

The Hon. Alexander Downer, MP

FORMER MINISTER FOR FOREIGN AFFAIRS, AUSTRALIA

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Background Information

25 July 2004

Treaty between the Government of Australia and the Government of New Zealand establishing Certain Exclusive Economic Zone and Continental Shelf Boundaries

Introduction

1. On 25 July, the Foreign Ministers of Australia and New Zealand signed the "Treaty between the Government of Australia and the Government of New Zealand establishing certain Exclusive Economic Zone and Continental Shelf Boundaries". The signing ceremony brings to an end several years of negotiation, and definitively settles the maritime boundaries between the two countries in the Tasman Sea and adjacent areas of the south-western Pacific Ocean.

What does the Treaty do?

2. The Treaty establishes and describes the boundary lines between Australia's and New Zealand's exclusive economic zones and continental shelf. The "exclusive economic zone" and the "continental shelf" are legal concepts describing particular maritime spaces.

3. The exclusive economic zone (EEZ) is the area extending out 200 nautical miles (M) from the coast, including both the sea and the seabed. It is measured from the baseline of the territorial sea, generally the low water line. Within the EEZ, the coastal State has sovereign rights in accordance with the United Nations Convention on the Law of the Sea (UNCLOS) over the living and non-living resources of the sea and the sea-bed.

4. The continental shelf is the sea-bed and the subsoil beyond the territorial sea out to 200 nautical miles from the coast or, where the "natural prolongation" of the land territory extends beyond that limit, to the outer edge of the continental margin. This is defined by UNCLOS according to a complex formula, but in no case can it extend beyond the greater of 350 nautical miles from the baseline or 100 nautical miles from the 2500m isobath (a line connecting all points lying at a depth of 2500 metres). On the continental shelf, the coastal State exercises sovereign rights over the non-living resources and sedentary living organisms (such as sponges and molluscs).

5. The continental shelf as a legal concept existed before UNCLOS although its outer limit was not defined with precision prior to UNCLOS. The EEZ was a new legal concept developed during the UNCLOS negotiations. Those countries, including Australia and New Zealand, that had entitlements under the pre-existing continental shelf regime argued successfully in the negotiations that their continental shelf entitlements should not be subsumed under, or limited

by, the new 200-nautical mile EEZ regime. Where the continental shelf constitutes the natural prolongation of the land territory of the coastal State, the entitlement extends to the outer edge of the continental margin. Precise legal descriptions of the rights and obligations of states with respect to the EEZ and the continental shelf are set out in UNCLOS.

Why was it necessary to conclude the Treaty?

6. The fixing of maritime boundaries provides certainty of jurisdiction where the legitimate maritime claims of neighbouring states overlap. UNCLOS prescribes that such delimitation 'shall be effected by agreement on the basis of international law ... in order to achieve an equitable solution'.

7. As a general principle, States that possess extended continental shelf (that is, continental shelf beyond 200 nautical miles) must submit information within a particular timeframe to the Commission on the Limits of the Continental Shelf ('the Commission'), established under UNCLOS. Australia will make its submission to the Commission towards the end of this year, while New Zealand is scheduled to do so in 2006. The Commission considers the information from the coastal State and makes recommendations to it. The limits of the continental shelf established by a coastal State on the basis of the Commission's recommendations are 'final and binding'.

8. Establishment of agreed boundaries to the continental shelf by Australia and New Zealand ensures that both countries will be supportive of each other's forthcoming submissions to the Commission. Australia will be lodging its submission towards the end of this year, while New Zealand is scheduled to do so in 2006.

What benefits will the Treaty bring?

9. The Treaty confirms the median line boundary between the overlapping EEZs that has been observed de facto by the two countries for more than two decades, and thus gives certainty as to the extent of these zones. The zones generated by Norfolk Island (Australia) and Three Kings Islands (New Zealand) in the north, and by Macquarie Island (Australia) and Auckland and Campbell Islands (New Zealand) in the south, overlapped by a small amount.

10. The Treaty establishes the boundary between the areas of continental shelf beyond 200 nautical miles claimed by Australia and New Zealand in the Tasman Sea and adjacent areas of the south-western South Pacific and Southern Oceans. Each country will also exercise sovereign rights over additional areas of continental shelf beyond 200 nautical miles outside the areas covered in the negotiations.

