## VI LAW OF THE SEA

### Territorial sea - extension of the Australian Territorial Sea from 3 to 12 nautical miles

On 13 November 1990 the Minister for Foreign Affairs, Senator Gareth Evans, and the Attorney-General, Mr Michael Duffy, announced that the Government had decided to extend Australia's territorial sea from 3 nautical miles to 12 nautical miles. The joint statement said:

> The Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Attorney-General, Michael Duffy, announced today that the Government had agreed to extend Australia's territorial sea from 3 nautical miles to 12 nautical miles.
>
> The Ministers said that the right to a 12 nautical mile territorial sea was well established internationally and significant advantages would flow to Australia from extending Australia's sovereignty over its water, seabed and airspace out to 12 nautical miles.
>
> "It will allow us more effectively to control Australia's marine environment and its living and non-living resources. The ability to enforce oil and other marine pollution measures, as well as regulate navigation, in our extended 12 nautical miles territorial sea, will be another safeguard in protecting such valuable areas as the Great Barrier Reef", the Ministers said.
>
> It will also provide Australia with considerable defence, customs and quarantine advantages as we will now be able to exercise our sovereignty, consistent with international law, out to 12 nautical miles.
>
> The Ministers also said that the 1979 Offshore Constitutional Settlement with the State Governments would not be affected by the decision. It was agreed at that time that these arrangements were to apply only to the 3 nautical miles territorial sea, irrespective of whether Australia subsequently moved to a 12 nautical mile territorial sea.
>
> "A proclamation extending Australia's territorial sea to 12 nautical miles will be issued under the Seas and Submerged Lands Act, with effect from 20 November 1990", the Ministers said.

The text of the Proclamation, signed by the Governor-General, Mr Bill Hayden, appeared in *Commonwealth of Australia Gazette* No S297 on Tuesday, 13 November 1990, as follows:

PROCLAMATION

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

Governor-General

I, WILLIAM GEORGE HAYDEN, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 7 of the *Seas and Submerged Lands Act 1973*, hereby declare that on and from 20 November 1990 the outer limit of the territorial sea of Australia, other than the parts of the territorial sea referred to in the Schedule, is 12 international nautical miles measured from the baseline established under international law or as otherwise determined by Proclamation under section 7 of the *Seas and Submerged Lands Act 1973* from time to time.

SCHEDULE
EXCEPTED PARTS OF THE TERRITORIAL SEA

1. The territorial sea in respect of an island referred to in Schedule 1, 2, 3, 4, 5, 6 or 7 to the Proclamation under section 7 of the *Seas and Submerged Lands Act 1973* dated 4 February 1983 with regard to certain islands comprised within the States of Queensland.
2. The territorial sea in respect of the island referred to in Schedule 8 to that Proclamation to the extent that Proclamation determines the outer limit of that part of the territorial sea adjacent to that island which lies north of the parallel of Latitude $9^{0}$ 33' $00^{0}$ South.

BILL HAYDEN

GIVEN under my Hand and the
Great Seal of Australia
on 9 November 1990.

By His Excellency's Command,

(Michael Duffy)
Attorney-General

GOD SAVE THE QUEEN!

**Contiguous Zone - continental shelf - exclusive economic zone - establishment by Australia**

On 24 September 1991 the Acting Minister for Foreign Affairs and Trade, Dr Blewett, the Attorney-General, Mr Duffy, and the Minister for Primary Industries and Energy, Mr Crean, issued the following joint news release:

> Australia would gain more power over the resources in the waters off its coast following a recent Cabinet decision, the Acting Minister for Foreign Affairs and Trade, Dr Blewett, the Attorney General, Mr Duffy, and the Primary Industries and Energy Minister, Mr Crean, announced today.
>
> The Ministers said the Government would establish an exclusive economic zone, a contiguous zone and revise the definition of Australia's continental shelf.
>
> They said this would formalise Australia's power over the marine environment off its coast.
>
> The exclusive economic zone will extend for 200 nautical miles and confirm Australia's exclusive jurisdiction over the marine environment.
>
> The contiguous zone will extend for 24 nautical miles and enhance the enforcement of Australian laws covering customs, immigration, quarantine and fiscal matters.
>
> A revision of the continental shelf definition would set out the area of sea bed and resources over which Australia has jurisdiction.
>
> These resources include minerals, petroleum and certain types of fish.
>
> The revision would be based on the continental shelf definition contained in the 1982 Law of the Sea Convention.
>
> The Ministers said the revised maritime zones would bring Australian practice into line with international law.
>
> "The adoption and implementation of the new maritime zones represents a significant step in a process which would facilitate entry into force of a comprehensive and widely accepted United Nations Convention on the Law of the Sea", they said.
>
> "Australia has exercised some of its rights in relation to the exclusive economic zone for some time.
>
> "The formal adoption of an exclusive economic zone is a recognition of this fact and gives notice of Australia's intention to give full effect to that jurisdiction in the future."
>
> The Ministers said the decision would not have any practical effect on existing fisheries arrangements.
>
> It would not affect the 1979 Offshore Constitutional Settlement with the State and Northern Territory Governments.
>
> The new maritime zones will be declared by amending the Seas and Submerged Lands Act and other Commonwealth marine legislation.

**Reefs - Clerke, Imperieuse and Mermaid Reefs - proclamation of marine nature reserves**

On 10 April 1991 the Minister for the Arts, Sport, Tourism and Territories, Mrs Kelly, issued a news release which read in part:

> The Minister for the Environment, Mrs Ros Kelly, today announced the proclamation of the Mermaid Reef Marine National Nature Reserve, off the Western Australian coast, under the National Parks and Wildlife Conservation Act 1975.
>
> Mrs Kelly said that the declaration of Mermaid Reef Maritime National Nature Reserve is an example of the Commonwealth's commitment to establishing a national representative system of marine protected areas for Australia.
>
> Mermaid Reef is located in a complex of reef atolls, known as the Rowley Shoals, approximately 300 kilometres west-north-west of Broome, Western Australia. The reserve encompasses the reef structure, its lagoon and surrounding deep waters and habitats extending approximately 3 nautical miles from the reef edge. The total area of the reserve is 53,984 ha.
>
> The Rowley Shoals comprise three distinct reefs - Clerke, Imperieuse and Mermaid Reefs. These Shoals are considered to be the most perfectly formed examples of shelf atolls in Australian waters, and apparently represent three distinct stages in atoll formation.
>
> "Nowhere else in the world are found shelf atolls so distant from a mainland coast", Mrs Kelly said. "Their isolation has contributed to their high scientific and conservation values, and they are highly regarded as a premier diving site."
>
> ...
>
> The past decade has seen increasing concern over the future of the Rowley Shoals, due to illegal visitation and exploitation of trochus, beche-de-mer and clams by foreign fishing vessels, and it was feared that the Shoals "pristine" nature would be lost if protective measures were not taken. Full protection of the Shoals' marine habitats and all marine life is necessary to ensure their future well-being.
>
> The Australian National Parks and Wildlife Service (ANPWS) and the Western Australian Department of Conservation and Land Management have cooperated since 1987 on the conservation of the Shoals. The two south-westerly atolls, Clerke and Imperieuse Reefs, were proclaimed as Marine Parks under Western Australian legislation on 25 May 1990.

