

THE TORRES STRAIT BOUNDARY

REPORT BY

THE SUB COMMITTEE ON TERRITORIAL BOUNDARIES

OF

THE JOINT COMMITTEE ON  
FOREIGN AFFAIRS AND DEFENCE

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SUB-COMMITTEE A - TERRITORIAL BOUNDARIES

REPORT ON BOUNDARY BETWEEN AUSTRALIA AND  
PAPUA NEW GUINEA

To Senator Sir Magnus Cormack,  
Chairman,  
Joint Committee on Foreign Affairs,  
and Defence

Sir

On 4 May 1976 this Sub-Committee was appointed with the following terms of reference "to consider investigate and report on the boundaries between Australia and Papua New Guinea, Indonesia and Portuguese Timor (East Timor) and that first priority be given to the boundary with Papua New Guinea".

One member, Mr. R. Jacobi, M.P. had reservations regarding some sections of the report. His reservations are set out in a statement attached to the report.

The Sub-Committee has pleasure in submitting their report on the first section of this reference.

R.F. Shipton, M.P.  
Chairman

MEMBERS OF THE SUB-COMMITTEE

Mr N.A. Brown, MP, Chairman (Victoria)\*  
Mr R.F. Shipton, MP, Chairman (Victoria)\*  
Mr K.L. Fry, MP (A.C.T.)  
Mr R. Jacobi, MP (South Australia)  
Lt Col. J.W. Sullivan, MP (New South Wales)

- \* Mr N.A. Brown was Chairman from the formation of the Sub-Committee on 5 May 1976 until 26 August 1976 when he left the Sub-Committee to act as adviser to the Australian delegation to the 31st meeting of the United National General Assembly. In the period of his absence Mr R.F. Shipton acted as Chairman of the Sub-Committee.

Secretary

L.O. Goldsmith,  
The Senate,  
Parliament House,  
CANBERRA. A.C.T.

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THE COMMITTEE'S  
CONCLUSIONS AND RECOMMENDATIONS

## CONCLUSIONS AND RECOMMENDATIONS

### A. CONCLUSIONS

The Committee has examined the question of the boundary between Australia and Papua New Guinea. The Committee visited and travelled through a large area of Torres Strait and contacted local leaders and residents. Submissions were received from governmental and private organisations and from individuals. Witnesses gave evidence to the Committee which was supplemented by information from published sources.

The Committee has looked at the problem in an analysis of the question of demarcation in the Torres Strait. Until the general principle of demarcation between national entities is settled the subsidiary problems that flow from such agreement (if obtained) remain.

The Committee's principal conclusions are:

1. The Committee supports the existing boundary which is taken to be the 1879 line. The inhabitants of the border region have access to Torres Strait waters as does marine traffic between the Papuan coast in the boundary area and other parts of Papua New Guinea.
2. No definitive statement was received, from the Australian Government presenting a case in support of changes in the existing boundary with Papua New Guinea. Possibly the Government was inhibited by the continuance of negotiations with Papua New Guinea. As far as such a statement can be inferred, the reasons for supporting a change appear to be based on a moral feeling that Papua New Guinea is disadvantaged by the existing boundary. To maintain good relations therefore the existing boundary should be altered in favour of that country.



3. Evidence presented to the Committee indicated that no significant deposits of commercial hydrocarbons had been discovered in the Torres Strait region to date and that prospects for future discoveries are not considered to be favourable.

4. Available published information and investigation at the local level suggests that the Torres Strait community is heavily dependent on welfare payments as a source of cash income. It appears unlikely that this trend towards a dependent community will be reversed in the foreseeable future.<sup>1</sup>

5. Migration both of family groups and of individuals from the Torres Strait area to mainland Australia has been an established pattern over the past 25 years. Of a total population of some 10,000 persons in the Torres Strait community more than 60 per cent now live permanently in Australia. The Committee found no evidence that this pattern of migration was likely to be reversed.

6. The existing provisions of the Australian Constitution, particularly s.123, places legal restraints on proposals to change the boundary of a State, or to cede a portion of a State to another country without the consent of the people of the State concerned.

7. Apart from these general constitutional difficulties, in regard to cession of territory, under the archipelagic theory advanced by Dr Prescott, there appears to be a strong case for the Torres Strait islands to remain Australian territory.

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1. As has been stated in Chapter 2 p.33 the community also receives a considerable income from remittances of islanders who have migrated to the mainland seeking employment.

8. The establishment of a Protected Zone in the Torres Strait would clarify the existing situation and could defuse the relatively low level of political activity caused by proposals to alter the existing boundary.

9. An essential provision of the establishment of this Zone is that mining and drilling of the seabed is to be prohibited for an agreed period and no new commercial activities would be permitted unless they were compatible with protection of the environment.

10. The Committee is not clear on how such a Protected Zone would be administered. If an independent Commission were established for this purpose the powers of the Commission should be clearly defined, particularly in relationship to the powers already exercised by State and local government authorities operating within the Torres Strait.

11. To be effective such a Commission should be representative of all parties including: Australia, Papua New Guinea, Queensland and the Torres Strait Islanders.

12. The Committee considers the Government should, at an appropriate time, make a public statement, preferably in Parliament, setting out the progress made in the negotiations outlined in Chapter IV, the general principles and parameters within which Australia is conducting these negotiations, and the tentative date for final agreement.

