognised but the international community should be slow to confer recognition in those circumstances. If acts of aggression and killing are still being carried out, recognition of a change of government carries with it some acceptance of those acts. In those circumstances recognition should be withheld.

On 9 May 1978 the Deputy Leader of the Opposition, Mr Bowen, said (HR Deb 1978, Vol 109, 2051):

It is contrary to fundamental international legal obligations of the Government that it should in such a way accede to an act of blatant aggression.

On 11 May 1978 the Minister provided the following written answer to two questions asked in the Senate concerning negotiations on the seabed resources between East Timor and Australia (Sen Deb 1978, Vol 77, 1648):

Australia and Indonesia have not yet entered into negotiations on a seabed boundary between the south of East Timor and Australia. The question of whether negotiations and the conclusion of any arrangement with Indonesia on this issue will amount to a *de jure* recognition of Indonesia's incorporation of East Timor will depend on all the circumstances existing at the time. There is a presumption in international law that negotiations on a seabed boundary such as that which is contemplated would lead to *de jure* recognition of Indonesia's incorporation of East Timor. However, this is only a presumption. In international law, recognition is essentially a matter of intention. It must not be assumed, therefore, that negotiations with Indonesia will automatically or necessarily result in a change in Australia's position on East Timor which I announced in my statement on 20 January 1978. As I said at the outset, everything will depend on all the circumstances existing at the time.

On 15 December 1978 the Minister announced to a press conference after meeting with the Indonesian Foreign Minister, Professor Mochtar Kusumaatmaja, that Australia would give *de jure* recognition of the Indonesian takeover of East Timor early in 1979 on a date to be fixed, when talks on delineating the seabed boundary between East Timor and Australia began. The following is a report of what he stated:<sup>5</sup>

"The negotiations when they start, will signify *de jure* recognition by Australia of the Indonesian incorporation of East Timor", Mr Peacock said.

"The acceptance of this situation doesn't alter the opposition which the Government has consistently expressed regarding the manner of incorporation".

"Recognition is not anything other than a legal move and if you are to enter into these sorts of negotiations then recognition occurs and so be it", Mr Peacock told reporters at the press conference.

Australia had to "face the realities" of international law in negotiating the seabed boundaries but this did not mean the Australian Government accepted the way in which Indonesia "incorporated" East Timor.

On 8 March 1979 the Minister provided the following answer in relation to a question on the seabed negotiations with Indonesia (Sen Deb 1979, Vol 80, 720):

In accordance with the agreement I reached with the Indonesian Foreign Minister in December 1978, Australian and Indonesian officials met in

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5. *The Canberra Times*, 16 December 1978, p 1, col 3.

Canberra from 14 to 16 February to commence negotiations on the delineation of the seabed between Australia and East Timor.

On 23 April 1980 the Minister provided the following answer to a question concerning Australia's vote on 22 November 1979 in the United Nations General Assembly against the draft resolution re-affirming the right of the people of East Timor to self-determination and independence (Sen Deb 1980, Vol 85, 1795):

Australia voted against the draft resolution on East Timor at the 14th General Assembly of the United Nations. In Australia's view the resolution was unrealistic and impractical. Its main thrust was directed towards the pursuit of what Australia sees as pointless goals in the area of decolonisation. Indeed, Australia has recognised that East Timor has been integrated into Indonesia.

**Recognition. Baltic States. East Timor. Visit by Australian Ambassador. Whether implied de jure recognition of incorporation of territory**

On 12 September 1978, the Leader of the Government in the Senate and Minister representing the Minister for Foreign Affairs, Senator Carrick, said (Sen Deb 1978, Vol 78, 454):

Earlier in Question Time Senator Wriedt asked whether there was any parallel between the visit of Sir James Plimsoll<sup>6</sup> to the Baltic States in 1974 and that of Mr Critchley<sup>7</sup> to East Timor and whether the visit of Mr Critchley to East Timor constituted de jure recognition. I am advised that recognition is essentially a matter of intention. In international law it is accepted that this intention can be construed from the conduct of the recognising State, some forms of conduct being more specific than others. But if there is a clear manifestation of a contrary intention — for example, by an unequivocal statement — it will prevail over any inference which can be drawn from that State's conduct. In the case of the Baltic States, the intention of the government of the day was to accord de jure recognition of the incorporation of the Baltic States into the Soviet Union. Sir James Plimsoll's visit was consistent with that intention and since the Government did not indicate a contrary intention by statement or otherwise the conclusion could be correctly drawn that Australia wished to accord de jure recognition. Subsequent public reference by the Government confirmed that this was so. However, in the latter case in accepting the Indonesian invitation to visit East Timor Mr Critchley made it known to the Indonesians that the Australian Government's position on East Timor remained as set out in the statement of the Minister for Foreign Affairs of 20 January and that it was not the Australian Government's intention that his visit should in any way alter that position.

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6. At the time, Australian Ambassador to the USSR.

7. At the time, Australian Ambassador to Indonesia.