**Fishing zones - Australian Fishing Zone - Norfolk Island - effect on neighbouring countries - access by foreign fishermen**

On 9 May 1990 the Minister for Primary Industries and Energy, Mr Kerin, provided the following written answer in part to a question on notice (Sen Deb 1990, Vol 139, p 178):

Australia has declared a 200 nautical mile fishing zone around Australia and its external territories, excluding the Australian Antarctic Territory. The Australian Fishing Zone (AFZ) excludes certain waters where there would otherwise be an overlap with similar 200 nautical mile zones claimed by neighbouring countries, whether or not Australia has entered into a delimitation agreement with the country concerned.

The Australian 200 nautical mile zone around Norfolk Island abuts the New Zealand exclusive economic zone and the French exclusive economic zone generated by New Caledonia.

Within the zone an inshore demersal line fishery on the Norfolk Plateau is fully exploited by traditional Norfolk Island fishermen. This inshore region has been closed to all other fishermen who may wish to fish for demersal fin fish.

...

Under access arrangements applying from 15 December 1989 to 31 October 1990, 250 Japanese longliners are permitted to operate in the AFZ. If any of these vessels choose to fish in the portion of the AFZ surrounding Norfolk Island they may do so but in the past few have fished the area.

Appropriately licensed Japanese vessels are not permitted to fish closer than 35 nautical miles from the Norfolk Island baseline.

The Australian Fisheries Service (AFS) is responsible for monitoring the activities of commercial fishing vessels in the waters of the AFZ adjacent to Norfolk Island. AFS and the Norfolk Island Government have recently cooperated on a project to install radar on the Island which will allow Norfolk Islanders to participate further in the surveillance of their adjacent waters.

Both the RAAF and RAN carry out periodic surveillance of the area and enforcement activities as required on behalf of AFS. Coastwatch is responsible for coordinating these activities.

The surveillance and enforcement program has not detected any infringements of Australian fisheries laws in Australian territorial waters adjacent to Norfolk Island in the past three years.

**Fishing zones – Australian Fishing Zone – surveillance – recovery of costs – disposal of boats of illegal fishermen**

On 23 May 1990 the Minister for Defence, Senator Robert Ray, said in the course of an answer to a question without notice (Sen Deb 1990, Vol 139, p 882):

Most of the surveillance costs are attributed to Coastwatch which, in the normal course of events, lets us know and requests our intervention. There is, of course, very little prospect of ever recovering any costs. The boats themselves are deliberately of very low quality so that when they are seized they cannot be sold. About the only fate for them is an annual burning and the sending of the photos back to Indonesian fishing villages as a warning.

> It is one of those civilian tasks that I think the defence forces must continue to do.

**Fishing zones - Australian Fishing Zone - illegal fishing in Australian waters - trochus fishing off Western Australia - poaching in Great Barrier Reef Marine Park**

On 10 January 1991 the Minister for Primary Industries and Energy, Mr Kerin, issued a news release which read in part:

> The Minister for Primary Industries and Energy, John Kerin, today gave details of actions the Government is taking in response to the most recent illegal incursions by Indonesian fishermen seeking trochus in Australian waters.
>
> "The problem of Indonesian fishermen illegally seeking trochus is not a new one. However, the recent spate of activity, where 232 fishermen were apprehended on 13 vessels over the Christmas-New Year period, has highlighted the problem", said Mr Kerin.
>
> "The Australian Fisheries Service works closely with Western Australian fisheries, Coastwatch, the Defence Forces, and Customs and Quarantine officers on a regular surveillance program which has again proved its effectiveness."
>
> "The Government takes this issue very seriously. Despite earlier hopes, it is clear that the number of fishermen coming to Australia has not been reduced.
>
> "All the vessels were motorised and therefore clearly operating outside the terms and the areas specified for traditional Indonesian fishermen under the 1974 Memorandum of Understanding between the Australian and Indonesian Governments."
>
> A total of 174 fishermen have been convicted this week of offences against Australian quarantine and fisheries legislation. Gaol sentences given range from four weeks to 24 months. The sentences are tougher than have been applied previously and it is to be hoped they will discourage the fishermen from further illegal fishing.
>
> "There are high costs associated with surveillance and apprehension, as well as accommodation, processing and repatriation of illegal fishermen. Nevertheless we will be maintaining a high level of surveillance and enforcement to combat illegal fishing activities taking place in areas under Australian jurisdiction."

On 12 March 1991 the Minister for the Arts, Sport, the Environment, Tourism and Territories, Mrs Kelly, provided the following written answer, in part, in answer to a question on notice (Sen Deb 1991, p 1742):

> Poaching in the Great Barrier Reef Marine Park has been a problem in the past. The high level of surveillance effort undertaken in recent years has drastically reduced the number of infringements detected in the Marine Park.

**Fishing zones - driftnet fishing - Convention for the Prohibition of Driftnet Fishing in the South Pacific - Japanese, Korean and Taiwanese fishing - United Nations General Assembly Resolution**

On 24 May 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in answer to a question without notice (Sen Deb 1989, Vol 139, pp 995-6):

> The Prime Minister signed the Convention for the Prohibition of Driftnet Fishing in the South Pacific on 2 February during his visit to New Zealand. The Convention bans driftnet fishing by parties to the Convention in their territorial seas and exclusive economic and fishing zones and requires parties not to assist the use of driftnets in the South Pacific region and to restrict port access and port servicing facilities for driftnet fishing vessels. The Government is now preparing legislation to enable ratification of the Driftnet Convention and it is cooperating with New Zealand, in particular, to improve driftnet surveillance.
>
> Protocols or letters supplementing the Convention through which distant-water fishing fleets, including those of Japan and Taiwan, would accept obligations to ban driftnet fishing in the region have been drafted now for further negotiation with the driftnetters. We remain disappointed that Japan and Taiwan still refuse to consider an immediate ban on driftnet fishing in the South Pacific and will continue to urge them to sign the relevant protocol to the Convention. Nonetheless, we welcome the Japanese agreement to cease driftnet fishing in the region by 1991.
>
> I should say finally that Australia was also actively involved in the formulation of a consensus resolution at the United Nations General Assembly which was adopted in December last year. That resolution contains a commitment to a cessation of driftnet fishing in the South Pacific by mid-1991 and to moratoriums in other oceans by mid-1992. Australia was instrumental in ensuring that the region's strongly expressed desire to see driftnet fishing banned in the South Pacific was not compromised. It has been Australia's particular concern to coordinate action taken in different oceans to avoid the displacement of driftnet vessels from one ocean to another. It is for this reason that the Government is also pushing for a global ban on driftnet fishing.

On 29 May 1991 the Minister for Trade and Overseas Development, Dr Blewett, said in the course of an answer to a question without notice (HR Deb 1991, pp 4191-2):

> As the Parliament is aware, this Government has actively opposed the use of driftnets in the South Pacific, particularly since the sudden upsurge in driftnet fishing towards the beginning of 1989, particularly by Japan and Taiwan.
>
> The action we have taken in the region, first of all, is with the conclusion of the Wellington Convention in November 1989 to ban driftnet fishing - we worked on that convention - and globally, of course, through the United Nations in relation to driftnet fishing. Therefore, the Government

welcomes the entry into force last week, on 17 May, of the Wellington Convention, which bans driftnet fishing in the South Pacific. Australia itself will be able shortly to ratify the convention once the amending legislation has been passed through the Parliament.

