

III. Recognition

Recognition of States – Former Yugoslav Republics and Yugoslav Federation

In a press conference of 1 January 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part:

As to the recognition of Croatia and Slovenia, it has, of course, been for some time a question of when rather than whether it was appropriate for the international community to recognise the reality of the dissolution of Yugoslavia as we have traditionally known it. Former Prime Minister Hawke made clear some time ago that Australia would be among the first to recognise Croatia and Slovenia, but, at the same time, we did not want to be pre-emptive in terms of the international response given the obvious dangers associated with the whole recognition scenario, dangers of Serbian backlash, dangers of the situation in Bosnia–Herzegovina, in particular, exploding. The approach we have adopted, accordingly, has been to really act in concert, or in step, with the mainstream Europeans who have had the primary responsibility of living with the outcome in Yugoslavia. The balance of judgment, not without some reservation has been reached in Europe that it is time, now, to go down the path of recognition. The Europeans, or the EC, moved that way last night and we followed immediately.

The question of the future of the other republics, in particular Macedonia and Bosnia–Herzegovina, has been left unresolved. As I say in my press release, the Australian Government is very well disposed toward the claims of independence of these republics, but again, we would not wish to take action in advance of a decisive move toward recognition by at least some number of European countries and there are still a number of unresolved problems so far as those republics are concerned. We, of course, all hope that the peace process now tenuously in place, as a result, in particular, of the United Nations efforts, will hold. ...

Q: Given the passions of the situation between the Croats and the Serbs, how far can recognition go towards ending that dispute?

GE: I have certainly taken the view that recognition in itself is no panacea and that the simplistic notion that recognition somehow immediately internationalises the problem and therefore makes it possible for all sorts of UN type processes and external processes to be put in train that would not otherwise be technically appropriate and that this will result in some magic new momentum, I have always been very cautious about accepting that analysis as have many other countries. There is another argument which goes the other way, however, and says that the fact of recognition and the international acceptance of the reality of separate Statehood that that involves will concentrate the minds – and particularly since the recognition is on existing boundaries – of the Serbs on the necessity to themselves compromise and reach an amicable solution. It really is just not a judgement

that I feel equipped to make at the moment as to how all this will work out and I do not honestly think anyone in the world is equipped to make a totally confident judgement. We can just hope that the process will hold, we can just hope that the Germans who have led the way on this have got it right when they said that on the balance the recognition will work to advantage. It is certainly an arguable case, whether it is a self-evidently decisive case I just do not know.

Q: I take it that you still recognise the Federation of Yugoslavia? What is their anticipated response to this?

GE: I did not think that they will be particularly thrilled by it and they have already made that clear in public statements by way of reaction to the EC. One of the virtues, of course, of moving in step with the EC, or a significant body of European opinion, is that it is less easy to translate that negative reaction into hostile action when you have got so many people going down a particular path. We do continue to recognise what is left of Yugoslavia and there will be no change in the status of the Yugoslav mission here in Australia. But, as the situation is progressively resolved in relation to Macedonia, Bosnia-Herzegovina, obviously questions will then have to be addressed about who is the proper successor State to Yugoslavia and whether there is anything left that can properly be so described. That time has not yet come.

Q: When you say existing boundaries, do you mean existing cease-fire boundaries or boundaries that existed before we started?

GE: The boundaries that existed before the start. There is no de facto acceptance of new boundaries as a result of this recognition. No, and that is a very important part of the European Community's and our own recognition. I mean, whether there is fully effective control by a government within those boundaries is a very good question and obviously one that is not easy to answer in the affirmative at the moment. So, a lot of these criteria are beginning to be a little bit fudged, but the basic thing is governing people, I think, is just their assessment of what will work and what, alternatively, may hinder the achievement of a proper political settlement, recognising that an irreversible momentum has developed behind the dissolution of what previously was Yugoslavia. I think it is appropriate to apply very strictly and pedantically those traditional criteria where there is still some prospect of holding a country together but where it manifestly has passed the point of no return, then other criteria tend to come into play and that is what has happened here.

Recognition of States – Slovenia and Croatia

On 16 January 1992 the Prime Minister, Mr Paul Keating, issued a news release which read in part:

- Australia has decided to recognise as independent States the former Yugoslav republics of Slovenia and Croatia.

