XIV DISPUTES

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

On 23 February 1990 the following article appeared in *Backgrounder* (Vol 1, No. 8) published by the Department of Foreign Affairs and Trade:

Australia Rejects Portuguese criticism of Timor Gap Treaty

The Timor Gap Zone of Cooperation Treaty between Australia and Indonesia, which establishes a provisional regime for joint development of petroleum resources in an area of overlapping maritime jurisdiction in the Timor Sea, represents a creative solution to a diplomatic impasse on resolution of a boundary dispute between neighbouring countries.

It is an imaginative approach to breaking the deadlock in delimitation negotiations first begun between Australia and Indonesia in 1979 after it became clear that the two countries held very different views of the applicable rules of international law.

However, while removing a potential source of bilateral and regional friction, Australia's signing of the Treaty has been criticised by the Portuguese Government as "violating the legitimate right of the people of Timor to self-determination and their sovereign right to their resources", as well as disregarding Portugal's status in the matter.

According to Portugal, the Treaty constitutes "a clear and flagrant violation of international law and the United Nations Charter, especially since numerous resolutions adopted by the General Assembly and the Security Council do not recognise Indonesia's sovereign power over East Timor, which was militarily and illegally occupied in December 1975".

Australia rejects absolutely the Portuguese claims that its actions are inconsistent with established international law. Indeed, Senator Gareth Evans has stated publicly that should Portugal seek to initiate any action in any forum, Australia would defend its position with vigour and determination.

There is no binding legal obligation not to recognise the acquisition of territory acquired by force. Moreover, even if the acquisition is recognised, it does not signify approval of the circumstances of acquisition.

The statement in Parliament by the Prime Minister in August 1985, which set out the Australian Government's position on the issue, made it clear that although Australia's *de jure* recognition of Indonesian sovereignty over East Timor had taken effect in 1979, Australia did not condone the manner in which the province was incorporated.

Furthermore, conclusion of the Timor Gap Zone of Cooperation Treaty does not, as a matter of international law, signify Australia's approval of Indonesia's original acquisition of the territory of East Timor.

In international law the legality of the original acquisition of territory has to be distinguished in subsequent dealings between the state acquiring the new territory and other states.

The East Timor issue is a matter quite separate from the Timor Gap Zone of Cooperation Treaty, which concerns maritime jurisdiction and petroleum resources of neighbours and is of no concern to Portugal on the other side of the world.

Australia has consistently supported discussions between Portugal and Indonesia under the auspices of the UN Secretary-General to resolve the lingering East Timor issue between those two countries.

It should be noted that the Treaty is provisional in nature and does not delimit a final seabed boundary. Australia continues to assert its sovereign rights over the seabed extending to the northern boundary of the Zone of Cooperation created by the Treaty (that is, to the geomorphological edge of the natural prolongation of Australia's continental shelf marked by the Timor Trough).

The Treaty itself contains provisions to the effect that it will not prejudice the position of either Australia or Indonesia in respect of permanent delimitation of the continental shelf in the Zone of Cooperation. Therefore, Australia does not concede that any sovereign rights over seabed resources that appertain to the land mass of East Timor in fact extend into the Zone of Cooperation.

The assertion that the people of East Timor have permanent sovereign rights over the seabed resources in the Zone of Cooperation is not accepted by Australia. Consistent with this position is the fact that Australia had never conceded, prior to 1975, any Portuguese interest in the area of seabed forming part of the Zone of Cooperation.

Australia supports the universal observance of internationally accepted standards of human rights and regularly raises human rights issues in a wide range of countries, including Indonesia. In this regard, the Government maintains a close interest in developments in East Timor and has, over the years, continued to raise questions of human rights in the Province, and to seek free access to the Province for the media, international organisations and aid workers.

As a practical matter, Australia's *de jure* recognition of Indonesia's acquisition of East Timor has enabled Australia to pursue its concerns for the human rights and economic development of the people of East Timor in a constructive and effective manner with the Indonesian authorities.

Senator Evans raised human rights issues with the Indonesian Foreign Minister, Mr Alatas, when he visited Australia in March 1989 and again in their meeting on 10–11 December 1989.

Australia's active support for the rights of the people of East Timor is well documented. The Government has assisted a United Nations Children

Fund (UNICEF) project in East Timor since its inception in 1982, with the total contribution to the project now being $3.24 million.

Australia has also contributed $1.8 million over the last six years to the International Committee of the Red Cross (ICRC) for its activities in East Timor.

