



Australian Government
Department of Foreign Affairs and Trade

Submission to the Senate Foreign Affairs, Defence and Trade References Committee

INQUIRY INTO AUSTRALIA'S DECLARATIONS UNDER CERTAIN INTERNATIONAL LAWS

Introduction

The Department of Foreign Affairs and Trade (DFAT) welcomes the opportunity to make a submission to the Senate Foreign Affairs, Defence and Trade References Committee Inquiry into Australia's declarations under certain international laws.

DFAT's Legal Division provides legal advice and services across the breadth of DFAT's operations to promote and protect Australia's interests. This includes providing advice on maritime boundary disputes and engagement with international courts and tribunals. Australia has negotiated boundary agreements with Timor-Leste, Indonesia, France (New Caledonia and Kerguelen), New Zealand, Papua New Guinea and Solomon Islands.

Declarations under the United Nations Convention of the Law of the Sea and the Statute of the International Court of Justice

It is common practice for States to make a declaration to clarify the meaning and scope of a multilateral treaty or specific provisions.

United Nations Convention of the Law of the Sea

Article 298 of *United Nations Convention of the Law of the Sea* (UNCLOS) permits a State, "when signing, ratifying or acceding to this Convention or at any time thereafter... [to] declare in writing that it does not accept procedures provided for..." dispute settlement with respect to "disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles..." States agreed to this limitation on compulsory dispute resolution procedures to reinforce a core principle at international law that States must consent to enter dispute settlement.

On 22 March 2002, Australia made the following declaration under articles 287 and 298 of UNCLOS:

The Government of Australia declares, under paragraph 1 of article 287 of the United Nations Convention on the Law of the Sea done at Montego Bay on the tenth day of December one thousand nine hundred and eighty-two that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention, without specifying that one has precedence over the other:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI of the Convention; and
- (b) the International Court of Justice.

The Government of Australia further declares, under paragraph 1 (a) of article 298 of the United Nations Convention on the Law of the Sea done at Montego Bay on the tenth day of December one thousand nine hundred and eighty-two, that it does not accept any of the procedures provided for in section 2 of Part XV (including the procedures referred to in paragraphs (a) and (b) of this declaration) with respect to disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations as well as those involving historic bays or titles.

These declarations by the Government of Australia are effective immediately.

Many other countries have made similar declarations to UNCLOS including, Canada, China, France, Mexico, Portugal, Republic of Korea, Singapore and Thailand.

A State party that has made a declaration under articles 298 “may at any time withdraw it, or agree to submit any dispute falling within the expected category of disputes to any procedure specified in” the Convention.

International Court of Justice

Article 36(2) of the Statute of the International Court of Justice (ICJ) states:

“The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.”

On 22 March 2002, Australia made the following declaration under article 36 of the Statute of the ICJ:

The Government of Australia declares that it recognises as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to the Secretary-General of the United Nations withdrawing this declaration. This declaration is effective immediately.

This declaration does not apply to:

- (a) any dispute in regard to which the parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement;
- (b) any dispute concerning or relating to the delimitation of maritime zones, including the territorial sea, the exclusive economic zone and the continental shelf, or arising out of, concerning, or relating to the exploitation of any disputed area of or adjacent to any such maritime zone pending its delimitation;
- (c) any dispute in respect of which any other party to the dispute has accepted the compulsory jurisdiction of the Court only in relation to or for the purpose of the dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited less than 12 months prior to the filing of the application bringing the dispute before the Court.

DONE at Canberra this 21st day of March two thousand and two.

Australia is one of 73 States (out of a total of 193 States) that has accepted the compulsory jurisdiction of the ICJ. Like most countries accepting the compulsory jurisdiction to the ICJ – including the United Kingdom, Canada and New Zealand – Australia does so with limitations. Eight countries have made a reservation to the ICJ statute specifically regarding maritime boundaries including Germany, India and Malta.

Rationale for declarations

DFAT's view is that negotiations are more likely to produce better resolutions to maritime boundary disputes. Boundaries are fundamental elements of sovereignty and statehood; as a result many States have excluded these matters from dispute resolution procedures. A negotiated boundary settlement with a neighbour is more likely to result in an enduring and respected boundary that provides certainty for the parties and all stakeholders.

Conclusion

Australia's declarations to article 287 and 298 of UNCLOS and article 36 of the Statute of the ICJ are consistent with international law and the practice of a range of other States. DFAT considers negotiation of maritime delimitation disputes to be the best approach for achieving stable maritime boundaries.