Slovenia and Croatia have met the conditions set out by the EC on 16 December 1991. These include respect for United Nations and Conference on Security and Cooperation in Europe (CSCE) principles, including regard for the rule of law, democracy and human rights, guarantees on minority rights, observance of international obligations on security and non-proliferation,

respect for the inviolability of all frontiers, and recourse to peaceful means for the settlement of disputes.

But much remains to be done before the people of the former republics of Yugoslavia are able to enjoy the peace and prosperity that is their right. I strongly urge the leaders of all the parties to the conflict to demonstrate the strength of will and political determination to resolve their differences peacefully. Nor does the act of recognition bring to an end the responsibility of the international community to help resolve the conflict. The international community must continue to promote and support efforts to ensure that minority rights, territorial disputes and succession questions are settled peacefully and justly.

I warmly welcome the establishment of these new States, and wish the leaders and people of the nations of Slovenia and Croatia well in the tasks ahead. My Government will seek discussions with the new States on establishing diplomatic relations.

On 16 January 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read in part as follows (see Chapter X p 567 of this volume for those aspects of Senator Evans' press release concerning the establishment of diplomatic relations):

"Recognition by the international community is the culmination of the process of self-determination on which the people of Croatia and Slovenia have embarked", Senator Evans said.

"The governments of Croatia and Slovenia have given the necessary undertakings – identified by the European Community – about respect for the rule of law, observance of human rights, acceptance of democratic principles and willingness to abide by international obligations and Australia accordingly wishes to enter into diplomatic relations with both countries." ...

Australia will continue to give close consideration to the question of the recognition of the republics of Macedonia and Bosnia–Herzegovina. The Australian Government is well disposed towards the claims of independence of these republics but would not wish to take action in advance of a decisive move towards recognition by a number of European countries.

Senator Evans said that the international community, and in particular the United Nations and the European Community, must continue their efforts to achieve a comprehensive and peaceful resolution.

"Australia will play its part in support of these efforts", Senator Evans concluded.

Recognition of States – Bosnia–Herzegovina

On 1 May 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read as follows:

Senator Gareth Evans, Minister for Foreign Affairs and Trade, announced today that Australia has recognised the Republic of Bosnia–Herzegovina.

"The situation in Bosnia–Herzegovina remains tense but Australia should do what it can to encourage the European Community's mediation efforts in Bosnia–Herzegovina", Senator Evans said.

"I take this opportunity to appeal to all the communities in Bosnia-Herzegovina to maintain their dialogue on the Republic's future structures. I also call upon other Republics and the Yugoslav National Army not to interfere in the affairs of Bosnia-Herzegovina. Australia will not accept changes in borders brought about by force", Senator Evans went on to say.

Over thirty countries have already recognised the Republic of Bosnia-Herzegovina including the EC countries, the United States, Canada, New Zealand and a number of other countries in the Balkans and North Africa.

Australia will continue to monitor closely the situation in the remaining republics of the former Socialist Republic of Yugoslavia; Serbia, Montenegro and the Republic of Macedonia. The Government has taken note of the proclamation of the Republics of Serbia and Montenegro to have formed a new State called the Federal Republic of Yugoslavia and will give this matter careful consideration. In the meantime, diplomatic and consular missions will continue to conduct normal business without prejudice to the final resolution of this issue.

See also Senator Evans' news release of 16 January 1992, set out on p 414 above.

Recognition of States – Macedonia – Australian non-recognition

On 3 March 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 151, p 537):

The Australian Government is acutely conscious of the sensitivities that are involved in relation to the question of the recognition of what is presently known as the Yugoslavian Republic of Macedonia...

From the point of view of Greece, and the Greek community in Australia, the question of the recognition of the Yugoslavian republic known as Macedonia does create a number of problems which do not exist in relation to other present or former Yugoslav republics. The Greek concerns extend to the use of the name "Macedonia", with all its historical and cultural associations; the question of Skopje's commitment to accepting the sovereignty and inviolability of the whole of present day Greece; and also the question of the protection of minorities, in particular the Albanians, who boycotted the 1991 independence referendum...

Australia will not proceed to recognition until the following basic, outstanding questions are resolved: the name issue – the use of the word "Macedonia" – being settled in a way which does not cause further tension with Greece; Greece's concern about possible territorial claims or aspirations being fully met; and the international community's concern about the protection of minorities being fully satisfied.

