VI – LAW OF THE SEA

Fishing zones – Australian Fishing Zone – relationship between foreign fishing and allocation of fishing rights to Australians

On 10 January 1988 the Minister for Primary Industries and Energy, Mr Kerin, issued the following statement rejecting suggestions that Australians would be competing directly with foreigners for access to Australian fish resources:

"There are well established guidelines for foreigners wishing to fish in Australian waters," Mr Kerin said.

"They are only given access to resources which Australians do not wish to exploit. That is, in our terms, surplus resources.

"There has never been any thought that Australian fishers would have to compete with foreign interests for our fish. This is true, irrespective of which mechanisms we use to allocate fishing rights. It is certainly not envisaged that Australians would compete with foreigners under the proposed auctioning, tendering or balloting mechanisms currently being discussed by the industry."

Mr Kerin said surplus fish resources are made available to foreign fishers under very strict conditions. However, where there is any conflict with Australian fishers, or where Australian fishing activity is increasing in a fishery currently exploited by foreigners, then there is a definite priority given to Australian fishers and the displacement of the foreign fishing component.

"Where there is no Australian interested in catching the fish, foreigners can be given access to the surplus and it is not hard to envisage a situation where foreigners would compete against each other for access. That is, foreigners bidding against foreigners. In this way, Australia would maximise its return from the operations of foreigners fishing the Australian Fishing Zone.

Fishing zones – Australian Fishing Zone – prohibition of pelagic gillnet and drift net fishing

On 11 April 1989 the Minister for Primary Industries and Energy, Mr Kerin, provided the following written answer in part to a question on notice (Sen Deb 1989, Vol. 132, p. 1372):

Australia is very aware of the potential damage that can result from the use of pelagic gillnets, and has shown itself to be responsible in its attitude towards these operations in the past.

The introduction of legislation in 1986 prohibiting the use of pelagic gillnets over 2.5 kilometres in length in northern Australia has prevented any further pelagic gillnet operations by foreign and domestic fleets in that area.

Australia has joined other South Pacific nations in discussions on the effects of gillnetting operations and currently is considering the introduction of a ban on landing or transhipment of pelagic gillnet–caught fish, and preventing port access for any pelagic gillnet vessels. At present no such operations are occurring in Australian ports or the Australian Fishing Zone.

Note: the Minister for Primary Industries and Energy, Mr Kerin, issued a new Fisheries Notice No. AFZ1 under the Fisheries Act 1952 on 20 July 1989

replacing a 1986 Notice and prohibiting pelagic gillnet and drift net fishing in the Australian Fishing Zone: see *Commonwealth of Australia Gazette* No S 255 of 25 July 1989.

Fishing zones – Australian Fishing Zone – access by Indonesian fishermen – Ashmore Islands

On 23 May 1988 the Minister for Arts and Territories, Mr Punch, said in part in answer to a question without notice (HR Deb 1988, Vol 161, p 2767):

> Indonesian traditional fishermen have been able, since a memorandum of understanding was signed with Indonesia in 1974, to visit the Ashmore and Cartier islands over those years for fishing purposes. Unfortunately, over those years they have also caused some considerable environmental damage to the bird life which abounds at Ashmore Reef. Of course, the Ashmore Reef nature reserve was declared in 1983. The Commonwealth Government has maintained a presence at the Ashmore Reef since October 1985 to exercise our national sovereignty over these parts. The initial presence, of course, was a camp on one of the islands.
>
> Since April 1986 our Department has stationed a charter vessel, with no enforcement role, at Ashmore Reef during the peak fishing season between March and November to monitor the activities of those fishermen. The Australian National Parks and Wildlife Service wardens visit the reef on Navy patrol boats. Periodic aerial surveillance is commissioned by the National Parks and Wildlife Service under the coastwatch network. Unfortunately, in the last couple of weeks there has been a dramatic increase in the number of Indonesian fishing vessels apprehended off the north–west coast of Australia.

The text of the 1974 Memorandum of Understanding referred to by the Minister is as follows:

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA REGARDING THE OPERATIONS OF INDONESIAN TRADITIONAL FISHERMEN IN AREAS OF THE AUSTRALIAN EXCLUSIVE FISHING ZONE AND CONTINENTAL SHELF

Following discussions held in Jakarta on 6 and 7 November, 1974, the representatives of the Government of Australia and of the Government of the Republic of Indonesia have agreed to record the following understandings.

1. These understandings shall apply to operations by Indonesian traditional fishermen in the exclusive fishing zone and over the continental shelf adjacent to the Australian mainland and offshore islands.

   By 'traditional fishermen' is meant the fishermen who have traditionally taken fish and sedentary organisms in Australian waters by methods which have been the tradition over decades of time.