We also welcome the United States signature to the convention and its first protocol. We note that the American Administration has sent a message to Congress advocating ratification of the convention. Also, we welcome the fact that Japan from July 1990, and Taiwan earlier this year, ceased driftnet fishing in the South Pacific. The entry into force of the convention means that driftnet fishing has now completely ceased in the South Pacific.

This is a major regional achievement, which has involved extensive cooperation between Australia, the Forum Island countries and the Forum Fisheries Agency. Of course, we are not satisfied with that achievement. We have still got concerns about driftnet fishing operations in other oceans, including the Indian Ocean, where large Taiwanese fishing fleets still operate.

The Government will continue to oppose the use of driftnet fishing globally, and our opposition will be registered at the next session of the United Nations General Assembly.

On 28 November 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Primary Industries and Energy, Mr Crean, issued a news release which read as follows:

The Minister for Foreign Affairs and Trade, Senator Evans, and the Minister for Primary Industries and Energy, Simon Crean, welcome the announcement by the Government of Japan to cease driftnet fishing on the high seas by the end of 1992.

"The announcement, which emerged from a lengthy debate on driftnet fishing, is a major step towards a global moratorium on this wasteful and indiscriminate practice", the Ministers said.

Mr Crean said the Japanese Government, in response to strong international concerns about the practice, had announced that its driftnet fishing fleet would be cut back by 50 per cent before July 1992 through a reduction in the number of vessels, the length of their nets and the areas of operation.

Japan will suspend driftnet fishing completely by 31 December 1992.

Senator Evans said in concert with other concerned nations, Australia would press for the Japanese action to be matched by Korea and Taiwan, the other major driftnet fishing nations which continued to operate on the high seas.

"Australia is especially concerned about the continued presence of a large fleet of Taiwanese driftnet vessels fishing in the Indian Ocean", he said.

The Ministers said driftnet fishing could threaten the recovery of the severely depleted Southern Bluefin Tuna and have serious impacts on other

marine resources, including albacore tuna, marine mammals, turtles and seabirds.

They said that Australia had played a major role in focussing international attention on the adverse impacts of driftnet fishing.

"Australia was one of the first countries to prohibit large scale driftnet fishing in waters under its jurisdiction. We also prohibit port entry on trans-shipment by driftnet vessels in the Australian fishing zone", they said.

"Through concerned regional action, South Pacific countries succeeded in eliminating the practice from the region in July this year."

The Convention for the Prohibition of Fishing with Long Drifnets in the South Pacific came into force in May 1991. Since the United Nations first resolved in 1989 to take action in relation to driftnet fishing, major scientific reviews had vindicated international concerns about the impact of the practice on fisheries resources and marine wildlife.

The Ministers said that the Japanese announcement set the scene for agreement on a resolution at this year's United Nations General Assembly to set clear deadlines for an end worldwide to driftnet fishing on the high seas.

On 23 December 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Primary Industries and Energy, Mr Crean, issued a news release which read as follows:

A United Nations General Assembly resolution placing a moratorium on driftnet fishing in international waters was warmly welcomed today by the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Primary Industries and Energy, Mr Simon Crean.

The Ministers said the decision by the General Assembly over the weekend followed an international campaign by several countries, including Australia, for a moratorium on driftnetting.

"The resolution means that all members of the United Nations are obliged to reduce driftnetting in international waters by 50 per cent by July next year and implement a full moratorium by the end of December", they said.

"The consensus support for the resolution by governments around the world represents a major step towards responsible and ecologically sustainable use of the harvestable resources of the world's oceans.

"The resolution means the end of destructive and wasteful driftnet fishing is now assured."

The Ministers said the driftnetting issue had highlighted international concern at the potential for over-exploitation of stocks which are fished in international and national waters.

"Through the United Nations and the Food and Agriculture Organisation, Australia will continue to work towards more effective

conservation and the management of fisheries resources in international waters", the Ministers said.

They said the Law of the Sea Convention provided a broad framework for this conservation and management already.

"Future commercial fishing of orange roughy and southern bluefin tuna, which occurs within the Australian Fishing Zone and international waters, will be assured only if all countries involved in fishing for these species cooperate in the development of sound conservation and management measures", the Ministers said.

"We can take heart that sufficient international concern for taking action on driftnet fishing existed.

"The decisive action by the General Assembly has set an important precedent and gives hope that nations now are beginning to grapple with the challenge of management of fisheries in international waters."

**Fishing zones - highly migratory species - southern bluefin tuna - negotiations between Australia, Japan, and New Zealand**

On 21 August 1990 the Minister for Primary Industries and Energy, Mr Kerin, said in part in answer to a question without notice (HR Deb 1990, Vol 172, pp 1115):

> Our relationship with the Japanese is crucial to the successful global management of southern bluefin tuna which, as honourable members will know, is a very valuable resource which has been under threat of commercial extinction due to over-fishing in earlier times. It is a highly migratory species and we have to enter into bilateral and trilateral negotiations in order to try to manage this resource.
>
> Australian and Japanese scientists and fisheries managers have not always agreed on the amount of restraint needed. But it is quite clear that we must be able to have confidence that the global quotas agreed to by Australia, Japan and New Zealand are being adhered to. That is why any under-reporting of catch is extremely serious and could threaten the eventual survival of the fishery.

On 11 October 1991 the Minister for Primary Industries and Energy, Mr Crean, issued a news release which read in part:

> Australia, Japan and New Zealand have agreed to restrict their global catch of Southern Bluefin Tuna (SBT) during 1991-92 to the same level as the previous year, the Minister for Primary Industries and Energy, Mr Simon Crean, announced today.
>
> The global limit of 11750 tonnes was set at the annual voluntary trilateral negotiations for management of SBT held recently in Wellington, New Zealand.

The three countries agreed to maintain their individual allocations within the quota at last year's level of 6065 tonnes for Japan, 5265 tonnes for Australia and 420 tonnes for New Zealand.

...

"The parties also recognised the need for an effective formal agreement for the international management of SBT which would include catches by countries outside the present informal trilateral framework", he said.