## B. RECOMMENDATIONS

1. The Torres Strait Islands should remain part of Australia. The Committee supports the existing boundary which is taken to be the 1879 line.
2. The Committee is attracted to the concept of a "Protected Zone" in the Torres Strait area and if this is accepted the zone should be clearly defined to include:
  - . freedom of passage through the area for Australians and Papua New Guineans;
  - . prohibition of mining and drilling in the seabed until satisfactory agreement has been achieved between all interested parties;
  - . compatibility of new commercial ventures with environmental considerations.
3. Every effort should be made to preserve the existing culture and customs of the Torres Strait Islanders.
4. Negotiations between Australia and Papua New Guinea should ensure the continuation of the existing rights of free access to the area and the right to engage in fishing for domestic purposes of Papua New Guinea and its citizens. Any agreement would also need to cover significant subsidiary matters such as
  - i) powers of arrest and pursuit of law breakers, e.g. illegal fishing
  - ii) inspection of vessels for human and

- animal quarantine
  - iii) conservancy laws and which ones should be observed and on what terms
  - iv) pilotage
  - v) lighthouses and beacons
  - vi) rights of refuge for storm-beset vessels
  - vii) control over migration
  - viii) contraband, i.e. prohibited cargoes
  - ix) airspace
5. In any negotiations on such matters as a seabed boundary and a Protected Zone it is necessary to take cognisance of the fact that all islands inhabited and uninhabited in the Torres Strait within the 1879 line are part of Queensland.
  6. That the Government should, at an appropriate time, make a statement in Parliament setting out its position on the Torres Strait boundary and the issues involved.
  7. The difference between a seabed boundary and a normal international boundary should be stated in clear, unambiguous terms.
  8. The people of the Torres Strait may see the need for competent counsel subject to their own direction and if so steps should be taken to ensure they have such counsel.

DEFINITION OF TORRES STRAIT AREA

The Committee could not locate a recent, reasonably succinct description which delineated the Torres Strait. For the purposes of this report the Committee adopted the following definition as delineating the area with a fair degree of accuracy.

"Generally that area of sea and islands lying between Cape York and the Papuan coast bounded as follows : in the East by the north east extremity of the Great Barrier Reef and thence in a north westerly direction to include Bramble Cay terminating at Bampton Point on the Papuan Coast; in the West by Parliament Point on the Papuan Coast; and thence South to latitude 11° south including Turu Cay and Cook, Merkara and Proudfoot Shoals".

## INTRODUCTION

### ESTABLISHMENT OF SUB-COMMITTEE

By a joint resolution of the House of Representatives and the Senate of 17 and 18 March 1976 the Parliamentary Joint Committee on Foreign Affairs and Defence for the Thirtieth Parliament was established. The Committee was empowered to report on -

- (a) foreign affairs and defence matters generally and
- (b) such matters as may be referred to the committee
  - (i) by the Minister for Foreign Affairs
  - (ii) by the Minister for Defence or
  - (iii) by resolution of either House of Parliament

The Committee comprises twenty one members, fourteen from the House of Representatives and seven from the Senate with the Government having a majority of three on the Committee.

At the first meeting of the Committee on 6 April Senator Sir Magnus Cormack was elected unopposed as chairman. The Committee agreed that its operations should be conducted so that it operated as a study group, received information from important guest speakers and that investigations and reports should be conducted by sub committees. At a subsequent meeting of the Committee on 4 May three sub committees; A, B, and C were appointed, terms of reference defined and membership determined. Sub-Committee A henceforth known as the Territorial Boundaries Sub-Committee was formally appointed with the following terms of reference "That the sub-committee

consider, investigate and report to the main Committee on the boundaries between Australia and Papua New Guinea, Indonesia and Portuguese Timor (East Timor) and that first priority be given to the boundary with Papua New Guinea and that a report on this aspect be presented within six months".

Mr N.A. Brown was appointed as chairman of the Sub-Committee other members of the Sub-Committee being -

Mr K.L. Fry, M.P.  
Mr R. Jacobi, M.P.  
Mr R.F. Shipton, M.P.  
Lt Col. J.W. Sullivan, M.P.

The Sub-Committee held its first meeting on 5th May 1976.

The report of the Sub-Committee has been examined by the whole Committee and was adopted by it on 1 December 1976.

#### PRELIMINARY CONSIDERATIONS AND CHRONOLOGY

At its initial meetings the Sub-Committee accepted the fact that it was conducting an investigation of a matter which was already the subject of negotiation between Australia and Papua New Guinea. It was realised this would have an inhibiting effect on evidence tendered, particularly by official witnesses. Some evidence was tendered in camera and clear definitive statements of position could not be obtained from the Government of Papua New Guinea nor, despite repeated requests, from the State of Queensland. The Australian Minister for Foreign Affairs, Mr A.S. Peacock, appeared before the Sub-Committee and gave evidence in camera, indicating the broad approach of the Australian Government. The fourth major party involved in this question, the Torres Strait Islanders, who whilst inhabitants of the State of Queensland, have been accepted as having a separate and discrete interest, have stated their position vigorously and almost unanimously. That is, they want no change in the border and generally, subject to such

qualifications as the discovery of significant mineral or hydro-carbon deposits on the sea bed, no change in the existing status quo.

The Sub-Committee visited the Torres Strait area in the period from August 2 to August 8 1976 in an endeavour to obtain at first hand some knowledge both of the region and the attitude of the Torres Strait people to the Boundary issue. The Sub-Committee visited and held public hearings at the islands of Sue (Warraber) Yorke, Yam, Saibai, Badu (Mulgrave) Moa (Banks) and Horn, and Bamaga Reserve (Cape York). A public hearing was also held on Thursday Island, the main centre of the group and at Tamwoy Reserve (Thursday Island). As the result of this visit the Sub-Committee felt it obtained a clear expression of opinion from a significant cross-section of the population on their attitude to any changes in the existing boundary.

The Sub-Committee took as the parameters within which the investigation should be conducted that there were four parties principally concerned: Australia, Papua New Guinea, the State of Queensland and the Torres Strait Islanders, a distinct ethnic group living on the islands in the Strait between Australia and Papua New Guinea which links the Arafura and the Coral Seas. The Sub-Committee considered that the principal legal factors which must influence any agreement reached were: clause 9 of the Commonwealth of Australia Constitution Act (The Constitution), and that body of international law known collectively as the Law of the Sea.