   By 'exclusive fishing zone' is meant the zone of waters extending twelve miles seaward off the baseline from which the territorial sea of Australia is measured.

2. The Government of the Republic of Indonesia understands that in relation to fishing in the exclusive Australian fishing zone and the exploration for and exploitation of the living natural resources of the Australian continental shelf, in each case adjacent to:

   Ashmore Reef (Pulau Pasir) (Latitude 120 15' South, Longitude 1230 03' East) Cartier Islet (Latitude 120 32' South, Longitude 1230 33' East) Scott Reef (Latitude 140 03' South, Longitude 1210 47' East) Seringapetam Reef (Pulau Datu) (Latitude 110 37' South, Longitude 1220 03' East) Browse Islet (Latitude 140 06' South, Longitude 1230 32' East).

   The Government of Australia will, subject to paragraph 8 of these understandings, refrain from applying its laws regarding fisheries to Indonesian traditional fishermen who conduct their operations in accordance with these understandings.

3. The Government of the Republic of Indonesia understands that, in the part of the areas described in paragraph 2 of these understandings where the Government of Australia is authorised by international law to regulate fishing or exploitation for or exploitation of the living natural resources of the Australian continental shelf by foreign nationals, the Government of Australia will permit operations by Indonesian nationals subject to the following conditions:
   (a) Indonesian operations in the areas mentioned in paragraph 2 of the understandings shall be confined to traditional fishermen.
   (b) Landings by Indonesian traditional fishermen shall be confined to East Islet Latitude 120 15' South, Longitude 1230 07' East) and Middle Islet (Latitude 120 15' South, Longitude 1230 03' East) of Ashmore Reef for the purpose of obtaining supplies of fresh water.
   (c) Traditional Indonesian fishing vessels may take shelter within the island groups described in paragraph 2 of these understandings but the persons on board shall not go ashore except as allowed in (b) above.
4. The Government of the Republic of Indonesia understands, that the Indonesian fishermen will not be permitted to take turtles in the Australian exclusive fishing zone. Trochus, beche de mer, abalone, green snail, sponges and all molluscs will not be taken from the sea from high water marks to the edge of the continental shelf, except the seabed adjacent to Ashmore and Cartier Islands, Browse Islet and the Scott and Seringapatam Reserve.
5. The Government of the Republic of Indonesia understands that the persons on board Indonesian fishing vessels engaging in fishing in the exclusive Australian fishing zone or exploring for or exploiting the living natural resources of the Australian continental shelf, in either case in areas other than those specified in paragraph 2 of these understandings, shall be subject to the provisions of Australian law.
6. The Government of Australia understands that the Government of the Republic of Indonesia will use its best endeavours to notify all Indonesian

fishermen likely to operate in areas adjacent to Australia of the contents of these understandings.

7. Both Governments will facilitate the exchange of information concerning the activities of the traditional Indonesian fishing boats operating in the area west of the Timor Sea.
8. The Government of the Republic of Indonesia understands that the Government of Australia will, until the twenty-eighth day of February 1975, refrain from applying its laws relating to fisheries to Indonesian traditional fishermen in areas of the Australian exclusive fishing zone and continental shelf other than those specified in paragraph 2 of these understandings.

Jakarta, 7 November 1974

First Assistant Secretary	Director of Consular Affairs
Fisheries Division	Department of Foreign Affairs
Australian Department of	Of Indonesia
Agriculture	
(AG Bollen)	(Agus Yaman)

On 4 November 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1988, Vol 129, pp 2034–5):

> There are two separate dimensions to the problem of Indonesian fishing vessels in Australian waters and they are sometimes confused in the public perception of it. One concerns the traditional fishermen in non-powered boats or boats with, at most, an auxiliary outboard for emergency situations. Their access to Australian waters is governed by a 1974 memorandum of understanding which deals with, among other things, the ability to take water on the Ashmore and Cartier Islands and suchlike. That has given rise to a number of problems in recent years, not least as a result of the passage of environmental protection legislation in Australia for areas such as the Ashmore and Cartier Islands. It has given rise to a number of problems in interpretation and enforcement. The discussions that I had on that part of the problem with the Indonesians were very productive. We have identified some areas that need to be followed through, with a further round of negotiations in order to update, and possibly revise in some respects, that memorandum of understanding. I look forward to that being sorted out over the next few months.
>
> The more substantial and obvious problem has concerned the recently very rapidly escalating influx of commercial fishing vessels into Australian waters fishing for trochus or, more recently, netting commercial fish of one kind or another. The Australian Government has reacted in a number of ways to this: through improved surveillance activity, apprehension of the boats, legal proceedings, and proposals to destroy the boats in question. However, there is obviously a need to deter at source, rather than to rely wholly on ex post facto measures. With that in mind I discussed this matter very extensively with the Indonesians at a number of levels – the Foreign Minister and the Defence

Minister and their respective officials. In the case of the Foreign Minister and President Suharto, we had quite a substantial exchange on this topic.

