

XIV – DISPUTES

Peaceful settlement of disputes – Australia–Indonesia negotiations for a seabed boundary between Timor and Northern Australia – protest by Portugal – Australian response

Following the announcement by the Australian Government on 5th September 1988 that agreement in principle had been reached by Australian and Indonesian officials for a Zone of Cooperation in the Timor Gap (see in Part VI – Law of the Sea above), the Embassy of Portugal in Canberra issued the following press release dated 8 September 1988:

1. The invasion of East Timor by Indonesia in 1975 violated the basic principles of International Law and, accordingly, the unilateral annexation of the territory was never recognised by the international community.
2. The ensuing interruption of the decolonisation process resulted in East Timor remaining listed as non-autonomous territory.
3. In 1985, the Portuguese Government protested vehemently against the Australian Government's attitude in negotiating the exploration of the resources of a Territory for which Portugal is the internationally recognised administrative power.
4. Under the auspices of the Secretary General of the United Nations talks under the resolution 37/30 are proceeding with the aim of guaranteeing the Timorese People their legitimate right to self-determination according to the United Nations Charter. So far, no qualitative change has occurred regarding the legal status of East Timor.
5. Therefore, the Portuguese Government considers that the ratification of such an agreement on the establishment of a cooperation zone for the exploration of oil in the so called "Timor-Gap", by the Australian Government, would constitute a blatant and serious breach of International Law.
6. The Portuguese Government will consider carefully any developments related to this issue and will act promptly, according to the International Law in defense of the legitimate interest in question.

On 1 November 1988 the Prime Minister, Mr Hawke, said in part in answer to a question without notice (HR Deb 1988, Vol 163, p 2106):

I thank the honourable member for his question. He will observe that we have conducted our negotiations with the Indonesians on the basis and the assumption that we are the two sovereign powers and nations with rights in this area to be determined. That carries, necessarily, the implication that we do not accept the observations that have been made by the other power [Portugal to which the honourable member refers.

On 1 November 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. 137, pp 2706–7):

In relation to the second part of the question, concerning the Portuguese reaction to the announced conclusion of the Timor Gap negotiations, the

Portuguese Ambassador did call on me yesterday on instructions from his Government to reiterate earlier Portuguese statements that Australia's signature to and ratification, in due course, of the Timor Gap Zone of Cooperation Treaty would, in the view of the Portuguese, constitute a breach of international law. The ambassador also stated again that Portugal would take due action after the signing of the Treaty in what he described as appropriate international forums and organisations. Similar representations were made a day earlier to our ambassador in Lisbon.

I made it clear, in reply to the Portuguese Ambassador, that should Portugal seek to initiate any action in any forum, Australia would defend its position with vigour and determination. We are quite confident of our legal position on this matter. I have already indicated this in the Senator in more detail than it is necessary to go into now – in the adjournment debate on 20 March 1986 and in Question Time on 18 October last year. I should add, though, that we have taken the view since 1979 that whatever the unhappy circumstances and indeed, possible illegality, surrounding Indonesia's acquisition of East Timor in the mid-1970's, Indonesian sovereignty over that territory should be accepted not only on a *de facto* basis but on a *de jure* basis. There is no binding legal obligation not to recognise the acquisition of territory that was acquired by force. Such a recognition does not, of course, imply approval of the circumstances of the acquisition. In international law the legality of the original acquisition of territory by a State has to be distinguished in subsequent dealings between the State acquiring that new territory and other States – in this instance, Australia.

The last point I want to make is that Australia has consistently supported discussions between Portugal and Indonesia under the auspices of the United Nations Secretary General to resolve the lingering East Timor issue as it exists between those two countries. This is a matter that relates to the dispute between Portugal and Indonesia, to which Australia is not a party, and is quite separate from the Timor Gap negotiations.