The question of the border between Australia and Papua



New Guinea has received considerable publicity in the years since 1972. Consideration of this question has, however, been continuing in a sporadic form both prior to and almost immediately after Federation, largely at the instigation of successive Administrators of British New Guinea. An Order in Council was actually issued in 1898, making over the islands north of a line through the Moon Passage (see map) to British New Guinea, but was never submitted to the Queensland Parliament for approval. After Federation, the matter became one of Commonwealth Government concern, and the matter was raised in Federal Parliament on 22 July, 1902.<sup>1</sup> An advisory opinion on implementing the 1898 Order in Council was submitted to Prime Minister Alfred Deakin on 28 June 1906 by the Attorney-General, the Hon. Isaac Isaacs. However, as the Queensland Premier proved uncooperative, no action followed. In fact, in 1925 the Queensland Government took action to further strengthen its claim in law to the islands in question by issuing new Letters Patent on 10 June explicitly quoting the Letters Patent of 1878 which defined the islands annexed to Queensland in 1879.

The question continued to arouse sporadic interest in the period between the wars and in the immediate post-war period. In August, 1964, Paul W. van der Veur published an article entitled "Papua Irredenta: Queensland's Northern boundary and the territory of Papua".<sup>2</sup> Mr E.G. Whitlam (then Deputy Leader of the Opposition) to raise the matter in the debate on the Native Members of the Forces Benefits

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1. Australia, House of Representatives, Debates, 22 July 1902, p.14486
  2. Australian Journal of Politics and History, 10(2), Aug '64: 183-195

Bill 1965.<sup>3</sup> Van der Veur's books Search for New Guinea's Boundaries: From Torres Strait to the Pacific, and Documents and Correspondence on New Guinea's Boundaries,<sup>4</sup> were published in 1966. Mr Ebia Olewale referred to Van der Veur's work when he moved a motion on "Adjustment of the Boundary between Papua New Guinea and the State of Queensland" in the Papua New Guinea House of Assembly on 21 August 1969,<sup>5</sup> and in April 1971 the Report of the United Nations Visiting Mission to the Trust Territory of New Guinea drew attention to what it called the "border" with Queensland:

"467. The united Territory's relationship with Australia will continue to be of the utmost importance for its future peace and prosperity.... The border runs within a mile of the Papuan coast and includes under Queensland jurisdiction all the intervening islands, including three, with a total population of 370, which lie close inshore. This situation is regarded locally on the Papuan side as anomalous and there is incipient pressure for revision of the boundary in the Territory's favour. This is far from being a national issue as yet, but could develop into a source of potential friction unless sympathetically handled. The Australian Government has sought to establish an equitable settlement of fishing and oil exploration rights in the Torres Straits and Papuan Gulf area; but they point out that boundary revision would raise constitutional problems in Australia as well as particular difficulties in relation to possible resettlement of the inhabitants of the islands, who have expressed opposition to being transferred to the jurisdiction of Papua and New Guinea."<sup>6</sup>

The Chronology of the main developments in the matter subsequently is as follows:

3. Australia, House of Representatives, Debates, 9 Dec '65 3881-2
4. Canberra, Australian National University Press, 1966
5. Papua New Guinea, House of Assembly, Debates, 21 Aug '69 1485-6, 1564-6.
6. United Nations, Trusteeship Council, Visiting Mission to New Guinea, Canb., Govt P., 1971.

CHRONOLOGY OF THE TORRES STRAIT DISPUTE

(DECEMBER 1972 TO JULY 1976)

15 December 1972: Prime Minister the Hon. E.G. Whitlam writes to Premier of Queensland Mr. Joh Bjelke-Petersen suggesting discussions between officials of Papua New Guinea, Queensland and Australian governments.

11 January 1973: Premier replies saying he could see no good purpose being served by such discussions.

17 January 1973: Joint statement by the Prime Minister and the Chief Minister of Papua New Guinea -- Australia willing to negotiate relocation of border but reluctant to be party to any settlement not accepted by Islanders. Recognition of need for prior consultation between Australian and Queensland Governments.

23 March 1973: Discussions with Premier who agrees to Council for Aboriginal Affairs consulting with Islanders.

13 June 1973: Prime Minister meets Islanders.

19, 20 September 1973: Yam Island meeting between Islanders and coastal Papuans, Dr Coombs and two Queensland officials present as observers.

. 2 April 1974: The Premier of Queensland moves Parliamentary Resolution for establishment of Marine Park. Adopted by Queensland Parliament on 3 April 1974.

. 7 April 1974: Prime Minister's telegram to the Premier advising him of the Commonwealth Government's concept of an environmentally protected area and proposing discussions between officials.

. 29 April 1974: Premier seeks more information before agreeing to discussions.

. 29, 30 May 1974: Daru Island Conference between Islanders and coastal Papuans. Dr Coombs and two Queensland officials present as observers.

. 26 June 1974: Prime Minister writes to Premier, indicating much common ground and again invites discussions.

. 19 August 1974: Premier replies agreeing to discussions.

. 24 September 1974: Premier makes statement in Queensland Parliament on Torres Strait.

. 13 November 1974: Discussions between Australian and Queensland Government officials in Canberra.

20, 21 February 1975: Discussions between Australian and Queensland Government officials in Brisbane.

30 June 1975: Prime Minister meets Islanders in Sydney.

3, 4 July 1975: Discussion between Australian and Queensland Government officials in Brisbane.

13 September 1975: Prime Minister writes to Premier, passing him a copy of letter of 8 September from Papua New Guinea Minister for Defence, Foreign Relations and Trade and expressing the hope that they can meet after officials have conferred further.

18 September 1975: A statement signed by the Councils of Darnley, Murray and Stephen Islands said that they were appalled at the political confrontation between the Queensland Premier and the Minister for Aboriginal Affairs (Mr Johnson); accused both of not caring what the Islanders thought; and said that Mr. Bjelke-Petersen was wrong in most of his allegations about bungling of Federal projects in the area.

19, 20 September, 1975: Dr Coombs attends Conference of Torres Strait Island Chairmen on Thursday Island. Islander's views set out in a memorandum signed by their Group Representatives.