As a result, the Indonesians decided to send a substantial team of officials, quite soon – within a matter of days – to all the relevant fishing village areas of Indonesia to make very clear the consequences of trespassing in Australian waters. Perhaps more substantially even than that, urgent action is to be taken by both sides to set up more formal and ongoing institutional arrangements, possibly in the form of a joint border committee of the kind that Indonesia has with a number of its neighbours which offers an institutional channel through which information can be accumulated and exchanged and appropriate practical measures taken to deal with a particular situation. One of the things that would be considered under such a set of institutional arrangements would be coordinated naval activity by both sides. There are some logistical difficulties associated with that, particularly on the Indonesian side, which might make that not a practicable proposition. However, that remains to be explored and it will be.

On 4 May 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1989, Vol 133, pp 1789–90):

I agreed with Foreign Minister Ali Alatas in March that officials of both countries should meet to discuss Indonesian fishing activity in the Australian fishing zone, which has for some time been a source of concern in our bilateral relationship. Officials accordingly met in Jakarta on 28 and 29 April last week and arrived at a number of new arrangements aimed at overcoming problems, first, in the operations of Indonesian traditional fishermen under the 1974 memorandum of understanding (MOU), and secondly in the illegal activities of Indonesian fishermen in other areas of the Australian fishing zone.

I take this opportunity to table the agreed minutes of that meeting and its annexes. These contain the practical guidelines for operation under the 1974 MOU and also a map which indicates the area in which Indonesian traditional fishermen can fish. New guidelines to the operation of that 1974 memorandum add certainty to the application of rules in the MOU area and confirm our understanding of what is covered by the reference to Indonesian traditional fishermen operating by traditional methods and using traditional fishing vessels.

We have also given access to traditional fishermen to a wider so-called box area in the Australian fishing zone and continental shelf. This will simplify our enforcement requirements by more clearly identifying the area in which fishing is permitted. Indonesia has also acknowledged the need for conservation measures which have been introduced in the Ashmore Reef nature reserve and for the protection of wildlife.

Indonesia also recognised that Australia would take necessary measures to prevent any illegal fishing in the Arafura Sea south of the provisional fisheries enforcement line and off the north west coast of Australia where incursions occurred in 1988 and earlier this year. Again, it was agreed that Australian and

Indonesian officials will consider ways to develop alternative income projects for villages in eastern Indonesia which are dependent on fishing and which suffer from economic pressures which tend to lead villagers to enter Australian waters illegally. Officials will also consider the possible benefits of a reciprocal fishing agreement.

Officials of both countries have thus arrived at a package of measures which should, in my belief, go a very long way towards addressing the fisheries problems which have arisen in recent times.

Following are the text of the Agreed Minutes of 29 April 1989, the Practical Guidelines for Implementing the 1974 Memorandum of Understanding, and the map indicating the area in which Indonesian traditional fishermen can fish, which the Minister tabled, as he referred to in his answer above.

AGREED MINUTES OF MEETING BETWEEN OFFICIALS OF AUSTRALIA AND INDONESIA ON FISHERIES

1. In accordance with the agreement reached by Mr Ali Alatas, the Foreign Minister of Indonesia and Senator Gareth Evans, the Foreign Minister of Australia in Canberra on 2 March 1989, Officials from Indonesia and Australia met in Jakarta on 28 and 29 April 1989 to discuss activities of Indonesian fishing vessels under the Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Australia regarding the operation of Indonesian traditional fishermen in an Area of the Australian Fishing Zone and Continental Shelf, concluded in Jakarta on 7 November 1974. They also discussed activities of Indonesian fishing vessels in the Australian Fishing Zone off the coast of North West Australia and in the Arafura Sea, and fishing in the waters between Christmas Island and Java.

