

III – RECOGNITION

Recognition of Governments – change in Australian policy

On 19 January 1988 the Minister for Foreign Affairs and Trade, Mr Hayden, issued the following news release:

The Minister for Foreign Affairs and Trade, Mr Bill Hayden, MP, today announced that Australia has changed its policy on recognition of foreign governments.

Mr Hayden said that his Department had for some time been conducting a review of Australian policy on the question of formal recognition of governments. As a result of the review, the Government had now decided that the practice of formally recognising or withholding recognition of foreign governments should be abandoned.

From now on the Australian Government will not extend formal recognition, whether *de facto* or *de jure*, to new governments taking power in other countries. Instead, Australian authorities will conduct relations with new regimes to the extent and in the manner which may be required by the circumstances of each case.

Mr Hayden said that successive Australian governments had been concerned for a number of years about the public presentation of Australia's practice of extending formal recognition to foreign governments which come to power otherwise than by normal constitutional processes.

The decision whether to recognise or not recognise such a regime had at times led to misunderstandings and complications in any dealings Australia might need to have had with the new regime for consular or other purposes.

In the first place, the extension of recognition to a new regime was often misinterpreted in the public mind as denoting Australia's approval of that regime. Second, existing practice had forced successive Australian governments to make a simple black and white choice between recognition and non-recognition. This had created practical difficulties, particularly in a rapidly evolving situation when flexibility on Australia's part might have suited Australia's interests better.

The adoption of the new policy will make it easier for the Government to indicate to a new regime to what extent it is prepared to do business with it, and to do so in a less dramatic way than sometimes occurs under the present practice.

The new policy is consistent with the practice of other major Western countries.

The Government will not take any steps under the new policy to establish formal relations with either Afghanistan or Kampuchea.

On 21 January 1988 the Opposition spokesman, Mr John Spender QC, issued the following news release:

The Opposition supports the change to recognition of states in place of recognition of governments for the purposes of foreign relations.

However, it does so on the basis of certain specific statements of principle.

First, in recognising a foreign State the Australian Government should be guided by the long established factual criteria of statehood, as laid down in the Montevideo Convention and its own appreciation of the relevance and importance of the question of self-determination by the people of a State whose recognition is under consideration.

Second, recognition of a State should not be taken to imply any judgment whatsoever on the Government of that State.

Third, the Australian Government should retain the right, in exceptional circumstances, to designate the Government accepted by Australia as representing any State recognised by Australia, or to specify that a particular Government is not, or is no longer, recognised by the Australian Government as being entitled to represent such a State.

Fourth, should the occasion arise, Australia should be free to declare that a particular authority is regarded as entitled to represent a territory, or part of a territory and its population, or a people or group of people, for such purposes as the Australian Government may declare.

Fifth, the Australian Government should have the rights to recognise, or withhold recognition from territorial changes, taking account of its obligations under the UN Charter, general international law and considerations of Australia's national interest.

Sixth, in view of the importance recognition can have for legal claims, the Australian Government should consider what approach it should adopt to the framing of executive certificates for legal proceedings in situations where the general principle of not recognising governments applies.

The Opposition supports the application of this policy without further delay to Fiji and again calls on the Government to resume civil aid programmes to Fiji.

The Opposition's policy is deliberately framed so as to cater for the kind of situations that exist in the Baltic states. The Opposition maintains its refusal to accept the legality of the Soviet annexation of those states.

In view of the importance of the whole question of recognition for the conduct of foreign affairs, the Government should issue a detailed statement spelling out the principles that would guide it on recognition questions.

On 16 March 1988 the following article on Australia's new recognition policy was published by the Department of Foreign Affairs and Trade in its publication *Backgrounder* (No 611):

On 19 January 1988 Cabinet decided that Australia would no longer formally recognise both States and Governments. Instead Australia would simply recognise States. This change in policy had immediate implication for Australia's dealings with Fiji.

* * * * *

Previously Australia recognised (or did not recognise) both States and Governments in existing States. We now recognise States only.