24 September 1975: Prime Minister passes copy of letter of 15 September from Sir Maori Kiki, Papua New Guinea Minister for Defence, Foreign Relations and Trade (addressed to Minister for Defence) to Premier of Queensland.

4 March 1976: Joint communique issued by the Prime Ministers of Papua New Guinea and Australia during Mr Somare's visit to Canberra. It was agreed that one object of the negotiations was to draw a seabed line between Australia and Papua New Guinea and to establish a protected zone in the area to preserve the environment and traditional way of life of the inhabitants.

15 March 1976: Mr Somare withdraws a series of bills seeking to define the seabed limits of Papua New Guinea.

18 April 1976: Telegram to the Prime Minister by Mr. Getano Lui stating in part that if Australia did not support them, the Islanders would take their case to the International Court of Justice and the United Nations.

3 May 1976: Talks in Brisbane between the Premier and the Deputy Prime Minister, the Rt. Hon. J.D. Anthony.

5 May 1976: Newspaper claims that Papua New Guinea is seeking to extend the 'present border' more than 100 klm south.<sup>2</sup>

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2. "Canberra Times" 6th May 1976.

6 May 1976: Claims that Papua New Guinea seeking to extend present border more than 100 km southwards denied by the Prime Minister during question time.

11 May 1976: Talks in Canberra between the Prime Minister, Deputy Prime Minister and the Queensland Premier.

18, 19, 28 and 29 May 1976: Meetings in Port Moresby between the Foreign Ministers of Australia and Papua New Guinea. Mr Peacock states that it is 'most important' to settle the border issue 'as soon as possible'.

19 May 1976: National President of Returned Services League, Sir William Hall, urges Federal Government to 'stand firm' against any requests from Papua New Guinea to have the Islands transferred to its 'jurisdiction'.

5 June 1976: Joint statement by the Foreign Ministers of Australia and

6 June 1976: Mr Tei Abal, Opposition Leader in the Papua New Guinea National Parliament, states that if his party won government it would have to review any agreement signed by Mr Somare.

7 June 1976: Queensland Premier charges that the agreement has 'betrayed' the Torres Strait Islanders to a foreign country'.

8 June 1976: Officials from the Department of Prime Minister and Cabinet, National Resources and Primary Industry leave for talks in Port Moresby.

9 June 1976: Mr Olewale accuses the Queensland Premier of wanting to keep the Torres Strait in order to exploit any mineral reserves that may be located there.

10 June 1976: Minister of Aboriginal Affairs explains to Island Chairmen the joint statement of 5 June.

12 June 1976: Minister for Aboriginal Affairs announces that Islanders representatives have accepted the need for a new seabed resources boundary. Claim denied by Mr. Getano Lui.

16 June 1976: Minister for Aboriginal Affairs states that the Islanders had asked that the Prime Minister visit them before any final agreement was reached with Papua New Guinea on the border issue.

6 July 1976: Sir A. Maori Kiki announces that "the new boundary line will be on top of the water; under the sea and up in the sky...."<sup>3</sup>

8 July 1976: Australian Government sources state that they will not yield to Papua New Guinea's requests.

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3. See statement to the National Parliament by Sir Maori Kiki p. 55.



14 July 1976: Torres Strait Islanders Advisory Council seeks withdrawal of Australian dollar note and its replacement with one bearing symbols of the island people.

15 June 1976: Statement to the Papua New Guinea Parliament on Torres Strait by Sir A. Maori Kiki. (See Appendix IV)

23 July 1976: Sir A. Maori Kiki emphasizes that the Torres Strait boundary now being negotiated between Australia and Papua New Guinea will be an 'all purpose international boundary' in which each nation will have 'full sovereignty'.

23 July 1976: Letter to the Minister for Aboriginal Affairs from Mr. Naseli Nona (Chairman Mabuiag Island Council), accusing Mr. Getano Lui of double talk and unilateral statements on behalf of the Islanders Advisory Council, was made public. Mr. Nona stated that Mr. Lui seemed to speak more on behalf of the Queensland Government than the Torres Strait Islanders. He further assured the Minister that he and other Island Chairmen recognised that the Australian Government was trying to look after their interests.

2-8 August 1976: Australian Parliament Sub-Committee on Territorial Boundaries visits Torres Strait area and holds public hearings.

## CHAPTER I

### ESTABLISHMENT OF THE EXISTING BOUNDARY

The maritime boundaries of the Colony of Queensland were defined in the letters patent of 6 June 1859 which established the new colony separate from New South Wales. Queensland was stated to have acquired "all and every the adjacent Islands, their members and appurtenances, in the Pacific Ocean". This vague description was soon proven inadequate, and in 1871 the Governor, Sir George Phipps, requested the British Colonial Secretary to extend his jurisdiction over all islands within 60 miles of the Queensland coast. This was granted in letters patent of 30 May 1872. The new definition brought all the islands of Torres Strait south of Mabuiag (Jervis) and Yam Islands under Queensland jurisdiction.

The next extension of Queensland's boundaries originated in the reluctance of Great Britain to accede to Australian prompting to take possession of eastern New Guinea. The background official correspondence relating to the 1879 extension of Queensland's boundaries and the 1884 proclamation of a protectorate by Britain over south-eastern New Guinea has been examined by Professor Marjorie Jacobs.<sup>1</sup> The Queensland Legislative Assembly passed a motion advocating Imperial annexation of non-Dutch New Guinea in 1871. Demand for annexation was further stimulated by Captain John Moresby's survey of the south-eastern part of the island in 1873. The British Government was most reluctant to incur what was foreseen as the great cost involved in annexation

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1. "The Colonial Office and New Guinea, 1874-84", Historical Studies, vol. 5, no. 18, May 1952, p. 110-118.

and consequent administration of eastern New Guinea, although, in the context of the imperialist rivalry at that time among Britain, France and Bismarck's new Germany, it was seen by the British Colonial Office as inevitable that New Guinea eventually be incorporated into the Empire. In 1875 the Colonial Office put forward the suggestion that the British claim to eastern New Guinea be established by the occupation of points on the coast.<sup>2</sup> This suggestion was at first turned down on the grounds of expense, but the next year rumours of a French expedition to New Guinea revived the Colonial Office fear that a foreign flag would be "hoisted ninety miles from Queensland".<sup>3</sup> Professor Jacobs describes the subsequent developments:

