VI Law of the Sea

Maritime jurisdiction. Australian maritime jurisdiction and enforcement. In January 1983 the Department of Defence (Navy Office) published a *Manual on the Law of the Sea*. Following is the text of Chapter 4 entitled ''Australian Maritime Legislation''[1].

AUSTRALIAN INTERNAL WATERS

Introduction

401. *The Area.* Australia's internal waters are all those waters lying within the baselines from which the territorial sea is measured. Baselines follow the low water line based on the Lowest Astronomical Tide (LAT). Australia's baselines were proclaimed in Commonwealth Gazette S29 of 9 February and came into operation on 14 February 1983.

402. *Bays.* All bays with a closing line of 24 nautical miles or less are internal waters. Bays claimed by the Australian Government to be historic bays include Shark Bay, St Vincent's Gulf, Spencer Gulf and Moreton Bay. It has also been suggested that the Gulf of Carpentaria with an entrance of 350 miles could be claimed as an historic bay (Note 2).

403. *Jurisdiction.* Internal waters and historic bays are within State limits and therefore subject to the laws of the State concerned. Commonwealth legislation also applies to internal waters and certain areas are designated ''Naval Waters'' and ''Aboriginal Waters'' as explained in the following paragraphs.

Naval Waters

404. *Legislation.* ''Naval Waters'' are defined in the Control of Naval Waters Act to include ''any port, harbor, haven, roadstead, sound, channel, creek, bay or navigable river of Australia in, on or near to which the Commonwealth has any naval establishment, dock, dockyard, victualling yard, arsenal, wharf or mooring . . .''. The Act confers certain powers on the ''Senior Naval Officer'' doing duty at any naval waters, or, where there is no naval officer, the ''superintendent of naval waters appointed in respect of those naval waters'' to control those naval waters. The Act empowers the Senior Naval Officer to give the master of any vessel within defined naval waters directions as to the mooring, anchoring, placing, unmooring or removal of the vessel or to cause an unmanned vessel within defined naval waters to be moored, anchored, placed, unmoored or removed in compliance with his directions. The Senior Naval Officer may also remove any wreck or other thing which is an obstruction to any naval waters or to the approaches thereto, any floating timber which impedes the navigation of the naval waters or any vessel laid by or neglected as unfit for sea service which is lying within any defined naval waters.

405. *Control of Naval Waters Regulations.* These Regulations allow for the control of vessels within naval waters in such matters as loitering, anchoring, mooring, berthing and dredging within certain distances of Government property and ships. They also control the laying of moorings and the depositing of such things as ballast, stones and sand in or near naval

waters except in such places as are directed by the Senior Naval Officer. The Senior Naval Officer may also give directions as to the speed of vessels in certain areas and as to the removal of wrecks. Areas of naval waters may also be reserved for gunnery operations and experiments and other naval purposes after due notice is given.

Aboriginal Waters

406. *Legislation.* The Commonwealth Aboriginal Land Rights (Northern Territory) Act 1976 provides for the granting to Aboriginals of traditional Aboriginal Land. It is an offence to unlawfully enter or remain on Aboriginal land unless entry or remaining on the land was due to necessity (Note 3). The Northern Territory Aboriginal Land Act, 1978 also provides that it is an offence for a person to enter or remain on Aboriginal land without a permit (Note 4). It is a defence however (Note 5) if the person charged proves that his entry onto Aboriginal land was due to necessity, or beyond his control or it was impractical, in the circumstances, to apply for a permit; and that he removed himself from the Aboriginal land as soon as it was practicable in the circumstances.

Notes. 1. Text provided by the Department of Defence. (Some notes omitted). (The Manual was replaced by the *Royal Australian Navy Manual of International Law* which was issued in July 1985.)
2. Lumb RD, *The Law of the Sea and Australian Off-Shore Areas* (2nd ed), p 91.
3. Aboriginal Land Rights (Northern Territory) Act 1976, Section 70.
4. Northern Territory Aboriginal Land Act 1978, Section 4.
5. Ibid, Section 9.
6. Ibid, Section 14.

407. *Closed Seas.* The Northern Territory Act also provides that it is an offence to enter onto or remain on closed seas (Note 6). Closed seas are those seas adjoining and within two kilometres of Aboriginal land which have been closed by the Administrator of the Northern Territory by notice in the Gazette. Before deciding to close a part of the seas the Administrator may refer the matter to the Aboriginal Land Commissioner for inquiry and report. As yet no seas adjacent to Aboriginal land in the Northern Territory have been closed. Applications have been heard for closure of seas adjacent to the Crocodile River and applications are being prepared for closure of seas adjacent to Bathurst and Melville Islands. It is a defence to a charge under the Act (Note 1) if the person charged proves that the entry onto closed seas was due to necessity, or beyond his control; that it was impractical in the circumstances to apply for a permit; and that he removed himself from the closed seas as soon as it was practicable in the circumstances.

408. *Transit of Closed Seas.* The Northern Territory Act also provides for the bona fide transit of a vessel through seas which are otherwise not open to that vessel (Note 2). HMA ships may therefore transit closed seas adjacent to Aboriginal land but should not undertake such activities as weapons exercise and the launching and taking onboard of aircraft while within those areas.

409. *Sacred Sites.* The Commonwealth Aboriginal Land Rights Act also provides for the protection of Aboriginal sacred sites (Note 3). It is an offence for a person to enter or remain on a sacred site unless his presence on the land would not have been unlawful if the land had not been a sacred site; and he had taken all reasonable steps to ascertain the location and extent of the sacred sites on any part of that Aboriginal land likely to be visited by him.

410. *Defence Force.* It is possible that members of the Defence Force who enter onto or remain on Aboriginal land, sacred sites or closed seas may be charged with the contravention of one of these Acts. An Aboriginal Council or the traditional Aboriginal owners of a piece of Aboriginal land may issue permits to enter or remain on Aboriginal land or closed seas subject to such conditions as they think fit. It may therefore be necessary for permits to be obtained from the appropriate Land Council to enter or remain on Aboriginal Land or closed seas. Enquiries in this regard should be directed to Naval Officer Commanding North Australia Area.

AUSTRALIAN TERRITORIAL SEA

Introduction

411. *The Area.* The Australian Territorial Sea currently extends three nautical miles from the baselines around the coast (Note 4). The 1982 Convention on the Law of the Sea allows Coastal States to claim a territorial sea of 12 nautical miles but Australia has not yet done so.

Notes. 1. Northern Territory Aboriginal Act 1978, s19.
2. Ibid, s20.
3. Aboriginal Land Rights (Northern Territory) Act 1976, s70.
4. See paragraph 401.

412. *Jurisdiction.* The Seas and Submerged Lands Act 1973 declared that the Commonwealth of Australia had sovereignty over the territorial sea. The Act was challenged by the States of the Commonwealth in the High Court (Note 1) where it was decided that the Commonwealth has a pre-eminent or paramount federal authority over the territorial sea and the seabed and activities associated with or occurring thereon. Following this decision the Commonwealth consulted with the States on the implementation of measures to achieve an adjustment of powers and responsibilities between the Commonwealth and the States in the offshore area. These consultations resulted in the Offshore Constitutional Settlement agreed to at the Premiers' Conference in June 1979. Commonwealth legislation to ensure that the States and the Northern Territory possessed constitutional powers in the offshore area came into force on 1 January 1982. This consisted of the Coastal Waters (State Powers) Act 1980, the Coastal Waters (Northern Territory) Powers Act 1980 and the Seas and Submerged Lands Amendment Act 1980. Following the proclamation of these Acts the States passed complementary petroleum and fisheries legislation to regulate fisheries and offshore petroleum mining in their adjacent territorial seas. These State Acts were to come into operation when the Commonwealth proclaimed Title Acts vesting in each of the States and the Northern Territory proprietary rights and titles in respect of the seabed of the adjacent territorial sea. The

commencement of these State Acts was triggered by the proclamation on 14 February 1983 of the Commonwealth Coastal Waters (State Title) Act 1980, the Petroleum (Submerged Lands Amendment) Act 1980, the Coastal Waters (Northern Territory Title) Act 1980 and the Fisheries Amendment Act 1980. The Commonwealth's international obligations in the offshore area are not affected by this Commonwealth/State adjustment of powers. The seabed owned or used by the Commonwealth or any authority of the Commonwealth for any specific Commonwealth purpose is not included in the grant to the States. The Commonwealth's right to use the seabed for national purposes, such as defence or navigational aids has been preserved. It is expressly provided that the right and title conveyed by the State Title Act is subject to the operation of the Great Barrier Reef Marine Park Act 1975. (See paragraphs 445 to 450. The criminal and fisheries legislation of the States' Parliaments therefore apply in the territorial seas and they are enforced by the States. Members of the Defence Force have no powers under such legislation and any assistance required by the States is a matter for the Commonwealth to consider in the normal way. Commonwealth legislation applying in the territorial sea includes the Quarantine Act 1908, the Immigration (Unauthorised Arrivals) Act 1980 and the Customs Act 1901. These Acts are discussed in the following paragraphs.

Notes. 1. New South Wales v Commonwealth (1975) 8 ALR 1.

Quarantine

413. *Legislation.* The Commonwealth Quarantine Act 1908 enables certain authorized RAN personnel to detain vessels under 45 metres in length which are believed to have been involved in offences against the Act. The power to detain vessels is vested in those members of the Defence Force authorized as ''approved persons'' in writing by the Minister for Health or by a Quarantine Officer (Note 1). The power to detain is also vested in all Quarantine Officers, all Customs Officers, members or special members of the Australian Federal Police, members of the State and Territory Police Forces and other persons authorized as ''approved persons''.

414. *Investigation.* Officers of HMA ships do not therefore necessarily have power to detain under the Quarantine Act. If, however, an offence is discovered or one of HMA ships is asked to investigate an offence, appropriate persons onboard that ship may be authorized in writing and so advised by signal. Where a breach of the Quarantine Act is observed, the circumstances should be reported by signal to the appropriate quarantine authorities.

415. *Assistance.* The Quarantine Act also provides that for the purposes of detention and other lawful dealings with a vessel an ''approved person'' is entitled to take with him, and to have the assistance of, members of the Defence Force (Note 2).

416. *Powers of Approved Persons.* These include the power to board and detain any vessel which they have reasonable grounds to believe has been involved in the commission of any prescribed offence against the Act; to destroy any animal, plant or goods on board which is considered to be a

source of infection; and to apprehend without a warrant any person who was on board a vessel at the time of commission of an offence and to detain him on board the vessel until he has been brought before a Justice of the Peace or a Quarantine Officer, who may order the person be returned to the vessel or to a quarantine station.

417. *Ministerial Directions*. There is a requirement in the Act to give the Minister of Health particulars of the detention as soon as practicable and the Minister may then direct the person detaining the vessel (Note 3):

a. to return the vessel to the owner if he is not satisfied that an offence has been committed;
b. if he considers that the offence was committed in an emergency or for some other justifiable cause, to return the vessel to the owner or master as soon as all things required to be done in relation to the vessel for the purposes of the Act have been done; or
c. to continue to detain the vessel and to serve either personally or by post, a notice on the owner or master of the vessel advising him of his rights under the Act.

418. *Reporting*. In all circumstances it will be necessary for the fullest details to be forwarded to Quarantine and for Quarantine to inspect the vessel at the earliest opportunity. The normal communication channels should be used for this purpose. It will be necessary for the detaining officer to provide security until such time as alternative arrangements can be made.

Notes 1. Section 75A(1)(e).
2. Section 75A(5).
3. Section 75A(8).

Immigration (Unauthorised Arrivals)

419. *Legislation*. The Commonwealth Immigration (Unauthorized Arrivals) Act 1980 gives certain powers to two categories of persons — ''officers'' and ''authorized officers''.

420. *Officers*. All members of the Defence Force have the power to act as ''officers'' for the purpose of ascertaining whether an offence has been committed against certain sections of the Act. The power to act as ''officers'' is also vested in officers of the Department of Australian Federal Police or of the Police Force of a State or Territory or other persons who are authorized by the Minister to exercise the powers of an ''officer'' under the Act.

421. *Authorized Officers*. An ''authorized officer'' is one who is authorized in writing by the Minister for Immigration and Ethnic Affairs. Only an ''authorized officer'' is empowered to detain a vessel. An ''officer'' may detain a vessel where requested to do so in writing by an ''authorized officer'' (Note 1). Members of the Defence Force may be authorized by the Minister for Immigration and Ethnic Affairs to exercise the powers of ''authorized officers''. Officers of HMA ships do not therefore necessarily have power to detain vessels under the Immigration (Unauthorized Arrivals) Act. They may only detain a vessel when asked in writing to do so by an

''authorized officer'' or following appointment as an ''authorized officer'' by the Minister.