More recently, the Australian Ambassador to Indonesia took the opportunity during his visit to East Timor from 23–27 October 1989 to announce the first Australian bilateral aid grant to the Province.

It is a grant of $100,000 which will be used for an initial one year project to demonstrate better farming techniques throughout the Province and to encourage farmers to accept technology appropriate to their needs.

The conclusion of the Treaty in no way impedes Australia's efforts on behalf of the East Timorese. Indeed, it is hoped that closer relations with Indonesia flowing from the negotiations will provide Australia with a more influential position from which to help the people of East Timor.

Following entry into force of the Timor Gap Treaty on 9 February 1991 (after an exchange of notes between Australia and Indonesia on 10 January 1991), Portugal commenced a case against Australia in the International Court of Justice on 22 February 1991. On the same day, the Portuguese Embassy in Canberra presented the following Note to the Department of Foreign Affairs and Trade:

EMBASSY OF PORTUGAL
CANBERRA

22nd February 1991

The Honourable Gareth John Evans QC
Minister for Foreign Affairs and Trade

Your Excellency,

Upon instructions from my Government, I have the honour to kindly request your attention to the following:

The Portuguese Government is aware that Australia is on the way of extending the exploration for and the exploitation of the natural resources of the Timor Sea's subsoil, as well as the practice of related acts of jurisdiction, closer to East Timor's coastline, inside the area known as "Timor Gap", located between East Timor's southern coast and Australia's northern coast.

Those activities are supposed to be undertaken beyond the median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the respective territorial seas are measured. Besides, those activities are also expected to be carried out in the very inside of the so-called "Timor Trough", situated close to the Timor coastline.

This extension is based on a bilateral instrument, concluded not with Portugal, the Administering Power of the non-self governing Territory of East Timor, recognised as such by the United Nations, but with a third country instead, any negotiation with Portugal having been precluded.

The Portuguese Government is of the opinion that the negotiation, the signature, the ratification, and the implementation of the Australian-Indonesian "Treaty", signed on 11 December 1989, constitute a very serious violation of some of the most basic rules of International Law, namely those pertaining to the right of self-determination of Peoples, to the territorial integrity of non-self governing Territories and to the permanent sovereignty of Peoples over their natural resources. Moreover they plainly disregard the United Nations Charter and the authority assigned to its main Bodies. This has been consistently made known to the Australian Government.

Besides this, the Portuguese Government considers that, even independently of their title, the exploration for and the exploitation of the natural resources located in the "Timor Gap's" continental shelf, be it direct or indirect, alone or together with any other country, are abusive and illicit without Portugal's consent, taking into account its capacity as the Administering Power of East Timor. In fact they violate also the rights provided to the Territory of East Timor under the provisions of article 2 of the Convention on the Continental Shelf, done at Geneva on 29 April 1958. The same applies to any act of jurisdiction related to that exploration or exploitation as well as to the collection of any revenues deriving from them. It is also the Portuguese Government's understanding that all the acts and activities described above undertaken beyond the median line, every point of which is equidistant from the nearest points of the baseline from which the breadths of the territorial seas of East Timor and Australia are measured, constitute a violation of those rights.

As a matter of fact, Portugal has always affirmed and still affirms, that, under the provisions of article 1, complemented by International Custom, and of article 6, paragraph 1 of the Convention on the Continental Shelf, done at Geneva, on 29 April 1958, the boundary of the continental shelf appertaining to East Timor and to Australia is and shall continue to be the median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the respective territorial seas are measured. In accordance with the provisions of the aforesaid article 6, paragraph 1, of the Convention on the Continental Shelf, done at Geneva, on 29 April 1958, article 1, paragraph 3 of "Decreto-Lei" 49.369, of November 11, 1969, extended to East Timor on November 22, 1969, and still in force, states that:

"unless an agreement has been concluded with a State whose coasts are adjacent or opposite to those of the Portuguese State, and providing that no special circumstances justify a different boundary line, the boundary of the continental shelf is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the respective territorial seas are measured".