Herbert, [Permanent Under-Secretary to the Colonial Office], was of the opinion that the Colonial Office could not afford to postpone annexation at least of the shore nearest to Australia, and that the British government should continue to object to any European power coming into the non-Dutch portion. How it could be done was a more difficult matter. Neither Cabinet nor Parliament would accept British annexation of New Guinea without Australian participation. In the circumstances, Herbert and Carnarvon reverted to the proposal of the previous year that several valuable points on the coast opposite Australia should be occupied in the belief that this would constitute a claim to the coastal areas strong enough to ward off foreign intruders. Carnarvon sought the Admiralty's advice about the points to be occupied and was informed that in view of the barrenness and inaccessibility of the coast opposite Australia, the islands of Tauan and Saibai, just off the coast, would be the only areas suitable for stations. These islands were then offered to Queensland, to quote the words of a Colonial Office official, 'as a test of the sincerity

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2. Great Britain, Colonial Office. Confidential Printing, Australia, No. 53, p. 64. C.O. 808/15, Herbert to F.O., 7 August 1875.
  3. Great Britain Colonial Office, 201/582. R. Armit to Carnarvon, 10 June 1876; idem, 201/577. Minute by Herbert, 21 November 1874, on Robinson to Carnarvon, 7 September 1874.

of the desires of the Australians for annexation'. Queensland's initial reponse was not encouraging. The colonial government refused to accept responsibilities beyond its territory, although it would contribute to the costs if the other Australian colonies did likewise. Eventually, it was only after what was described in the Colonial Office as "much shilly-shallying" that the islands were included in Queensland by the expedient of extending the borders of the colony in 1879.<sup>4</sup>

Dauan, Saibai, Boigu, and all the other islands in Torres Strait not previously annexed to Queensland by the letters patent of 1872, were annexed by the Queensland Coast Islands Act 1879. The schedule of the Act described the islands in the following words:

Certain islands in Torres Straits and lying between the Continent of Australia and Island of New Guinea that is to say all islands included within a line drawn from Sandy Cape northward to the south-eastern limit of Great Barrier Reefs thence following the line of the Great Barrier Reefs to their north-eastern extremity near the latitude of nine and a half degrees south thence in a north-westerly direction embracing East Anchor and Bramble Cays thence from Bramble Cays in a line west by south (south seventy-nine degrees west) true embracing Warrior Reef, Saibai and Tuan Islands thence diverging in a north-westerly direction so as to embrace the group known as the Talbot Islands thence to an embracing the Deliverance Islands and onwards in a west by south direction (true) to the meridian of one hundred and thirty-eight degrees of east longitude.

These islands were annexed to Queensland as from 1 August 1879, by proclamation in the "Gazette" of 21 July 1879.

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4. Great Britain, Colonial Office. C.O. 201/582; Minute by Herbert on Tenterden to Col. Office, 21 July 1876; Minute by Herbert on Tenterden to Col. Office, 30 May 1876; R. Hall to Col. Office, 21 October 1876; Carnarvon to Kennedy, 29 Jan. 1877; Minute by W.R. Malcolm on Admiralty to Col. Office, 21 October 1876, C.O. 234/37; Kennedy to Carnarvon, 18 May 1877.

### Proposals for Revision

Anglo-German rivalry eventually led to a division of eastern New Guinea between the German and British Empires in 1884. The establishment of a British protectorate over south-eastern New Guinea, administered from Port Moresby, deprived the incorporation of Dauan, Saibai and Boigu into Queensland of its rationale, at least in the eyes of the officials responsible for administering the area. The Hon. John Douglas (Resident Magistrate on Thursday Island) in 1885; Sir Samuel Griffith (Queensland Premier) in 1893; and Sir William MacGregor (Administrator for British New Guinea) in 1893, all expressed their decided opinions that the three islands could be more conveniently governed from Port Moresby, and that geographically they belonged to New Guinea.

The Douglas proposal for a boundary revision was first made in a report to the Colonial Secretary in 1885. He stated his opinion that a readjustment of the maritime boundary had been rendered desirable by the establishment of the protectorate over New Guinea. He doubted whether the people of Queensland attached any particular importance to the possession of the Torres Strait Islands, including the Prince of Wales group:

They regard them, if I am not mistaken, rather as sources of probable future expenditure than as sources of revenue. It must be admitted also, that this is a region in which the native or coloured races will, in all human probability preponderate. Such a condition of society is not in accordance with the genius of the people of Queensland. <sup>5</sup>

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5. Victoria. Parliamentary Papers, 1886. vol. 3, p. 7-8. British New Guinea "Correspondence respecting Future Administration", No. 65 (enclosed with the Memorandum by the Special Commissioner for the Protected Territory of British New Guinea, P. 86/958) p. 467-490. see also Van der Veur, Paul W., Documents and Correspondence on New Guinea's Boundaries, op. cit., p. 23-25.

Douglas further observed that the 'territorial definitions of the present are not binding on futurity, if more convenient arrangements for the purposes of government can be made', and concluded his argument as follows:

My proposition is that the islands of Torres Straits, including the Prince of Wales group, should be transferred to the New Guinea Protectorate. If this suggestion should be adopted, it will be nothing more than a re-adjustment of administrative responsibility by which the inhabitants on both sides of the Strait would benefit.<sup>6</sup>

Later Douglas modified his stand to the extent that he would draw the boundary along the 10th parallel of South Latitude which would retain the Prince of Wales group for Queensland and guarantee exclusive control of the main navigable channels in the western Torres Strait area.