**Fishing Zones - Australian Fishing Zone - new fisheries management legislation**

On 31 May 1991 the Minister for Primary Industries and Energy, Mr Kerin, introduced the Fisheries Management Bill 1991 into Parliament, and explained the purpose of the Bill in part as follows (HR Deb 1991, pp 4469-72):

> The Government regards the effective management of the Commonwealth's fisheries as a very important responsibility and throughout its term it has been committed to improving that management. Last December the Fisheries Administration Bill was introduced into Parliament. That Bill will establish a new statutory authority - the Australian Fisheries Management Authority - to undertake the Government's fisheries management responsibilities.
>
> The Bill before us now, together with supporting legislation, provides the powers for the new authority to undertake the Government's fisheries management responsibilities. This new legislation will replace both the Fisheries Act 1952 and the Continental Shelf (Living Natural Resources) Act 1968 and will establish a framework for the management of Commonwealth fisheries well into the twenty-first century. ...
>
> This Bill also has specific provisions to control fishing activities which are harmful to the marine environment, such as driftnet fishing. The Prime Minister (Mr Hawke) has consistently emphasised Australia's policy of seeking a global ban on large scale driftnet fishing. This legislation bans pelagic driftnet fishing in the Australian Fishing Zone and will also enable the Government to ratify the convention for the prohibition of fishing with long driftnets in the South Pacific. ...
>
> This legislation will contain provisions similar to those of the Fisheries Act 1952 for scientific exploration and foreign fishing activity in the Australian Fishing Zone through the issue of scientific permits and foreign fishing licences. ...
>
> A foreign fishing licence will also be fishery-specific, will be valid for up to one year, and will be subject to the payment of fees and levies, as well as other fishery-specific conditions. The Foreign Fishing Boats Levy Act 1981 will be replaced by the Foreign Fishing Licences Levy Bill 1991 in order to collect the levy payments and the Fisheries Agreements (Payments) Act 1981 will be replaced by the Fisheries Agreements (Payments) Bill 1991 to collect payments from overseas governments or commercial interests for access to the Australian Fishing Zone. These new levy Bills do not change

> the basis of levy collection from foreign fishing boats but simply place that collection within the framework of the new legislative instruments and administrative arrangements.

Also on 31 May 1991 Mr Kerin introduced the Foreign Fishing Licences Levy Bill 1991 into Parliament, and explained the purpose of the Bill in part as follows (HR Deb 1991, p 4477):

> The fees and levies can be paid either by means of a formal agreement for access to the Australian Fishing Zone or through specific levies imposed when the foreign fishing licence is granted. This Bill provides the mechanism through which the levies associated with foreign fishing licences are paid when there is no formal agreement with overseas governments or commercial interests.

**Continental shelf delimitation – Zone of Cooperation with Indonesia in the Timor Sea**

On 9 May 1990 the Minister for Industrial Relations, Senator Peter Cook, introduced the Petroleum (Australia–Indonesia Zone of Cooperation) Bill 1990 and related legislation into the Senate. Part of his Second Reading Speech was as follows (Sen Deb 1990, Vol 139, pp 138–40):

> PETROLEUM (AUSTRALIA–INDONESIA ZONE OF COOPERATION) BILL 1990
>
> The purpose of this Bill is to give effect to 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" which was signed on 11 December 1989.
>
> The introduction of the Petroleum (Australia–Indonesia Zone of Cooperation) Bill is required to fulfil certain of our obligations under the Treaty and in particular to enable the Ministerial Council and Joint Authority to exercise the rights and responsibilities prescribed in relation to the exploration for, and exploitation of petroleum resources in Area A of the Zone of Cooperation.
>
> Meanwhile the Petroleum (Australia–Indonesia Zone of Cooperation) (Consequential Provisions) Bill provides a series of amendments to legislation that would otherwise be inconsistent with certain provisions of the Treaty.
>
> The Treaty has a ten year history. Negotiations with Indonesia over sea–bed boundaries in 1971–72 left unsettled the delimitation of the sea–bed boundary in the Timor Gap area.
>
> Negotiations were reopened in February 1979. After several rounds of talks, however, it became clear that it would be difficult to reconcile the two countries' competing sea–bed boundary claims. Both Government subsequently began exploring the possibility of a provisional "joint development" regime for petroleum resources, to operate pending final

agreement on the precise boundary. The concept of a Zone of Cooperation was then developed, whereby both countries would jointly invite contractors to explore for and exploit petroleum resources under production sharing contracts in the disputed area.

Agreement on the text of the Treaty, which is incorporated as the Schedule to the Petroleum (Australia-Indonesia Zone of Cooperation) Bill, was reached by officials on 27 October 1989. The formal signing by the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Indonesian Minister for Foreign Affairs, Mr Ali Alatas, took place on 11 December 1989.

The Timor Gap Treaty is the most substantial bilateral agreement concluded in the forty year history of Australia's relations with Indonesia. The Treaty represents a unique approach to the settlement on a provisional basis for cooperative exploration for and exploitation of petroleum resources which would otherwise have been indefinitely delayed by efforts to define a single boundary line. The Zone of Cooperation is an area of very high prospectivity.

The zone of cooperation consists of three areas. Area A is the area of joint development where the control of petroleum operations will be exercised by a Ministerial Council and a Joint Authority on behalf of Australia and the Republic of Indonesia. The Joint Authority will be responsible for the day-to-day management of petroleum operations in Area A and will report directly to the Ministerial Council, a body comprised of an equal number of Australian and Indonesian Ministers.

Area B is the area of sole of Australian jurisdiction, but Australia will pay 10 per cent of gross Resource Rent Tax revenues from this area to Indonesia and notify Indonesia about petroleum operations in the Area. Area C is the area of sole Indonesian jurisdiction, and Indonesia will notify Australia about petroleum operations in that Area and will pay 10 per cent of its Contractor's Income Tax Revenues from this Area to Australia.

This Bill, together with the Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Bill, is therefore directed at making Australian law consistent with the provisions of the Treaty. The Treaty includes four annexes. Annex A provides maps and the coordinates of the Zone of Cooperation. Annex B is the "Petroleum Mining Code for Area A of the Zone of Cooperation" which governs operational activities relating to exploration for and exploitation of petroleum resources. Annex C is the "Model Production Sharing Contract between the Joint Authority and (Contractors)", being the basis on which production sharing contracts for Area A should be concluded. Annex D is the "Taxation Code for the Avoidance of Double Taxation in Respect of Activities Connected with Area A of the Zone of Cooperation".

The principal financial impact will be the prospective receipt of sales proceeds by Australia from the production sharing arrangements. The basic

principle of the Treaty is that the Joint Authority exercises the rights of the two countries in the exploration for and exploitation of their petroleum in Area A of the Zone of Cooperation. The Joint Authority is to enter into contracts with corporations to explore for and produce petroleum. In return, these contractors will receive a share of the petroleum produced, to which they will acquire ownership at the point of tanker loading.

Primary responsibility for the marketing of petroleum rests with the contractor. There are, however, safeguards to ensure that petroleum is marketed at world prices. Provision is made under the Model Production Sharing Contract for the Joint Authority to determine the value of petroleum sold by the contractor to purchases, such as affiliates, that are not third parties. In addition, the Join Authority may market any or all of the petroleum produced with the approval of the Ministerial Council, when the Joint Authority can receive a better price than the contractors.

The method of sharing petroleum production between the contractor and the Joint Authority is provided in Section 7 of the Model Production Sharing Contract. This provides for three progressive stages in this sharing of crude oil production, between the Joint Authority and the contractor. The Joint Authority's share is to be paid intact and in equal shares to Australia and Indonesia. The initial stage is the shared first tranche petroleum. In the next stage, contractor's investment credits and operating costs are recovered from production revenues. The final stage is the sharing of residual production.

First tranche petroleum amounts to 10 per cent of crude oil production during the first five years of production and thereafter 20 per cent. On oil production up to a daily average rate of 50,000 barrels per day, this first tranche petroleum is to be shared in the ratio 50:50 between the Joint Authority and the contractor. For the next 100,000 barrels per day of production first tranche petroleum is to be shared in the ratio 60:40 between the Joint Authority and the contractor; and for production above 150,000 barrels per day the respective sharing ratios are 70:30.

