V – TERRITORY

Antarctica – Antarctic Treaty – applicability to Marion Island (South Africa)

On 22 August 1988 the Minister for Foreign Affairs and Trade, Mr Hayden, provided the following written answer to a question on notice (HR Deb 1988, Vol 166, p 114):

(1) South Africa was an original signatory of the Antarctic Treaty which it ratified in 1960. It is also a signatory to the Convention for the Conservation of Antarctic Seals (1972) and the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) (1980).

In June this year South Africa also signed the Final Act of the Antarctic Minerals Convention.

(2) South Africa has operated a scientific research station on Marion Island since 1948. The station is supported under the South African National Antarctic Research program.

(3) The Government has no evidence that South Africa has carried out or plans to carry out any nuclear or military activities on or near Marion Island.

While the Antarctic Treaty does contain provisions prohibiting nuclear explosions, weapons testing and other military activities, Marion Island (which lies north of latitude 60 degrees South) is in fact outside the area covered by the Treaty. Marion Island does lie within the CCAMLR area, but that Convention contains no provisions of its own regarding nuclear and military activities. If South Africa were to engage in such activities on Marion Island, it would therefore technically not be in breach of its obligations under the Treaty or under CCAMLR.

(4) Because Marion Island lies outside the area covered by the Antarctic Treaty, neither Australia nor any other Antarctic Treaty Party has a right to inspect South Africa's activities there.

[Note: for material on the environmental protection of Antarctica, see under Part XIII, International Environmental Law, pp 157–159 below.]

Incorporation of territory – East Timor and Indonesia – Timor Gap seabed boundary negotiations – views of Portugal

On 18 October 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in answer to a question without notice (Sen Deb 1988, Vol 129, pp 1524–5):

I have seen some suggestions that Fretilin is trying to encourage Portugal to take Australia to the International Court of Justice over the recent Timor Gap negotiations. The Australian Government has no information to suggest that Portugal would so react and seek to take Australia to the court. In fact, as the Portuguese Foreign Minister said, I understand, in the United Nations General Assembly just a few days ago on 3 October, Portugal no longer has any territorial claims over East Timor and is not involved in any dispute over sovereignty of the Territory. It is therefore difficult to imagine on what conceivable basis Portugal, which has accepted the ICJ's Jurisdiction, might accede to any request to try to take Australia to the court.

The Australian Government's view on the recognition of Indonesian sovereignty over East Timor was set out in this Parliament on 22 August 1985 by both the Prime Minister in the House of Representatives and by me representing the Foreign Minister in this place. That statement made it clear that Australia's de jure recognition of Indonesian sovereignty had taken effect in February 1979 when negotiations were opened with Indonesia on the seabed boundary in the Timor Gap. Although Australia recognised Indonesia's sovereignty over East Timor, it did not condone the manner in which the province was incorporated.

Finally, the seabed boundary negotiations can in practice only be conducted with the Indonesian Government. I dealt more fully with the international law dimensions and implications of these negotiations in the adjournment debate on 20 March 1986. I would refer anyone interested to the *Hansard* report of that debate.

[Note: Portugal commenced an action against Australia in the International Court of Justice in relation to the Timor Gap Treaty on 22 February 1991. For related materials, see under Part XIV, Disputes, pp 162–165 below.]

On 17 October 1989 the Leader of the Government in the Senate, Senator Button, said in part in answer to a question without notice (Sen Deb 1989, Vol 136, p 1980):

The Prime Minister's statement to Parliament on 22 August 1985 confirmed that the Australian Government recognises the sovereign authority of Indonesia over East Timor, though it does not condone the manner in which the province was incorporated into Indonesia. The reported declaration of 33 Australian members of parliament lending their support to the request by Bishop Belo for a referendum on self-determination in East Timor does not therefore reflect the Australian Government's view. In the statement on 22 August 1985 the Prime Minister also affirmed that Australia would continue to raise questions of human rights in East Timor. Since that time the Government has continued to make known to the Indonesian Government Australia's concerns that internationally accepted standards of human rights be universally observed. Specifically, the Government has pursued Australia's legitimate interest in the human rights situation in East Timor through raising with Indonesian Ministers concerns about human rights abuses and regular visits to the province by the Australian Embassy in Jakarta.

On 14 December 1989, Senator Robert Ray, the Minister representing the Minister for Foreign Affairs and Trade, said in part in answer to a question without notice (Sen Deb 1989, Vol 138, p 4556):

The Government recognises Indonesian sovereignty over East Timor. This was enunciated clearly by the Prime Minister in his statement to Parliament on 24 August 1985. Such recognition of Indonesian sovereignty over East Timor means that the Government would only support the proposal for creating a kind of special territory or autonomous region status for East Timor if it were accepted by the Indonesian Government. The Prime Minister made it clear at that time that recognition of Indonesian sovereignty had permitted us to pursue human rights and aid issues in that province.