Intense efforts are now under way in Europe to achieve a mutually acceptable outcome between Athens and Skopje on all the relevant issues, and it is important that the Australian Government does not by its actions take any steps that would prejudice that process. We do not want to state any Australian position which assumes that a consensual solution is impossible...

Finally, Australian policy will continue to be guided above all by our assessment of what will most contribute to the harmonisation of relations between the former Yugoslav republics, and between them and their neighbouring States. We have no wish to see the recognition issue determined in any way which serves only to create new regional tensions in a region which has already been undergoing such rapid change.

On 2 June 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question upon notice from Senator Bourne (*Sen Deb 1992, Vol 153, p 337*). The question and answer were, in part, as follows:

(Q) What support has the Australian Government provided to the efforts by the European Community and the United Nations aimed at finding a peaceful solution to the dispute over recognition of the former Yugoslav Republic of Macedonia?

(A) Australia, like the European Community, has expressed its willingness to recognise the former Yugoslav Republic of Macedonia when all outstanding issues, including the issue of the name of the State, have been settled. We have encouraged the EC to work strenuously to resolve this matter and we will continue to do so.

On 15 December 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (*Sen Deb 1992, Vol 157, p 4990*):

As I and the Prime Minister have stated before, Australia has taken a similar position to that of the European Community. We will not be able to move to recognition of the former Yugoslav Republic of Macedonia until outstanding problems associated with the name under which the former republic will be known are resolved. Of course, we do all hope that this issue can be resolved expeditiously and that in the interim calm will prevail between the parties concerned.

On 26 May 1992 the Minister for Small Business, Construction and Customs, Mr David Beddall, issued a news release which read as follows:

The Federal Minister for Small Business, Construction and Customs, Mr David Beddall confirmed today that the references to the former Yugoslav Republic of Macedonia in proposed changes to the Customs Tariff Act in no way implies any change in Australian Government policy on recognition.

To ensure there is no possible misunderstanding, the Government will move an amendment to the Act in the Senate to include the words "the former Yugoslav Republic of Macedonia".

"The changes to the Customs Tariff Act enable, both countries recognised by Australia and other geographical entities to receive benefits under the Australian System of Tariff Preferences (ASTP)", Mr Beddall said.

"Places such as the former Yugoslav Republic of Macedonia will receive the benefits of the ASTP scheme but this does not imply recognition as an independent country.

"Both the Prime Minister and the Minister for Foreign Affairs and Trade have explained the Government's position in this regard.

"There will be no recognition of the former Yugoslav Republic of Macedonia as an independent country until a number of conditions are met including the name issue being settled in a way so as not to cause any further tension in the region."

Recognition - Succession to former Yugoslavia - Australian notification to Conference on Yugoslavia of debt owed by former Socialist Federal Republic of Yugoslavia to Australian national

On 15 September 1992 Australia's Permanent Representative to the United Nations in Geneva, Mr Ronald Walker, sent the following letter to the Co-Chairmen of the Steering Committee for the International Conference on the former Yugoslavia, Lord Owen and Mr Cyrus Vance (see pp 455-63 of Volume 12 of this *Year Book* for background information on the *Tokic* case, and p 258 of Volume 13 of this *Year Book* for a reference to its foreign State immunity aspect):

The Australian Government hereby notifies the Conference on Yugoslavia of the existence of a debt owed by the former Socialist Federal Republic of Yugoslavia to an Australian national. The debt arises from an unsatisfied judgement of an Australian Court of Competent Jurisdiction against the "Government of Yugoslavia".

The judgement arose from an incident on 29 November 1988, when Josef Tokic, an Australian citizen engaged in a protest outside the premises of the Yugoslav Consulate in Sydney, was shot and wounded by an unidentified person firing from within the Consulate's premises. Requests from the New South Wales Government for the Yugoslav Government to allow police to question staff of the consulate were refused. The Government of Australia ordered that the Consulate be closed and its staff returned to Yugoslavia.

On 28 August 1990 Mr Tokic's solicitors lodged a Statement of Claim against the "Government of Yugoslavia" in the Supreme Court of New South Wales. On 18 February 1991 the initiating process was served by an officer of the Australian Embassy in Belgrade on an officer of the Yugoslav Federal Secretariat for Foreign Affairs. In the Supreme Court of New South Wales the Government of Yugoslavia was initially represented by local solicitors and asserted that the Court did not have jurisdiction to hear the case, it subsequently declined to file a Defence and did not appear at the hearing of the matter. The Court was satisfied that the defendant was aware of the matter and of the hearing date. The matter was heard *ex parte*.