- . Recognition of a State essentially means acceptance of it as a fully independent and sovereign member of the community of nations. Our recognition of existing States is more or less taken for granted. Recognition has been accorded in a variety of ways over the history of Australia's independent foreign relations, eg by entering into treaties, formal communications, ministerial visits and, most obviously, by the establishment of diplomatic relations. Recognition (or non-recognition) of States is therefore not normally an issue for us, and is likely only to become one when a new State emerges – eg where a former colonial or dependent territory becomes independent, or where part of one State breaks away to form a new State – eg as in the case of Bangladesh.
- . Under our old policy the issue of recognition (or non-recognition) of a Government of an existing State arose much more frequently, ie whenever there was a change in that Government, but particularly where there was a change by violent or unconstitutional means. The problem then for a Government formally recognising Governments as well as States was whether to "recognise" the new regime as the Government of the State concerned.
 - the grant or refusal of recognition of a new Government has, however, nothing to do with the recognition of the State itself: they are separate issues. If the Government of one State refuses to recognise a new "Government" in another existing State, the existing State does not thereby cease to be a State.
- . Under our old policy the recognition of a new regime which had come to power in an existing State as the Government of that State was technically a formal acknowledgment that the Government was in effective control of that State and in a position to represent that State internationally. However, recognition of a new Government inevitably led to public assumptions of approval or disapproval of the Government concerned, and could thereby create domestic or other problems for the recognising Government. On the other hand, "non-recognition" limited the non-recognising Government's capacity to deal with the new regime.
- . Considerations such as these have led a number of western Governments to change to a policy of recognising States only. Australia now follows this policy. This means:
 - Australia continues to recognise those States it previously recognised
 - There is no question, therefore, of Australia now "recognising" the State of Fiji (as has been suggested in the media).
 - Australia no longer recognises (or declines to recognise) Governments of existing States.
 - The question as to whether or what Australia "recognises" in these terms is no longer relevant.
- . In future, Australia will no longer announce that it recognises, or does not recognise, a new regime in an existing State. Australia's attitude to a new

regime will be ascertained by the nature of our policies towards and relations with the new regime.

- . Important indicators of Australia's attitude to a new regime will be:
 - public statements
 - establishment of and/or the conduct of diplomatic relations with it
 - ministerial contact
 - other contacts, such as entering into aid, economic or defence arrangements, technical and cultural exchanges.
- . Abandoning the device of recognition of Governments will enable us to react more flexibly and quickly to developments and to avoid giving rise to speculation about recognition and, consequently, assumptions of approval.
- . Finally, in announcing this change of policy, the Government made clear that it should not be taken as representing any change with respect to Australia's existing policy towards Afghanistan or Kampuchea. However, it is open to the Australian Government to have contact with any Kampuchean faction without any implication of acknowledging its political legitimacy. Until such time as a politically acceptable regime emerges in Kampuchea with which we wish to establish relations there will be no exchange of diplomatic representations with Kampuchea and Australia will not accept as legitimate any claim to the Kampuchean seat in the United Nations or other international organisations.

Recognition of governments – diplomatic relations – the implications of diplomatic contact – guidelines on Official Australian Contacts with foreign representatives

On 18 February 1988 the Minister for Foreign Affairs and Trade, Mr Hayden, in answer to a question on notice, provided Parliament with the text of the guidelines he had approved earlier that month on Official Australian Contacts with Representatives of Foreign States, Political Entities or Organisations where Special Considerations are involved. [The guidelines, which up-dated those issued in 1986, were issued before the recent change in recognition policy had been taken into account; the guidelines were revised and reissued in September 1991.]

Following is an extract from the guidelines (HR Deb 1988, Vol 159, pp 389–392):

CONTACTS WITH TAIWAN

Australia recognises no Government authorities in Taiwan. Hence any travel to Taiwan should be the subject of prior approval by the Minister for Foreign Affairs or as delegated by the Minister to the Department of Foreign Affairs. Policy on this matter has been formulated over the years since diplomatic relations were established with the People's Republic of China in 1972. While the policy generally follows the practice of the previous Government, it is in fact based upon principles laid down by the Labour Government between 1972 and 1975.

The authorities in Taiwan claim to be nothing less than a Government of China and they agree entirely with Beijing that Taiwan is a province of China.

We can only recognise the Government of the People's Republic of China with its seat in Beijing. ...

CONTACT WITH INDO-CHINESE STATES AND GROUPS

Vietnam

Australia has maintained normal diplomatic relations with Hanoi since 1973. It maintains an Embassy in Hanoi, as does Vietnam in Canberra. ...

VIETNAMESE AND LAO ANTI-COMMUNIST RESISTANCE MOVEMENTS

Australia has recognised the current governments in Vietnam and Laos and enjoys normal relations with them. Contact with groups which have openly espoused the armed overthrow of the Vietnam and Hanoi Governments should be avoided. ...

COALITION GOVERNMENT OF DEMOCRATIC KAMPUCHEA (CGDK)

The CGDK was formed in 1982 to bring together the three resistance movements opposing the Heng Samrin Government in Phnom Penh. It consists of three groups, one of which, the Democratic Kampuchea Government, was overthrown by the Vietnamese invasion in 1979 and whose Khmer Rouge forces now operate from bases on the Thai/Cambodian border. The Australian Government does not recognise any Government in Cambodia.