Memorandum of Understanding of 1974

2. Officials reviewed the operation of the MOU. Both sides stressed their desire to address the issues in a spirit of cooperation and good neighbourliness. They noted that there had been a number of developments since 1974 which had affected the MOU. In 1974 Australia and Indonesia exercised jurisdiction over fisheries on 12 nautical miles from their respective territorial sea baselines. In 1979 and 1980, Australia and Indonesia respectively extended their fisheries jurisdiction to 200 nautical miles from their respective territorial sea baselines, and in 1981 a provisional fishing line was agreed. Since the areas referred to in the MOU are south of this line, new arrangements are necessary for the access by Indonesian traditional fishermen to these areas under the MOU.
3. The Australian side informed the Indonesian side that there were also changes in the status of Ashmore Reef and Cartier Islet as a separate territory of the Commonwealth of Australia and the establishment of the Ashmore Reef National Nature Reserve. The

Australian side further informed that there had been a considerable increase in the number of Indonesian fishermen visiting the Australian Fishing Zone and a depletion of fishery stocks around the Ashmore Reef; that wells on Middle Islet and East Islet where Indonesian traditional fishermen were permitted under the MOU to land for taking fresh water had been contaminated; that Australia had also incurred international obligations to protect wildlife, including that in the territory of Ashmore and Cartier Islands. The Indonesian side took note of this information.

4. Since the conclusion of the MOU, both Indonesia and Australia had become parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

5. The Indonesian and Australian Officials discussed the implications of the developments mentioned in the preceding paragraphs. They affirmed the continued operation of the MOU for Indonesian traditional fishermen operating by traditional methods and using traditional fishing vessels. An Australian proposal that Indonesian traditional fishermen could conduct fishing not only in the areas adjacent to Ashmore Reef, Cartier Islet, Scott Reef, Seringapatam Reef and Browse Islet as designated in the MOU, but in a wider 'box' area in the Australian Fishing Zone and Continental shelf was welcomed by the Indonesian side. A sketch map and coordinates of this 'box' area appears in Annex 1 of these Agreed Minutes.

6. In view of the developments that had occurred since 1974 as highlighted above, Officials considered that to improve the implementation of the MOU, practical guidelines for implementing the MOU as appears in the Annex of these Agreed Minutes were considered necessary.

7. The Indonesian side informed the Australian side on measures that had been and were being taken by the Indonesian authorities to prevent breaches of the MOU. The Indonesian side also indicated its willingness to assist in preventing breaches of the MOU and to take necessary steps to inform Indonesian fishermen of the practical guidelines annexed to these Agreed Minutes.

8. The Indonesian and Australian Officials agreed to make arrangements for cooperation in developing alternative income projects in Eastern Indonesia for traditional fishermen traditionally engaged in fishing under the MOU. The Indonesian side indicated they might include mariculture and nucleus fishing enterprise schemes (Perikanan Inti Rakyat or PIR). Both sides mutually decided to discuss the possibility of channelling Australian aid funds to such projects with appropriate authorities in their respective countries.

North West Coast of Australia

9. The Indonesian and Australian Officials discussed matters related to the activities of Indonesian fishing vessels in the Australian Fishing Zone off the coast of North West Australia. They noted that those activities were outside the scope of the MOU and that Australia would take appropriate enforcement action. The Australian side indicated the legal and economic implications of such activities.
10. The Indonesian and Australian Officials felt the need for a long-term solution to the problem. To this end, they agreed to make arrangements for cooperation in projects to provide income alternatives in Eastern Indonesia for Indonesian fishermen engaged in fishing off the coast of North West Australia. The Indonesian side indicated that they might include mariculture and nucleus fishing enterprise schemes (Perikanan Into Rakyat or PIR). Both sides decided mutually to discuss the possibility of channelling Australian aid funds to such projects with appropriate authorities in their respective countries.

Arafura Sea

11. Indonesian and Australian Officials discussed the activities of Indonesian non-traditional fishing vessels in the Arafura Sea on the Australian side of the provisional fishing line of 1981. Officials agreed that both Governments should take effective measures, including enforcement measures, to prevent Indonesian non-traditional fishing vessels from fishing on the Australian side of the provisional fishing line without the authorisation of the Australian authorities.
12. Officials agreed to make arrangements for cooperation in exchange of information on shared stocks in the Arafura Sea for the purpose of effective management and conservation of the stocks.

Fishing in water between Christmas Island and Java and other waters.

13. The Officials of Indonesia and Australia noted that fisheries elimitation in waters between Christmas Island and Java and in the west of the provisional fishing line remained to be negotiated and agreed. Pending such an agreement, the Officials noted that both Governments would endeavour to avoid incidents in the area of overlapping jurisdictional claims.

Wildlife Cooperation

14. The Indonesian and Australian Officials considered the mutual advantages of the exchange of information on wildlife species populations believed to be common to both countries. It was agreed that each country's nature conservation authorities would exchange information on such wildlife populations and management programs and cooperation in the management of wildlife protected areas. In

the first instance Indonesian authorities would be consulted on the management plan for the Ashmore Reef National Nature Reserve.

Consultations

15. The Indonesian and Australian Officials agreed to hold consultations as and when necessary to ensure the effective implementation of the MOU and Agreed Minutes.