In a memorandum to Sir Henry Norman, the Governor of Queensland dated 17 January 1893, the Queensland Premier, Sir Samuel Griffith noted the absence of any real government in the islands and the inapplicability of Queensland laws 'framed for the government of civilized and not of primitive people'. There was also no doubt in Griffith's mind that the coastal islanders belonged ethnologically and geographically to New Guinea. He concluded with the following recommendation:

I would suggest that the dividing line should be so amended as to include within Queensland jurisdiction the Warrior Reefs (which have for some years been largely fished by Queensland vessels) and Turn Again and Deliverance Islands.<sup>7</sup>

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6. Ibid.

7. Commonwealth Archives Office. CP1 (Colony), series 5, vol. 10, p. 14-20; see also Van der Veur, op. cit., p. 26-28.

Sir William MacGregor was asked by Sir Henry Norman to comment on the Griffith memorandum. He replied that he had long been of the opinion that the present division of jurisdiction was 'anomalous and unfair to the Possession'. Geographically the situation was unsound:

'a look at the map will convince any person that the Queensland territory encroaches unduly on the Possession'. Not only did the boundary come 'within one or two hundred yards' of the Papuan mainland at the Talbot group but it was wellnigh impossible to go west from the government station at Mabadauan (opposite Saibai) without crossing some part of Queensland jurisdiction. Economically, the existing boundary cut off all the fishing grounds - including sedentary ones for pearl-shell and beche-de-mer - which by nature should belong to the Possession. This deprived people of a livelihood and unfairly affected the finances of the Possession. And, finally MacGregor pointed to the people's cultural affinity: 'The inhabitants of Boigu, Dauan, Saibai, and Warrior Isd. have intimate intercourse with the New Guinea tribes, and they obtain much of their food from the Possession... They approach each other in customs and have intertraded from time immorial [sic]'.<sup>8</sup>

MacGregor agreed with Griffith that the people of the coastal islands should be permitted to continue their participation in the Strait fisheries. But he sharply disagreed with the views of the Queensland Premier on the demarcation of the new border:

Sir Samuel Griffith's proposal would give to the Possession a mere fringe of what it would have received had the two colonies been simultaneously created and a fair division of the Straits been made between them ....I respectfully submit that the whole of the Warrior Reef north of the Warrior Island should be added to British New Guinea.<sup>9</sup>

8. Commonwealth Archives Office. C.P. 1 (Colony), series 6, vol. 2, Despatch No. 24, p. 457-63; see also Van de Veur, op. cit., p. 26-28.

9. Ibid.

On 31 August 1894, the Queensland Premier, Hugh Nelson, informed the Governor, Sir Henry Norman, that the Government recommended a boundary rectification on the basis of the 'Blue Line' which had been suggested by Sir Samuel Griffith. A few months later the Colonial Secretary, Lord Ripon informed Sir Henry Norman that his Government saw no objection to the proposal and approved it in principle.

The dispute between MacGregor and the Queensland Government did not end there. On 19 May 1898 a new Order in Council was issued which defined the northern maritime boundary in the following terms:

The boundary line shall run from a point on the existing boundary three miles S.E. from Bramble Cay by a line bearing 55°W. (true) to a point midway between Pearce Cay and Dalrymple Island; thence by the centre of Moon Pass in Warrior Reef and by a line bearing S.88°W. (true) passing three miles S. of Turn Again and Deliverance Islands (Westerly); thence W. by S. (true) to the meridian of 138° of E. longitude.

The Order in Council, however, was never submitted for Queensland parliamentary approval. The kindest interpretation one could give to this "oversight" is that the several Queensland elections and the two referenda on Federation left no time for its implementation before the establishment of the Commonwealth of Australia.

#### Coincidence of 1879 Line with Traditional Boundary

At public hearings held in Torres Strait, and especially at the hearing of 4 August 1976 on Saibai Island, the Sub-Committee was repeatedly assured by witnesses that the 1879 line corresponds, at least where it passes between Saibai,



Dauan, Boigu and the Papuan mainland, to a traditional border which antedated Queensland annexation of the islands. This is denied by Mr. Ebia Olewale, who comes from Kunini village on the mainland only forty kilometres from Saibai. He claimed in the Papua New Guinea House of Assembly on 26 August 1969 that the three islands in question were settled from Kunini and Tureture, but has not so far procured proof of this. The fact that the Islanders speak Yagar-yagar, a language unintelligible to the Bine speakers of Kunini and Tureture, makes Mr. Olewale's assertion difficult to accept.

The men responsible for actually tracing the line 1878 were Commander G.P. Heath, Portmaster at Brisbane, and Captain Frederick J. Evans, Admiralty Hydrographer. It would appear that they drew the line such as to include Boigu in the knowledge that the inhabitants of these islands were related to those of Dauan and Saibai. Captain Evans had had three years' personal experience of living and sailing in the Torres Strait region.<sup>10</sup> He had also read a paper presented to the Royal Geographical Society by Rev. W. Wyatt Gill, a missionary who had spent some time at the London Missionary Society's stations on the three islands, and who had investigated the neighbouring country.<sup>11</sup> From Gill's paper it is clear that the traditional border ran between the islands and the mainland. It is also clear, however, that Evans' main reason for including Dauan, in particular, within the line of annexation, was to secure a base from which to dominate the Papuan coast:

10. Great Britain, Accounts and Papers, 1876, vol. 54. "Correspondence respecting New Guinea", C. 1566, No. 18, Enclosure, p. 40
11. Royal Geographical Society. Proceedings, 24 November 1873, p.p. 31-37. W. Wyatt Gill, "Three visits to New Guinea", see also, pp. 105, 6.

"Tauan (Mt Cornwallis) [i.e. Dauan], is a small but lofty island (800 feet high), and appears suited for an outpost; a vessel of moderately heavy draft can anchor close to. The occupation of this island would practically give possession of the mainland of New Guinea immediately opposite to Cape York, and at the narrowest part of Torres Strait".<sup>12</sup>

In fact, it was Port Moresby which later became the administrative centre for British New Guinea.

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12. Great Britain, Accounts and Papers, ibid.