422. *Offences.* The offences which may be investigated by members of the Defence Force in their role as ''officers'' include cases where:

a. a ship is carrying an excessive number of persons for immigration purposes (Note 2),
b. a ship carrying immigrants is disabled (Note 3),
c. the master or crew of a ship permit illegal landing of persons (Note 4).

Notes 1. Immigration (Unauthorised Arrivals) Act 1980, s 17.
2. Section 6.
3. Section 7.
4. Section 8.

423. *Powers.* In investigating these offences ''officers'' have the power (Note 1) to board and search a vessel; to require the master and persons onboard to give information; and to require the protection of books and papers by the master and to take copies.

424. *Detention.* A vessel may only be detained by an ''authorized officer'' if he has reasonable grounds to believe that an offence (as in paragraph 421) has been committed in relation to the vessel or if he has been prevented from boarding the vessel. In detaining a vessel an ''authorized officer'' may take with him and have the assistance of any police officers or other persons he may think necessary. The vessel may subsequently be removed to an appropriate place and detained there as deemed appropriate by an ''authorized officer''.

425. *Notification of Detention.* It should be noted that when a vessel is detained the ''authorized officer'' is required to give notice of the detention to the owner, agent or charterer (Note 2).

Customs

426. *Customs Offences.* The Customs Act 1901 contains offences relating to the import and export of prohibited goods. It is an offence (Note 3) for any person to smuggle any goods; import or export any prohibited goods; or unlawfully convey or possess any smuggled goods or prohibited imports or exports. The Act (Note 4) also makes special provision for offences relating to the importing, exporting or having possession on board any ship or aircraft of any narcotics. The Act (Note 5) also provides for the forfeiture to the Crown of the following ships, boats or aircraft not exceeding 250 tons registered tonnage where:

a. used in smuggling or conveying prohibited imports or exports;
b. when found within three nautical miles of the coast or of land, fails to bring to or land for boarding;
c. when found hovering within three nautical miles of land fails to leave within 12 hours after being required to do so by an officer;
d. goods are thrown overboard or destroyed to prevent seizure by Customs

e. cargo onboard is subsequently found to be deficient without a lawful reason; or
f. false compartments or other disguised places for the purpose of running goods are found.

Notes 1. Section 16(a).
2. Section 17(2).
3. Customs Act, 1901, s 233.
4. Section 233B.
5. Section 228.

427. *Associated Offences.* It is also an offence (Note 1) for any person to:
a. evade payment of duty,
b. obtain any refund or rebate which is not payable,
c. tender a false invoice,
d. falsify any particulars,
e. make or deliver any untrue declaration,
f. mislead any officer,
g. refuse to answer questions or produce documents, or
h. sell or offer for sale any goods upon the pretence that they are prohibited imports or smuggled goods.

428. *Officers.* An ''officer'' under the Customs Act is a person who is:
a. engaged in the service of the Customs, or
b. authorized in writing by the Minister to perform the functions of a Customs officer.

429. *Powers of Officers.* In investigating customs offences ''officers'' under the Customs Act have the power to (Note 2):
a. chase any ship or aircraft which does not bring to or land at the airport when lawfully signalled or required to do so and (after having fired a gun as a signal) fire at or into such ship or aircraft to compel her to bring to or land at the airport;
b. board and search any ship or aircraft hovering within three nautical miles of the coast which has failed to depart within 12 hours of being required to do so;
c. open packages and examine, weigh, mark and seal any goods subject to the control of the Customs;
d. board and search any ship, boat or aircraft and secure any goods on any ship, boat or aircraft;
e. patrol and pass freely along and over any part of the coast or any railway or the shores, banks or beaches of any port, bay, harbour, lake or river;
f. moor any vessel or boat in the service of the Customs in any place;
g. question the passengers on or from any ship, boat or aircraft as to whether they have any dutiable goods or prohibited imports or exports;
h. detain and search persons suspected of unlawfully carrying or having any dutiable goods or any prohibited imports or exports;
i. stop and search any vehicles for dutiable goods;

Notes 1. Customs Act 1901, 2 59(1).
2. Sections 184 to 210.

j. search with the assistance of any police officer or other assistants and with a Customs Warrant any house, premises or place;
k. seize any forfeited ship, aircraft or goods upon land or water (this power extends to any officer of Her Majesty's Forces); and
l. arrest without warrant any person who is reasonably suspected of having committed or attempting to commit or of being concerned in the commission of, any of the following offences:
   (1) smuggling;
   (2) importing any prohibited imports;
   (3) exporting any prohibited exports; or
   (4) unlawfully conveying or having in his possession any smuggled goods, prohibited imports or prohibited exports.

430. *Defence Assistance in Customs Operations.* Assistance by Defence Force units in coastal surveillance operations mounted under the Customs Act may only be given at the request of the Department of Industry and Commerce. Members of the Defence Force are not "officers" under the Customs Act. However the person in command of any ship in the service of the Commonwealth which includes members of the Defence Force in command of HMA ships on which the prescribed ensign of the ship is flying may, by means of an international signal code or other internationally recognized means of communication between ships, request the master of an Australian ship or any ship within 12 nautical miles of the coast of Australia or within 500 metres of an Australian installation to permit his ship to be boarded for the purposes of the Customs Act (Note 1). This provision also applies to persons in command of aircraft in the service of the Commonwealth (Note 1). Where the master of a ship refuses or fails to comply with the request to be boarded the Customs Act provides that the person in command of the requesting ship or aircraft may chase the offending vessel and after firing a gun as a signal, fire at or into, the offending vessel in order to compel it to be brought to for boarding (Note 2). The person in command of the requesting ship may then board and search the suspected vessel, require all persons on board to answer questions and produce documents relating to the vessel's voyage and arrest without warrant any person on the vessel who he believes on reasonable grounds has committed, is committing or attempting to commit an offence against the Act (Note 3). The officer in command of the requesting ship also has the power to detain the suspected vessel and cause it to be brought to such port as he thinks fit (Note 4). If Defence Force units are asked to assist in customs operations to intercept a vessel by the Department of Industry and Commerce only the minimum amount of force necessary to cause the vessel to stop may be used. The principles stated in RANOPS paragraphs 1733 to 1735 regarding use of force in international law are to be observed by Commanding Officers of HMA Ships. HMA Ships may not fire directly at a

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Notes 1. Section 59(2).
2. Section 184(1).
3. Section 185(2).
4. Section 185(3).

suspected vessel unless requested to do so in writing by a customs officer who certifies that the arrest of the vessel is of such "proved necessity" in international law as to justify direct fire (see Table of Cases — Red Crusader case).

AUSTRALIAN CONTIGUOUS ZONE

The Area

431. A notional Australian Contiguous Zone not yet claimed in legislation extends 12 nautical miles from the baselines from which the territorial sea is measured. The 1982 Convention on the Law of the Sea allows Coastal States to claim a contiguous zone of 24 nautical miles but Australia has not yet done so.

Jurisdiction

432. The waters of the Contiguous Zone are classified as high seas and thus the freedom of the high seas apply in this area. Australia is however permitted to, and does, control the acts of foreign nationals and foreign vessels in the zone for the application and enforcement of its laws relating to health and quarantine, immigration and revenue. Australia is permitted to arrest persons and vessels for infringements committed within the territorial sea. Thus if a vessel has been involved in illegal activity within the territorial sea and is at some future time discovered to be in the contiguous zone, the vessel may be arrested if this is permitted by the appropriate legislation without the requirement of hot pursuit from the territorial area (Note 1). If the vessel was, however in the high seas outside the contiguous zone, she could not be arrested because the conditions for establishing hot pursuit would not be met.

AUSTRALIAN FISHING ZONE

The Area

433. The Australian Fishing Zone (AFZ) was established on 1 November 1979 (Note 2). It includes all waters within 200 nautical miles outwards of the baselines from which the territorial sea is measured, but it does not include waters within the territorial sea of Australia or another country or excepted waters. Excepted waters include those which Australia has agreed belong to adjacent countries where their claimed waters would otherwise encroach within the AFZ and waters outside the territorial waters around certain of Australia's territories viz — Christmas Island and the Australian Antarctic Territory (Note 4). The area of the AFZ is shown in chartlet form at Annex P(3).

Jurisdiction

434. *Legislation.* The taking of fish within the AFZ is regulated by the Fisheries Act 1952 and the Fisheries Regulations. It is an offence for a person to use a boat within the AFZ for commercial or private purposes unless the vessel has been issued with a licence under the Fisheries Act or is engaged in traditional fishing (see paragraph 437).

Notes 1. For the doctrine of hot pursuit see Chapter 5.
2. Gazette dated 26 September 1979.
4. Gazette dated 2 November 1979.

435. *Fish.* For the purposes of the Fisheries Act, the term ''fish'' includes turtles, dugong and crustacea and molluscs (except those defined as ''sedentary organisms'' under the Continental Shelf (Living Natural Resources) Act — see paragraph 456; it does not include any species of whales. The Act also applies to fish in the water column; it does not apply to the seabed (for which see paragraph 456).

436. *Licences.* Licences to fish are issued by the Department of Primary Industry and they permit fishing for certain types of fish at certain times of the year as specified in the licence.

437. *Indonesian Fishing Vessels.* Indonesian subsistence fishermen enjoy special fishing rights within the AFZ as detailed in the Memorandum of Understanding signed by Indonesia and Australia on 7 November 1974.

438. *Taiwanese Fishing Vessels.* There is an authorized area of the AFZ for Taiwanese Vessels.

439. *Japanese Fishing Vessels.* The licensing of Japanese tuna long-line fishing vessels is subject to an agreement between Australia and Japan and licences are granted for eight prescribed areas.

440. *Officers.* All members of the Defence Force are designated ''officers'' for the purpose of the Fisheries Act. The term ''officer'' also includes officers or employees of the Commonwealth or a Territory who are authorized in writing by the Secretary of the Department of Primary Industry as well as members of the Australian Federal Police and the police forces of a State or Territory.

441. *Fisheries Offences.* The offences which may be investigated by all members of the Defence Force in their role as ''officers'' include the following:

a. fishing without a licence (Note 1);
b. using a boat for taking fish, processing, carrying or trans-shipping fish without a licence (Note 2);
c. contravening a condition of a licence or doing an act prohibited by a notice issued by the Minister (Note 3);
d. taking fish from a trap, net, or other equipment unless he is the owner (Note 4);
e. using a foreign boat for taking, catching or capturing fish for private purposes or having in possession or charge a foreign boat equipped with nets, traps or other equipment for taking, catching or capturing fish without a licence (Note 5); and

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Notes 1. Fisheries Act 1952, s 13(1)a.
2. Sections 13(b)(c)(d) and 13B(1) and (2).
3. Sections 13(f) and 13(i).
4. Section 13A.
5. Sections 13AA and 13AB(1).

f. in the case of foreign boats, entering Australian ports or landing fish without a licence (Note 1).

422. *Associated Offences*. It is also an offence (Note 2) for any person to:

a. assault, resist or obstruct an officer;
b. fail to facilitate by all reasonable means the boarding of a boat by an officer;
c. refuse to allow an authorized search; or
d. refuse to comply with directions or to give information.

443. *Powers of Officers*. In investigating these offences "officers" have the power (Note 3) to:

a. board and search a ship in the AFZ;
b. examine any equipment;
c. seize, detain, remove or secure any boat, net, trap or other equipment which he has reason to believe has been used in contravention of the Act;
d. arrest without warrant any person whom he has reason to believe has committed an offence under the Act;
e. bring the ship or require it to be brought to a specified place and to remain there; and
f. require the production of documents and information.

Notes 1. Sections 13BA and 13BB.
2. Section 14.
3. Section 10.

444. *Fisheries Prosecutions — Production of Hydrographic Charts as Evidence*. In every prosecution in respect of an offence relating to foreign fishing in the Australian Fishing Zone, it is necessary to produce evidence to establish that the point at which the alleged offence occurred was within the zone as defined by the Fisheries Act 1952. In the absence of a provision in the Fisheries Act, 1952, making a hydrographic chart admissible, even if such a chart shows the baselines from which the territorial sea is measured and the outer limit of the Australian Fishing Zone, such charts may not be relied upon in court proceedings as a basis for establishing that an offence was committed within the Australian Fishing Zone. While the courts may continue to take notice of certain geographical facts illustrated on hydrographic charts to assist them in their deliberations, the most satisfactory way of establishing that an offence under the Fisheries Act, 1952, occurred within the Australian Fishing Zone would be to tender a certificate issued under section 16(2) of the Fisheries Act (Note 1) to the effect that "an area of water specified in the certificate was part of proclaimed water or part of the Australian Fishing Zone". By virtue of sub-section 16(4) of the Fisheries Act, 1952, such a certificate would constitute "prima facie evidence on the matters specified in the certificate".