Portugal, in its capacity as Administering Power of the non-self governing Territory of East Timor, is obliged, under the provisions of article 73 of the Charter of the United Nations, to promote to the utmost, within the system of international peace and security established by the Charter, the well-being of the inhabitants of that Territory. It is therefore also incumbent upon it the responsibility of defending and promoting the rights of the East-Timorese. Thus, Portugal, in addition to what it has already stated before, namely through the verbal note of protest handed over to the Department of Foreign Affairs, on 11 February 1991, hereby notifies the Australian Government that:

The exploration for and exploitation of the natural resources of Timor Sea's seabed and subsoil, in the area known as "Timor Gap" as well as any other connected activities, carried out directly or indirectly, alone or together with any other country, including the practice of related acts of jurisdiction or the collection of any revenues deriving from them, undertaken beyond the above-mentioned median line (and, in all cases, when extended to where Australia had announced its intention to undertake them), without Portugal's consent and not even with any attempt to negotiate the matter with Portugal, constitute, furthermore, a violation of the rights provided to the Territory of East Timor under the provisions of article 2 of the Convention on the Continental Shelf of 29 April 1958.

Portugal and Australia are both parties to the Convention on the Continental Shelf, done at Geneva, on 29 April 1958, as well as to the Optional Protocol of Signature concerning the compulsory settlement of disputes arising out of the interpretation or application of any article of any Convention on the law of the sea of 29 April 1958, whose article 3 reads as follows:

"The parties may agree, within a period of two months after the Party has notified its opinion to the other Party that a dispute exists, to resort not to the International Court of Justice but to an Arbitral Tribunal. After the expiry of the said period, either Party to this Protocol may bring the dispute before the Court by an application."

In accordance with and for the purposes of the aforesaid article 3, the Portuguese Government, in the fulfilment of its duties as the Administering Power of the non-self governing Territory of East Timor, and namely in the defence of the rights of its people, hereby notifies the Australian Government that:

– It considers that the boundary of the continental shelf appertaining to East Timor and to Australia, in the area known as "Timor Gap", is and shall continue to be the median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the respective territorial seas are measured.

– It considers that the exploration for and exploitation of the Timor Sea's seabed and subsoil in the area known as "Timor Gap", as well as any other connected activities, carried out by the Government of Australia, directly or indirectly, alone or together with any other country, including the practice of related acts of jurisdiction or the collection of any revenues deriving from them, beyond the above–mentioned median line (and, in all cases, when extended to where Australia has announced its intention to undertake them), without Portugal's consent and not even with any attempt to negotiate the matter with Portugal, constitute a violation of the rights provided to the Territory of East Timor under the provisions of article 2 of the Convention on the Continental Shelf of 29 April 1958.

– And that it considers that a dispute exists between Australia and Portugal in what regards the questions referred to above, questions which concern the interpretation and the application of articles 1, and 6, paragraph 1, of the Convention on the Continental Shelf of 29 April 1958.

As a consequence of the existence of the aforesaid dispute between Australia and Portugal the Portuguese Government proposes to the Australian Government that negotiations be held aiming at agreeing upon a mutually acceptable form of settlement to the dispute. This would not, of course, be detrimental to the holding of negotiations on the very substance of that dispute, which have been hitherto precluded by the Australian Government.

The Portuguese Government reserves itself the right to bring the entire dispute referred to above before the International Court of Justice, or a part of that dispute, as provided by article 3 of the above mentioned optional Protocol of 20 April 1958. This cannot be construed as a renunciation to any other rights or to the possibility of resorting to the Court to uphold them.

My Government will forward a copy of this Note to the Secretary–General of the United Nations, taking into account the provisions of Chapter XI of the Charter and also the mandate entrusted to him by Resolution 37/30 of the United Nations General Assembly, of 23 November 1982.

Please accept, Your Excellency, the renewed expressions of my highest consideration.

Yours faithfully

Jose Luiz Gomes

Ambassador

The Department responded in the following terms:

> The Australian Department of Foreign Affairs and Trade presents its compliments to the Embassy of Portugal and refers to the letter of 22 February 1991 from the Ambassador to the Minister for Foreign Affairs and Trade and to the Note delivered on 11 February 1991.
>
> The Australian Government notes with some surprise that the letter of 22 February 1991 was delivered at the same time as Portugal was instituting proceedings in the International Court of Justice against Australia. The Australian Government regards the institution of such proceedings as regrettable. It considers such action is unlikely to advance the resolution of the difference Portugal has with Indonesia with regard to East Timor.
>
> Australia reserves fully its position concerning the wide ranging assertions, including legal assertions, concerning East Timor and the rights of the people of East Timor made by Portugal both in the letter and in previous diplomatic notes lodged with the Department. Australia will take whatever action it considers appropriate to defend the action instituted against it in the International Court.
>
> However, Australia specifically rejects the suggestion in the letter that a dispute exists between Australia and Portugal concerning the continental shelf between Australia and East Timor. In particular, Australia does not consider that any dispute arises between the two countries arising out of the interpretation or application of any provisions of the 1958 Law of the Sea Conventions. In the view of Australia, Portugal no longer has any relevant continuing legal interest or authority in relation to offshore areas appurtenant to East Timor. The Australian Government is unable, therefore, to agree to negotiations as suggested in the letter.
>
> The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of Portugal the assurance of its highest consideration.