The UN General Assembly has accepted the credentials of the CGDK which, as "Democratic Kampuchea", occupies Cambodia's seat in UN fora and agencies. This arrangement does not in itself imply more general recognition of the CGDK: a number of governments which accept Democratic Kampuchea's credentials in the UN do not recognise it as the Government of Cambodia.

Australia's position on Democratic Kampuchea's credentials has been to abstain at all meetings where the issue has arisen since Australia withdrew recognition in 1981. ...

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (DPRK-NORTH KOREA)

Diplomatic relations between Australia and the DPRK were established in 1974, followed by the opening of Embassies in Canberra and Pyongyang. For reasons which have never been fully explained, the DPRK withdrew its Embassy from Canberra in October 1975 and expelled Australia's mission from Pyongyang. We regard our relations with the DPRK as having been "interrupted", although we continue to recognise its Government.

CONTACTS WITH LATIN AMERICAN STATES

CHILE

Australia's relations with the military government are cool but official contact is maintained. ...

CENTRAL AMERICA

Australia maintains normal relations with all governments in the region. ...

PARAGUAY

Australia's relations with the military government are minimal. ...

CUBA

Australia has consular but not diplomatic relations with Cuba. ...

CONTACTS WITH OTHER AFRICAN STATES AND GROUPS

The Government maintains correct diplomatic relations with South Africa. There are no contacts or cooperation on intelligence, military or nuclear matters, reflecting the Government's strong opposition to apartheid. Bilateral relations can be described as "cool but correct" and contact should reflect this situation.

SOUTH AFRICA: BLACK HOMELANDS

Australia, along with the rest of the international community, does not recognise the so-called independent "homelands" created by the South African Government – Transkei, Ciskei, Venda and Bophuthatswana – on the grounds that to do so would be to condone the apartheid system and accord it unjustified respectability.

SOUTHERN AFRICAN LIBERATION MOVEMENTS (ANC, PAC, SWAPO)

Normal and informal contacts may be maintained with representatives of black nationalist movements opposed to the South African Government, including SWAPO, the African National Congress (ANC) and the Pan Africanist Congress (PAC).

There should be no recognition of claims to be the sole representative of the people of Namibia or South Africa or to be legitimately constituted governments-in-exile. ...

DISSIDENT MOVEMENTS

Australia follows the general policy of recognising those Black African governments recognised by the Organisations of African Unity (OAU). However, there are dissident movements in many of these countries (Eritrean and Tigrayan secessionist movements, UNITA in Angola, the MNR in Mozambique to mention only a few), whose role in Africa may be significant. Contact with representatives of such organisations need not be avoided. However, these should be at an informal level and there should be no real or implied recognition of the claims of the various movements.

MACEDONIANS

The Greek Government has in the past objected to the use in Australian Government publications of the term "Macedonian". The State of Macedonia is part of the Federal Republic of Yugoslavia. Persons who live in Greece, and who speak the Macedonian language, are Greek in nationality.

CROATIANS

The Government does not recognise the existence of a separate Croatian State, nor the international standing of any group purporting to represent such a State. No contacts should be made, nor correspondence conducted, which might imply Australian recognition of such an entity.

Recognition of States – the criteria of statehood – diplomatic accreditation

On 26 September 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following answer to a question on notice which asked, amongst other things, how many sovereign states currently existed (Sen Deb 1989, Vol 136, pp 1367-1368):

(1) The precise answer to this question depends on the criteria used for determining statehood. There are currently 159 States members of the United Nations. Of these, two members, the Byelorussian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic would not normally be considered as sovereign states. There are in addition a number of States which meet the criteria of statehood under international law – a permanent population, a defined territory, a Government, and a capacity to enter into relations with other States – but which are not members of the United Nations. A number of these States participate in certain UN or regional activities. They would include the Democratic Peoples' Republic of Korea, the Federated States of Micronesia, the Holy See, Kiribati, Liechtenstein, the Marshall Islands, Monaco, Nauru, the Republic of Korea, San Marino, Switzerland, Tonga and Tuvalu.

(2) As at 1 August 1989 Australia has 71 resident diplomatic missions.

(3) As at 1 August 1989 Australia has non-resident diplomatic accreditation with 68 states.

(4) As at 1 August 1989, of the states referred to in (1) Australia does not maintain either resident or non-resident diplomatic accreditation with the following: Afghanistan, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Djibouti, Dominican Republic, Equatorial Guinea, Guinea, Guinea-Bissau, Haiti, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Mali, Mauritania, Monaco, Niger, Rwanda, San Marino, Sao Tome and Principe, Suriname, Togo and Zaire. Diplomatic relations with the DPRK have been suspended since 1975. Australia maintains consular relations with Liechtenstein.