AUSTRALIAN MARINE PARKS

Great Barrier Reef Marine Park

445. The Great Barrier Reef Marine Park Act 1975 provides for the establishment, control, care and development of a marine park in the Great

Barrier Reef region. The Governor-General may by Proclamation declare an area within the Great Barrier Reef region to be a part of the Marine Park and assign a name or other designation to that area (Note 2). Only two areas have so far been declared to be a part of the Marine Park — the Capricornia Section and the Cairns Section. The waters of any sea within such a declared area, the seabed and subsoil beneath any sea within the area and the airspace above the area extending to such height above the surface as is specified in the Proclamation shall be taken as part of the Marine Park (Note 3).

446. *Zoning*. A zoning plan has been prepared for the Capricornia and Cairns Sections of the Park. A zoning plan defines the activities which can occur in different zones of the Marine Park and the conditions of entry into those areas. Permits from the Great Barrier Reef Marine Park Authority are required for entry into a zone and for activities in certain zones such as research, the construction and conduct of mooring facilities, the discharge of waste and the construction and conduct of aircraft landing areas.

447. *Offences*. The Great Barrier Reef Marine Park (Capricornia Section) Regulations create certain offences (Note 4) relating to the use of zones. The offences include:

a. using or entering a zone for the purpose of removing a vessel that is wrecked, stranded, sunk or abandoned without informing the Great Barrier Reef Marine Park Authority;
b. discharging waste from a vessel or an aircraft in the Capricornia Section;
c. depositing litter in the Capricornia Section; and
d. using for the purpose of spearfishing:
   (1) an underwater breathing aparatus, or
   (2) a powerhead.

Notes 1. Section 16(2).
2. Section 31(1).
3. Section 31(2).
4. Regulations 7(4), 9, 10, 12.

448. *Exceptions*. The offence of discharging waste (Note 1) from a vessel or an aircraft does not apply to the discharge from a vessel or an aircraft of:

a. human waste where the vessel or aircraft does not contain a storage tank of a kind designated for the storage of human waste,
b. offal from fish caught within the Capricornia Section, or
c. bio-degradable waste where the aircraft or vessel is more than 500 metres from the seaward edge of a reef that is exposed at mean low water spring tide or where the Authority has given its permission in writing to the discharge of waste from the vessel or aircraft.

449. *Authorized Entry*. Entry into the Capricornia Section is however authorized for any aircraft, hovercraft, vessel or person to enter any part of a zone for the purpose of (Note 2):

a. saving human life or avoiding the risk of injury to a human being;
b. locating or securing the safety of an aircraft, hovercraft or vessel

which is, or may be, endangered by stress of weather or by navigational or operational hazards;

c. government geodetic survey, reconnaissance, surveillance, or law enforcement (including enforcement of the Act and regulations made under it); or

d. dealing with an emergency involving a serious threat to the environment.

450. *Application.* The Great Barrier Reef Marine Park Act applies to all persons, including foreigners, and to all vessels and aircraft, including foreign vessels and aircraft whether or not they are within the limits of Australia and the Australian coastline (Note 3). The Act is normally to prevail over the Defence Act.

Notes 1. Regulation 9(1) and (2).
2. Regulation 7(5).
3. Section 65(1).

AUSTRALIAN EXCLUSIVE ECONOMIC ZONE

The Area

451. The 1982 Convention on the Law of the Sea makes provision for States to claim an Exclusive Economic Zone (EEZ) extending for 200 nautical miles from the baselines from which the territorial sea is measured. Although many States now claim EEZs, Australia has not yet declared such a zone.

452. When Australia declares an EEZ, the Australian Fishing Zone (Note 1) will be subsumed into the EEZ and the legislation as it will be primarily for the protection and preservation of the marine environment in the EEZ.

AUSTRALIAN CONTINENTAL SHELF

Introduction

453. *The Area.* The Australian Continental Shelf is very extensive and in some areas extends for several hundred kilometres from the coast.

454. *Jurisdiction.* Australia first claimed jurisdiction over the continental shelf in 1888 (Note 3) and in 1953 the Governor-General proclaimed sovereign rights over the shelf adjacent to the Australian coastline for the purpose of exploring and exploiting natural resources (Note 4). The Pearl Fisheries Act of 1953 defined the continental shelf as the seabed and subsoil contiguous to the coasts of Australia to a depth of 100 fathoms. The 1958 Convention on the Continental Shelf allows a claim to resources of the shelf to the 200 metre line, or beyond that depth, to where resources are exploitable. The 1982 Convention on the Law of the Sea amends this jurisdiction as explained in Chapter 2, Australian jurisdiction over the resources of the shelf is regulated by the Continental Shelf (Living Natural Resources) Act and the Petroleum (Submerged Lands) Act as explained below.

Notes 1. See above paragraphs 433 et seq.
2. See above paragraphs 445 et seq.
3. The Queensland Pearl Shell and Beche-de-mer Fisheries (Extra-territorial) Act No. 1 of 1888.
4. Gazette 1953 (p. 2563).

Living Natural Resources

455. *Legislation.* The searching for and taking of sedentary organisms from Australia's continental shelf is governed by the Continental Shelf (Living Natural Resources) Act 1968. The Act applies to all persons, including foreigners and to all ships including foreign ships.

456. *Sedentary Organisms.* The Act applies to certain marine organisms, which at the harvestable stage, are either immobile on or under the seabed and which are unable to move except in constant physical contact with the seabed or subsoil. The sedentary organisms regulated by the Act are published by Proclamation (Note 2); they include corals, sponges, beche-de-mer, pearl shell, clams, abalone, green snail, trochus, seaweed and kelp.

457. *Controlled Areas.* The Act allows controlled areas to be established and enables the Department of Primary Industry to issue "controlled area notices" relating to sedentary organisms in such areas. Controlled area notices have been issued (Note 3) in respect of six areas.

458. *Conservation Notices.* These notices regulate the lawful taking by a licensed vessel of sedentary organisms in controlled areas.

459. *Prohibitions in Force.* As a result of the setting up of controlled areas and the publication of conservation notices the following prohibitions are in force in the following areas:

a. *Queensland Division* (Controlled Area No. 1):
   (1) Absolution prohibitions: corals and lace corals, sea urchins, beche-de-mer, bivalve molluscs (except scallops) and bottom dwelling gastropod molluscs.
   (2) Limitations on size: mother of pearl shell, "black lip" pearl shell, trochus and green snail.
   (3) Prohibition on trawling and dredging: pearl shell, trochus, beche-de-mer and green snail.
   (4) Removal: mother of pearl, trochus, beche-de-mer and green snail alive.
   (5) Protection: giant clams, tritons and helmet shells.

Notes 2. Gazette dated 9 April 1970; 13 April 1970; 11 September 1972.
3. Gazette dated 10 April 1970; 8 September 1972; 26 January 1982.

b. *Victoria Division* (Controlled Area No. 2):
   (1) Absolute prohibitions: oysters and abalone.
   (2) Protection: abalone.

c. *Tasmania Division* Controlled Area No. 3):
   (1) Absolute prohibitions: sea-urchins, abalone, bailer shells and other gastropods of the volutidae family.
   (2) Protection: abalone.

d. *Western Australia Division* (Controlled Area No. 4):
   (1) Absolute prohibitions: beche-de-mer, mother of pearl shell, razor fish, abalone, trochus and green snail.
   (2) Limitations on size: mother of pearl shell, "black lip" pearl shell, trochus and green snail.
   (3) Prohibition on trawling and dredging: pearl shell, trochus, beche-de-mer and green snail.

(4) Removal: mother of pearl, trochus, beche-de-mer and green snail alive.
(5) North of 19 degrees south: unlicensed taking of all sedentary organisms.

e. *Northern Territory and Ashmore and Cartier Islands Division* (Controlled Area No. 5):
(1) Absolute prohibition: sponges, beche-de-mer, bivalve molluscs (except scallops) and bottom dwelling gastropod molluscs.
(2) Limitations on size: mother of pearl shell, ''black lip'' pearl shell, trochus and green snail.
(3) Prohibition on trawling and dredging: pearl shell, trochus, beche-de-mer and green snail.
(4) Removal: mother of pearl, trochus, beche-de-mer and green snail alive.
(5) Unlicensed taking of all sedentary organisms in the Ashmore and Cartier Islands division.

f. *South Australia Division* (Controlled Area No. 6):
(1) Absolute prohibition: abalone.

460. *Licences.* Licences to search for and to take sedentary organisms may be issued by the Department of Primary Industry to permit the taking of certain types at certain times. At the present time no licences have been issued to foreign vessels but special rights are given to traditional fishermen (see below paragraph 461).

461. *Indonesian fishing vessels.* Indonesian subsistence fishermen enjoy special rights within the AFZ as detailed in the Memorandum of Understanding signed by Indonesia and Australia on 7 November 1974.

462. *Officers.* All members of the Defence Force have the power to act as ''officers'' under the Act. These powers are also vested in officers or employees of the Commonwealth or a State who are authorized in writing by the Secretary of the Department of Primary Industry and in members or special members of the Australian Federal Police or members of the Police Force of a State or Territory.

463. *Offences.* The offences which may be investigated by all members of the Defence Force in their role as ''officers'' include the following:

a. searching for or taking sedentary organisms from the Continental Shelf or a controlled area without a licence (Note 1);
b. trans-shipping sedentary organisms to a ship which does not have a licence (Note 2);
c. having on board a diver, trial diver or diver's tender without a licence (Note 3); and
d. contravening conditions of a licence or notices issued by the Minister (Note 4).

464. *Associated Offences.* It is also an offence (Note 5) for any person to

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Notes 1. CS(LNR) Act, Sections 15(1) and (2).
2. Section 15(3C).
3. Section 15(4).
4. Section (15)5.
5. Section 17.

assault, resist, or obstruct an officer; or to refuse to comply with directions or to give information.

465. *Powers of Officers.* In investigating these offences "officers" have the power (Note 1) to:

a. board and search a ship in a controlled area;
b. seize, take, detain, remove and secure any ship he has reason to believe has been used in contravention of the Act;
c. arrest without warrant any person whom he believes has committed an offence under the Act;
d. bring the ship or require it to be brought to a specified place and remain there; and
e. require the production of documents and information.

Offshore Oil and Gas Resources

466. *Legislation.* The law concerning the exploration for and exploitation of off-shore oil and gas resources on the Australian continental shelf is contained in the Petroleum (Submerged Lands) Act 1967 (Note 2). The purpose of this Act is to regulate mining for petroleum and it includes provision for the establishment of "safety zones" for the protection of a well or structure or any equipment in an adjacent area.

467. *Safety Zones.* The Act empowers a designated State or Commonwealth authority to create a zone extending for a distance of 500 metres around a well, structure or equipment used in connection with mining for petroleum or gas (Note 3). Entry into these safety zones is prohibited to all except authorized vessels and fines of up to $10,000 may be imposed for unauthorized navigation within such zones. After gazettal, safety zones are promulgated in Notices to Mariners, Annual Summaries of Notices to Mariners and other sources.

468. *Assistance.* HMA ships may be required to assist in the surveillance of safety zones and to enforce the prohibition on entry of vessels into them. The power of prohibition can be exercised only when an Australian Federal Policeman is embarked or when the Commanding Officer, or other designated officer, has been authorized to act as a Special Member under the Australian Federal Police Act 1979. This legislation may be enforced against both Australian and foreign vessels.

Notes 1. Section 14.
2. Petroleum (Submerged Lands) Act 1967.
3. S119.

469. *Criminal Jurisdiction.* The criminal laws of States and Territories are in force in "adjacent areas" off their coasts beyond the limits of the territorial sea in relation to all matters and things touching, concerning, arising out of or connected with the exploration of, or the exploitation of the resources of the continental shelf (Note 1). The "adjacent areas" are defined in the Petroleum (Submerged Lands) Act.