Peaceful settlement of disputes – International Court of Justice – action by Nauru against Australia

On 13 July 1990 the following article appeared in *Backgrounder* (Vol 1 No 19) published by the Department of Foreign Affairs and Trade:

Nauru: International Court of Justice action against Australia

> On 19 May 1989, Nauru filed an application with the International Court of Justice alleging Australian responsibility for the rehabilitation of phosphate lands mined before Nauru's independence on 31 January 1968. Australia denies such responsibility.
>
> Australia and Nauru have had a long and close relationship. Nauru was originally colonised by Imperial Germany in 1886, but on the outbreak of

War in 1914 Australian forces occupied the island. After World War I, the British Empire was awarded a mandate over Nauru, following vigorous representations by the then Australian Prime Minister, Mr WM Hughes. The Governments of the United Kingdom, Australia and New Zealand agreed on a joint administration, with an administrator for the island provided by Australia.

During World War II, Japanese forces occupied the island and deported about two thirds of the inhabitants to the island of Truk, where a large number died. After the war they returned to Nauru, arriving on 31 January 1946.

In 1947, the Mandate was converted into a trusteeship under United Nations (UN) supervision with Australia, New Zealand and the United Kingdom designated as the joint administering authority. During the period of the trusteeship, increased governmental responsibilities were gradually conferred on the people of Nauru. This culminated in the creation of a Legislative Council in 1965. Further negotiations resulted in an agreement to grant Nauru independence on 31 January 1968, and to transfer control of the phosphate industry wholly to Nauru.

Under the trusteeship an Australian administrator, on behalf of the partner governments, oversaw the day-to-day affairs of the island. All decisions concerning the government and future of Nauru were made jointly by the partner governments. Officials from the partner governments met regularly to discuss the future of the island and its people, and the phosphate mining operations carried out there. During this period, UN Visiting Missions to Nauru, and the Trusteeship Council itself, commented favourably upon the high standard of health care, education and public services provided by the Administration.

Phosphate mining on Nauru began while it was a German colony. During the period of the mandate and of the trusteeship, phosphate extraction continued under the aegis of the British Phosphate Commissioners, a statutory body established for the purpose by the partner governments. Royalties paid to the Nauruan landowners were steadily increased over the years. In 1921, a Nauru Royalty Trust Fund was established by BPC to provide for the welfare of Nauruans on the island. In 1927, a further long term Nauruan Landowners Royalty Trust Fund was set up. In 1947, with the reestablishment of phosphate mining after the war, these trust funds were continued and a Community Long Term Investment Fund introduced under an agreement between BPC and the Nauruan Chiefs, to provide for the long term future of the Nauruans. Additional royalties were paid into these funds by BPC.

In 1963, the Nauruan people were offered resettlement on Curtis Island, just off the Queensland coast, where they would have retained the right to their own community within the State of Queensland. The partner governments offered to meet all expenses of the relocation. The Australian

Government offered the Nauru Local Government Council rights unparalleled elsewhere in Australia, including rights to control entry to the island, liquor licensing, policing and the right to prevent the transfer of land on the island to outsiders.

However, the Nauruan leadership insisted on a status inconsistent with the maintenance of Australian sovereignty over the island. It was not possible to arrange a satisfactory compromise on this issue, and the Nauruans then decided to opt for independence on Nauru itself.

The phosphate agreement concluded before independence gave Nauru the entire economic benefit of the phosphate industry. This followed the rejection by the Nauruans of a form of partnership. Under this agreement and the UN-approved independence arrangements, which were reported fully to the United Nations and as a result of which the trusteeship was terminated, the trusteeship partner governments (Australia, New Zealand and the United Kingdom) gave up their concession to mine phosphate until the year 2000. Despite the great value of the concession, the partner governments considered that in order to guarantee the Nauruans a viable future it should be surrendered without compensation. Plant on the island, some of which the British Phosphate Commissioners could otherwise have used for its other operations, was sold to the Nauruans at a price agreed between the BPC and the Nauruan leaders. In return the partner governments considered that Nauru now had the wherewithal to provide for a secure future and take on the responsibility for any rehabilitation of the island.