On 12 December 1991 Mr Justice McInerney of the Supreme Court of New South Wales found that the person who fired the shot was an employee of the Consulate. He further found that the defendant was not immune from the action by reason of Section 13 of the Foreign States Immunities Act 1985 (Commonwealth). Mr Justice McInerney awarded Mr Tokic the sum of \$A46,854.00 in damages against the Yugoslav Government, plus costs. Those costs have not yet been assessed. That judgement was served on the Yugoslav Federal Secretariat for Foreign Affairs on 18 March 1992.

Neither the Government of the Socialist Federal Government of Yugoslavia before its dissolution nor any of its successor States have paid the assessed damages and costs in accordance with the judgement.

The Australian Government requests the Conference to note the existence of the debt in the context of any future discussion of the division of the assets and debts of the former Socialist Federal Republic of Yugoslavia.

I should be grateful if you would draw this letter to the attention of the Chairman of Working Group 4 of the International Conference.

The following letter, dated 14 October 1992, was received in response to the Permanent Representative's letter from Mr Andreas Zobel, Secretary of the Working Group on Succession Issues of the International Conference on the former Yugoslavia:

On behalf of Mr Cyrus Vance and Lord Owen, Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, I acknowledge receipt of your letter dated 15 September 1992 regarding the case of Mr Josef Tokic.

The letter will be brought to the attention of Ambassador Jorgen Bojer, the newly appointed Chairman of the Working Group on Succession Issues who has just taken up his duties.

Please accept, Your Excellency, the assurances of my highest consideration.

Recognition of States - Tibet - Australian non-recognition - Visit of Dalai Lama

On 28 April 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question upon notice (Sen Deb 1992, Vol 152, p 1734):

As I outlined in response to Senator Powell's question in the Senate on 16 May 1991, it is the Government's judgment that it would not be appropriate for the Government to extend guest of government status to the Dalai Lama. Given the Dalai Lama's association with the "Tibetan government in exile", the Australian Government could only accord him guest of government status were we willing to support a bid by the Tibetan people for independence from China, which we are not.

As I have indicated previously, I am prepared to meet the Dalai Lama when he visits Australia in his capacity as a religious leader and Nobel Laureate.

On 29 April 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said, in part, in answer to a question without notice (Sen Deb 1992, Vol 152, p 1794):

In representations to the Department on 7 April the Chinese Embassy requested that my proposed meeting with the Dalai Lama be cancelled on the basis that the Dalai Lama was not just a religious figure but a person in exile engaged in political activities aimed at splitting China; that Tibet was an inalienable part of Chinese territory; and that it was inappropriate for Ministers to meet such a

person. In response, the Department said that I would be meeting the Dalai Lama in this capacity as a religious figure and as a Nobel Laureate; that we accepted China's sovereignty over Tibet – a recognition that was implicit when diplomatic relations were established with China in 1972 – but that we continue to have serious concerns about the repression of religious freedom, cultural identity and freedom of expression in Tibet.

I might also say that when I was in China two and a half weeks ago the issue was also raised with me by the Chinese Foreign Minister, albeit in somewhat muted terms, and the exchange was essentially of the kind that I have just repeated.

Recognition and the Palestinian Liberation Organisation

Prior to a visit to the Middle East, the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release on 6 May 1992 which read in part:

Senator Evans's visit will involve subject to arrangements yet to be finalised some contacts with PLO and other Palestinian representatives.

Senator Evans said that the Government had reviewed its policy on contact with the PLO and decided to restore it to that which existed before the Gulf War. In response to the PLO support for Iraq's invasion on Kuwait, restrictions were imposed in January 1991 which barred Australian Ministers and officials from initiating contacts with the PLO. Those restrictions have now been lifted.

"The decision reflects the passage of more than a year since the Gulf crisis, and the generally constructive role which the PLO has played in the Middle East peace process during that time. It is consistent with our long established aim of encouraging the forces of moderation rather than extremism within the PLO, and returns Australian policy to the mainstream of Western government practice", Senator Evans said.

"The decision should not be taken as involving any formal recognition of the PLO as having any governmental status, nor any endorsement of its policies, nor any expression of absolution for its past mistakes", Senator Evans said.