Following the signature of the Timor Gap Treaty by Australia and Indonesia on 11 December 1989, the Embassy of Portugal in Canberra presented the following Note dated 13 December 1989 to the Department of Foreign Affairs and Trade:

Embassy of Portugal
Canberra
22/C/SAO

The Embassy of Portugal presents its compliments to the Department of Foreign Affairs and Trade and has the honour to draw its attention to the following:

1. It was officially announced that the Ministers for Foreign Affairs of the Commonwealth of Australia and of the Republic of Indonesia signed, on 11 December 1989, a provisional agreement on the establishment of a "zone of cooperation" in the maritime area existing between the non-self-governing territory of East Timor and northern Australia, known as "Timor-Gap".

2. That agreement is designed to promote the joint exploitation of the natural resources of that maritime area's continental shelf.
3. The Portuguese authorities have consistently lodged diplomatic protests with the Government of Australia against the talks that, for some years, it has been holding together with the Government of Indonesia aiming, as it has been publicly disclosed, at concluding the aforesaid agreement. This was the case with the protest lodged on 19 September 1985, on 9 September, and 31 October, 1988, and again on 30 October 1989, to which the Embassy has the honour to call once more the Department's attention.
4. In those protests the Portuguese Government pointed out that the negotiation and the eventual conclusion of such an agreement with the Republic of Indonesia – a country that has military invaded the Territory of East Timor and has persisted ever since with its illegal occupation, in defiance of the United Nations Security Council's and General Assembly's relevant resolutions – would constitute a serious and blatant breach of International Law.
5. In proceeding with the signing of the abovementioned agreement Australia is continuing and bringing to its conclusion that violation of the law.
6. The authority exercised by Indonesia over the Territory of East Timor is illegitimate, being in disregard of the principle of the non-use of force in international relations and of the right to self-determination of the people of East Timor provided by the Charter and fundamental United Nations resolutions, and by International Custom as well. That authority is not, therefore, recognised by the United Nations. Indonesia cannot thus be considered as being able to legitimately undertake any commitment whatsoever on behalf of the people and the territory of East Timor.
7. In signing the "Provisional Agreement" Australia acts in contempt, namely, of its duties to respect the right of the East Timorese to self-determination, the territorial integrity of East Timor and the permanent sovereignty of that people over its natural resources which are, partially, the object of the agreement.
8. Moreover, Australia disregards Portugal's capacity as the administering power of that non-self-governing territory and the exercise of the rights and obligations inherent to that capacity, as recognised by the United Nations, which continue to keep the item "Question of East Timor" inscribed on the agenda of their main bodies. Australia is thus further violating the obligations impending upon it as a member of the International Community and, in particular, those undertaken upon ratifying the charter of the United Nations, of which Australia was one of the founding countries.
9. Under the auspices of the Secretary General talks are now proceeding concerning the question of East Timor. The signing of this agreement interferes with and goes against the mediation efforts, tirelessly and patiently exercised by the Secretary General, aiming at reaching a comprehensive settlement for that question, as provided for by General Assembly's resolution 37/30.

10. In the light of the above, Portugal cannot but lodge its most vehement protest with the Government of the Commonwealth of Australia and to state that it reserves itself the right to resort to all legal means it will consider as convenient to uphold the legitimate rights of the East Timorese.

The Embassy of Portugal avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

Canberra ACT

13th December, 1989.

On 5 January 1990 the Department of Foreign Affairs and Trade responded in the following terms:

The Department of Foreign Affairs and Trade presents its compliments to the Embassy of Portugal and has the honour to refer to the Embassy's Note of 13 December concerning the agreement signed on 11 December by Australia and Indonesia called the "Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia".

Australia rejects absolutely the assertions in that Note that Australia is in violation of international law.

Australia reiterates that Australia's recognition of the incorporation of East Timor into Indonesia in no way condones the use of force by Indonesia. Australia's active support for the rights of the people of East Timor is well documented.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of Portugal the assurances of its highest consideration.

Canberra ACT

5th January, 1990

Peaceful settlement of disputes – Central America

On 3 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 1675):

At their summit of 13 and 14 February, the Presidents of the five Central American countries – that is, Nicaragua, El Salvador, Costa Rica, Honduras and Guatemala – agreed on a comprehensive program for peace in the region. On 24 March the Bush Administration undertook to work with the democratically elected Central American leaders and expressed support for a non-military solution to the crisis in Central America. On 5 April in a speech to the Cuban National Assembly, we had Mr Gorbachev calling for an end to foreign interference in the affairs of sovereign States.

