Territory

Territory
Claim to Antarctica. Recognition of. Effect of increased scientific and exploratory effort.
On 24 August 1977 the Minister for Science, Senator Webster, was asked in the Senate to comment on speculation that Australia's claim to the Antarctic may not be recognised by other countries unless there is an increase in the level of scientific and exploratory effort in that area. Senator Webster replied in part as follows:[40]

> Australia's title in Antarctica is the outcome of acts of discovery and exploration by British and Australian explorers. In the periods from 1908 to 1912 and from 1929 to 1931 specific proclamations of title on behalf of the British crown were made at various points . . .
> Australian activity in the Australian Antarctic Territory is an essential element in occupation of the area and to the exercise of Australia's sovereign rights in that area. While the principal region of activity is the coast, under these circumstances this is a specific occupation of the landward area. In an area which is as uninhabitable and as little traversed as Antarctica the main activity in the AAT is directed towards scientific studies in the area. Such activity is in accord with the spirit of the Antarctic Treaty, which seeks to avoid international discord, and fosters co-operation in scientific activity. The scientific program is directed towards two broad areas—gaining an understanding of Antarctica itself and the relationship between it and the global environment.

Territory
Claim to Antarctica. Basis of. Effect of claims of common heritage.
On 15 September 1977 in the House of Representatives the Minister for Foreign Affairs, Mr Peacock, was asked if his goverment intended to hold to its claim to the Australian Antarctic Territory. He replied in part as follows:[41]

> As regards the element of sovereignty and title to which the honourable member refers, it is evident from the Law of the Sea Conference and the demands being made by a number of nations, based on the concept of the common heritage of mankind, that this principle will be applied by many in the international community to claims made and held in the Antarctic. It is the policy of the Australian Government, however, to maintain our sovereignty, notwithstanding those demands. It is a sovereignty whose legal basis is well supported by Australian activity dating back, from the Australian point of view, to Mawson's first expedition from 1911 to 1914, to the transfer of title through the Executive Council by Britain to us in 1933 and to its early

40. S Deb 1977, vol 74, 443-4.
41. HR Deb, vol 106, 1164.

discovery and exploration. We have, of course, recently announced plans to increase our activities by allocating extra expenditure in this year's Budget for rebuilding our three Antarctic stations, expanding the scope of our scientific work in the Antarctic and its adjacent waters, and beginning design studies for an Australian ship to meet our transport requirements to the Antarctic and our research requirements in the Antarctic and its adjacent waters.

Territory

Australia–Papua-New Guinea maritime boundary.

Following is the text of a note on the legal issues involved in negotiation of a Torres Strait Boundary Treaty:[42]

It is important to remember that the Torres Strait issue involves maritime boundaries. A distinction must be drawn between a land boundary or border on the one hand, and a maritime boundary on the other.

A *land boundary* is well understood and can be marked, eg by a fence, or a series of border markers; it reflects political/national divisions, it can take into account geographical features, and it can be altered by agreement or treaty. In particular, there is no principle of international law which says exactly what a state is entitled to in terms of the geographical scope of its land boundaries. The scope is determined by a range of historic, geographic, social, racial and other factors. In all cases a national state has an absolute right to forbid crossing of its land boundary if it so chooses.

A *maritime boundary* on the other hand is conceptually quite different, and represents a compromise between the historic freedom of the high seas and the rights and interests claimed by coastal states in respect of the seas adjacent to their coasts. There are now well-established and recognised rules of international law which spell out exactly what a state is entitled to claim in respect of maritime boundaries.

Many people have referred to the so-called 1879 line in the northern area of the Torres Strait as the boundary between Australia and Papua-New Guinea, and have argued that this 'boundary' should not be changed. However, the 1879 line is not and has never been a boundary of any kind. By the Coast Islands Act of 1879 Queensland acquired all the islands in the Torres Strait lying south of a line drawn in the northern part of the Strait. This line, the 1879 line, was simply a line of convenience, drawn on a map to indicate the area within which acquisition of island *territory* was then being made on behalf of Queensland. The Act did not, nor could it, purport to annex any area of sea or seabed in this area. This situation has not changed since 1879, and this line is therefore not an internationally recognised boundary or border of any kind. There is no doubt, however, that the

42. Originally printed in Department of Foreign Affairs publication *Backgrounder*, 22 April 1977.

islands of the Torres Strait south of the 1879 line were legally incorporated into Queensland and subsequently became Australian territory. This is still the case.

On 16 September 1975 Papua-New Guinea became a sovereign, independent state, and thereupon acquired certain legal rights as a sovereign state, including the right to claim maritime boundaries in accordance with international law.