The second stage provides the contractor with production equal in value to investment credits of 127 per cent of exploration and capital costs together with all operating costs, including exploration costs and depreciation of capital costs.

The third stage allocates residual production once investment credits and operating costs are recovered. The split of this production is based on the same progressive sharing arrangements between the Joint Authority and the contractor as applies to the allocation of first tranche petroleum.

The revenues from first tranche natural gas production are shared constantly 50:50 between the Joint Authority and the contractor. Following the recovery of investment credits and operating costs, residual natural gas production is again shared in the 50:50 ratio.

An additional and prospectively significant financial impact is the taxation receipt from business profits derived from Area A. Both countries' will apply their taxation legislation to contractors deriving profits from their operations in Area A but in such a way that only 50 per cent of business profits and losses are taken into account by each country. As noted, Australia is obliged by its Treaty obligations to pay 10 per cent of its gross Resource Rent Tax revenue from Area B to Indonesia. Neither revenues from production sharing, nor taxation receipts from business profits from petroleum operations in Area A, can be estimated until more is known of the petroleum potential of Area A.

A third element in this overview of financial impacts is that the provisions to apply to individuals working in Area A provide that residents of Australia will be subject to Australian taxes, and residents of Indonesia will be subject to Indonesian taxes. Double taxation provisions apply to business profits and salaries of individuals who are residents of neither Australia nor Indonesia.

The Joint Authority will be self funding from contract fees. Such fees will not, however, be receivable until contract bids are received and contracts are subsequently awarded. This may not occur until some twelve months after the Treaty enters into force. The final element in the financial impact of implementation of the Treaty is therefore the initial working capital for the Joint Authority estimated at $US2m. Australia is required to advance its half share or $US1m. It is anticipated that this advance will be repaid within five years. The scope of the Treaty extends well beyond production sharing, taxation and the arrangements for the Ministerial Council and Joint Authority. The Treaty, under Articles 12 to 30, covers the range of issues likely to be encountered in the exploration for and exploitation of petroleum.

These include the prevention and minimisation of, and liability of contractors for, pollution of the marine environment. For this purpose and civil claims generally, the legislation provides that State and Territory courts are vested with federal jurisdiction in relation to acts or omissions done in Area A resulting in damage or liability suffered by Australians. This will include liability for the pollution of the marine environment.

There are a range of other Articles in the Treaty covering other activities, contingencies and potential developments arising out of the exploration for and exploitation of petroleum in Area A. These include surveillance, security measures, search and rescue, air traffic services, and health and safety for workers. These and other issues will be dealt with through a range of rules, regulations and procedures required by the Treaty.

This package of legislation gives effect to the Treaty and its Annexes which govern all aspects of the exploration for and exploitation of petroleum in Area A of the Zone of Cooperation. The regime established by the Treaty for Area A of the Zone of Cooperation is unique compared with similar joint development zones in other parts of the world in both the complexity and

comprehensive nature of its provision. The joint nature of those provisions do not simply replicate the system existing in either Australia or Indonesia, but combine features of both in an innovative and practical arrangement.

This legislation gives effect to a substantive and complex Treaty which allows this vital cooperative effort with Indonesia to proceed.

I commend the Bill to honourable senators and present the Explanatory Memorandum to this Bill and the Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Bill 1990.

PETROLEUM (AUSTRALIA-INDONESIA ZONE OF COOPERATION) (CONSEQUENTIAL PROVISIONS) BILL 1990

This Bill provides a series of amendments to legislation that would otherwise be inconsistent with the provisions of 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". The text of the Treaty is the schedule to the Petroleum (Australia-Indonesia Zone of Cooperation) Bill 1990, or Treaty Bill.

These amendments relate to legislation pertaining to the exploration for and exploitation of petroleum in Area A of the Zone of Cooperation. Area A is the area of joint development where a Ministerial Council and a Joint Authority will exercise the rights and responsibilities of Australia and Indonesia in relation to the exploration for an exploitation of petroleum.

The Crimes at Sea Act is amended so that it applies in Area A consistent with Article 27 of the Treaty. Northern Territory criminal law will apply to offences by Australians, while Indonesian law will apply to Indonesians. The provisions, consistent with the Treaty, deal also with persons who are neither permanent residents nor nationals of either Australia or Indonesia.

Other parts of this Consequential Provisions Bill are provided to make Australian legislation consistent with Articles of the Treaty dealing with the application of customs, migration and quarantine laws, industrial relations issues and changes required to permits which had been issued under the Petroleum (Submerged Lands) Act in Area A.

The Customs Act is amended consistent with Article 23 to make it an offence, without authorisation, for persons or goods to be brought directly to or from a resource installation in Area A without first entering or returning to either Australia or Indonesia. Goods taken to, or brought from Area A, for use in petroleum operations are not liable to customs duty, but are subject to duty if they are transferred permanently from Area A to another part of Australia.

Amendments to the Fringe Benefits Tax Assessment Act and the Income Tax Assessment Act ensure that the anti-avoidance measures provided in these Acts are not diminished by the Treaty or the Taxation Code.

The Industrial Relations Act amendment provides for employment contracts and collective agreements entered into under Article 24 of the Treaty to specify the Australian Industrial Relations Commission as an available mechanism for the settlement of disputes.

The Migration Act is amended to allow control of persons moving onto and from resource installations in Area A and by regulation to allow the application of that Act in Area A if that proves necessary.

The amendments provided to the Petroleum (Submerged Lands) Act 1967 redefine the scheduled "adjacent area" to exclude Area A of the Zone of Cooperation, and hence place it outside the scope of this Act. These amendments provide that those parts of permit areas extending outside Area A are to be renewed. Provision has been made in the event that compensation is found to be payable in relation to the termination of permit areas in Area A, in terms consistent with paragraph 51 (xxxi) of the Constitution. Legal advice to the Government, however, is that no such compensation will be payable.

The Quarantine Act amendments are similar to those made to the Migration Act. These control persons, goods and equipment leaving or entering Area A for quarantine purposes.

The financial impacts of these amendments are relatively less significant than those relating to the Treaty Bill. The non-liability of goods to customs duty, when used in petroleum operations in Area A, has the potential to relieve importers from duty over a broad range, but generally this exemption from duties would be within the level of 10 per cent to 20 per cent. Until the petroleum potential of Area A is better understood and hence development plans can be prepared, there is no basis on which to estimate the impact of this provision.

The object of these amendments is therefore to apply existing Commonwealth legislation in Area A in a manner which is consistent with the Treaty.

On 23 May 1990 the Democrats Leader, Senator Michael Macklin, issued the following statement:

The Australian Democrats today announced that they will oppose the government's treaties for oil exploration in the Timor Gap with Indonesia.

Democrats Leader, Senator Michael Macklin, said that his party will vote against the government legislation which seeks to ratify the treaties.

Senator Macklin said: "The Democrats believe there are sufficient grounds for the Zone of Co-operation Treaty with Indonesia to be considered illegal."