Certainly, the Australian Government welcomes those expressions of political goodwill by the five Central American Presidents and by the United States of America and the Soviet Union to support a negotiated non-military

settlement of the conflict in the region. We consider that only a genuine commitment to reform in the political, social and economic instabilities of this troubled region will resolve the continuing tension and conflict which exists there.

Peaceful settlement of disputes – Cambodia – withdrawal of Vietnamese troops – prevention of return of Pol Pot – Australian policy

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, pp 3214–5):

During the past four or five years several proposals and counter-proposals have been put forward concerning ways to achieve a peaceful resolution of the Kampuchean issue. Unfortunately, there has been little real progress towards settlement negotiations. ...

Australia has tried to assist where possible in facilitating a peaceful settlement in Kampuchea. Australia has not sought a central role, but has sought to stimulate and support the efforts of those more directly involved to establish dialogue.

Australia has been able to contribute in this way because of our long-standing friendship with the ASEAN countries, our good relations with China, our ability to talk frankly and productively to the Soviet Union and our relationship with Vietnam. ...

In the view of a number of countries, including Australia, a major obstacle to progress has been the continued presence of the Khmer Rouge within the Coalition Government of Democratic Kampuchea. While Australia accepts that any settlement will have to take into account the Khmer Rouge rank and file, we are firmly of the view that such a settlement must also include arrangements to prevent the return to power of the murderous Pol Pot group.

With this in mind, I raised the question of establishing a tribunal to determine the culpability of the Pol Pot leadership at the 1986 and 1987 ASEAN Post Ministerial meetings. While some interest has been shown in the proposal, it has not, to date, attached the necessary degree of international support to allow it to go ahead. The process involved in exploring this issue has, however, proved most useful in clarifying the thinking of a number of the principal parties towards the Khmer Rouge. In particular it has enabled the Vietnamese (and the PRK) to identify for the first time Khmer Rouge leaders who in their view would be acceptable in future negotiations. ...

Australian policy on Kampuchea remains as set out in my statement to the House on 7 December 1983. Australia shares the principles of the ASEAN countries on the Kampuchea issue and has each year voted in favour of the ASEAN resolution on Kampuchea at the United Nations General Assembly. Like the ASEAN countries, Australia continues to deplore and protest against the invasion of Kampuchea by Vietnamese troops. Australia hopes that an eventual resolution of the problem will see self-determination for the Kampuchean people; the safe return of displaced Kampuchean to their

homeland; and the withdrawal of Vietnamese forces from Kampuchea, matched by arrangements to prevent the return to power of the Pol Pot group. Any solution to the Kampuchean issue will also need to satisfy the legitimate security concerns of Vietnam, Thailand and other regional countries.

Australia recognises that substantive negotiations and major initiatives are a matter for the principal parties. What we have done and will continue to do is to encourage movement among those parties as opportunities arise.

On 6 April 1989 the Prime Minister, Mr Hawke, said in part in answer to a question without notice (HR Deb 1989, Vol 165, p 1134):

The Government – as do, I am sure, all honourable members in the House – welcomes the announcement that Vietnamese troops will be withdrawn from Cambodia by September this year. We express the hope that that stated intention of withdrawal will be completed in the time frame that has been announced. There is no doubt that this will represent an enormously hopeful step in the tragic history of that country.

We note that Vietnam proposes to reconvene the 1954 International Control Commission to supervise the withdrawal and the cessation of military assistance to the Cambodian factions. As honourable members would be aware, Australia has consistently called for the withdrawal of all Vietnamese troops from Cambodia because we have seen that as a necessary pre-condition for any settlement in that country.

Both the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and I recently had discussions with a number of parties involved in the Cambodian problem. During my recent visit to the region I indicated to Prime Minister Chatichai that in view of Australia's longstanding interest in and concern about this matter we were prepared to take a constructive approach to Australia's possible involvement in those settlement processes if such involvement was sought by the parties most directly concerned in the resolution of the conflict. It is a measure of Australia's standing in the region and the work of the Government since 1983 that Thailand wants Australia to participate in that peace process. While there are still difficulties which need to be resolved, we remain hopeful that all parties will make continued and determined efforts to advance the peace process. The need for an agreement among the Cambodian factions remains of fundamental importance if a permanent and peaceful resolution is to be achieved.