470. *Advisory Restricted Area.* A section of the Bass Strait covering all the areas between the oil rigs was designated a Restricted Area by the Commonwealth Government in 1980 (Note 2). The Defence Force was directed to undertake sea and air surveillance of the Restricted Area to

detect vessels that moved towards the oil rigs and to warn them out of the area. All vessels over 200 tonnes are advised to pass to the south and east of the Restricted Area. The Restricted Area is advisory only and national and foreign vessels may only be warned to leave the area.

AUSTRALIAN HIGH SEAS LEGISLATION

Australian Merchant Ships

471. Australian merchant ships on the high seas remain exclusively under the administrative, criminal, civil and protective jurisdiction of the Commonwealth at all times. The law relating to the operation of merchant ships is contained in the Navigation Act 1912 and ships are registered in Australia under the Shipping Registration Act 1981. The criminal law of the State or Territory with which the ship is connected applies to acts committed on and from the ship both at sea and in a foreign country (Note 3). The protective jurisdiction of the Commonwealth is such that Australian ships may not be arrested or detained except by order of the Commonwealth; see Chapter 5 for action which may be taken by HMA ships to prevent illegal acts against Australian merchant ships. In the event of a collision or any other navigational incident on the high seas involving the penal or disciplinary responsibility of the Master or Crew, criminal proceedings against the person or persons responsible may only be instituted by the Commonwealth.

Australian Citizens on Foreign Ships

472. The criminal law of the State or Territory in which an Australian citizen is domiciled (or which was his last place of residence) applies to acts he may commit on or from a foreign ship beyond the limits of the territorial sea, provided that he is not a member of the crew of that ship (Note 4).

Notes 1. Petroleum (Submerged Lands) Act 1967, Section 9(1) and (2), Schedule 2 and Crimes At Sea Act (Commonwealth) (1979), Sections 9(1) and (2).
2. The Restricted Area was promulgated in Department of Transport and Construction Marine Notice No. 11/80.
3. Crimes at Sea Act 1979, Section 6(1).
4. Ibid, Section 8.

Foreign Nationals on Foreign Ships

473. A foreign national who commits an offence beyond the limits of the territorial sea of any country on and from a foreign ship which is on a voyage to Australia, may if he enters Australia, be tried, with the consent of the Attorney-General in State or Territory courts as if the acts were committed there (Note 1). Where a country other than Australia has jurisdiction under international law in relation to a foreign ship, the Attorney-General shall not give his consent to the institution of criminal proceedings in Australia against foreign nationals in relation to the commission of criminal offences on and from the foreign ship beyond the territorial sea of Australia without the consent of the flag state (Note 2).

Protection and Preservation of the Marine Environment

474. Protection of the marine environment of Australian offshore areas is governed by Part VIIA of the Navigation Act (Commonwealth) 1912. This part of the Navigation Act applies to Australian and foreign ships within

Australian internal and territorial waters and Australian ships outside territorial waters (Note 3) but does not apply to a ship belonging to an arm of the Australian Defence Force or to foreign naval, military or air forces (Note 4). Where the Minister for Transport and Construction is satisfied that oil is or is likely to escape from a ship to which this Section of the Navigation Act applies the Minister may take certain actions to prevent or reduce the extent of pollution by the oil of any Australian coastal waters, any part of the Australian coast or any Australian reef. These actions include serving a notice on the owner of the ship requiring action to be taken to prevent the escape of oil from the ship, to remove oil from the ship in the specified manner to a specified place and the removal of the ship to a specified place (Note 5). If a requirement specified in such a notice is not complied with before the time specified in the notice the owner of the ship is guilty of an offence under the Act punishable upon conviction by a fine calculated in accordance with the quantity of oil on board the ship (Note 6).

Notes 1. Crimes at Sea Act, 1979, Section 7(5).
2. Ibid, Section 7(6).
3. Navigation Act, 1912, Section 329E(6).
4. Ibid, Section 3.
5. Ibid, Section 329E(1) and (3).
6. Ibid, Section 329G.

If a notice under the Act has not been complied with and oil escapes from the ship the Minister for Transport and Construction is empowered to take such action as is necessary to prevent or reduce the extent of the pollution by the oil of any Australian coastal waters, any part of the Australian coast or any Australian reef or to remove or reduce the effects of the pollution by the oil of any such waters, coast or reef (Note 1).

475. The prevention of the pollution by oil of certain prohibited zones of the sea beyond Australian territorial waters by ships registered in Australia is governed by the Protection of the Sea (Discharge of Oil from Ships) Act 1981 which implements the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 and the 1962, 1969 and the 1971 amendments to this Convention for Australian flag vessels. The Act does not apply to warships, naval auxiliaries or ships under 500 tons gross tonnage however the Act gives effect to the Second Resolution adopted by the Conference producing the 1954 Convention which provides that:

> "The Governments of contracting parties should apply the provisions of the Convention so far as is reasonable and practicable to all classes of seagoing ships registered in their territories or belonging to them to which the provisions of the conventions do not apply, that is to say, warships . . . ships used as naval auxiliaries etc." (Note 2).

476. The Act provides that if any discharge of oil or of an oily mixture occurs from an Australian ship into the sea beyond Australian territorial waters the owner and the master of the ship are each guilty of an offence punishable on conviction by a fine not exceeding fifty thousand dollars or one hundred thousand dollars if the owner is a body corporate (Note 3). It is

Notes 1. Navigation Act, 1912, Section 329J.
2. Protection of the Sea (Discharge of Oil from Ships) Act, 1981, Second Schedule.
3. Section 9(1).

a defence to a charge under the Act if the defendant proves that:

a. the discharge occurred when the ship was proceeding on route;
b. the instantaneous rate of discharge of oil content did not exceed sixty litres per mile;
c. the discharge was made as far as practicable from land;
d. in the case of a discharge of an oily mixture, the oil content of the discharge was less than one hundred parts in one million parts of the mixture;
e. the discharge of the oil or of the oily mixture from the ship was for the purpose of securing the safety of the ship, preventing damage to a ship or cargo or saving life at sea; or
f. the oil or the oily mixture escaped from the ship in consequence of damage to the ship or unavoidable leakage and that all reasonable precautions were taken after the occurrence of the damage or the discovery of the leakage for the purpose of preventing or minimizing the escape of the oil or of the oily mixture (Note 1).

477. The Act incorporates the 1971 Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil 1954 concerning the protection of the Great Barrier Reef. The amendments to the Convention and their implementation in the Protection of the Sea (Discharge of Oil from Ships) Act give improved protection for the Great Barrier Reef by prohibiting operational discharges of oil within or near the outer Reef, by measuring nearest land from the outer edge of the Reef (Note 2). While this Act incorporates provisions relating to the 1971 Amendments, they are not to be applied in Australia until they come into force internationally. The Act came into force on 1 October 1982 (Note 3).

Notes 1. Protection of the Sea (Discharge of Oil from Ships) Act, 1981, Section 9(2) and 9(3).
2. Ibid, Section 10.
3. Department of Transport and Construction Marine Notice 20/82.

Protection of Whales

478. *Legislation.* The Commonwealth Whale Protection Act 1980 provides for the preservation, conservation and protection of whales and other like creatures.

479. *Offences.* The Act applies to the Commonwealth and prohibits the taking or killing of whales without a permit. Also, no foreign whaling vessel may enter an Australian port without the written permission of the Minister for Home Affairs and Environment. Inspectors are appointed under the Act and include members of the Australian Federal Police or Territory Police. Members of the Defence Force are not given any powers under the Act.

480. *Powers of Inspectors.* Inspectors may stop or detain and search any aircraft or vessel reasonably suspected of containing a whale in respect of which an offence against the Act has been committed. The Act also gives

power of seizure of any vehicle, aircraft, vessel or article used in the commission of an offence to an inspector, the forfeiture to the Crown in certain circumstances.

Protection of Torres Strait

481. *General.* On 18 December 1978 the Torres Strait Treaty between Australia and Papua New Guinea was signed. The Treaty contains provisions concerning sovereignty and maritime boundaries in the Torres Strait area. It has not yet been ratified.

482. *Delimitation.* Three delimitation lines form the basis of the Treaty. These are the:

a. seabed resources line,
b. swimming fisheries line, and
c. Protected Zone line.

483. *Protected Zone.* The establishment of a Protected Zone in the Torres Strait area is an important part of the Treaty. The zone was established to enable Torres Strait Islanders and Papua New Guineans living in the adjacent coastal area to maintain their traditional activities and freedom of movement. The Treaty contains provisions to ensure:

a. the protection and preservation of the marine environment,
b. the management and conservation of fish resources,
c. the protection of indigenous flora and fauna (including such endangered species as the dugong and certain species of turtle), and
d. the prevention and control of pollution.

484. *Commercial Fisheries.* The Treaty contains provisions regarding agreed arrangements for commercial fisheries within the Protected Zone including co-operation on the issue and endorsement of licences. Traditional fishing, however, takes precedence over commercial fishing.

Chapter 5

Naval Enforcement of Australian Maritime Legislation

Introduction

501. As explained in Chapter 4 members of the Defence Force have the power to act as 'officers' under certain Commonwealth Acts and may also be called upon to assist persons who are exercising their powers to enforce Australian maritime legislation. Several of the Acts have special provisions for boarding, arresting and detaining vessels (eg the Fisheries Acts) but in the absence of specific Australian legislation in this regard, the general principles of international law should be followed and these are explained below.

Boarding

502. Specific instructions on boarding are contained in ABR 1920A RAN Handbook on Ships Landing Boarding Parties and in ACB 0332 (RANOPS) Chapter 17.

Arrest

503. Where HMA ships are instructed to arrest an offending vessel every endeavour must be made by the use of signals, siren, loud hailer or a boarding party to induce the offender to stop. If these methods fail, warning shots may be fired across the bows of a vessel but only after express warning has been given to the vessel and the offender clearly understands that such action is about to be taken. Warning shots must not be fired unless it is possible to open fire without endangering innocent parties. Firing on an unarmed vessel so as to create danger to human life onboard without proved necessity is a breach of international law (Note 1). More specific guidance for HMA ships is to be found in ACB 0332 (RANOPS) Chapter 17.

Hot Pursuit

504. The doctrine of hot pursuit (Note 2) permits a coastal State in certain circumstances to extend its jurisdiction over foreign vessels and foreign nationals beyond its maritime territory and onto the high seas. It refers to the right of the coastal State to continue, outside the territorial sea or the contiguous zone, the pursuit of a foreign vessel which, while within the internal waters, territorial sea, contiguous zone or extended fisheries or resource zone of the pursuing State, has violated the laws and regulations of that State, provided however that the pursuit has commenced immediately after the offence and has not been interrupted.

505. Hot pursuit is subject to certain strict controls. The three most important requirements are that the pursuit must be commenced as soon as possible after detecting the commission of an offence, it must be pressed with all possible despatch (ie it must be 'hot') and it must be continuous. Not so well recognized

1. See RED CRUSADER CASE [Denmark v U.K. (1962) 35 ILR 485]
2. 1958 Convention on the High Seas Article 23 and 1982 Convention Article 111.

in customary international law have been the circumstances and offences which give rise to the right of hot pursuit and the degree of force which may be employed to enforce the right.

506. The conditions under which hot pursuit of a foreign ship may be undertaken may be summarized as follows:

a. Competent authorities of the coastal State must have good reason to believe that the foreign ship has violated the laws and regulations of that State.
b. The pursuit must be commenced when the offender or one of its boats is within the internal waters, territorial sea or contiguous zone of the coastal State (but see paragraph 507). If within the contiguous zone it may only be undertaken if there has been a violation of the rights for the protection of which the zone was established (see paragraph 432).
c. Pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship. Signals given by radio by a pursuing craft should not be considered a lawful commencement of hot pursuit. The pursuing vessel or aircraft does not, however, have to be within the internal waters, territorial sea or contiguous zone before commencing hot pursuit.
d. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on Government service specially authorized to that effect. In the case of aircraft, they must actively mount an effective pursuit but if they have not the capability to make the arrest they may call on warships or authorized Government ships to join in or take over the pursuit and make the arrest. Similarly, provided the pursuit is hot and continuous, another ship may relieve temporarily or permanently the original pursuing ship.
e. The right of hot pursuit ceases as soon as the pursued ship enters the territorial sea of its own country, or of a third State.

507. Where an offence has been committed in the extended fisheries or exclusive economic zone of a coastal State which is recognized as a valid zone of jurisdiction in international law, a right of hot pursuit exists, but may only be continued outside the extended fisheries zone or exclusive economic zone if the offence was committed against the coastal State legislation creating the fisheries or exclusive economic zone. In the case of Australia where an offence has been committed within the Australian Fishing Zone (AFZ) of 200 nautical miles hot pursuit may only be commenced within the AFZ and continued outside the AFZ if an offence has been committed against the Fisheries Act, 1952 (Commonwealth) (see paragraph 434).