11. The establishment of these boundaries will provide both countries with certainty of jurisdiction over the relevant offshore resources within their boundaries. For fisheries, the certainty of jurisdiction that flows from finalisation of the boundaries will provide a better basis for the joint management by the two countries of any stocks shown to occur in the vicinity of the boundaries. For petroleum and other mineral or biological resources of the seabed,

finalisation of the continental shelf boundaries will create certainty of jurisdiction for issuing of exploration and extraction licences.

What kind of jurisdiction do the two countries have over the continental shelf?

12. Under UNCLOS, a coastal State exercises 'sovereign rights for the purpose of exploring' the continental shelf and "exploiting its natural resources". The natural resources of the continental shelf are defined as consisting of the "mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or subsoil." This includes organisms such as sponges and molluscs.

Are there hydrocarbon deposits on the continental shelf subject to the Treaty?

13. The hydrocarbon potential of most areas of continental shelf beyond 200M that have been delimited by the Treaty is largely unknown, but in general, is not likely to be high.

14. The areas are generally deep, usually 1500-5000 metres, and often have a thin sedimentary section.

15. The areas delimited by the Treaty are remote from existing infrastructure and markets and would be expensive to develop.

16. Because of these factors these areas are poorly explored. Even where data from reconnaissance surveys show zones of relatively thick sediments, factors that control the formation and entrapment of hydrocarbons such as the distribution of source and reservoir rocks and thermal history are unknown.

How was the Treaty negotiated?

17. The negotiations were launched in 1999, when the two countries agreed to conclude an agreement "no later than 2003" on the delimitation of their maritime zones.

18. The Australian negotiating team was led by officials from the Department of Foreign Affairs and Trade, and included officials from the Attorney-General's Department, Geoscience Australia and from time to time representatives of Tasmania, New South Wales and Norfolk Island.

19. The New Zealand negotiating team was led by officials from the Ministry of Foreign Affairs and Trade and included officials from Land Information New Zealand, technical advisers from the National Institute of Water and Atmospheric Research, the Institute of Geological and Nuclear Sciences and the Naval Hydrographer's Office, and external legal advisers.

20. The delegations met on eight occasions, and concluded negotiations ad referendum (subject to approval by their respective Governments) in April 2004.

What were the main issues that arose in the negotiations?

21. UNCLOS requires that the delimitation of overlapping maritime jurisdictions 'shall be effected by agreement on the basis of international law ... in order to achieve an equitable solution'. There is a significant body of international precedent for maritime delimitation. Each delimitation negotiation is, however, unique, and what may be an equitable result will depend on an analysis of all the relevant circumstances.

22. During negotiations, the relevant issues included the relative length of coastlines, the effect of islands, and the distances from relevant coastlines, as well as geomorphological factors such as natural prolongation and the legal and technical case for connectivity of the continental shelf.

Why are the lines drawn as they are?

23. The boundary has two discrete parts: one in the north dividing Australia and New Zealand EEZs and continental shelf in the region extending from Lord Howe Rise, past Lord Howe and Norfolk Islands to Three Kings Ridge (described in Article 2); and the other in the south separating the EEZs and continental shelves between Macquarie Island and Campbell and Auckland Islands (described in Article 3). Three maps depicting the lines are attached to the Treaty as Annexes 1, 2 and 3. The map attached to this document is that shown in Annex 1 to the Treaty.

24. The northern line begins at the intersection of the outer limit of the continental shelf beyond 200 nautical miles with an arc drawn 350M from Norfolk Island. It then runs south-westerly to the northernmost point of Three Kings Ridge, and then southward along the western margin of the Three Kings Ridge until it meets the line of equidistance between Phillip Island (lying off Norfolk Island) and the Three Kings Islands, which it follows in a south-westerly direction to the point where the two EEZs diverge. It then turns westerly and north-westerly along the outer limit of the EEZ generated by Phillip Island until its intersection with the parallel of latitude 31° 30' S, from where it proceeds south-westerly to the intersection of the outer limit of the EEZ generated by Ball's Pyramid (lying off Lord Howe Island) with the parallel of latitude 32° 30' S. The line then follows that outer limit south-westerly to its intersection with the line of equidistance between the Australian and New Zealand mainlands giving half-effect to Three Kings Island. It then proceeds south-easterly to intersect an arc drawn 350M from Ball's Pyramid, before running south-westerly along that arc to its intersection with the mainland equidistance line, thence south-westerly along that line to a point beyond the furthest extent of continental shelves of both countries.