After independence, Nauru was anxious to continue the phosphate operation. Australia guaranteed to take two million tons a year until 1970, and continued to provide Nauru's largest and most important market. It is in the period since independence that the majority of the phosphate has been mined. The income from phosphate mining should have given Nauru one of the highest per capita incomes in the world. A good return on investment should have guaranteed them a long-term income above that enjoyed by the average Australian.

Only one third of today's mined land was mined before independence. The remaining two thirds has been mined by Nauru without rehabilitation so far, although there exists a sizable fund earmarked for the purpose. The rehabilitation question was comprehensively studied in the lead up to Nauru's independence, but these studies did not see rehabilitation as practicable in terms of providing a significant return to the Nauru economy. The Davey Committee, which reported on the issue in 1966, made a number of recommendations on land use and rehabilitation, but also concluded that "... it would be impracticable to restore the mined areas to provide an agricultural economy for the Nauruans ...". Nevertheless it remains open to the Government of Nauru to use the financial returns from mining to undertake rehabilitation in accordance with its own judgement of national priorities.

Successive Australian governments, together with New Zealand and the United Kingdom, have maintained the position that any responsibility for rehabilitation was extinguished in the independence settlement. Accordingly, Australia considers that Nauru has no case against it in international law. The United Kingdom and New Zealand have not accepted the compulsory jurisdiction of the International Court to the degree Australia has, and have therefore not been taken to the Court by Nauru.

Australia continues to take a close and sympathetic interest in the long-term future of Nauru as a Pacific Island country with which we continue to seek close and friendly relations. The Prime Minister, Mr Hawke, made this clear to President DeRoburt during his state visit to Australia in 1988, offering to facilitate Nauru's access to Australian expertise which might be useful to Nauru in preparing its economy for the post-phosphate era.

Strong personal and business links between the two states also continue. Many Nauruan students attend Australian secondary and tertiary institutions. Nauruans undergo medical treatment in Australia. Nauru has many investments in Australia, the foremost being Nauru House in Melbourne.

The Nauruan written arguments (Memorial) were filed in the International Court on 20 April 1990 and the Australian Counter Memorial must be lodged by 21 January 1991. As there has been no indication from Nauru that it intends to drop its action, the Australian Government is continuing to prepare its defence.

Australia's Counter Memorial was lodged in January 1991, and oral argument was presented on Australia's preliminary objection later in the year. Following is the transcript of a British Broadcasting Corporation Television interview with the Minister for Foreign Affairs and Trade, Senator Gareth Evans, in London on 4 November 1991:

Q: Just to change the subject slightly... There is a court case being brought by the Nauruan Government.. for compensation.. this is over, as you well know, the phosphate mining issue. What is the Australian Government's reaction to it?

GE: We are vigorously contesting this particular litigation because we say it is against both the letter and the spirit of the agreement that was reached in 1967 before Nauruan independence. The essence of that agreement reached between the three trusteeship countries, Australia, New Zealand and Britain on the one hand and Nauru on the other was to give the full future economic benefit of the industry, the phosphate industry, to Nauru. And that enabled the Nauruans to afford the rehabilitation process themselves. It was very much part of that agreement that rehabilitation be the ongoing responsibility of the Nauruans. About two-thirds of the area of the island that has been mined has been mined since Nauruan independence under the terms of that agreement. There is about DLR$A280 million in the Nauru rehabilitation trust fund which was built especially for that purpose.

So, for all those complicated reasons we say that an agreement is an agreement and it ought to be stuck to.

Q: What sort of contact have you had with the British Government? I know that you are the running responsible agent but...

GE: Britain and New Zealanders have both resisted the jurisdiction of the international court in relation to this particular matter. Australia is the only one of the three countries that has been willing to accept the jurisdiction on this, as indeed on a number of other matters internationally. That means that if things do go badly for us in the case we will be looking to Britain and New Zealand for their contribution. We do not think they will go badly but we certainly think that responsibility should be shared among all of us.

Q: I see. So you willingly, as it were, put yourself into the hands of the court?