Current International Law

The following summarises the international law applying to maritime boundaries:

The Territorial Seas

Every state has the right to claim a belt of water adjacent to its mainland and its islands as territorial seas. Within this belt, a state has exclusive rights to the resources of the sea, the seabed, and the super-adjacent air space. Foreign ships have the right of innocent passage through the territorial sea. The 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, to which Australia is a party, recognises state sovereignty in respect of the territorial sea.

Australia and Papua-New Guinea at present each claim a territorial sea of three miles. It is likely, however, that the Law of the Sea Convention, at present being negotiated, will recognise the right of states to claim territorial seas of twelve miles; many countries already do so, and any state claiming a 12-mile sea would now be recognised as having the right to do so under customary international law.

Under the 1958 Geneva Convention, islands also possess a territorial sea, and low tide elevations (ie reefs and sandbanks which are above water at low tide but submerged at high tide) may be used in fixing the base-lines from which the territorial sea is measured.

The Contiguous Zone.

States can also claim certain rights in relation to a Contiguous Zone of sea up to 12 nautical miles from the base-lines from which its territorial sea is measured. For Australia and Papua-New Guinea, therefore, the Contiguous Zone stretches 9 miles from the outer limit of the territorial seas. Within this zone, the coastal state may exercise jurisdiction with respect to customs, fiscal, sanitary and immigration arrangements, but this does not mean the full sovereignty that a state can exercise in its territorial sea.

Fisheries Zone.

Customary international law also permits a coastal state to delimit a 12-mile exclusive fisheries zone from the baselines of the territorial seas. In 1967 Australia legislated for such a zone for itself and the then Territory of Papua-New Guinea. When it

became independent, Paua New Guinea inherited a 12-mile fisheries zone.

The Continental Shelf.

The 1958 Geneva Convention on the Continental Shelf (to which Australia is a party) grants to a coastal state exclusive rights to the exploration and exploitation of the seabed of the continental shelf out to a sea depth of 200 metres, and thereafter to the point where the resources cease to be exploitable. There is a continuous or common continental shelf between Australia and Papua-New Guinea in the Torres Strait.

When any of the foregoing areas of maritime jurisdiction overlap (for instance in the Torres Strait), international law provides for delimitation, generally based on a 'median line' principle, although 'special circumstances' may be taken into account by agreement in a delimitation.

Developing International Law

Apart from the foregoing maritime jurisdictions which can be claimed under existing international law, new principles of maritime jurisdiction are emerging from the current Law of the Sea Conference. It is certain that any new Law of the Sea Convention will recognise the right of a coastal state to claim a territorial sea of 12 miles and, probably, a contiguous zone of 24 miles.

The concept that a coastal state can also claim jurisdiction over the resources of the sea and the seabed for a distance of 200 nautical miles from the coast (otherwise known as the *200-mile exclusive economic zone,* or *EEZ*) is also bound to find a place in any new Law of the Sea Convention and, indeed, such jurisdiction has already been claimed by a significant number of states.

The assertion of some or all of the foregoing rights to maritime jurisdiction in respect of the Australian mainland and the Australian islands in the Torres Strait, on the one hand, and in respect of the Papua-New Guinea coastline and the Papua-New Guinea islands in the Torres Strait on the other, will of course create a mosaic of overlapping jurisdictions in this area. Delimitation will be necessary. But there is a further, most important, consideration for both Governments.

The Inhabitants of the Torres Strait

The inhabitants of the Torres Strait and the coastal Papua-New Guineans have long lived and moved freely in the Torres Strait area in accordance with their traditional way of life. It is recognised by both the Australian and Papua-New Guinea Governments that the traditional way of life and livelihood of the inhabitants of the Torres Strait should be preserved and protected. This has been a major consideration in the negotiations to date.

Although the strict application by Australia and Papua-New Guinea of their maritime jurisdiction rights in the Torres Strait could be used

to prevent the inhabitants of the region continuing to move freely in accordance with their traditional way of life, both Governments agreed in June 1976 that a settlement on Torres Strait should include provision for the establishment of a protected zone in the Torres Strait to protect and preserve the traditional way of life and livelihood of the Torres Strait Islanders and the residents of the adjacent coast of Papua-New Guinea, including their fishing and customary freedom of movement throughout such a zone, both north and south of any maritime boundaries in the area.