Alan Brown	Nugroho Wisnumurti
Head of the Australian Delegation	Head of the Indonesian Delegation

PRACTICAL GUIDELINES FOR IMPLEMENTING THE 1974 MOU

1. Access to the MOU area would continue to be limited to Indonesian traditional fishermen using traditional methods and traditional vessels consistent with the tradition over decades of time, which does not include fishing methods or vessels utilising motors or engines.
2. The Indonesian traditional fishermen would continue to conduct traditional activities under the MOU in the area of the Australian Fishing Zone and the continental shelf adjacent to Ashmore Reef, Cartier Islet, Scott reef, Seringapatam Reef and Browse Islet. In addition Indonesian traditional fishermen would be able to conduct traditional fishing activities in an expanded area as described in the sketch map and coordinates attached to Annex 1 of the Agreed Minutes.
3. To cope with the depletion of certain stocks of fish and sedentary species in the Ashmore Reef area, the Australian Government had prohibited all fishing activities in the Ashmore Reef National Nature Reserve, but was expected soon to adopt a management plan for the Reserve which might allow some subsistence fishing by the Indonesian traditional fishermen. The Australian side indicated that Indonesia would be consulted on the draft plan. Because of the low level of stock, the taking of sedentary species particularly Trochus niloticus in the reserve would be prohibited at this stage to allow stocks to recover. The possibility of renewed Indonesian traditional fishing of the species would be considered in future reviews of the management plan.
4. As both Australia and Indonesia are parties to CITES, Officials agreed that any taking of protected wildlife including turtles and clams, would continue to be prohibited in accordance with CITES.
5. Indonesian traditional fishermen would be permitted to land on West Islet for the purpose of obtaining supplies of fresh water. The Indonesian side indicated its willingness to discourage Indonesian traditional fishermen from landings on East and Middle Islets because of the lack of fresh water on the two islets.

Jakarta, 29 April 1989

[Editor's note : See Map 1 in Appendix III]

High seas fishing – tuna fishing and the incidental dolphin kill – measures to combat

On 3 March 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer to a question on notice (Sen Deb 1989, Vol 132, p 439):

(1) The fishing methods employed in the Eastern Tropical Pacific (ETP) tuna fishery are the most serious cause of marine mammal mortality in the world. Since the inception of the fishery in 1959, it has been estimated that more than 6 million dolphins have been killed as a result of purse seine fishing for yellowfin tuna which swim beneath and behind schools of dolphins. Incidental deaths of dolphins for the years 1983 to 1987 reportedly have been 24,000, 29,400, 56,700, 129,500 and 115,000 respectively.

(2) The Federal Government has, through its diplomatic missions abroad, expressed its concern to all Governments whose fishing fleets are involved in the incidental dolphin kill. This concern was also raised at a meeting between the then Foreign Minster, Mr Hayden, and the Foreign Minister of Mexico, Mr Sepulveda, held in Canberra, on 27 July 1988.

(3) The Federal Government believes that the incidental dolphin kill would not cease or be reduced simply by banning the import of yellowfin tuna caught in the ETP. The most likely outcome of any such ban would, in fact, be economic hardship for blameless parties, particularly the less developed countries in which most of the world's tuna is processed. Moreover, it is almost impossible to determine whether or not tuna processed outside Australia has come from the ETP tuna fishery due to the industry practice of mixing together the tuna caught from various tuna fisheries throughout the world.

(4) The Federal Government has, in addition to the representations referred to above, expressed in general terms at the 40th meeting of the International Whaling Commission (IWC) (Auckland 30 May – 3 June 1988) its concern at the incidental dolphin kill. The Federal Government will continue to use diplomatic channels in its attempt to bring about a cessation or reduction of the incidental dolphin kill.

The concern of the Federal Government reflects its policy of seeking protection for all cetaceans (dolphins, porpoises and whales) worldwide. It is not possible for Australia to directly enforce this policy in external waters such as the ETP. In Australian waters, however, cetaceans are protected by the Whale Protection Act 1980 which prohibits the killing, taking, injuring or interference with any cetacean (including dolphins). The Act recognises, however, that in licensed commercial fishing operations cetaceans may be unintentionally killed or captured. The Act specifies that in these circumstances, captured cetaceans must be released immediately and that any incident of a cetacean being taken, killed or injured must be reported to the Minister for the Arts, Sport, the Environment, Tourism and Territories as soon as practicable.