GE: One of the themes in Australian foreign policy is the notion of acceptance of the role of good international citizen. We take one of the characteristics of such citizenship being a willingness to submit to the jurisdiction of the international court if a case is brought against us in international law. A number of other countries have been less willing to submit to that jurisdiction or have created... exceptions or reservations about it. One might wish when litigation of this kind appears on the horizon that we had been perhaps less generous. ... but we do not think we can change course in mid-stream in that respect so we accept the responsibility, we will fight the case. Our side of the case is very strong, but if that proves unfounded we certainly will be looking to Britain and New Zealand to contribute.

Peaceful settlement of disputes - Belize and Guatemala - dispute over sovereignty

On 20 September 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 today welcomed the announcement that the Governments of Belize and Guatemala have finally agreed on a series of steps to resolve their long-standing dispute over the sovereignty of Belize.
>
> ...
>
> He said that the agreement involved Guatemala's recognition of Belize's sovereignty and the general acceptance of current borders. Belize had made a concession to allow the Guatemalans a deep water channel away from the coast and had adjusted its Exclusive Economic Zone (EEZ). The agreement also provided for the few remaining unresolved border issues to be submitted to international arbitration.

"Australia believes that the resolution of this dispute is a very positive development and will enhance the political and economic stability of the region", Senator Evans said.

Peaceful settlement of disputes – Cambodia

On 12 December 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice about the United Nations peace plan for Cambodia (Sen Deb 1990, p 5521):

> The simple truth of the matter is that the Australian proposal, as now endorsed not only by the Permanent Five but by the entire United Nations at least through the Security Council and now the UN General Assembly, is a proposal which was built around the concept of a transitional period in Cambodia which will involve a UN peacekeeping presence, a UN organised election and a UN supervised civil administration to ensure a level playing field, and there is no better guarantee that I can think of that a fair outcome will result.

On 3 October 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Defence, Senator Ray, issued a joint news release which read in part:

> Up to 40 Australian Defence Force (ADF) personnel will take part in the United Nations Advance Mission to Cambodia (UNAMIC), the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Defence, Senator Robert Ray, announced today.
>
> The United Nations has accepted, subject to Security Council approval of the Secretary-General's plan, Australia's offer to provide an ADF communications unit to the UNAMIC. The force is likely to be deployed in late October or early November after the signing of a comprehensive settlement of the Cambodia conflict.
>
> The Australian unit will support the cease-fire in Cambodia by setting up communications links between the Cambodia Supreme National Council in Phnom Penh and the armed forces of the four Cambodian parties. The unit may be required to remain in Cambodia for a number of months, until the main peace-keeping force is deployed.
>
> ...
>
> The Ministers noted that the Australian contribution was another example of our long-standing participation in UN peacekeeping operations. Currently Australia also maintains peacekeepers in the Middle East and Cyprus, and we have recently despatched a communications unit to the Western Sahara.

On 5 November 1991 the Prime Minister, Mr Hawke, said in the course of an answer to a question without notice (HR Deb 1991, pp 2279–81):

> Honourable members will be aware that late in 1989 Senator Evans took up a broad idea which had been put forward in the first instance by Congressman

Stephen Solarz of the United States. He put forward the broad concept that the United Nations should, in effect, rule Cambodia during a transition period to allow elections to be held in which Cambodians could make their own democratic choice about the government which would be in charge of their country.

The Australian Foreign Minister, Senator Gareth Evans, took the simple idea and turned it into a comprehensive, detailed and practical plan which envisaged a bigger role for the United Nations than any it has ever taken before in any comparable or vaguely comparable situation. To put it mildly, the Evans transformation of the Solarz idea was to create an exceptionally bold plan.

...

I go finally to the question of Australia's further role. We have only just begun that role. A team of some 40 ADF communicators is now on standby to go to Cambodia as part of the United Nations advance mission which will provide communications and good offices between the factions until the full United Nations Transitional Authority in Cambodia, UNTAC, is established next year. Its mission, as we should all acknowledge in this place, will be difficult but it will be rewarding and we wish its members well. Australia has offered to provide some 500 personnel for UNTAC itself, including the commander of the main peacekeeping force, as well as electoral assistance. We are committed to helping with reconstruction and repatriation efforts.

Peaceful settlement of disputes – Arab–Israeli dispute – Australia's role

On 21 May 1990 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, p 636):

I think Australia's general position on this whole issue is by now well known and well appreciated to the extent that what we are talking about here are essentially political conflicts rather than contests of legal right. We take the view that the situation in Israel and the occupied territories is long overdue for reasoned resolution by a proper, negotiated settlement between Israel, its Government and the proper representatives of the Palestinian people. ...