Doctrine of Constructive Presence

508. It is a general principle of international law that acts done outside a State's territory but intended to produce and in fact producing detrimental effects within it, justify a State in exercising its criminal jurisdiction to punish the person causing the harm as if he had been present at the place where the effect occurred, if the State should succeed in getting him within its power. This gave rise to the rule of customary international law that a ship may be arrested on the high seas,

if at the time it is engaged in illegal action within the territorial sea. This rule is known as the doctrine of constructive presence. Thus, as a result of its actions on the high seas a vessel may be deemed as constructively present within the jurisdiction of the coastal State and so liable to hot pursuit and arrest. For example, a foreign ship on the high seas acting as a mother ship to boats breaking a coastal State's law within the State's territorial sea may be pursued and arrested. In such a case hot pursuit actually starts on the high seas but is said to have started constructively within the territorial sea. However, being a fictional basis for jurisdiction, the doctrine of constructive presence should be applied with caution.

Arrest after Hot Pursuit

509. The arrest procedure should be the same as that for offences committed within the coastal jurisdiction (see paragraph 503). As to the degree of force which may be employed to enforce the right of hot pursuit it was stated in the judgement of the *I'm Alone case* [Canada and USA (1935) 3 UNRIAA 1609] that the United States might use necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port a vessel suspected of attempting to break the American law prohibiting the import of alcoholic liquor. However the sinking of the I'm Alone which the United States admitted to be deliberate was not justified, as it was considered to be excessive use of force.

Consequences of Unlawful Hot Pursuit

510. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it must be compensated for any loss or damage that it has thereby sustained.

Maritime jurisdiction. Geneva Convention on the Territorial Sea and the Contiguous Zone. Australian proclamation of baselines.

On 4 February 1983 the Governor-General made a number of Proclamations relating to off-shore legislation and the limits of the territorial sea (see *Commonwealth of Australia Gazette*, No. S 29, 9 February 1983). The following is the operative part (Schedule omitted) of a Proclamation relating to baselines:

PROCLAMATION

Commonwealth of Australia
N.M. STEPHEN
Governor-General

By His Excellency the Governor-General of the Commonwealth of Australia

WHEREAS it is provided by sub-section 7(1) of the *Seas and Submerged Lands Act* 1973 that the Governor-General may, from time to time, by Proclamation, declare, not inconsistently with Section 11 of Part I of the Convention on the Territorial Sea and the Contiguous Zone, the limits of the whole or any part of the territorial sea:

AND WHEREAS it is provided by sub-section 7 (2) of that Act that, for the purposes of such a Proclamation, the Governor-General may, in particular, determine either or both of the following:

(a) the breadth of the territorial sea;

(b) the baseline from which the breadth of the territorial sea, or any part of the territorial sea, is to be measured:

NOW THEREFORE I, Sir Ninian Martin Stephen, the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, in pursuance of section 7 of the *Seas and Submerged Lands Act* 1973 —

(c) hereby revoke, with effect on and from 14 February 1983, the Proclamations under section 7 of that Act made on 24 October 1974 and published in the *Gazette* on 31 October 1974; and

(d) hereby declare that, on and from 14 February 1983, the inner limit of a part of the territorial sea of Australia referred to in the Schedule is the baseline determined in accordance with that Schedule.

On 1 July 1983 the High Court of Australia handed down its decision in the *Commonwealth* v. *Tasmania* 46 ALR 625. In the course of his majority judgment, Mason J said (at 696):

> Whether failure on the part of Australia to enact domestic legislation incorporating the rules in the Convention on the Territorial Sea and the Contiguous Zone and the Convention on the Continental Shelf as part of our domestic law would have amounted to a contravention of those Conventions is not altogether clear. The Conventions did not impose an obligation in specific terms to enact domestic legislation of a particular kind. None the less the validity of the Seas and Submerged Lands Act 1973 (Cth) which gave effect to these Conventions was upheld in *New South Wales* v *Commonwealth* (the *Seas and Submerged Lands* case) (1975) 135 CLR 337; 8 ALR 1. It may be said that the legislation was valid because it gave effect to the principles of customary international law as declared by the Conventions. But if Australia became a party to a convention which enacted a new set of rules in relation to the territorial sea and the contiguous zone, but that convention did not attract sufficient support to constitute its provisions as principles of customary international law, domestic legislation giving effect to it would none the less still constitute a valid exercise of the power.

Law of the sea. Protection of the Sea. Legislative measures.

In 1981 Parliament passed several Acts dealing with the prevention of marine pollution (see *Appendix II*). For the second reading speeches to these Acts, which explain their background, purpose and provisions see HR Deb 1981, Vol 121, 485-487 (5 March 1981). For Australia's opposition to the dumping of nuclear wastes in the Pacific Region, see the written answer of the Minister for Foreign Affairs, Mr Street, in HR Deb 1981, Vol 124, 511-512 (19 August 1981). Following the 1981 protection of the sea legislation, two further Bills were introduced on the prevention of pollution from ships: see HR Deb 1982, Vol 129 2390-2391 21 October 1982, HR Deb 1983, Vol, 131 and 939-941, 25 May 1983.

Australian Fishing Zone. Scope. Enforcement. Torres Strait Zone.

On 26 March 1981 the Minister for Primary Industry, Mr Nixon, provided

the following written answer to a question concerning the arrest of an unlicensed Taiwanese fishing vessel on the Great Barrier Reef (HR Deb 1981, Vol 121 1065):

> Under the terms of the 1980-81 agreement the Kaohsiung Fishing Boat Commercial Guild is amongst other things, required to ensure that in the event of a licensed Taiwanese vessel contravening Australian fishing laws the vessel and the persons responsible will not engage in further fishing in the Australian fishing zone. The 'Ging Hung No. 111' was not a licensed vessel, but the master appeared before the court on several charges and was subsequently fined and the vessel, catch and gear were forefeited to the Commonwealth. I regard the penalties as satisfactory.

On 7 May 1981 Mr Nixon wrote in answer to a question (HR Deb 1981, Vol. 22 2212):

> The Department of Primary Industry monitors reports of foreign fishing vessel activity in the Australian Fishing Zone (AFZ), including the AFZ around Norfolk Island and has arranged for the charter of aircraft on a number of occasions to investigate alleged infringements when timely information regarding such incidents has been received. In addition, the Australian Government has informed the relevant foreign governments of incidents involving foreign flag fishing vessels suspects of illegal activities int he AFZ around Norfolk Island.
>
> Licenses have been issued which permit a number of foreign fishing vessels to fish in the AFZ off Norfolk Island under prescribed terms and conditions. The operations of such vessels are monitored by means of a mandatory radio reporting system which requires each vessel to provide details of its movements and activities (including catches) to the Department of Primary Industry (via the Australian Coastal Surveillance Centre) on a regular basis.
>
> Surveillance and enforcement measures in the AFZ are under continuous review, including those relating to areas of the AFZ surrounding external territories, and will be further considered during the forthcoming review of the existing Australian civil coastal surveillance system, the report on which is due to be presented to the Australian Government in mid-1982.

On 26 May 1981 Mr Nixon further wrote in answer to a question (HR Deb 1981, Vol 123, 2614):

> A 200-mile fishing zone was declared in relation to (a) Cocos Island, (b) Christmas Island, (c) Heard Island and (d) Macquarie Island on 1 November 1979.
>
> Surveillance patrols by RAAF Orion aircraft of these territories is undertaken on an opportunity basis. In addition, secondary sources of surveillance (commercial aircraft, local fishing vessels, research vessels under contract to the Australian government etc.) provide supplementary information on foreign fishing activity.

On 23 February 1982 Senator Chaney, representing the Minister for Primary Industry in the Senate, said in answer to a question (Sen Deb 1982, Vol 93, 233, as corrected by Senator Chaney on 4 May 1982, Ibid., 1769):

> Australia has the same claim to territorial waters as does New Guinea and imposes much the same restrictions. We have [no] licensing agreements

which license American fishing boats to use Australian waters. Licensed boats, of course, are not subject to any interference.

On 13 December 1983 the Minister representing the Minister for Primary Industry in the Senate, Senator Walsh, wrote in part in answer to a question (Sen Deb 1983, Vol 101, 3709):

> Under the Torres Strait Treaty both Australia and Papua New Guinea have a number of obligations regarding fisheries management. These obligations arise from a desire to:
>
> (a) protect the traditional way of life and livelihood of the traditional inhabitants, including traditional fishing — the principal purpose of the Protected Zone (Article 10);
>
> (b) co-operate and consult in the conservation, management and optimum utilisation of Protected Zone commercial fisheries, provided there is due protection given to traditional fisheries (Articles 20, 21);
>
> (c) manage particular fisheries jointly if either party considers this necessary (Article 22);
>
> (d) implement a catch-sharing arrangement for Protected Zone commercial fisheries jointly managed by the two countries (Article 23);
>
> (e) take into account the desirability of promoting economic development in the Torres Strait area and employment opportunities for traditional inhabitants when issuing commercial fishing licences, and ensure traditional inhabitants are consulted from time to time on licensing arrangements for Protected Zone commercial fisheries (Article 26);
>
> (f) protect and preserve the marine environment and the indigenous flora and fauna in and around the Protected Zone (Articles 13, 14).

Australian Fishing Zone. Control over fishing by foreigners.

For the second reading speeches to four Bills that were introduced to Parliament for the purpose of authorising the imposition and collection of a tax on various kinds of fishing activities by foreigners, see HR Deb 1981, Vol 125, 1786-1789 (24 September 1981).

Maritime Law Conventions

For Australian activity in the area of international maritime conventions and the international regulation of merchant shipping, see the speech of the Minister for Transport, Mr Morris, delivered at the tenth annual conference of the Maritime Law Association of Australia and New Zealand on 26 September 1983 (Comm Rec 1983, 1644-1647).

Law of the Sea. Third United Nations Conference on the Law of the Sea.

On 26 May 1981 the Minister for Foreign Affairs, Mr Street, said on tabling in Parliament the Reports of the Australian Delegation to the Ninth and Resumed Ninth Sessions of the United Nations Law of the Sea Conference (HR Deb 1981, Vol 123 2534-2536):

> Ever since the first substantive session of the Conference in Caracas in Venezuela in 1974, the Australian delegation has produced detailed reports

of developments at the Conference. These reports contain an account of the negotiations and have annexed to them copies of the most significant statements that were made during that particular session as well as copies of the negotiating texts produced by the Conference. Since the Fourth Session of the Conference in 1976, the Delegation's reports have been published in bound volumes and have been tabled in this Parliament. The result is that we now have available to us a detailed history of the Law of the Sea Conference, as seen through the eyes of the Australian Delegation. As far as we can ascertain, no other delegation has prepared such comprehensive reports and few governments have tabled the reports of their delegation to the Law of the Sea Conference in their Parliaments. Honourable members may be interested to know that the reports are also widely read in sectors of the community interested in the Law of the Sea, especially in Australian universities and in fishing and conservationist bodies. They are also studied closely by State governments and by the mining industry, both of which have had representatives attached to the Australian Delegation at the last few sessions of the Conference. Furthermore, the reports are provided to a number of foreign governments. I understand that they are found to be of considerable use, particularly by our neighbours in the South Pacific region.

. . .

It is self-evident and needs no emphasising by me that, as an island continent with extensive offshore areas and a heavy dependence on international trade, Australia has a vital interest in the issues before the Law of the Sea Conference. It is an objective of the Australian Government that the International Law of the Sea be cleared of the doubts and uncertainties that exist today and that some new concepts around which a wide measure of agreement has grown up should be recognised. To this end, successive governments of Australia, both on this side of the House and on the other, have taken the view that our very substantial interest in the Law of the Sea would best be protected by the early adoption of a comprehensive and widely-accepted Convention.