## CHAPTER II

### ECONOMIC AND SOCIAL CONDITIONS IN THE STRAIT

On the basis of data collected during an extensive field survey, Helen Duncan built up estimates of aggregate and per capita household disposable cash income for Islanders on four reserve islands in the Torres Strait (Murray, Yorke, Saibai and Badu) for the calendar year 1973. In addition, using a cross-sectional projection technique, she extrapolated her results to obtain estimates for all thirteen government-administered island reserves.<sup>1</sup> Miss Duncan's work is the most detailed and comprehensive account available on socio-economic conditions in Torres Strait and the following summary is based largely on her work. The Sub-Committee's own observations while in the area generally supported most of Miss Duncan's conclusions.

#### Population

At the time of the 1971 census 9,663 Torres Strait Islanders were enumerated throughout Australia. Of these, 2,348 or less than 25 per cent lived in the reserve islands, 1,578 or about 16 per cent on Thursday Island and the nearby unreserved islands, and 584 at the Bamaga Reserve near the tip of Cape York. This gave a total of 4,510 living in what may be described as the Torres Strait region. A further 2,998 lived elsewhere in Queensland, the biggest concentrations being 1,011 in the Cairns statistical region and 772 in the Townsville statistical division. So it will be seen that almost 60 per cent of the total Islander population enumerated in 1971 were then living

1. Duncan, Helen, Socio-Economic Conditions in the Torres Strait Australian National University Research School of Pacific Studies, Department of Economics, 1974.

outside the Torres Strait Region. (See Appendix I).

Other features of the Islander population are worthy of note. Firstly, the predominance of women over men. On Saibai for example, the number of women is almost 84 per cent higher than the number of men. Secondly, the very high concentration of persons under 16 years of age. In 1973, 30 per cent of mainland Australians were under 16 years of age. The figure for Murray Island was 33 per cent; Saibai 43 per cent; Yorke 49 per cent; and Badu 58 per cent. As Helen Duncan points out:

The main implication of this concentration, from the viewpoint of regional economic structure is the high number of dependents, absorbing much of the consumption stock but adding little to aggregate production. On the other hand in the light of the Australian social service system, these dependents are responsible for a substantial flow of income in the form of child endowment and pensioners' dependants allowances.<sup>2</sup>

At the same time, there is a shortage of persons over 65 years of age living on their home island. In 1970 the mainland average was 8 per cent: the Yorke average was 2 per cent; Saibai and Badu 3 per cent; and Murray 4 per cent. The economic implication of this situation is twofold. On the one hand, the lack of aged people, offsets to some degree the high ratio of younger dependents to potentially productive population. On the other hand, the Island communities receive fewer age, invalid, widow and repatriation pensions than they would be entitled to if their population structure was more conventional. Overall, the islands productive potential, in terms of population resources, is below the Australian average and this explains in part their

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2. op. cit., p. 18

high dependence on government funds.

### Political Organisation

Under the terms of the Torres Strait Islanders' Act 1971 (amended in part in 1974), every reserve and community is governed by an Island Council consisting of not more than 5 members who hold office for a period of 3 years. Island councils have the following powers:

- they have the function of local government including the making and enforcement of by-laws, provided that such by-laws have the prior approval of the Queensland Minister for Aboriginal and Islanders Advancement;
- they maintain law and order and liaise with other island councils, with the Queensland Department, and with the Commonwealth Department of Aboriginal Affairs. They also play an important role in the organisation of major island social activities, such as feasts;
- they have the power to license or permit and to impose fees, charges, rents and dues;
- they have the power to appoint policemen and may constitute them selves, by a simple majority of the members of Council, into an Island Court;
- any Islander who desires to reside on a reserve for a period exceeding one month, needs to apply to the Chairman of the Island Council concerned. Both he and the appropriate Director or District Officer need to be satisfied before approval can be given.

Limitations on the powers of Island Councils include the following:

- pecuniary penalties for the breach of a by-law are not to exceed \$40 and a term of imprisonment for such a breach is not to exceed 3 months;
- the Island Advisory Council may at any time suspend the operation of a resolution of an Island Council. However, an appeal to the Stipendiary Magistrate is open;
- not only are the District Officer, Manager and Council responsible to the Director for the administration and control of a reserve, but also under Section 78 the Governor in Council may make regulations (not inconsistent with the Act) with respect to the jurisdiction, powers and procedures of any Island Council.

The Reserve Islands are divided into three groups - Eastern, Central and Western. Each Council elects a Group Representative who constitutes with the other Group Representatives, the Island Advisory Council. The functions of the Advisory Council are to advise, and make recommendations, to the Minister and Director of Aboriginal and Islanders Advancement on matters affecting the progress, development and well-being of the Islanders.

#### Health

Torres Strait Islanders are healthy-looking people, and do not seem to be subject to diseases common in many tropical areas, such as worm infestations, dysentery and yaws. Even malaria is unusual in the Strait despite close proximity to Papuan coastal areas where the disease is common. According to

one Thursday Island doctor, one serious medical problem in the Torres Strait is venereal disease.<sup>3</sup> The disease is particularly difficult to control because of frequent contact with the source of infection.

On all inhabited Islands there is a Medical Aid Post (MAP) staffed by a government nurse and two to four assistants. On the Islands that have a head teacher seconded from the Queensland Education Department, his wife is appointed the government nurse even though she may have no medical experience, other than a fortnight's training on Thursday Island. On the Islands where there is no non-Islander government teacher the senior MAP assistant is considered the government nurse.

The government nurse has daily radio contact with doctors at Thursday Island Hospital, who advise on treatment of patients. Any patients considered seriously ill are removed to Thursday Island on first available transport. For the Central and Eastern islands an ambulance boat is stationed at Yorke Island to service the entire central-eastern area; (when the Sub-Committee was at Yorke, the ambulance boat was out of order). Patients are flown from Yorke to Thursday Island. Unfortunately, the ambulance boat is unable to cope with rough weather, which makes it inoperable for at least six months of the year. In the Western Group medical emergencies are also evacuated by air from Badu, if the airstrip is open; if not, patients are transferred either by dinghy, lugger, or by the regular cargo boat.