Continental shelf – sovereign rights over natural resources – proclamation of Australian legislation

On 20 December 1989 the Minister for Resources, Senator Peter Cook, issued the following news release:

> The Minister for Resources, Senator Peter Cook, announced today the proclamation of an Act which will open up Australia's continental shelf for the exploration of seabed minerals beyond the three nautical mile territorial sea.
>
> The Minerals (Submerged Lands) Act 1981 deals with the granting of exploration permits and production licences for offshore minerals and associated matters.
>
> "Proclamation of this Act, which will come into force on 1 February 1990, is in response to an overall increase in interest by companies in offshore minerals exploration."
>
> "The Australian seabed is largely unexplored but it is believed to contain many minerals including diamonds and heavy mineral sands."
>
> "Development of viable offshore mining, including the associate technology required for this pioneer industry, will enhance the general mining industry's already significant contribution to the Australian economy."
>
> The Minister emphasised that the Government will be paying particular attention to the environmental implications of mining activities in Australia's offshore areas, especially possible marine pollution.
>
> "All applications under the Act will be rigourously assessed against the requirements of the Commonwealth Environmental Protection (Impact of Proposals) Act 1974," he said.
>
> "While the commonwealth will have the final say in important matters, such as the granting of seabed titles, the States and the Northern Territory will administer the legislation on a day to day basis."
>
> Companies seeking access to the area beyond the territorial sea for the purpose of exploration for seabed minerals should lodge an application with the relevant State or Northern Territory Department.
>
> Applications lodged in the 28 days from 1 February 1990 will be considered as having the same priority and will be determined on their respective merits.

Continental shelf delimitation – seabed agreement with Solomon Islands

On 13 September 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued the following news release:

> The Australian Minister for Foreign Affairs and Trade, Senator Gareth Evans, signed in Honiara today a bilateral treaty with the Solomon Islands which defines for the first time the seabed boundary between the two countries.
>
> "The Agreement, which is Australia's first bilateral treaty with the Solomon Islands, is the result of ten years consideration by both sides of a fair and equitable boundary between our two countries", Senator Evans said.
>
> Senator Evans is in the Solomon Islands as part of an extensive official visit to the South Pacific.

The Agreement was signed on behalf of the Solomon Islands by its Minister of Foreign Affairs, Sir Peter Kenilorea.

The agreed boundary lies between the Australian Coral Sea Islands and the Solomon Islands' Indispensible Reefs. It also joins up with Australia's other seabed boundaries with Papua New Guinea and New Caledonia.

"The Agreement with the Solomon Islands will contribute significantly to strengthening the bonds of friendship and cooperation between our two countries", Senator Evans said.

Discussions on the boundary began in 1978. It was agreed that the boundary should follow the median line between the two countries. The line divides the seabed, and provides the outer limit for the 200 nautical mile Australian Fishing Zone and the Solomon Islands Exclusive Economic Zone.

The Agreement is based on the rules and principles of internatational law, and takes into account the United Nations Convention of the Law of the Sea.

"It represents a precise and equitable delimitation of our respective maritime areas", Senator Evans said.

The Agreement requires ratification before it enters into force. Senator Evans said he hoped the necessary procedures to enable ratification could take place as soon as possible.

[Note: the Agreement, which has two maps annexed to it, entered into force on 14 April 1989: see Aust TS 1989 No 12.]

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

On 5 September 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Resources, Senator Peter Cook, announced that agreement in principle has been reached by Australian and Indonesian officials for a Zone of Cooperation in the Timor Gap. Their statement read as follows:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Resources, Senator Peter Cook, today announced and welcomed the agreement reached during talks between Australian and Indonesian officials on proposals for consideration by governments to establish a Zone of Cooperation in the Timor Gap.

Senator Evans and Senator Cook said that the proposal to establish a Zone of Cooperation in the area between Timor and Northern Australia was the best possible means to ensure that both countries shared in the potential petroleum resources of the region until it became possible for a permanent seabed boundary to be delimited.

Under the proposed approach the Zone of Cooperation would comprise three component areas, namely Areas A, B and C as indicated in the sketch map [reproduced below].

Area A would be subject to a joint development regime, regulated by a Ministerial council and a Joint Authority.

Area B would be subject to Australian Laws covering petroleum exploration and development, while Area C would be subject to the relevant Indonesian

Legal regime, subject to the sharing of tax revenues in each of Areas B and C, and to a process of notification and consultation between the two Governments.

Senator Evans and Senator Cook said that they looked forward to early discussion between Ministers of the two Governments to confirm the proposals. Officials would then be authorised to proceed to the establishment of working groups to prepare a comprehensive agreement to be concluded by the two Governments.

Senator Evans and Senator Cook said that the establishment of a Zone of Cooperation in the Timor Gap would be a significant step in the development of close relations between Australia and Indonesia.