25. The southern line begins north of Macquarie Island on the outer limit of Australia's EEZ at a meridian of longitude slightly west of the furthest possible extent of the area of continental

shelf beyond 200M from both countries, runs east along that outer limit and then south-east along the equidistance line between Macquarie Island (Australia) and Campbell and Auckland Islands (New Zealand). From the southernmost point of overlap, it resumes a southerly course along the outer limit of Australia's EEZ, to a point on that line where it diverts to the south-east for a short distance to divide equally a small area of continental shelf beyond 200M from both countries.

26. The boundary described in the Treaty is a common maritime boundary dividing both the EEZ and continental shelf of the two countries. It is a fair and equitable outcome in accordance with the principles of international law. Norfolk, Lord Howe and Macquarie Islands would continue to generate full 200M EEZs and 200M continental shelves except in areas where the zones of the two countries meet, in which case the boundary has been agreed as a line of equidistance. Where the agreed boundary runs along the outer limit of Australia's EEZ, those parts of the boundary divide Australia's EEZ from that part of New Zealand's continental shelf that is beyond 200M from New Zealand.

27. Parts of the boundary relating to the delimitation of areas of continental shelf beyond 200M do not, however, run along the equidistance line. It is consistent with international law and practice that in some circumstances, an isolated island of one country (lying between the mainland of that country and that of another country) is given a reduced weight in delimiting maritime boundaries between those two countries. This factor particularly affects Lord Howe and Norfolk Islands, the latter of which lies closer to New Zealand than to the Australian mainland. Thus, the boundary dividing the area of continental shelf beyond 200M located between Lord Howe Island and mainland New Zealand is drawn in such a way as to give less than full weight to the coastline of Lord Howe Island (Balls Pyramid). In relation to the Three Kings Ridge, the proposed boundary line is drawn so as to leave most of the Ridge under New Zealand jurisdiction. This is because the natural prolongation from New Zealand's North Island to the Three Kings Ridge is more obvious than that from Australia's Norfolk Island, and hence the legal and the technical case for its connection with Three Kings Ridge is more straightforward.

28. There are two small areas of overlapping continental shelf beyond 200M from the Australian and New Zealand coastlines in the vicinity of Macquarie Island and Auckland Island. One of these areas is placed under New Zealand jurisdiction and jurisdiction over the other is divided equally between Australia and New Zealand.

Will the Treaty create new financial obligations?

29. There are no financial implications for either country resulting from the conclusion of the Treaty or directly arising from it.

Does the Treaty provide for withdrawal?

30. Treaties establishing permanent boundaries, including maritime boundaries, generally do not contain provisions relating to amendment or withdrawal. The Treaty is consistent with this practice. Amendment or withdrawal would still be possible provided both Parties consented.

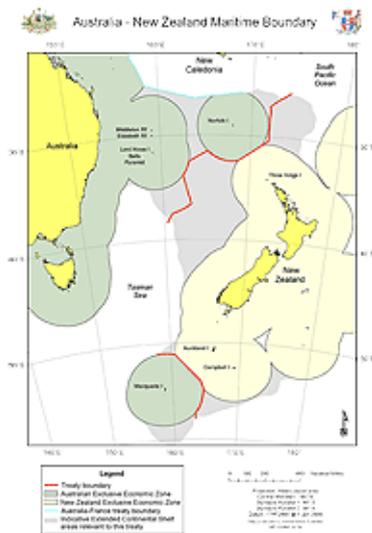
What further boundary treaties need to be negotiated?

31. Australia and New Zealand have yet to delimit the maritime spaces off their respective Antarctic territories, but otherwise have now settled all maritime boundaries between them.

32. Australia has still to conclude maritime boundary treaties with East Timor, France and Norway.

33. New Zealand has still to conclude maritime boundary treaties with Fiji and Tonga.

Map



[\(images/a-nz-maritimebound.gif\)](#)

[Enlarge this map \(images/a-nz-maritimebound.gif\)](#)

Media inquiries: Media inquiries: Chris Kenny (Mr Downer's Office)