On 17 March 1981 the Leader of the Australian Delegation to the Tenth Session of the United Nations Conference on the Law of the Sea, Mr Keith Brennan, said in part (PP No 151/1982, Appendix C):

It is an important foreign policy objective of the Australian Government that International Law be cleared of some of the uncertainties or doubts which exist today and that it recognise some imaginative new concepts which have already secured very wide support. To be specific:

(i) We wish to see the widespread demand of coastal States for wider resource jurisdiction in offshore waters clearly recognised;

(ii) We wish to see the extent of the sovereign rights of coastal States over the resources of the Continental shelf expressed in unambiguous terms;

(iii) We wish to see a clear and agreed formulation of the rules governing the protection of the marine environment, particularly in offshore waters;

(iv) We wish to see a clear and agreed formulation of the concept of archipelagic waters, so that a long held aspiration of the

archipelagic States, many of whom are Australia's close neighbours, can be realised;

(v) We wish to see the uncertainties regarding the breadth of the territorial sea removed forever;

(vi) We wish to see a clear and agreed formulation of the rules governing the right of innocent passage through the territorial sea, and rights of passage through and overflight of archipelagos, straits used for international navigation and the exclusive economic zones of States;

(vii) We wish to see a clear and agreed formulation of the rules governing the conduct of marine scientific research in the exclusive economic zone and on the continental shelf;

(viii) We wish to see the possibility of the exploitation of the deep seabed under secure title opened up as soon as possible;

(ix) We wish to see the principle of the common heritage of mankind given practical realisation as soon as possible;

(x) We wish to see the parallel system as elaborated by Secretary of State Kissinger in 1976 given practical effect as soon as possible.

. . .

Like many other delegations, the Australian Delegation sees *no possibility* that these objectives could be secured otherwise than under a single widely accepted international Convention.

On 17 September 1981 the House of Representatives adopted the following motion, seconded by the Minister for Foreign Affairs, without a vote (HR Deb 1981, Vol 124, 1474–1476):

That this House —

(a) notes that the resumed Tenth Session of the Third United Nations Conference on the Law of the Sea decided on 28 August 1981 that the next (Eleventh) Session of the Conference, to be held from 8 March to 30 April 1982, is intended to take final decisions on the provisions of the text, so that a Convention can be opened for signature at Caracas, Venezuela, later that year, and also notes that the United States review of its Law of the Sea policies will soon be completed;

(b) reaffirms its commitment to the basic objectives of the Conference in working for the conclusion of a comprehensive and widely-accepted Convention on the Law of the Sea which would lay down a balanced and equitable regime, both for the use of the seas by all people for all legitimate purposes, and for the management and use of the resources of the seas and the seabed;

(c) recognises that Australia has vital interests in the early conclusion of these negotiations; and

(d) strongly expresses the hope that the United States Administration will decide to join with the rest of the international community in working for the successful conclusion of the work of the Conference at its Eleventh Session.

United Nations Convention on the Law of the Sea. Adoption and signing.

On 4 May 1982 the Minister for Foreign Affairs, Mr Street, said in part in answer to a question (HR Deb 1982, Vol 127, 2140–2141):

> . . . the Australian delegation was instructed to vote in favour of the Convention on the Law of the Sea at the 11th session, which ended in New York on 30 April. I think that it would be of interest to the House if I outlined precisely what happened at the end of the conference. The convention was adopted by a vote of 130 in favour, four against, and 17 absentions. As I mentioned a moment ago, Australia voted in favour, and we expect that the text will be open for signature later this year.

On 18 November 1982 the Minister for Foreign Affairs, Mr Street, issued the following statement (Comm Rec, 1656):

> The Minister for Foreign Affairs, the Hon. A.A. Street, announced today that the Government had recommended to the Governor-General in Council that Australia sign the Law of the Sea Convention at the forthcoming signing session in Jamaica from 6-10 December 1982. The Convention was adopted by the Law of the Sea Conference in New York on 30 April 1982 by an overwhelming majority of countries, including Australia, after years of intensive negotiations.
>
> Mr Street said that the decision was based on a number of factors, including the achievement of Australia's long term objectives of freedom of navigation and access to living and non-living resources. If countries with substantial maritime interests were not to support the Convention, difficulties over transit and resource exploration arrangements would almost certainly increase.
>
> The Minister said that by signing the Convention in Jamaica, Australia would be in a better position to encourage other countries, including those in our region, to sign early and to influence attitudes to the new Convention. Australia would also be able to participate fully in the work of the proposed preparatory commission, whose task it will be to prepare the detailed rules and regulations for the operation of the International Seabed Authority and Law of the Sea Tribunal.
>
> Mr Street said the Government accepted that the Convention was not perfect. Australia would have preferred that the provisions on the mining of the deep seabed beyond national jurisdiction were based more on the operation of free market forces. The Government believed, however, that the existing provisions were the best that could be negotiated in the circumstances and that the Convention's advantages far outweighed any disadvantages.
>
> Mr Street said that the Government's decision had only been reached after close consultation with the States and interested organisations, all of which generally supported Australian signature of the Convention. State governments from 1978 and the Australian mining industry from 1979 had been represented on successive Australian Delegations to the Law of the Sea Conference.
>
> The Minister said that, while the Government was disappointed that the United States Government had decided not to sign the law of the Sea Convention at this time, it hoped, nevertheless, that the Convention would

be widely supported and provide a secure and agreed framework for all aspects of the uses of the seas.

On 7 December 1982 the Leader of the Australian Delegation to the United Nations Law of the Sea Conference, Mr Keith Brennan, before signing the Convention for Australia on 10 December, made the following statement at the signing session: (*Australian Foreign Affairs Record*, December 1982, pp. 781-784):

Mr President,

It is a great pleasure to me and the members of my delegation to find ourselves meeting under your presidency on this historic occasion. May I speak again of the gratitude and the admiration we have for your work and for the enormous contribution you have made to the successful outcome of this conference.

May I also express the gratitude of the Australian Government to the Government of Jamaica for its hospitality to us all, and for the excellent arrangements that have been made for our meetings here. We are all grateful to the special representative of the Secretary General and to the Executive Secretary of the conference. My delegation shares the universal regret that our friend and colleague Shirley Amerasinghe is not here to see the conclusion of the work to which he contributed so much.

It is with great satisfaction that I am able to inform this meeting that Australia will not only be signing the final act of the conference, but will also be signing the convention itself.

Our presence here today represents the culmination of years of work spread over sixteen sessions of this conference to which must be added the meetings of the committee or the peaceful uses of the sea-bed beyond national jurisdiction which preceded it.

In the late sixties, serious disorder threatened the oceans of the world because of the inequities and inadequacies of the traditional Law of the Sea:

- fishing grounds were faced with depletion;
- the rules governing fishing unfairly favoured the rich and disadvantaged the poor;
- archipelagic states believed that the integrity of their nations was jeopardised by the doctrine that the waters surrounding the islands were high seas;
- pollution control laws were proving to be inadequate to meet the risks presented by supertankers;
- the enforcement of pollution control standards by flag states was proving to be unsatisfactory;
- uncertainty surrounded the extent of coastal states' rights over the resources of the continental shelf;
- land-locked states had inadequate access to the sea;
- in increasing numbers, states were unilaterally declaring wide territorial seas or other forms of jurisdiction over parts of the high seas;
- these declarations were perceived by others as threatening their high seas rights;
- there were fears of a resources grab in the sea-bed beyond national jurisdiction;

- there was a growing perception of a need to establish a legal basis for the grant of exclusive titles to mine sites in the sea-bed beyond national jurisdiction.

As an island continent heavily dependent on trade, Australia had a vital interest in the resolution of the doubts and uncertaintites that existed, and in the development of new concepts to restore order, and to rectify the shortcomings of the past. We were an original member of the committee on the peaceful uses of the sea-bed beyond national jurisdiction. Successive governments in Australia and all political parties at state and federal level have thrown their weight behind efforts to draw up the text of a comprehensive convention which could be widely accepted. The importance that the Australian Parliament has attached to this objective was reflected in the unanimous adoption on 17 September 1981 of a motion recording Australia's vital interest in the negotiations and its hope for the early adoption by consensus of a convention text.

The achievements of the third United Nations Conference on the Law of the Sea are historic. They reflect a renegotiation of the rules governing title to all the resources of the sea and the sea-bed and the rules governing perhaps the most important uses of the sea such as navigation, research and pollution control. The conference has broken new ground in all of the following directions, any one of which might have been a challenge for a separate conference:

(a) the establishment of the 200 miles exclusive economic zone;
(b) the recognition that coastal states' rights over the continental shelf extend to the outer edge of continental margin;
(c) the creation of new obligations to protect the marine environment and the establishment of wider coastal state power to control pollution;
(d) the recognition that archipelagic states have rights of sovereignty over the waters inside the archipelago;
(e) agreement on the maximum breadth of the territorial sea;
(f) clarification of the rules of innocent passage through the territorial sea;
(g) the establishment or re-definition of rights of navigation and overflight of archipelagos, straits used for international navigation and the exclusive economic zone;
(h) the establishment of new rules governing marine scientific research in the exclusive economic zone and on the continental shelf;
(i) tighter rules governing the conservation of fisheries;
(j) assured access to the sea for landlocked states;
(k) acceptance of the principle that the resources for the sea-bed beyond national jurisdiction are the common heritage of mankind;
(l) an extensive system for the peaceful settlement of disputes.

All of these objectives were secured by a process of consensus negotiation. It is a matter of regret that at the moment of adoption of the convention, the consensus which had operated so constructively over the years broke down. It is our sincere hope that in due course consensus will be restored. We are aware of the problems which confronted delegations which

were not able to participate in the adoption of the convention and its attendant resolution and we understand their difficulties.

Although we will be signing the convention, my own delegation would have liked to have seen some of the provisions of Part XI written differently. Our acceptance of the provisions of Part XI and related annexes is without prejudice to the attitude we might take in the drafting of other conventions. We had other difficulties too, but the same could be said of all states which intend to sign the convention. It is our hope that ways can be found to make the convention acceptable to those countries which have particular problems.

My delegation continues to believe that order will be achieved on the oceans only through the medium of a widely ratified comprehensive convention. Whatever may be the limitations of the present text, it provides the only secure and comprehensive basis on which the resources of the oceans can be exploited, ships and aircraft can enjoy rights of navigation and over-flight, research can be pursued and the environment protected in a satisfactory way.

If there is any radical departure by states from the provisions of this convention, the disorders of the sixties will return in aggravated form to plague us again. Specifically I might recall that it has long been acknowledged that the doctrine of the freedom of the high seas does not provide a basis for the grant of exclusive title over a specific site for the purpose of mining the deep sea-bed. No contrary view has ever been seriously argued or is now seriously argued. But the situation has changed in recent years. The great majority of states now recognise the resources of the sea-bed beyond national jurisdiction as the common heritage of mankind. Even if individual states question the majority view on this point, it is beyond question that any attempt to exploit the resources of the sea-bed beyond national jurisdiction outside the convention would give rise to the most serious political and legal consequences.

The signing of the final act and the opening of the convention for signature mark the end of the work of the conference; but they also mark the beginning of a new phase.

It is gratifying that enough states will sign the convention on Friday to make it possible for the preparatory commission, established by Resolution I of the conference, to begin its work at the earliest date the Resolution permits. The work that has been assigned to the preparatory commission is of great importance. We must now ensure that the preparatory commission works in an efficient and practical manner to complete this work so that the authority may be able to function effectively as soon as the convention enters into force.

The Australian Government attaches importance to, and has a continuing interest in, ensuring that the frequency and costs of meetings to be held under the auspices of the convention, and the costs and bureaucratic structures of the institutions to be established, be kept to a minimum. For its part Australia considers it essential that participants in the preparatory commission bear these objectives very much in mind and demonstrate a clear recognition of the need for financial restraint.

> Until the preparatory commission has completed its work the conditions of access to the sea-bed will remain incomplete. A particular responsibility will rest on those who, at the appropriate time, will in accordance with the terms of Resolution I be eligible to participate in the taking of decisions by the commission. It will be essential that those states act with statesmanship at that time. They will have to consult not the interests of themselves alone but also the interest of those who may sign or accede to the convention at a later date. It proved possible to construct this convention by consulting the interests of all, and the preparatory commission should, in its formulation of the rules, regulations and procedures, take account of the interests of those who may sign or accede as well as those who have already signed or acceded.
>
> Finally, may I presume on traditional friendships to address an appeal to any governments which may have on contemplation any exploration or exploitation activities outside the convention. I hope that before any final decisions in that sense is taken, an assessment will be undertaken, at the highest national level of the political consequences of any such action. Mining the sea-bed outside the convention would be highly divisive, and the country concerned would incur the hostility of the bulk of the world. Whatever may be said about the other provisions of Part XI and its related annexes, it has to be recognised that from this point onwards the doctrine embodied in Article 137 that no state shall claim or exercise sovereignty or sovereign rights over any part of the area or its resources has the same sanctity as the doctrine similarly embodied in the convention, of the freedom of navigation.