A major Australian objective in further negotiations with Papua-New Guinea will continue to be to ensure a long-term settlement which will protect the traditional way of life and livelihood of the Torres Strait Islanders as Australian citizens. If a long-term settlement is to be achieved, however, and arrangements made which will not become a matter of discord and bitterness in the future, the settlement must take into account the principles of international law applicable to maritime boundaries in situations such as the Torres Strait. To ignore these legal principles would only store up trouble for the future, and put in doubt the long-term certainty and security upon which the Islanders depend to enjoy their traditional way of life.

Territory

Boundaries. Delimitation of. Between Australia and East Timor, and Indonesia.

On 2 June 1977 in the House of Representatives the Acting Minister for Foreign Affairs, Mr Sinclair, was asked the following questions upon notice:

(1) Was an agreement between Australia and Indonesia covering seabed boundaries eastward of 9°28′S x 127°56′E and westward of 10°37′S x 125°41′E signed on 9 October 1972.

(2) Did Article 3 of this agreement refer to the possibility of a further delimitation agreement or agreements being concluded between governments exercising sovereign rights with respect to the exploration of the seabed and the exploitation of its natural resources in the area of the Timor Sea, which might necessitate adjustment of the boundary lines agreed to on 9 October 1972.

(3) Have there been any discussions between the Governments of Australia and Indonesia regarding delimitation of a seabed boundary between 9°28′S x 127°56′E and 10°37′S x 125°41′E since 9 October 1972. If so, on what occasions, at what localities, and who represented Australia on each occasion.

(4) Have any discussions on a seabed boundary between Australia and East Timor taken place. If so, (a) with which nation or nations did they take place, (b) on what occasions and at what localities did they take place and (c) who represented Australia on each occasion.

(5) Does he anticipate an early conclusion (a) to discussions with

Indonesia for completion of our seabed boundary with that country and (b) to discussion for a seabed boundary with East Timor.

(6) If no discussions have been held on a seabed boundary with (a) Indonesia, in areas not covered by the 1971 agreement, and (b) East Timor, what is the status of our seabed boundaries in this region with particular reference to oil and gas exploration and exploitation.

(7) Has an exploration permit been given to Pelsart Oil NL which covers an area between the median line and the Timor Trench claimed by the Portuguese Government; if so, does this constitute Australian recognition of Indonesian sovereignty over East Timor and/or adjacent waters.

Mr Sinclair replied as follows:[43]

(1) Yes, although it should be noted that the westward section begins at 10°28′S x 126°00′E.

(2) Article 3 of the 1972 Agreement reads as follows: Article 3 'The lines between points A15 and A16 and between points A17 and A18 referred to in Article 1 and Article 2 respectively, indicate the direction of those portions of the boundary. In the event of any further delimitation agreement or agreements being concluded between governments exercising sovereign rights with respect to the exploration of the seabed and the exploitation of its natural resources in the area of the Timor Sea, the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia shall consult each other with a view to agreeing on such adjustment or adjustments, if any, as may be necessary in those portions of the boundary lines between points A15 and A16, and between points A17 and A18'.

(3) No negotiations on a seabed boundary in this area have been held with the Government of Indonesia.

(4) At various times between 1971 and 1973 Portugal and Australia discussed the possibility of commencing negotiations to delimit a seabed boundary between Australia and East Timor but no agreement was reached. In November 1973 the Portugese Government indicated that they did not wish to begin negotiations until after the Law of the Sea Conference, the first session of which was due to open in Caracas in June 1974. These initial exploratory discussions were conducted in Lisbon and Canberra between officials of the Portuguese and Australian Ministries of Foreign Affairs through their respective Embassies in each capital.

(5) (a) Australia and Indonesia have already established a seabed boundary between their two countries.

(b) No negotiations on the seabed boundary between East Timor and Australia are currently under consideration.

(6) The status of the seabed boundary between East Timor and Australia is governed by the 1958 Convention on the Continental Shelf. Under this Convention Australia has jurisdiction for the

43. HR Deb 1977, vol 105, 2589-90.

purpose of exploration and exploitation of the natural resources (including petroleum) of the seabed to the outer edge of its continental margin. The basis for Australian jurisdiction was explained by the then Minister for External Affairs in the House of Representatives on 30 October 1970.

(7) The area in question is within Australian jurisdiction and is within the area adjacent to Western Australia, as defined in the Petroleum (Submerged Lands) Act, and was included in permits issued under the Act in 1969. After relinquishment in 1975, the area was advertised in 1976 in accordance with normal procedures under the Petroleum (Submerged Lands) Act. Pelsart Oil NL applied for a permit and the Western Australian Designated Authority, with the concurrence of the Commonwealth, has informed the company that it is prepared to grant a permit.