Recognition of States – non-recognition of governments – Afghanistan, Burma (Myanmar), Cambodia

On 5 May 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1989, Vol 133, p 1922):

Australia's position is, of course, one of recognising states rather than governments. As such, the question of recognising anyone in particular does not arise. In practice, we deal with the particular Government that appears to be or is in control of the situation on the ground. In Afghanistan at the moment it is simply not possible to say that any Government, whether it be the Najibullah remnant or the resistance forces, constitutes such a Government in control. The situation is very fluid, very confused. I simply hope that moderate positions will be adopted, that compromise will be possible and that an acceptable route to self-determination and free elections can be assured.

On 14 December 1989 Senator Evans provided the following written answer in part to a question on notice (Sen Deb 1989, Vol 138, pp 4622–3):

The present military regime in Myanmar, under General Saw Maung, came to power in September 1988 after suppressing popular demonstrations in favour of democracy in which an estimated 3,000 people, a large proportion of whom were students, were shot by security forces. ...

The regime has come to rely increasingly on the exercise of martial law. ...

Australia maintains normal diplomatic relations with Myanmar. The question of recognition does not arise as Australia recognises states and not governments.

The Australian Government has never indicated support for the regime, the way it came to power, or its continued suppression of opposition groups. On the contrary, Australia has been at the forefront of those countries encouraging the Myanmar authorities to hold early general elections and to improve the observance of human rights. ...

The Australian Government will continue to do all that it reasonably can do to encourage the military regime in Myanmar to meet the democratic aspirations of the people of Myanmar and to improve its observance of fundamental human rights.

On 24 March 1988 Senator Evans, representing the Minister for Foreign Affairs and Trade, said in part in answer to a question without notice (Sen Deb 1988, Vol 126, p 1284):

... under Australia's new recognition policy, which involves the recognition of states, not of governments, the question of the recognition of any particular Government in Kampuchea simply does not arise. We remain of the view that no existing Kampuchean faction has a legitimate claim to acceptance as the representative of Kampuchea.

On 21 December 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer to a question on notice (HR Deb 1988, Vol 164, p 3935):

For the purposes of international law, Australia, like most other countries, has recognised for years now Cambodia and Afghanistan as States. Australia does not, however, as a matter of policy, accept any of the various factions or regimes in Cambodia and Afghanistan as the legitimate governments of those States.

On 23 May 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (Sen Deb 1989, Vol 133, p 2524):

The Australian Government's attitude toward the Khmer Rouge is one of unequivocal opposition to any return to power of Pol Pot and his senior associates in the Khmer Rouge.

As a result of the Government's decision, in January 1988, to abandon the recognition of governments, the question of "recognising" the Khmer Rouge does not arise.

Recognition of States - China - Taiwan and Tibet

On 15 June 1989 the Prime Minister, Mr Hawke, said in answer to a question without notice asking whether he would give consideration to formally recognising Taiwan as a result of the situation in China (HR Deb 1989, Vol 167, p 3535):

The Government will not give consideration to his suggestion. It is not a proposal which has any merit or sense in it at all. It would do nothing obviously to assist the situation of the people in China, and our major concern as a Government and as a country must be, I believe, to take those courses of action

which are calculated to create a situation where the previous sorts of reforms being undertaken in China can be proceeded with, and a situation where there will be a repudiation by the leadership in China of the policies it has embraced over recent weeks. There is no conceivable way that the course of action suggested by the honourable gentleman in his question could have any such beneficial effect in that direction. It would be a negative complication. It is not something which has been suggested or contemplated, as far as I am aware, by any of our friends in the West. Noone has contemplated that and, if I may say so without being too offensive, it is manifestly an irrelevant and illogical suggestion.

On 7 December 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1989, Vol 138, p 4094):

The Australian Government's position on Tibet is well known. Australia acknowledges that Tibet is part of China; no country recognises Tibet as an independent State. At the same time, we consider it important that universally accepted standards of human rights are observed in Tibet, including the right of Tibetans to practise their cultural and religious traditions.

Recognition of States - non-recognition of the "Sahrawi Arab Democratic Republic"

On 26 May 1988 the Minister for Foreign Affairs and Trade, Mr Hayden, provided the following written answer in part to a question on notice (HR Deb 1988, Vol 161, p 3217):

The Western Sahara was admitted to the OAU in February 1982 but its membership is disputed by Morocco and some other states. Australia does not recognise the independent State of the Western Sahara (the so-called Sahrawi Arab Democratic Republic). Morocco withdrew from OAU membership as a consequence of the admission of the "SADR".