[Editor's note : see Map 2 in Appendix III]

On 27 September 1988 the Minister for Resources, Senator Cook, said in part in answer to a question without notice, referring to the Timor Gap (Sen Deb 1988, Vol 128, p 762):

The area in dispute relates to the difference between Australia and Indonesia as to where the seabed boundary should be drawn between our two countries. From the Australian point of view we regard the seabed boundary as properly to be drawn along the continental shelf. The Indonesian Government takes the view that it is 200 miles from Timor. There is an overlap between both positions. The issue is how to resolve this disputed territory.

We have reached a tentative agreement at officer level which reflects an understanding that we divide that disputed territory into three zones. Zone A would be the area for which both Indonesia and Australia would work out a common set of provisions to govern how prospecting would be carried out and, if prospecting is rewarded by finds, how production would be carried out; what the taxation regime would be; what the legal obligations and impediments would be; and what rule of law would prevail.

In Zone B, which is the Australian end of the disputed area, the Australian provisions would apply and 16 percent of our resource rent tax would be payable to Indonesia. In Zone C, the Indonesian end of the disputed territory, Indonesian provisions would apply. We would obtain a 10 percent return from the Indonesian taxing system, which is based on profits.

On 26 October 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Indonesian Foreign Minister, Mr Ali Alatas, issued a Joint Statement in Jakarta, part of which read as follows:

3. The Zone of Cooperation will be delineated in the northern side by a simplified bathymetric axis line, in the southern side by the 200 nautical mile line measured from the Indonesian archipelagic baselines, and in the eastern side and western side by equidistance lines. The establishment of the Zone and its delineation will not prejudice the respective positions of the two Governments on a permanent continental shelf delimitation in the area and will not in any way be construed as affecting the respective sovereign rights claimed by each side in the Zone of Cooperation.
4. The Zone of Cooperation will comprise three component areas, namely Areas A, B and C as in the sketch map [reproduced above]. A joint

development regime will apply in Area A and there will be established a Ministerial Council and a Joint Authority. In Area B the relevant Australian legal regime will apply, and in Area C the relevant Indonesian legal regime will apply, subject to a regime of sharing in tax returns applicable in each of the two areas and a process of notification and consultation between the two Governments through the Joint Authority on petroleum exploration and development activities.

5. The two Ministers believe that the establishment of the Zone of Cooperation will further strengthen the relations between the two countries.

On 11 December 1989 the two Foreign Ministers issued a further Joint Statement, part of which read as follows:

The Minister for Foreign Affairs and Trade of Australia, Senator Gareth Evans, and the Minister for Foreign Affairs of the Republic of Indonesia, Mr Ali Alatas, welcomed the further milestone in cooperative relations between Australia and Indonesia represented by signature today of the Timor Gap Zone of Cooperation Treaty.

The two Ministers signed the Treaty in a mid-air ceremony over the 'Zone of Cooperation' area of the Timor Sea.

They noted that conclusion of the Treaty, while establishing a long-term stable environment for petroleum exploration and exploitation, would not prejudice the claims of either country to sovereign rights over the continental shelf, nor would it preclude continuing efforts to reach final agreement on permanent seabed boundary delimitation.

[Note: the Treaty entered into force on 9 February 1991: See Aust TS 1991 No 9]

[Note: for Portugal's response to the Timor Gap Treaty, see under Part XIV, Disputes, pp 162–165 below]

Freedom of navigation – international straits – closure by Indonesia of the Lombok and Sunda Straits – Australian response

At a Joint Press conference held by the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Indonesian Minister for Foreign Affairs, Mr Alatas, in Jakarta on 25 October 1988, Senator Evans said that Australia's position on the announced closures of Sunda and Lombok Straits had been communicated to Indonesia in writing as well as in discussions. The text of the Aide Memoire, which was handed to the Indonesian Department of Foreign Affairs on 10 October 1988, is reproduced below. At a Press Conference in Bali the previous day, Senator Evans said: "I am satisfied on the basis of the explanations I was given that international freedom of passage in these waterways is acknowledged and will be respected, and I don't anticipate any further difficulties of this kind arising in the future".

AIDE MEMOIRE

With reference to the Navigation Warnings issued by the Director General Sea Operations on 13, 14 and 17 September 1988 notifying all ships of the closure of Lombok and Sunda Straits for the purpose of sea and air battle manoeuvre

exercises to be conducted by the Indonesian Armed Forces at specified periods between 14 and 29 September 1988, the Australian Embassy wishes to inform the Department of Foreign Affairs that Australia considers that these Straits are important routes for international navigation through and over which all ships and aircraft enjoy rights of passage, and that passage through and over these Straits may not be hampered or suspended under international law.

The Embassy is pleased to note, however, that no information has come to the attention of the Australian Government of any ships or aircraft having been actually hampered or prevented from passing through or over the Lombok and Sunda Straits on the dates mentioned in the Navigation Warnings.