Australia's position remains one of very strong support for a resolution of the problem of the Palestinian people in a way that, of course, not only recognises Israel's right to exist within secure borders but also produces a just solution for the displaced Palestinian people.

On 7 November 1990 Senator Evans provided the following written answer in part to a question on notice (HR Deb 1990, Vol 173, p 3496):

The Australian Government maintains an even-handed policy towards the parties to the Arab–Israeli dispute. This policy allow us to impress upon all concerned – with equal voice – the need for a comprehensive and lasting peace based upon a negotiated settlement between parties.

Australia's policy towards the Middle East is based on two main premises:

- As a longstanding friend of Israel we are totally committed to Israel's right to exist within secure and recognised boundaries.
- We also recognise the right of self-determination for the Palestinian people, including their right, if they so choose, to independence and the possibility of their own independent state.

Our even-handed policy is aimed at Australia being heard with respect by Arab and Israeli Governments. This is a valuable, balanced position that ought to be preserved if the difficult business of advancing a peaceful settlement is to be continued.

On 5 September 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in answer to a question without notice (Sen Deb 1991, p 1193):

United Nations General Assembly resolution 194 was adopted back on 11 December 1948. It was one of the early attempts to resolve the Arab-Israeli and Palestinian issues. Among other things, it established the United Nations Conciliation Commission to assume the functions of the UN mediator on Palestine - Count Bernadotte - who was murdered in Jerusalem on 17 September of that year. It resolved that Jerusalem should be placed under a permanent international regime under United Nations control. It also resolved that refugees wishing to return to their homes after the 1948 Arab-Israeli war and live in peace with their neighbours should be allowed to do so and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property. Australia voted in favour of that resolution. Among states which voted against were, regrettably, Egypt, Iraq, Lebanon, Saudi Arabia, Syria and Yemen.

Since that resolution was adopted almost 43 years ago, there have been dramatic further developments in the region, including three major wars between Israel and its neighbours. Australia's current attitude to that resolution is that the broad issues it canvasses should be discussed in the context of a peace conference between all the parties involved.

...

As Australia was not a member of the Security Council in 1967, we were not entitled to vote on resolution 242. We were on the Security Council in 1973 and we did vote in favour of resolution 338. As I have made clear on several occasions, including through a news release as recently as last month, on 3 August, Australia has for many years supported a comprehensive solution to the Middle East dispute based on these Security Council resolutions and the principle of land for peace.

Settlement of disputes – Iraqi invasion of Kuwait – linkage to the Arab–Israeli dispute

On 11 October 1990 Senator Button, as Minister representing the Minister for Foreign Affairs and Trade, provided the following written answer to an earlier question without notice (Sen Deb 1990, pp 2917–18):

> The Government has made clear that there can be no linkage between the resolution of the Gulf crisis and the resolution of the Palestinian issue. The requirements for a resolution of the Gulf crisis are clearly stated in the United Nations Security Council resolutions:
>
> The unconditional withdrawal of Iraq from Kuwait;
>
> The restoration of the legitimate Government of Kuwait;
>
> The departure of all foreign nationals who wish to leave Iraq and Kuwait.
>
> ...
>
> In conclusion, Australia's policy towards the Middle East is based on two main premises: we are committed to Israel's right to exist within secure and recognised boundaries; we recognise the right of self-determination for the Palestinian people, including their right, if they so choose, to independence and the possibility of their own independent state.

On 19 June 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1991, pp 4994–5):

> So far as the first part of the question is concerned, Security Council resolutions 242 and 338 were adopted after the Arab–Israeli wars in 1967 and 1973 in quite different circumstances from those in which the 12 Iraq–Kuwait Security Council resolutions were adopted in the past few months. Resolutions 242 and 338 were aimed at concluding active hostilities between the conflicting parties. The question of who was the aggressor was far less clear cut. The international community, including the Security Council, was deeply divided about the rights and wrongs of the wars and issues which led to them.
>
> Resolutions 242 and 338 set out provisions to be met by both sides of the conflict and required negotiation between them. One of these issues was, of course, the settlement of boundaries between the then warring parties of 1967 and 1973 – boundaries which have never been determined; whereas in the case of Iraq's invasion of Kuwait, established and recognised boundaries were blatantly violated. The onus for the implementation of those resolutions has thus never rested exclusively with Israel. Indeed, Senator Coulter will recall that the Arab side which had lost territory in both wars was, for several years, quite ambivalent about those resolutions, mainly because they implied recognition of the state of Israel.