Firstly, Indonesia's 1975 invasion of East Timor was a flagrant violation of international law under Article 2(4) of the Charter of the United Nations. The treaty is illegal because Indonesia lacked legal title to the area containing the resources.

Secondly, prior to 1975 the East Timorese were under Portuguese colonial rule and therefore had a right to self-determination. The invasion was a violation of that right as specified in the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States.

The Australian Democrats believe that there is a massive discrepancy between the government's position on East Timor and its stance on the Soviet annexation of the Baltic states 50 years ago.

Senator Macklin said: "Australian governments have consistently held that the Soviet annexation of the Baltic states was illegal under the doctrine of non-recognition of forcible seizure of territory."

"However, this Government is prepared to condone the Indonesian invasion of East Timor on our front doorstep only 15 years ago!"

In supporting the legislation the opposition has flaunted international law and ignored the on-going human rights abuses in East Timor in favour of prospective royalties from oil exploration and exploitation.

[*Note*: for Portugal's response to the Timor Gap Treaty, see Part XIV, Disputes, below.]

On 28 May 1990 Senator Cook said on conclusion of debate on the proposed legislation, amongst other things (Sen Deb 1990, Vol 139, pp 1247–49):

There are not too many cases internationally where there is a dispute about the boundary where an enlightened temporary outcome of this nature has been reached in order to provide some benefit to both contesting countries. I repeat that that in no sense is meant to indicate that Australia does anything other than continue to argue that the continental shelf should continue to be the right boundary. I also acknowledge that Indonesia would argue that the boundary is the 200-mile limit from its shores, but we argue that the continental shelf is the right boundary, and that is the case. Here we have a solution to the conflict. ...

Finally, Senator Brownhill proposed also that the issue of compensation to existing permit holders had not been resolved satisfactorily. ...

The permits extending into area A are to be terminated only because this is an essential step in the implementation of an important international treaty. No special benefit is gained from that termination by the Commonwealth. The Government does not propose to compensate the permit holders unless the termination of permits within area A is found to be an acquisition of property within the meaning of paragraph 51(xxxi) of the Australian Constitution.

An exploration permit is a right granted by Government to search for petroleum owned by the Crown – in effect, by Australia for Australians, Legal advice to the Government is that the termination of an exploration permit in these circumstances is not an acquisition of property.

On 8 February 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read in part:

> The Minister for Foreign Affairs and Trade, Senator Gareth Evans, will tomorrow attend the inaugural Ministerial Council meeting of the Timor Gap Treaty in Bali.
>
> Senator Evans said the inaugural Ministerial Council meeting would address a number of administrative issues including the creation of a smooth operational framework for the Joint Authority and the appointment of an Executive Director from each country.
>
> The Ministerial Council would deal in a practical way with issues that would inevitably arise during the Treaty's lifetime. Cooperation flowing from it would remain an important factor in the stability of Australia's relationship with Indonesia.

On 10 February 1991 the Minister for Resources, Mr Griffiths, issued a news release which read in part:

> The Federal Minister for Resources, Mr Alan Griffiths, today returned to Australia after attending, together with the Foreign Affairs and Trade Minister, Senator Gareth Evans, the landmark meeting of the Timor Gap Zone of Cooperation Treaty Ministerial Council.
>
> ..
>
> The inaugural meeting coincided with the Timor Gap Treaty entering into force, and marked the opportunity for a bilateral program with Indonesia to develop petroleum resources in the Timor Gap area.
>
> "This is a first in international relations where two countries have actually shared a resource rather than simply divided the source into components", Mr Griffiths said.
>
> ...
>
> With the joint activities in operation, petroleum exploration activity can be expected to commence with seismic surveys being undertaken for prospective bidders for contract areas.
>
> Award of production share contracts can be expected in December 1991. Exploration drilling might then commence in 1992 or 1993.
>
> In addition, Mr Griffiths said, "With the Treaty having entered into force, I now propose to release exploration areas in Area B in May this year".
>
> In keeping with the Treaty obligations, Mr Griffiths will write to the Indonesian Energy Minister, Mr Ginandjar, regarding Area B within the next few weeks.

On 9 April 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer, in part, to a question on notice (Sen Deb 1991, p 2134):

> Under the Treaty the Joint Authority is responsible for controlling movements into, within and out of Area A, the joint area, of the Timor Gap Zone of Cooperation of vessels, aircraft, structures, and other equipment employed in exploration for and exploitation of petroleum resources and for requesting action by appropriate Australian and Indonesian authorities for search and rescue operations and in the event of terrorist threat to the vessels and structures engaged in petroleum operations in Area A. Under the Treaty the two countries have the right to carry out surveillance in Area A of the Zone of Cooperation and are obliged to exchange information on surveillance and on likely threats or security incidents relating to petroleum exploitation in that Area. The Ministerial Council has agreed that the two countries will keep the Joint Authority appropriately informed of such matters. The Ministerial Council has therefore agreed that the two Technical Officers with security liaison functions will be responsible for liaising with the appropriate Australian and Indonesian authorities and will be the point of contact within the Joint Authority on all security matters and incidents. ...

On 12 November 1991 the Minister for Resources, Mr Griffiths, issued a news release which read in part:

> The Federal Minister for Resources, Mr Alan Griffiths today announced that 11 production sharing contracts have been approved for petroleum exploration in Area A of the Zone of Cooperation in the Timor Sea.
>
> The agreement was made at a meeting of the Ministerial Council for the Zone of Cooperation. The meeting was attended by Mr Griffiths and Indonesia's Minister for Mines and Energy, H.E. Ginandjar Kartasasmita.
>
> Mr Griffiths said the 11 production sharing contracts would be executed between the Australia-Indonesia Joint Authority and successful applicants, within the coming 30 days.
>
> Area A, which has been divided into 14 contract areas, was opened for competitive bidding on June 24 this year, with applications closing on October 7. Applications were received for 12 of the 14 contract areas. One applicant subsequently withdrew. No applications were made for the other two contract areas.
>
> There were a total of 55 oil companies involved in the applications lodged.
>
> ...
>
> The total work commitment proposed by the applicants comprises over 40,000 kilometres of seismic survey and interpretation, a total of 48 wells to be drilled, with more than 20 exploration wells drilled in the first three years, amounting to a total exploration budget in excess of US $200 million.
>
> During the meeting Mr Griffiths stressed that the success of these projects should be determined not only by revenue which Australia and Indonesia might share from the petroleum operations in Area A, but also by the ability to ensure a healthy and safe working environment for workers, and

> petroleum operations which do not cause unacceptable damage to the marine environment. In this context, the Minister welcomed the completion of three policy papers prepared by the Ministerial Council, on occupational health and safety, combating incidental pollution and administrative guidelines for the preparation of employment contracts or agreements for personnel employed in Area A.

On 11 December 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice regarding the proposed signing of production-sharing agreements (Sen Deb 1991, p 4619):

> The agreement being signed this week is very much pursuant to the treaty which already exists between Indonesia and Australia on the Timor Gap question. It would be a very serious matter indeed were Australia not to proceed with its obligations under that existing treaty arrangement, which was freely entered into between two sovereign countries and is pursuant to what was obviously a *de jure* recognition by us - announced as such in 1979 and repeated by this Government in 1985 - so far as Indonesia's sovereignty over the border area in question is concerned.