Peaceful settlement of disputes – Arab–Israeli dispute – recognition of a Palestinian State – need for international peace conference

On 22 November 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1988, Vol 130, pp 2484–5):

The Government takes the view that the meeting of the Palestine National Council in Algiers last week does represent a positive step forward in the search for peace in the Middle East. We do welcome the Council's acceptance of

United Nations (UN) Security Council resolution 242 as the basis of an international conference in the Middle East. ...

The question of Australian recognition of the declaration of a Palestinian State, which was probably the centrepiece of last week's meeting, will arise only in the context of an acceptable negotiated resolution of the future of the occupied territories. The Australian Government takes the view that quite apart from the generally accepted legal pre-conditions for the recognition of statehood – that is to say, an identifiable territorial unit containing a permanent population under the authority of its own Government and capable of entering into relations with other States – the question of a Palestinian State we say cannot be resolved by unilateral declaration but only in the context of an overall settlement of the Middle East dispute.

In the context of an overall settlement, it is our position and continues to be our position that we support the rights of self-determination for the Palestinian people, including independence and the possibility of their own independent State. We also, as I have indicated elsewhere, support the convening of an international conference on the Middle East under the auspices of the UN as a means of resolving ultimately, perhaps the only means of resolving, the Arab-Israeli dispute.

On 23 November 1988 the Prime Minister, Mr Hawke, said in part in answer to a question without notice (HR Deb 1988, Vol 164, p 3052):

The Government has frequently noted its support for the right of self-determination of the Palestinian people, including their right, if they so choose, to independence and their own independent State. Having said that, we continue to believe that the question of a possible Palestinian State can only be resolved as part of an overall settlement of the Middle East dispute involving all the parties who are legitimately involved in and concerned with that dispute.

On 15 December 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a further question on the subject (Sen Deb 1988, Vol 131, p 4279):

Today's developments on the Middle East represent a major breakthrough and one which Australia unreservedly welcomes. In comments at a press conference last night Australian time, following his address to the United Nations session in Geneva, the Chairman of the Palestine Liberation Organisation, Mr Yasser Arafat, clarified significantly the PLO's position on peace in the Middle East. Mr Arafat said that the PLO accepted:

the right of all parties concerned in the Middle East conflict to exist in peace and security ... including the State of Palestine, Israel and other neighbours, according to the resolutions 242 and 338.

That is to say, he expressly accepted Israel's right to exist without any accompanying qualifications. He went on to renounce:

totally and absolutely ... all forms of terrorism, including individual, group and State terrorism.

Again this was without accompanying qualification of the kind that occurred both in the Algiers declaration and in the Stockholm statement. He accepted:

Resolutions 242 and 338 as the basis for negotiations with Israel, within the framework of (an) international conference.

This is a clear and unambiguous statement of the PLO's position and undoubtedly now provides the basis for discussions which can lead to a settlement of the Middle Eastern dispute. The statement clearly meets the three conditions spelt out initially by Prime Minister Hawke not only in Australia but in his visits to Israel, Jordan and Egypt in early 1987 and in a subsequent meeting with General Secretary Gorbachev, namely, a recognition of Israel's right to exist within secure and recognised borders, acceptance of resolutions 242 and 338 as the basis for any settlement and an unequivocal rejection of the use of terror and acceptance of the process of negotiation.

In satisfying these conditions, Mr Arafat has cleared the way for direct dealings between the Australian Government and the PLO. I should clarify that this does not mean that the Australian Government is extending recognition to the State of Palestine, proclaimed recently by the Palestine National Council. The Government has made it clear that the question of Australian recognition of a Palestinian State will arise only in the context of an overall peace settlement.