See also the answer of Senator Dame Margaret Guilfoyle, Minister representing the Minister for Foreign Affairs in the Senate, on 14 December 1982:Sen Deb 1982, Vol 97, 3422.

On 1 August 1983 Australia made the following statement in the exercise of the right of reply pursuant to the announcement made by the President of the Conference on the Law of the Sea at the 185th Plenary Meeting held on 6 December 1982 (A/CONF.62/WS/37/Add.1, p.2):

> Australia reserves its position with regard to any statement made at the final session of the Third United Nations Conference on the Law of the Sea at Montego Bay relating to the interpretation of provisions of the United Nations Convention on the Law of the Sea or to the present state of international law.

Law of the Sea. Bays. Historic Bays. Gulf of Sidra (or Sirte).

On 20 August 1981 the Minister for Foreign Affairs, Mr Street, said in answer to a question about the incident in the Gulf of Sidra involving Libyan and United States aircraft (HR Deb 1981, Vol 124, 572):

> It might be of interest to the House to have what information we have in relation to the incident referred to by the Deputy Leader of the Opposition. The reports relate to an attack on 19 August by two Libyan SU22 aircraft on United States Navy F14 aircraft participating in a naval exercise in the Gulf of Sidra. In response to that attack the United States fighters shot down the

Libyan aircraft. The United States Government has said that the incident occurred 60 miles off the coast while the Libyan Government maintains the distance was approximately 30 miles. We are, of course, very concerned about this development which threatens to increase tensions in an area where already tensions are at a critically high level. I am also aware of Libyan Government claims to sovereignty over the Gulf of Sidra. These claims have not been generally recognised by the international community. In fact, several countries, including the United States, have specifically rejected them.

From the information available to us it appears the incident occurred over international waters, that is, over waters where international law recognises the right of over-flight by military and commercial aircraft.

On 25 August 1981 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, said in answer to a question (Sen Deb 1981, Vol 91, 255):

The information I have from the Minister for Foreign Affairs with regard to Libya and the aircraft is that he is aware of reports that Colonel Gaddafi has said that the two Libyan fighters shot down by the United States Navy fighters on 19 August fired first. He is reported to have said that the Libyan aircraft were under orders to protect Libyan air space from intruders and had therefore attacked after their warning to the United States aircraft to depart had been ignored.

It has now been confirmed that the incident occurred in the geographical area of the Gulf of Sidra, further out than the 12-mile limit which we understand is claimed by Libya as territorial sea along the rest of its coast. Libya has claimed the Gulf as an historic bay since October 1973. That claim has not been generally recognised by the international community, including Australia, and a number of countries, including the United States, have specifically rejected it. It is therefore apparent that the incident occurred over international waters, where international law recognises the right of military and commercial overflight.

The Government rejects the characterisation of the United States exercise in the Gulf of Sidra as a form of provocation. United States forces have carried out such exercises a number of times in the past and in all cases have given proper and timely notice of them. Any nation has the right to conduct properly military exercises in international waters, and in no circumstances can the exercise of that right give legal justification for an armed attack. The Government is pleased that the incident has been an isolated one and that both parties have taken action under the United Nations Charter to report the matter to the Security Council.

An article in the Department of Foreign Affairs publication *Backgrounder* of 26 August 1981 discussed the Libyan claim, and concluded (p.2):

Australia has never recognised Libya's claim to sovereignty over the Gulf of Sidra.

On 17 November 1981 the Minister for Foreign Affairs, Mr Street, wrote in answer to a question (HR Deb 1981, Vol 125, 2958):

In October 1973, Libya announced that the Gulf of Sidra 'constitutes an integral part of the territory of the Libyan Arab Republic and is under its

complete sovereignty.' Libya claimed that 'through history and without any dispute, the Libyan Arab Republic has exercised its sovereignty over the Gulf'.

Neither the United Nations Secretariat's Memorandum of 30 September 1957 entitled 'Historic Bays' nor its study of 9 March 1962 entitled 'Juridical Regime of Historic Waters, including Historic Bays' makes any reference to the Gulf of Sidra or to Libyan claims to the Gulf.

We are not aware, on the information available to us, that any of the countries listed, or any of the littoral countries of the Mediterranean, has expressly recognised the Libyan claim to the Gulf of Sidra.

Law of the Sea. Ports. Access by foreign warships. Conditions of entry.

On 18 May 1982 the Minister for Foreign Affairs, Mr Street, provided the following written answer concerning Pacific Island states which had been reported to refuse port facilities to United States naval craft carrying nuclear weapons (Sen Deb 1982, Vol 94, 2078–2079):

> The United States Government has made known to us its concern that policies recently adopted by some South Pacific island states could have the effect of preventing port visits there by United States warships.
>
> The Government is aware of and understands the concerns expressed by many South Pacific island states over nuclear issues. On issues such as nuclear testing and the dumping of nuclear wastes in the Pacific, Australia has played an active and public role. Australia is a party to and strong supporter of the Nuclear Non-Proliferation Treaty (NPT) under which we have the status of a Non-Nuclear-Weapons State.
>
> The Australian Government shares with island governments an interest in maintaining and enhancing the security of the South Pacific region. The Government believes that in pursuit of this interest it is important for the three ANZUS partners to be able to maintain an effective naval presence in the South Pacific. We have therefore made known to Island Governments on a continuing basis, both bilaterally and in in multilateral forums, our view that our mutual security interests could be harmed by action which might restrict Western naval activities in the area. However, policies on conditions for port visits by foreign warships are, of course, ultimately a matter for the sovereign island states of the South Pacific themselves to determine.

On 18 August 1982 the Minister for Defence, Mr Sinclair, presented the Defence (Visiting Warships) Bill 1982 to Parliament, and part of his second reading speech is as follows (HR Deb 1982, Vol 128 488–490):

> The purpose of this Bill is to discharge the responsibilities of the Commonwealth in relation to visits by foreign warships. The House will be aware that in recent months the Government of Victoria sought to exclude certain categories of foreign warships from its ports. Somewhat earlier the Government of New South Wales expressed reservations about visits of these same categories of warships to the Port of Sydney and to other ports in that State. There have also been attempts by some organisations to hinder or put difficulties in the way of such visits. The Government has made quite plain that it will not accept interference with these visits. Visits to

Australian ports of foreign warships are an important aspect of Australia's international relations. They have obvious and important implications for our defence and security.

Constitutionally the powers in respect of such matters rest with the Commonwealth. It is the Commonwealth, not the States, that is responsible for the maintenance of defence and international arrangements with other countries. Quite properly the Commonwealth has exercised exclusive authority in this area. It intends to continue to do so. To ensure that there is no uncertainty as to the legal position applicable to the visits of such ships it is is believed that legislation in the form now introduced is essential.

In addition to asserting in practical terms the exclusive authority of the Commonwealth, the Bill will perform two other functions. It will make provision in formal terms for the authorising, on behalf of Australia, of entry to our waters by foreign warships where such entry is desired. The need for authorisation to precede any such visit has long been recognised as a matter of international law and practice. Secondly, the Bill will provide a legal framework for appropriate action to be taken to safeguard approved visits from obstruction or interference. At the same time, the Government expects that there will continue to be co-operation with the relevant State authorities in regard to the visits of foreign warships. In the vast majority of cases over many years such co-operation has been forthcoming.

The Bill specifically adverts in its objects clause to the co-operation and assistance of the State and their authorities in facilitating access to Australian ports for visiting warships. The Government has reiterated in recent statements the importance it attaches to visits to Australia by the warships of allied and friendly countries in the context of our overall defence arrangements. These visits are of the greatest importance, whether they occur in the course of joint exercises, for resupply purposes, for crew recreation or as a practical demonstration of goodwill. We believe that foreign warships should be as free to visit Australian ports as Australian warships are to visit the ports of our friends and allies. The Government has no doubt that its views in this matter are endorsed by the overwhelming majority of the Australian people. It is also relevant to quote from the joint communique issued by the representatives of the governments of the United States, New Zealand and Australia at the conclusion of the thirty-first meeting of the ANZUS Council held in Canberra on the 21 and 22 June 1982. The communique states:

> In particular (the Deputy Secretary and the Ministers) confirmed the high priority each partner placed upon a regular and comprehensive programme of naval visits to each other's ports, as well as to friendly ports in the Asia/Pacific region generally. They recognise the importance of access by United States naval ships to the ports of its Treaty partners as a critical factor in its efforts to maintain strategic deterrence and in order to carry out its responsibilities under the terms of the Treaty. In this regard the Australian and New Zealand members declared their continued willingness to accept visits to their ports by United States naval vessels whether conventional or nuclear powered.

In the light of statements made by the Premier of Victoria and earlier by his

counterpart in New South Wales, it is believed that this undertaking may not be capable of implementation without the passage of this legislation. The Government accepts that concerns have been expressed, quite understandably, with particular regard to ships which are nuclear powered or ships which would be carrying nuclear weapons. So far as nuclear powered ships are concerned, the Government's positions continues to be that expressed by the Prime Minister (Mr Malcolm Fraser) in his statement to the House of 4 June 1976 on this matter. Subject to compliance with appropriate safety procedures, visits of nuclear powered ships can proceed without significant risk of adverse consequences. With regard to visits by ships which could be carrying nuclear weapons, as has been repeatedly made clear, the position is that the foreign governments concerned will not confirm or deny that a particular ships is carrying nuclear weapons. Again, if I may quote from the ANZUS communique:

> (The Ministers and the Deputy Secretary) noted and accepted that it is not the policy of the United States Navy to reveal whether or not its vessels are armed with nuclear weapons.

To do so in particular cases would over a period of time provide valuable information to potential enemies about the capabilities of the naval forces concerned and, of course, as to the particular ship. The Government accepts this position and will not be seeking disclosure as to whether a particular visiting ship is or is not carrying nuclear weapons. In relation to the safety of nuclear weapons which may be carried on visiting allied warships, the precautions and procedures that are known to be taken by the navies concerned are such as to preclude the possibillity of an accidental nuclear detonation. The risk of accidental explosion of the conventional explosive in such weapons is judged to be as small as the risk of an accidental explosion involving conventional weapons carried by our own naval vessels. Such an accident has never happened.

Against this background I turn to the terms of the Bill. As I have already mentioned, the Bill includes an objects clause stating that it is intended to establish procedures for the discharge by the Commonwealth of its constitutional responsibilities and powers. The clause also declared the intention that in furthering the object of the Act the co-operation and assistance of the States and their authorities be sought and utilised, so far as it is appropriate and practicable to do so, in facilitating access to Australian ports for warships visiting Australia. However, the Bill is expressed to operate to the exclusion of any State or Territory laws that would prevent or obstruct any act or thing that a warship or person is empowered or permitted to do by the Bill.

Central to the operation of the legislation is the power given to the Minister for Defence to grant approval for a specified foreign warship, or class of foreign warships, to have access during a specified period to Australian ports or to specified Australian ports. Such an approval may be made subject to conditions. It is envisaged that, in practice, all such approvals will be subject to compliance with conditions relating to navigation and safety, and health, quarantine, customs and immigration requirements. Provision is also made for the Minister to give directions to the

commander of a foreign warship in respect of which an approval is in force. Directions may be given about the movement of the ship or its crew or about the loading or unloading of goods. Directions of this nature would essentially be supplementary to the conditions attached to an approval, and could be necessitated by circumstances arising after an approval is given. Where an approval is in force, a foreign warship covered by the approval will be entitled to enter, remain in and depart from an Australian port covered by the approval. In addition, goods may be loaded onto or unloaded from the ship and services may be supplied to the ship.

Under clause 9 of the Bill, the Minister for Defence is empowered to give directions to facilitate access by a foreign warship to an Australian port, where a relevant approval is in force. These powers would be exercised only as a last resort where access by a foreign warship was being frustrated or significantly hindered by a refusal or failure to provide the goods, services or facilities normally required for that purpose. These might include the provision of pilotage or tug services, the availability of berthing facilities, or the supply of services such as water or electricity. Clause 9 provides that a direction may be given only where the Minister is satisfied that giving the direction is necesssary to secure the entry, stay or departure of the ship, or the safety of the ship, its crew or other persons, or is necessary or convenient for the effective operation of the ship. Provision is made for compensation for loss or damage sustained as a result of compliance with a direction. Provision is also made for payment for the provision of goods, services or facilities, or other things, pursuant to a direction.

