

**AUSTRALIAN DECLARATIONS UNDER ARTICLES 287(1) AND 298(1)
OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA
1982, LODGED AT NEW YORK ON 22 MARCH 2002.**

Documents tabled on 18 June 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**

Australian declarations under Articles 287(1) and 298(1)(a) of the United Nations Convention on the Law of the Sea 1982, lodged at New York on 22 March 2002.

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. Australia lodged a declaration under Article 287(1) of the United Nations Convention on the Law of the Sea (UNCLOS) choosing dispute settlement mechanisms concerning the interpretation and application of the United Nations Convention on the Law of the Sea 1982 (UNCLOS).
2. By the same instrument, Australia also lodged a declaration under Article 298(1)(a) of UNCLOS that Australia does not accept any of the dispute settlement procedures provided for in Section 2 of Part XV with respect to disputes relating to sea boundary delimitations and historic bays or titles.

Date of proposed binding treaty action

3. The declarations were signed on 21 March 2002.
5. The declarations entered into force on 22 March 2002.
6. The Minister for Foreign Affairs wrote to the Chair of the Joint Standing Committee on Treaties on 25 March 2002, advising that the treaty action took place on 22 March 2002 with immediate effect. The reason for taking the treaty action prior to tabling and consideration by the Committee relates to its sensitivity. If it became known that the Government intended to take this action before the declaration under Article 298(1)(a) was lodged, then another country may have been able to pre-empt the Government's decision and commence proceedings against Australia prior to Australia's lodgement of the declaration.

Date of tabling of the proposed treaty action

7. 18 June 2002.

Summary of the purpose of the proposed treaty action and why it is in the national interest

8. The declaration under Article 287(1) means that Australia has selected its preferred means of dispute resolution under UNCLOS as the International Tribunal for the Law of the Sea and the International Court of Justice. The declaration under Article 298(1)(a) means that Australia does not accept the UNCLOS compulsory dispute resolution mechanisms in relation to disputes relating to sea boundary delimitations and historic bays or titles. This is consistent with the Government's view that maritime boundary disputes are best resolved through negotiation and not litigation.

Reasons for Australia to take the proposed treaty action

9. UNCLOS provides for the compulsory settlement of disputes between Parties over the interpretation and application of the Convention. Article 287(1) of UNCLOS allows States to nominate their preferred dispute resolution mechanism from the following:

- (a) the International Tribunal for the Law of the Sea (ITLOS) established in accordance with Annex VI of UNCLOS;
- (b) the International Court of Justice (ICJ);
- (c) an arbitral tribunal constituted in accordance with Annex VII of UNCLOS;
- (d) a special arbitral tribunal constituted in accordance with Annex VIII of UNCLOS for specific categories of disputes.

10. Of the 138 parties to UNCLOS, 29 States have made declarations nominating their preferred dispute resolution mechanism.

11. The declaration made by Australia under Article 278(1) chose the following means for the settlement of disputes concerning the interpretation or application of UNCLOS, without specifying that one has precedence over the other:

- (a) ITLOS; and
- (b) the ICJ.

If another country involved in a dispute with Australia has not accepted either of these mechanisms, the default mechanism of an arbitration panel consisting of five members in accordance with Annex VII of the Convention would apply.

12. Australia chose the ICJ and ITLOS as its preferred means of dispute resolution because there are advantages in taking disputes to existing, internationally recognised forums. Arbitral tribunals are not pre-existing bodies and have to be constituted before dispute resolution can be commenced. This can be a time consuming and difficult process. Also, the parties to the dispute have to pay the full cost of both the tribunal and the arbitration. Australia already contributes to the cost of the ICJ and ITLOS and no additional costs are incurred by taking a dispute to the Court or the Tribunal.

13. UNCLOS (Article 298(1)) also allows States to exclude certain specified categories of disputes from compulsory dispute settlement. Australia has excluded one of those categories – disputes concerning sea boundary delimitation and historic bays or titles - from compulsory dispute settlement. As a result, any sea boundary disputes between Australia and another State cannot be subject to compulsory dispute settlement under UNCLOS. Of the 29 States that have nominated their preferred dispute resolution mechanism, 11 States have made an exception in relation to sea boundary disputes.

14. Notwithstanding that declaration, disputes concerning maritime boundaries could still be heard by a conciliation commission under UNCLOS. The results of conciliation are not binding.

15. The Government's view is that maritime boundary disputes are best resolved through negotiation, not litigation. Negotiations allow the parties to work together to reach an outcome acceptable to both sides. The Government is, and remains, committed to the peaceful settlement of disputes. Compared to other countries, Australia, as an island continent, has some of the longest maritime boundaries in the world. It has maritime boundaries with many countries and

the Government is concerned that every endeavour should be made to reach an agreed resolution of any maritime boundary disputes through peaceful negotiation.

Obligations

16. The declaration lodged by Australia under Article 287(1) means that Australia as a matter of international obligation has accepted the ICJ and ITLOS as forums for dispute settlement in relation to the interpretation or application of UNCLOS.

17. The declaration under Article 298(1)(a) means that Australia is not obliged to submit to compulsory dispute settlement under UNCLOS disputes relating to sea boundary delimitations or historic bays or titles.

Implementation

18. No new implementing legislation or amendment to legislation is required.

Costs

19. Australia will incur no additional costs through making this Declaration.

Consultation

20. There was no consultation outside Federal Government. The Declaration falls within the sensitive treaty action exception to the normal processes of tabling treaties prior to their entry into force. This action was not made public prior to it being taken to ensure the effectiveness of the declaration was maintained. Public knowledge of the proposed action could have led other countries to pre-empt the declaration by commencing an action against Australia in relation to sea boundary delimitation that could not be made once the declaration under article 298(1)(a) of UNCLOS was made.

Regulation Impact Statement

21. No Regulation Impact Statement is required.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

22. It is open to Australia under Article 287(1) of UNCLOS to alter its declaration choosing the means for the settlement of disputes concerning the interpretation or application of UNCLOS.

23. It is open to Australia under Article 298(1) of UNCLOS to alter its declaration that it does not accept any one or more procedures provided for in Part XV, Section 2 of UNCLOS in relation to the category of disputes in Article 298(1).

Withdrawal or denunciation

24. Australia can revoke its declaration under Article 287. However, under Article 287(6) the revocation does not take effect until three months after it has been deposited with the Secretary-General of the United Nations.

25. It is open to Australia to withdraw its declaration under Article 298(1)(a) at any time.

Contact details

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