Settlement of disputes – Lebanon – withdrawal of foreign forces – Syrian forces

On 12 April 1989 the Prime Minister, Mr Hawke, said in part in answer to a question without notice (HR Deb 1989, Vol 166, p 1443):

Australia supports a solution in Lebanon based on the territorial integrity and sovereignty of the Lebanese republic. It supports a position where there should be a withdrawal of all foreign forces, except those which are there expressly at the request of a Lebanese Government representing all communities in the Lebanon. No position could be clearer than that. That applies to Syria. Those forces should be withdrawn to the extent that they remain there other than at the express wish of a Government in Lebanon representing all communities in Lebanon. They should be withdrawn and that proposition applies to all troops in the Lebanon.

On 8 May 1989 Mr Duffy, the Minister representing the Minister for Foreign Affairs and Trade, said in part in answer to a question without notice (HR Deb 1989, Vol 166, p 2101):

On 14 April the Prime Minister and Senator Evans met representatives of Australia's Lebanese community who wished to express their concern, particularly at the recent events in Lebanon. Both the Prime Minister and Senator Evans emphasised the Government's support for Lebanon's territorial integrity and sovereignty and the call for the withdrawal of foreign forces from Lebanon, except those that were there at the request of the Lebanese Government, representing all communities. Following that meeting, Senator Evans in-

structed Australian missions overseas to explore with other governments what scope might exist for international action over Lebanon. Whilst Australia is not a party principal to efforts to promote a solution in Lebanon, the Government stands ready at all times to assist efforts to achieve a lasting peace; supports and encourages the efforts of the Arab League to secure a ceasefire and a negotiated settlement to the conflict; and welcomes the plan to send an Arab League observer force to Lebanon to monitor the cease-fire. ...

The causes of conflict in Lebanon are complex and will not be solved simply through the withdrawal of Syrian forces who were, of course, invited into Lebanon at the request of the previous Lebanese Government. However, in the current situation there is a particular need for Syrian forces to exercise restraint and for Syria to act constructively.

Peacekeeping forces – United Nations Iran/Iraq Military Observer Group (UNIMOG) – Multinational Force of Observers (MFO), Sinai – United Nations Transition Assistance Group (UNTAG), Namibia – Australian participation

On 11 August 1988 the Acting Minister for Foreign Affairs and Trade, Mr Duffy, issued a news release, part of which read as follows:

The Acting Minister for Foreign Affairs and Trade, Mr Michael Duffy, and the Minister for Defence, Mr Kim Beazley, announced today that a formal request to Australia to participate in the United Nations Iran/Iraq Military Observer Group (UNIMOG) has been received and accepted.

Australia's contingent of 15 officers will be drawn from officers already serving with the UN Truce Supervision Organisation (UNTSO) and directly from Australia.

The United Nations has decided to assign the Australian officers to the Iranian side of the border.

The Ministers expressed the hope that Australia's positive and constructive participation in support of the efforts of the UN to bring an end to the Iran/Iraq war would be reinforced by our contribution to UNIMOG. They also welcomed the assurances which have been provided to the UN by both sides that they would guarantee the security of UN forces within their respective territories.

On 26 May 1989 the Minister for Defence, Mr Beazley, provided the following written answer in part to a question on notice (Sen Deb 1989, Vol 133, pp 2879–80):

The question of whether Australia might wish to be invited to nominate for the post of Commander MFO, Sinai, was raised informally late last year. This question coincided with preparations to meet our impending commitment of a 300-strong contingent to the peacekeeping force in Namibia, as well as Australia's commitment of personnel to the UN Iran/Iraq Military Observer Group and consideration of other possible peacekeeping commitments. The Government decided in view of Australia's heavy commitments to peacekeeping and monitoring forces around the world, and prospective commitments

which may arise regionally, that the resumption of a contribution to the MFO Sinai was not warranted at that time. ...

I would like to draw the Senator's attention to the fact that the Government is committed to the promotion of peace, internationally, as most recently demonstrated by the provision of the Army contingent to the United Nations Transition Assistance Group Namibia, by far Australia's biggest peacekeeping effort to date. Australia provided 106 personnel and helicopters to the MFO from 1982 to 1986, and currently has 28 observers serving with the UN in the Middle East.