**Freedom of navigation - declaration by Papua New Guinea of a 50-nautical mile exclusion zone around Bougainville - Australian response**

On 9 May the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1990, Vol 139, pp 109-110):

> The final part of the question concerned Mr Somare, who expressed his upset a couple of days ago in relation to a report carried in the *Canberra Times* last Friday which drew upon the remarks of a departmental spokesman about our attitude to Papua New Guinea's declaration of a 50-nautical mile exclusion zone around Bougainville. The remarks of that spokesman and, indeed, the remarks I made myself in a doorstep interview that day, did reflect serious concern at the implications for Australia of that declaration which was made early last week. They also repeated concerns which I had expressed to Papua New Guinea Ministers during my visit a week earlier when I was assured that such a declaration, while it had been considered, would not be made. ...
>
> In his press release, Mr Somare suggested that Australia's interest in this proposed total exclusion zone amounted to interference in Papua New Guinea's internal affairs. I think the following points need to be appreciated: the Australian response that I was making did not relate to the current restrictive arrangements about a 12-nautical mile zone, which do not involve any international shipping lanes. I made it clear in Papua New Guinea, as I have made it clear subsequently, and again in Question Time today, that any decision about the application of a blockade in this area is wholly a PNG affair. Of course, the purported declaration of a 50-nautical mile exclusion zone is not, in any view, simply an internal affair for the country concerned;

it is an action which can profoundly affect the interests of other countries. The notice to aviators and mariners that was issued on 2 May warned, after all, that unauthorised vessels sighted within the zone would be fired on without warning by PNG patrol boats. The exclusion zone was also defined as including air space up to 20,000 feet.

While no commercial aircraft fly directly over that route, there are certainly Australian ships that pass regularly through the passage between Buka and New Ireland. To the best of our knowledge about eight Australian flag vessels per month transit that passage, while the total number of commercial traffic could be as high as one per day. So it was in that context that I instructed our High Commissioner in Port Moresby to make our rather well-founded concerns known to the Papua New Guinea Government. And it was in those terms that I responded to press inquiries on the subject. I notice that Papua New Guinea has now rescinded notification of the proposed 50 nautical miles total exclusion zone. Mr Diro has said that he was obliged to acknowledge on the part of the Papua New Guinea Government that declaration of such a zone would be a violation of international law. He also acknowledged that it was the product of an internal communications failure. His Government accepted responsibility for the confusion in question.

**Freedom of navigation - protection of the marine environment - compulsory pilotage of vessels - Great Barrier Reef Marine Park - International Maritime Organization recommendation**

On 28 May 1990 the Minister for Arts, Sport, the Environment, Tourism and Territories, Senator Richardson, said in answer to a question asked on 25 May on compulsory pilotage of vessels in the Great Barrier Reef Marine Park (Sen Deb 1990, Vol 139, pp 1196-7):

> There are international agreements to ensure the right of innocent passage by ships through international waters and territorial seas. As a consequence, any move to introduce compulsory pilotage requires international agreements and cooperation.
>
> At the instigation of the Australian government, the International Maritime Organisation recommends that all ships greater than 100 metres or which carry hazardous substances, including oil, should carry a pilot while in waters off the Great Barrier Reef. About 90 per cent of ships carry a pilot and nearly all tankers are piloted. The Government does not believe that 90 per cent is good enough. The risks to the Great Barrier Reef are too high.
>
> I am advised that the Department of Foreign Affairs and Trade has urged those countries whose ships do not carry pilots to do the right thing. Also, it is investigating as a high priority other possible legal options, in consultation with the Attorney-General's Department, the Department of Transport and Communications and the Great Barrier Reef Marine Park Authority.

> These options include imposing conditions on ships seeking access to Australian ports and the compulsory requirement to carry a pilot.

In October 1990 Australia launched an initiative in the International Maritime Organization seeking recognition of and compliance with a system of compulsory pilotage in the Great Barrier Reef Marine Park. Following is an extract from IMO document MEPC 30/24, ANNEX 16, at p 61, which gives some of the background to the proposal:

> The Great Barrier Reef has long been recognised as an area of particular environmental significance and a number of measures have been taken to protect this area, or parts of it, from damage caused by ships.
>
> In 1971, the IMO Assembly adopted resolution A 232(VII) to amend the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, (as amended in 1969). The term "nearest land" in this Convention was amended for the north-eastern coast of Australia to mean the eastern boundary of the Great Barrier Reef instead of the north-eastern coast (the normal baseline) of mainland Australia. The objective of the amendment was to maintain and preserve the Great Barrier Reef in its natural state free from pollution in any form particularly that caused by discharges from ships of oil or oily mixtures even in limited quantities. In the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) the same principle was applied in all relevant Annexes with a view to providing additional protection to the Great Barrier Reef. ...
>
> In 1985, a proposal was submitted to the Sub-Committee on Safety of Navigation to recommend the use of pilotage services during navigation through Torres Strait at the north of the Great Barrier Reef, the northern part of the Inner Passage of the Great Barrier Reef and the major entrances to the Reef (document NAV 31/3/3). The main objective of the proposal was to provide the maximum possible level of protection for this highly sensitive area. The proposal was supported by a brief description of the area and the present state of protection of the area. The proposal was adopted by IMO in November 1987 as Assembly resolution A 619(15).
>
> In 1990, a proposal was submitted to the MEPC to:
>
> (1) identify the Great Barrier Reef as a particularly sensitive sea area; and
>
> (2) a proposal for a compulsory pilotage scheme for merchant ships navigating the inner route in parts of the Great Barrier Reef.

The proposal referred to was that submitted by the Australian Government. Following is an extract from the document (MEPC 30/19/4) submitted by Australia in support of the proposal (reproduced also in MEPC 30/24 ANNEX 16, pp 62–65):

*Voluntary Pilotage*

IMO resolution A619(15) recommends that all ships of 100 metres in length and over, all oil tankers, chemical carriers and gas carriers irrespective of size should engage the services of the Queensland Coast and Torres Strait Pilot Service when navigating Torres Strait, the Great North East Channel, the Inner Route and Hydrographer's Passage.

Australia acknowledges the partial success of this scheme. Before the recommendation was adopted by the Assembly some 75% of vessels engaged a pilot. The level of compliance has now risen to approximately 90% of vessels and has stabilised at this level. This leaves a significant number, some 200 per year, which currently ignore resolution A619(15).

These vessels include tankers and large container ships carrying significant volumes of bunker oil.

In February of this year Australia intensively lobbied the governments of those countries whose ships are not currently availing themselves of the voluntary system, urging them to ensure that ships operating under their flag comply with IMO resolution A619(15). Despite these efforts there has not been a noticeable increase in compliance. As a consequence the risk of an accident remains unacceptably high.

*Compulsory Pilotage*

In the light of these circumstances, Australia now proposed a scheme of compulsory pilotage for merchant ships navigating the inner route of the Great Barrier Reef between the northern boundary of the Great Barrier Reef Marine Park and 16 degrees 40 minutes S.