The Bill will establish offences of preventing, hindering or obstructing the entry of a ship to the berthing of a ship at, or the departure of a ship from, an Australian port in respect of which a relevant approval is in force. Other offences are provided relating to failure to comply with a direction by the Minister for Defence under clause 9, and of preventing, hindering or obstructing other specified activities relating to a ship. As I have already said, the Government believes that visits to Australian ports by the warships of our friends and allies have the overwhelming support of the Australian people. The Government is confident that this legislation, prompted by threat to the continuance of such visits, will have similar support. I commend the Bill to the House.

Note: The Bill was not passed into law.

On 8 December 1982 the Minister for Defence, Mr Sinclair, announced new conditions of entry for nuclear powered warships, as follows (HR Deb 1982, Vol 130, 3078–3079):

> The House will be aware that nuclear powered warships of the United States Navy regularly visit Australian ports. Since the Government decided in 1976 to allow such visits about 50 port calls have been made by a variety of United States Navy nuclear powered surface ships and submarines to Western Australia, Victoria, Tasmania, Queensland and the Northern Territory. These port visits — like visits made by conventionally powered United States Navy warships — are valued by both the Australian and United States governments and are an important practical expression of

naval co-operation in peacetime between close allies. This year's ANZUS Council communique recorded that the Council members:

> confirmed the high priority each partner placed upon a regular and comprehensive programme of naval visits to each other's ports, as well as to friendly ports in the Asia/Pacific region generally. They recognised the importance of access by United States naval ships to the ports of its Treaty partners as a critical factor in its efforts to maintain strategic deterrence and in order to carry out its responsibilities under the terms of the Treaty.

In this regard, I would draw to the attention of the House the fact that the United States Navy now operates about 135 nuclear powered warships and that more than 40 per cent of the major combatant units of the United States Navy are nuclear powered. All the nuclear powered warships visits that have taken place in the last six years have been arranged in accordance with the conditions of entry laid down by the Australian Government in 1976. These conditions of entry were incorporated in the document titled 'Environmental Considerations of Visits of Nuclear Powered Warships to Australia' which was tabled in this place by the Prime Minister (Mr Malcolm Fraser) on 4 June 1976. I now wish to inform the House that the Government has decided, following a review of the conditions of entry carried out by the Department of Defence in co-operation with other departments and the Australian Atomic Energy Commission, that a number of changes should be made to those conditions.

Unlike the conditions of entry laid down in 1976, the new conditions of entry are intended to apply to warships having reactors larger than 100 megawatts as well as to warships with reactors smaller than 100 megawatts. This change follows further assessment of information available on these vessels and the selection of berths such that any health hazards associated with the visits will be no greater than those accepted currently for warships with smaller reactors. The new conditions of entry will therefore enable visits to approved berths in Australia by the Nimitz class of aircraft carriers, subject only to appropriate arrangements being made to remove the vessel to a remote location in the unlikely event of an accident involving the nuclear propulsion plant. The other change of substance to the general conditions of entry concerns emergency towing arrangements. The 1976 conditions of entry stipulated that a tug must be available for emergency towing duties whenever a nuclear powered warship visited an Australian port. United States nuclear powered surface ships, however, have two or more reactors and could move under their own power even in the unlikely event of damage to one of those reactors. Except when visits are made by nuclear powered submarines, which have only one reactor, the requirement to remove a warship to a safe location may therefore be met by the warship itself rather than by separate towing vessels.

The new conditions of entry will apply to visits by nuclear powered warships of the United States Navy and — should visits be requested by it — to nuclear powered warships of the Royal Navy.

They are as follows:

A. visits will be for purposes such as crew rest and recreation and not

for fuel handling or repair to reactor plant necessitating breach of reactor containment;

B. visits will be subject to satsifactory arrangements concerning liability and indemnity and to provision of adequate assurances relating to the operation and safety of the warships while they are in Australian waters;

C. movement of vessels must take place during daylight hours under conditions where visibility is not less than three quarters of a mile;

D. navigational controls on other shipping will be applied during the time that nuclear powered ships are entering or leaving ports;

E. there must be a capability to remove the vessel either under its own power or under tow, to a designated safe anchorage or to a designated distance to sea, within the time frame specified for the particular berth or anchorage and in any case within 24 hours, if an accident should occur; and

F. an operating safety organisation, competent to carry out a suitable radiation monitoring program and able to initiate actions and provide services necessary to safeguard the public in the event of a release of radiactivity following an accident, must exist for the port being visited.

I would emphasise to the House that the new conditions of entry are completely consistent with the very high standards of safety that have always been applied during visits by nuclear powered warships. It might be noted that, among the detailed precautions that are taken, these warships may use only those berths which have been individually assessed and cleared by the Australian Atomic Energy Commission as suitable for such use. Moreover, competent Australian personnel monitor carefully radiation levels in the vicinity of these warships throughout each visit, and a separate environmental monitoring program is conducted in co-operation with State authorities in each of the ports that are visited.

The results of these monitoring programs are published annually by the Department of Home Affairs and Environment. No emissions of radiactivity have been detected by these programs from any of the nuclear powered warships that have visited Australia. Application of the new conditions of entry for nuclear powered warships will facilitate future visits to Australia by our United States ally's warships and at the same time will ensure that all the necessary precautions are taken to protect fully the interests of the Australian public in these visits. I commend them to the House.

Law of the Sea. Ports. Access by warships.

On 15 December 1983 the Attorney-General, Senator Evans, announced the Government's policy on visits by nuclear-powered warships (Sen Deb 1983, Vol 101, 3829–3832):

> There are a number of different strands in that policy situation, some of which are better developed than others, as I will explain. The first strand of relevant policy here is the proposition that the Australian Government will not allow nuclear arms on Australian soil. . . .
>
> The second strand of relevant policy relates to the visits of nuclear

powered ships to Australian ports. Again here, a clear bipartisan approach — perhaps even clearer than in the case of nuclear arms on Australian soil — has evolved over time and there is no question of that bipartisan approach being in any way at risk. The situation here is that nuclear powered vessels will be allowed to visit Australia subject to certain guidelines. Those guidelines were first laid down after some considerable period of discussion and negotiation by the then Prime Minister, Mr Fraser, in the House of Representatives on 4 June 1976. They have subsequently been slightly modified to take account of later developments including, in particular, the controversy around the proposed visit of a nuclear warship to Victoria in 1982. As they now stand, with only very minor modifications to the original 1976 statement, they are as follows:

(a) Visits will be for purposes such as crew rest and recreation and not for fuel handling or repair to reactor plant necessitating breach of reactor containment;
(b) Visits will be subject to satisfactory arrangements concerning liability and indemnity and to provision of adequate assurances relating to the operation and safety of the warships while they are in Australian waters;
(c) Movement of vessels must take place during daylight hours under conditions where visibility is not less than three quarters of a mile;
(d) Navigational controls on other shipping will be applied during the time that nuclear powered ships are entering or leaving ports;
(e) There must be a capability to remove the vessel either under its own power or under tow to a designated safe anchorage or to a designated distance to sea within the time frame specified for the particular berth or anchorage and in any case within 24 hours, if an accident should occur; and
(f) An operating safety organisation competent to carry out a suitable radiation monitoring program and able to initiate actions and provide services necessary to safeguard the public in the event of a release of radiactivity following an accident must exist for the port being visited.

There is no ambiguity or uncertainty about that particular policy statement, nor any disposition on the part of the Government to review or modify it in any way.

The third strand in the relevant policy relates to the visits of nuclear armed ships, or ships which may be nuclear armed, to Australian ports. Again, there is a long-standing bipartisan policy initiated by the previous Government and continued by the present Labor Government that we do not ask our allies either to confirm or deny whether nuclear weapons are being carried.

The fourth element in this policy network that relates to this issue concerns dry docking of ships armed with conventional weapons. Again, there has been a clear policy in existence for a long period which the present Government inherited from its predecessors. The essence of that policy is that naval ships armed with conventional weapons going into dry dock are to be required to de-ammunition or disarm in the sense in which we

discussed it yesterday, subject, however, to waiver or exemption — partially or wholly — depending on the circumstances of the individual case. So much is clear. But as a matter of general statement, how that particular policy is to be applied in a particular case will depend on all the circumstances of the particular case.

The next element that comes into the policy equation, however, concerns the dry docking of naval ships armed with non-conventional weapons, or ships which may or may not be armed with non-conventional weapons. The difficulty is that there is simply no established policy in place in this respect. To the extent that there has been a clear policy about dry docking naval ships, that policy was formulated in the context of conventional weapons and it is the case that attention has simply never been addressed previously to what the situation is or ought to be in relation to ships which may be armed with non-conventional weapons, and how that particular aspect of the policy is to be integrated or interrelated with the previous matters that I have mentioned, about no nuclear arms on Australian soil, and about the rules governing nuclear armed ships visiting Australian ports, namely, that we do not ask our allies to confirm or deny. Clearly, a different situation arises with non-conventional weapons than arises with respect to conventional weapons. What needs to be done is to establish guidelines to ensure that urgent needs can be accommodated, and the policy is clearly very much in need of review and development in this particular area.

The final policy strand that is relevant and which can be stated as a policy of general application which would, I believe, command ready bi-partisan support — although I do not believe that it has been articulated so clearly in the past — concerns the weight to be given to safety considerations when it comes to dry docking or otherwise harbouring warships visiting Australian ports. We have not, as I understand it, clearly articulated guidelines to deal with this in the past. But as the Minister for Defence (Mr Scholes) has said, and as I have said, representing him in this place, there is no question but that Australia would not in any way endanger the safety of any ship or crew by not accommodating genuine needs that that ship or crew had. What, of course, will constitute a danger to the safety of the ship or its crew will vary quite considerably according to particular circumstances, not least whether the nation is at peace or at war. If the particular disability being experienced by the ship is a breakdown in one of its engines, which means that it cannot cruise or steam at its otherwise maximum speed, that may be of no particular significance at all in a peace time environment but manifestly of very great significance in a war time environment.

Law of the Sea. Ports. Access by ships in distress. Protest to Soviet Embassy.

On 22 September 1982 the following report appeared in *The Australian*, at page 3:

> The Federal Government has lodged a protest with the Soviet embassy in Canberra over the behaviour of the captain of a Russian research vessel.
>
> The vessel, Antaris, called at the Cocos Islands, an Australian-adminis-

tered group of 27 atolls in the central Indian Ocean, late last month.

The captain told local official the Antaris had engine trouble and he wanted to carry out repairs.

The officials directed the captain repeatedly to a safe anchorage on South Keeling Island. The captain refused and moored his ship on North Keeling Island.

Both Islands are part of the Cocos group.

A spokesman for the Department of Foreign Affairs in Canberra said yesterday the Government was concerned over the captain's defiant action and the incident had been taken up with the Soviety embassy.

The Minister for Home Affairs and the Environment, Mr McVeigh, confirmed last week that Cabinet had discussed sightings of Soviet submarines in the area.

The Cocos Islands, which will become an overseas territory of Australia next year after a UN supervised act of self determination for the 323 Cocos Malays, have great strategic significance for the Western alliance.

The airstrip on West Island is used by the RAAF as a staging base for reconnaissance flights in the central Indian Ocean and by the US Air Force staging through to Diego Garcia.

Law of the Sea. Straits. The Straits of Hormuz. Iran-Iraq war.

On 18 October 1983 Senator Evans, the Minister representing the Minister for Foreign Affairs in the Senate, said in answer to a question about the threat by Iran to block the Straits of Hormuz (Sen Deb 1983, Vol 100, 1634):

> Obviously the Government takes seriously any possibility of the Straits of Hormuz being blocked as a result of the Iran-Iraq conflict. I indicated the Government's concern in this respect in answer to a question last week. As to the Press reports that have been circulating to the effect that Australia could be asked to contribute to a naval force in the Middle East if there is an escalation of the war between Iran and Iraq, my brief from the Minister for Foreign Affairs is to the following effect: There has been no discussion with any country of such an Australian involvement. Australia has, however, discussed the situation in the Gulf in general terms with a number of countries and it has expressed its concern in those discussions at the possibility of an escalation of the Iran-Iraq war. Australia has supported calls for a ceasefire in the conflict and negotiations to remove differences between Iran and Iraq evern since the hositilities began three years ago. We hope that both countries will look again at the possibility of a peaceful resolution of the conflict.

Senator Evans provided the following further written reply from the Minister for Foreign Affairs on 16 November 1983 (Sen Deb 1983, Vol 100, 2713):

> Australia has not made a direct approach to Iraq in relation to its conduct of the war with Iran . . .
>
> Australia has maintained a scrupulously neutral position in relation to the war and has publicly expressed its concern about the possible escalation of the conflict. The Government continues to hope that both sides might be able to agree to a ceasefire and the negotiation of their differences.