As the Department of Foreign Affairs will be aware, Australia has long supported the Indonesian Government's wish to establish and maintain a special regime for waters within its archipelago. At the same time, the Australian Government has always made it clear that its support has been given on the understanding that satisfactory guarantees would be provided to the international community with respect to passage not only through but also over archipelagic waters. The regime for archipelagic waters, including archipelagic sea lanes passage, is now set out in the United Nations Convention on the Law of the Sea.

The Embassy wishes to inform the Department of Foreign Affairs that Australia reserves the right for its ships and aircraft to exercise rights of passage through and over Indonesia's archipelagic waters, in accordance with the provisions of the United Nations Convention on the Law of the Sea, and expresses the hope that Indonesia will respect these rights, which are enjoyed by the ships and aircraft of all States.

Embassy of Australia

Jakarta

[Note: for a full discussion of this incident, see Donald R Rothwell's "The Indonesian Straits incident: transit or archipelagic sea lanes passage?" in *Marine Policy*, November 1990, pp 491 to 506]

United Nations Convention on the Law of the Sea – ratification, with understanding, by the Philippines – Objection by Australia

On 1 September 1988 the Secretary-General of the United Nations circulated the following depository notification CN 173 1988 TREATIES-1:

OBJECTION BY AUSTRALIA TO THE UNDERSTANDING RECORDED UPON SIGNATURE BY THE PHILIPPINES AND CONFIRMED UPON RATIFICATION

The Secretary-General of the United Nations, acting in his capacity as depository, and referring to depository notification CN 104 1984 TREATIES-3 of 22 May 1984 concerning the ratification by the Government of the Philippines, with an understanding, of the abovementioned Convention, communicates the following:

On 3 August 1988, the Secretary-General received from the Government of Australia the following objection concerning the understanding recorded by the Philippines:

(Original: English)

"Australia considers that this declaration made by the Republic of the Philippines is not consistent with Article 309 of the Law of the Sea Convention, which prohibits the making of reservations, nor with Article 310 which permits declarations to be made "provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of this Convention in their application to that State.

The declaration of the Republic of the Philippines asserts that the Convention shall not affect the sovereign rights of the Philippines arising from its constitution, its domestic legislation and any treaties to which the Philippines is a party. This indicates, in effect, that the Philippines does not consider that it is obliged to harmonise its laws with the provisions of the Convention. By making such an assertion, the Philippines is seeking to modify the legal effect of the Convention's provisions.

This view is supported by the specific reference in the declaration to the status of archipelagic waters. The declaration states that the concept of archipelagic waters in the Convention is similar to the concept of internal waters held under former constitutions of the Philippines and recently reaffirmed in Article 1 of the New Constitution of the Philippines in 1987. It is clear, however, that the Convention distinguishes the two concepts and that different obligations and rights are applicable to archipelagic waters from those which apply to internal waters. In particular, the Convention provides for the exercise by foreign ships of the rights of innocent passage and of archipelagic sea lanes passage in archipelagic waters.

Australia cannot, therefore, accept that the statement of the Philippines has any legal effect or will have any effect when the Convention comes into force and considers that the provisions of the Convention should be observed without being made subject to the restrictions asserted in the declaration of the Republic of the Philippines."

On 12 December 1988 the Secretary-General of the United Nations circulated the following depository notification CN 254 1988 TREATIES-2:

DECLARATION BY THE PHILIPPINES CONCERNING AN OBJECTION BY AUSTRALIA TO THE UNDERSTANDING RECORDED UPON SIGNATURE BY THE PHILIPPINES AND CONFIRMED UPON RATIFICATION

The Secretary-General of the United Nations, acting in his capacity as depository, and referring to depository notification CN 173 1988 TREATIES-1 of 1 September 1988 concerning an objection by the Government of Australia to the understanding recorded upon signature of the abovementioned Convention by the Philippines and confirmed upon ratification, communicates the following:

On 26 October 1988, the Secretary-General received from the Government of the Philippines the following declaration concerning the said objection made by Australia:

"The Philippine Declaration was made in conformity with Article 310 of the United Nations Convention on the Law of the Sea. The Declaration consists of interpretative statements concerning certain provisions of the Convention.

The Philippine Government intends to harmonize its domestic legislation with the provisions of the Convention.

The necessary steps are being undertaken to enact legislation dealing with archipelagic sea lanes passage and the exercise of Philippine sovereign rights over archipelagic waters, in accordance with the Convention.

The Philippine Government, therefore, wishes to assure the Australian Government and the States Parties to the Convention that the Philippines will abide by the provisions of the said Convention."