The Great Barrier Reef is an area with specific restraints on navigation relating to the depth of water, width of channel and certain limitations in weather conditions, where safety of navigation and protection of the unique environment of the Great Barrier Reef would be enhanced by the carriage of a qualified pilot.

In view of the history of shipping incidents overseas and the eleven incidents that have occurred within the Great Barrier Reef since 1985, the Australian Government cannot justify delaying the implementations of practical measures to protect an area so vital to Australia's national interest and that of the international community as a whole.

Australia proposes introducing compulsory pilotage for the inner route of the Great Barrier Reef and Hydrographers' Passage under existing domestic legislation, the Great Barrier Reef Marine Park Act, which regulates activities in the Park, and is specific to the area of the Great Barrier Reef Marine Park.

In seeking support for the proposal from Member Governments of the IMO in October 1990, the Australian Government stated in an Aide Memoire:

Australia believes that the requirement of pilotage in this geographically limited and environmentally unique area is a necessary and justifiable exercise of its jurisdiction and consistent with international law.

In this context Art 192 of the 1982 United Nations Law of the Sea Convention describes the general obligation upon all states to protect and preserve the marine environment.

In addition, Art 194(1) places an obligation upon states to act individually or jointly in order to prevent, reduce and control pollution from any source. Art 194(3)(b) requires states to take measures to minimise to the fullest possible extent pollution from vessels, in particular measures for preventing accidents. Art 194(5) specifically places an obligation upon states to take measures necessary to protect and preserve rare or fragile ecosystems. These obligations have been incorporated in the 1986 convention for the Protection of the Natural Resources and Environment of the South Pacific Region (The Noumea Convention). Australia is a State Party to this convention, which entered into force this year.

It is accepted under customary international law, and is embodied in the 1923 Geneva Convention on the International Regime of Maritime Ports, that coastal states may place requirements upon ships entering their ports as a condition of such entry.

Article 21(1)(a), (d) and (f) of the Law of the Sea Convention acknowledge the rights of coastal states to adopt laws and regulations in conformity with international law in the territorial sea in respect of safety of navigation and the regulation of maritime traffic, the conservation of the living resources of the sea, the preservation of the environment of the coastal state and the prevention, reduction and control of pollution thereof.

Resolution A159(ES.IV) (27 November 1968) of the Inter-governmental Maritime Consultative Organisation (IMCO – the forerunner of the IMO) is also significant in this context. It contains a recommendation to governments that:

> ... they should organise pilotage services in those areas where such services would contribute to the safety of navigation in a more effective way than other possible measures and should, where applicable, define the ships or classes of ships for which employment of a pilot would be mandatory.

The areas and provisions of the proposed regulations will be kept to an absolute minimum consistent with the goal of minimising the risk of pollution of this unique marine environment. They will not impose an excessive burden on shipping in view of the increased protection which these measures will afford for an irreplaceable and unique ecosystem.

The proposal was adopted by the Marine Environment Protection Committee of the IMO. By resolution MEPC.44(30), adopted on 16 November 1990, it identified the Great Barrier Reef region as a Particularly Sensitive Area, and by

Resolution MEPC.45(30) adopted on the same day, provided for protection of the region. The operative part of the latter Resolution:

> RECOMMENDS that Governments recognise the need for effective protection of the Great Barrier Reef region and inform ships flying their flag that they should act in accordance with Australia's system of pilotage for merchant ships 70 m in length and over or oil tankers, chemical tankers, and gas carriers, irrespective of size navigating the inner route of the Great Barrier Reef between the northern extreme of Cape York Peninsula (10°41'S) and 16°40'S and in Hydrographers Passage.

On 20 November 1990 the following Joint Statement was issued on the implementation by Australia of the compulsory pilotage scheme for the environmental protection of the Great Barrier Reef:

> Australia will implement a scheme of compulsory pilotage for ships which constitute a potential threat to the environment of the Great Barrier Reef, the Federal Government announced today.
>
> The initiative was announced by the Acting Minister for Foreign Affairs and Trade, Neal Blewett, the Attorney-General, Michael Duffy, the Minister for the Arts, Sport, the Environment, Tourism and Territories, Mrs Ros Kelly, MP and the Minister for Shipping and Aviation Support, Senator Bob Collins.
>
> The Ministers said that the Great Barrier Reef was a World Heritage Area and the world's largest system of corals and associated life forms. It was the greatest known marine repository of biodiversity, and was a unique area requiring the highest possible level of environmental protection.
>
> The Australian Government had for some time been conducting an international campaign to ensure that all ships which posed a potential hazard to the Great Barrier Reef carried a pilot.
>
> "The culmination of this campaign will be the introduction of an amendment to the Great Barrier Reef Marine Park Act requiring all ships of 70 metres length and over and all loaded oil tankers, chemical carriers and liquefied gas carriers, irrespective of size, to take pilots when navigating the northern part of the inner route of the Great Barrier Reef, as well as Hydrographers Passage which is off Mackay. This will replace the existing voluntary pilotage scheme which received the endorsement of the International Maritime Organisation (IMO) in 1987. The new scheme should be in place by the middle of next year", they said.
>
> Australia has conducted a major diplomatic effort to gain acceptance of compulsory pilotage in the area. Australia achieved international endorsement of its proposals at a meeting of the Marine Environment Protection Committee (MEPC) of the IMO, held in London from 12-16 November.
>
> At this meeting governments agreed on the need for effective protection of the Great Barrier Reef region and that it should be identified as a

Particularly Sensitive Area. Governments will instruct ships flying their flag that they should act in accordance with Australia's pilotage system.

The Great Barrier Reef is the first area in the world to be identified as a Particularly Sensitive Area under guidelines which were agreed to by the IMO at the November MEPC meeting.

On 26 November 1990 the Minister for Shipping and Aviation Support, Senator Collins, said in part in answer to a question without notice (Sen Deb 1990, p 4401):

This is simply not a question of symbolism; it has a real effect. All of the major shipping nations of the world will be required by their governments to instruct ships flying their flags to act in accordance with Australia's pilotage arrangements for the Great Barrier Reef. Amendments will be made to the Great Barrier Reef Marine Park Act which will require all ships which pose a potential hazard to the reef to carry a pilot when navigating the northern part of the inner reef and Hydrographers Passage off Mackay. This requirement will apply to all ships in excess of 70 metres in length and to loaded oil tankers, chemical carriers and liquefied gas carriers, irrespective of their length.

**United Nations Convention on the Law of the Sea - Australian policy**

On 18 September 1990 the Minister for Trade Negotiations, Dr Blewett, provided the following written answers to the respective questions (HR Deb 1990. Vol 172, p 2125):

(1) Does the first corporate plan of the Department of Foreign Affairs launched on 7 May 1990, include an objective to promote universal application of a regime for the oceans based on the 1982 UN Convention on the Law of the Sea.

(2) Did the 21st South Pacific Forum, held in Port Vila on 31 July and 1 August 1990, again urge all member countries, as a matter of priority, to take measures to ensure the entry into force of the Convention.

(1) Yes.

(2) The communique of the 21st South Pacific Forum contained the following reference to the ratification of the Law of the Sea Convention: "The Forum urged all member countries, as a matter of priority, to take measures to ensure the entry into force of the Law of the Sea Convention".