> ... Australia has accepted for many years that the PLO does represent the opinion of a significant proportion of the Palestinian people and we have certainly been prepared to deal with the PLO on that basis. We do not, however, accept the PLO's claim to be the sole legitimate representative of the Palestinian people.

Settlement of disputes – Ethiopia and Eritrea

On 28 May 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1991, pp 3629–30):

> Since the resignation and flight of President Mengistu last week, fighting in the north and north-west of the country has seen significant gains made by the various rebel groups in Eritrea. The Eritrean People's Liberation Front has at last captured Asmara and the strategic port of Assab while the Tigrean People's Liberation Front has now surrounded the capital, Addis Ababa.
>
> ...
>
> The Australian Government has long supported and called for a negotiated settlement of the conflict in Ethiopia. We have made this very clear to the Ethiopian Government and to the various rebel groups. We are certainly hopeful that the London talks will see the end of a conflict which has gone on for 30 years and which has contributed so much to the tragedy of Ethiopia during that period.

Settlement of disputes – Lebanon

On 13 February 1991 the Prime Minister, Mr Hawke, said in the course of an answer to a question without notice (HR Deb 1991, pp 465–6):

> The Taif accord, agreed by an overwhelming majority of the Lebanese parliamentarians in October 1989 and welcomed by this Government, as the honourable member will recall, sets out a new Lebanese national charter. It provides for sharing equally political power between Muslims and Christians in an enlarged parliament. It also provides a framework for the withdrawal of Syrian forces from Lebanon and the extension of the Lebanese Government's authority throughout the country.
>
> I think it is comforting to us all to know that since the Taif accord was signed in October 1989, some considerable progress has already been achieved. I go to three issues. Firstly, a new government has been formed. Secondly, the security situation in Beirut has been stabilised with the withdrawal of various militia groups. Finally, the Government has extended to a considerable extent its authority to southern Lebanon by moving army units there. But, having said that, we must say that despite the Taif agreement and that progress to which I have alluded which has been made under the agreement, very serious problems remain. We have the continued presence in Lebanon of both Syrian and Israeli forces and we have a situation

of attacks and retribution between the Palestine Liberation Organisation and Israeli forces in Lebanon.

These destabilising factors underline that while the Taif agreement is a major step in the right direction, foreign intervention still plagues Lebanon and makes it still the tragic country. In those circumstances I conclude by saying that there is a responsibility on all countries, not least upon Australia, to support international efforts to assist in the further implementation of the Taif agreement once a more settled environment is created with the removal of Iraq from Kuwait. I can assure the honourable member that Australia will certainly provide such support.

Settlement of disputes – Cyprus

On 9 April 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer, in part, in answer to a question on notice (Sen Deb 1991, p 2141):

Australia will continue to support UN Security Council resolutions and the Commonwealth approach to a resolution of the problems in Cyprus. The Australian Government believes that negotiations and dialogue between the two communities are essential if a lasting solution is to be found for the Cyprus problem, and that that process of dialogue is most effectively conducted through the UN Secretary General.

...

The Australian Government would not urge international and comprehensive economic sanctions against Turkey at this time ...

Peaceful settlement of disputes – United Nations peacekeeping operations – Australian response on troops and equipment available for peacekeeping operations – Western Sahara

On 16 April 1991 the Minister for Defence provided the following written answer, in part, to a question on notice (HR Deb 1991, p 2779):

The UN questionnaire sought a response from Australia on the type of forces that could be made available for peacekeeping operations.

The Australian response, submitted on 31 August 1990, indicated the type of personnel, units and equipment that could be provided for peacekeeping operations.

The provision of any support, would be subject to Australian Government consideration of a UN request, on a case by case basis. No firm commitment to peacekeeping operations would be given without full Ministerial approval.

On 10 July 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Defence, Senator Ray, issued a joint news release which read in part:

Australia will take part in the United Nations peace-keeping operation in the Western Sahara the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Defence, Senator Robert Ray, announced today.

The Ministers said Australia would provide 45 military communicators to form the field communications unit for the operation. They would be deployed in the operations area for about 35 weeks.

Australia's contribution was in response to a formal request from the United Nations Secretary-General to participate in the United Nations Mission for the Referendum in the Western Sahara (MINURSO).

...

"Participation by Australia demonstrates Australia's support for the increasing responsibility of the United Nations in international peace-keeping and the Government's commitment to good international citizenship", the Ministers said.