Besides the MAP service, doctors or the hospital matron occasionally make trips to the islands for general check-ups

3. Duncan, Helen, op. cit, p. 27

and immunisation programs. Yorke Island, because of its airstrip, receives a monthly visit from the Cairns-based flying doctor. Dental treatment is run on a similar occasional visit system.

### Education

Primary education is provided on each Island. These schools are staffed by Islander teachers who have received a maximum of two years special training in Brisbane, on top of their own primary, or occasionally secondary, education. Two-year trained teachers are the exception rather than the rule; more often teachers are trained for one year, or not at all. Five of the communities also have a fully-trained head teacher seconded on a two-year contract from the Queensland Education Department. Besides these staff there is an itinerant advisor, who spends a few weeks per year at each school advising on teaching methods and any professional or administrative difficulties. There are also two school inspectors. One is an Islander, who like the itinerant teacher, is employed on a full-time basis. The other is employed by the Queensland Education Department and makes regular inspections of the island schools.

It was the feeling of most of the teachers who had taught in mainland Queensland, that the education standard was significantly below that of the mainland. They attributed this mainly to lack of trained staff and poor facilities. For example many of the schools consist of only one room subdivided by blackboards.



The main source of secondary education in the region is the boarding high school at Bamaga, which the Sub-Committee visited. Some students are also sent to schools at Herberton, Charters Towers, Townsville, Rockhampton and Brisbane, under the Commonwealth Government Secondary Grant Scheme.

One of the most important functions of education must be to equip Islander children to cope either with the living pattern of the Strait or with the Australian (mainland) way of life. Unfortunately, many of the traditional ways are being forgotten. For example, most of the under-40 generation, especially in the Central Islands, have difficulty in speaking their own language and many of the younger generation are unfamiliar with gardening and fishing methods. At the same time, because their primary education is below the mainland standard, many children do not progress to secondary school. Of those that do, many cannot cope with the normal secondary standard. Tertiary education is almost unheard of.

#### Economic Conditions

The total volume of economic activity in the Strait is very small. In 1970-71 Gross Domestic Product amounted to little more than \$100,000 on Boigu, Dauan and Saibai and less than \$500,000 on all the islands north of 10°S. Major economic activities include pearling and fishing for barramundi, crayfish trochus, beche-de-mer, turtle, skip jack, sardines and mackerel.

Throughout the late 1950s, and much of the 1960s, pearling in the Torres Strait had continued to decline from the high levels of the 1890s. Trochus shell production, which was subject to the same competition from plastics, suffered relatively an even more

severe decline. Between 1956-1960 and 1966-1970 the average annual number of boats engaged in pearl shell and trochus shell fisheries in Queensland fell from 71 to 21, and average annual employment fell from 888 to 328. Over the same period, annual production of pearl shell fell from an average of 540 tons to 170 tons and annual production of trochus shell fell from an average of 460 tons to virtually zero.

The effects of the decline of traditional marine export industries would have been more serious but for the growing level of public authority expenditure in the region and the emergence of the cultured pearl industry. In the early 1960s several culture farms were established, mainly as Australian/Japanese joint ventures. By 1968, six companies were operating eleven farms producing cultured pearls for export. At their peak of operations, these farms employed nearly 200 men who, apart from technicians, were largely Islanders. In addition, the farms' demand for live pearl shell for the culture purposes helped stabilise incomes and employment in the pearl shell fleet. In fact, 'live shell' soon became a far greater source of income to the lugger fleet than 'store shell'.

Unfortunately, the pearl culture industry has also experienced hardship in the last few years. A decrease in demand was followed by a much more significant set-back on the supply side. Beginning in the 1970-71 season, live shell fished for pearl culture purposes were attacked by disease. With mortality rates as high as 80 per cent, the majority of farms were forced to close down. By the end of the calendar year 1971, employment on pearl culture farms had dropped to only 37

men and during the 1971-72 season only nine pearling vessels, three owned by Islanders and six by members of the Pearlshellers' Association, operated. There are indications that the disease problem has since diminished, but it is as yet too early to predict a full recovery in pearl culture operations.

The Establishment of several other marine industries in the Strait in recent years has led to considerable diversification away from pearling in the composition of exports. These industries include crayfishing and prawn- and crayfish-processing and packaging.

Estimates of the level and pattern of exports for the three years 1969-70 and 1971-72 are shown in the following table:

EXPORT OF GOODS AND SERVICES FROM  
THE TORRES STRAIT AREA 3

(\$'000)

Item	1969-70	1970-71	1971-72
<u>Merchandise f.o.b.</u>			
Prawn (processed)	1,176	1,175	945
Cultured Pearls	862	834	177
Pearl Shell	372	434	327
Live oysters (for pearl culture)	200	149	-
Crayfish	80	81	300
Torchus shell	11	8	-
Natural Pearls	3	3	3
Other merchandise	2	16	5

3. Treadgold, M.L. The Economy of the Torres Strait Area: A Social Accounting Study. Canberra, Australian National University Research School of Pacific Studies, Department of Economics, 1974, p. 26

Item	1969-70	1970-71	1971-72
<u>Invisibles</u>			
Expenditure by non-resident ships and aircraft	160	157	198
Travel and Tourism	337	393	462
Miscellaneous	91	100	107
<b>Total exports of goods and services</b>	<b>3,295</b>	<b>3,351</b>	<b>2,524</b>

Since its inception in 1970, turtle farming in the Strait has caused a great deal of controversy. At the same time, it has created a number of employment opportunities (in 1976 estimated at 100) and had a marked effect on the aggregate income of various Islands. For example, in 1973 the aggregate income of Murray Island increased by over \$31,000; Yorke Island by \$12,000 and Badu Island by \$8,000.

Other opportunities for productive employment are limited to clerical positions with the Anglican church, small amounts of gardening and fishing for cash, salaried positions paid for by the Department of Aboriginal and Islander Advancement (DAIA), and non-cash work such as agriculture, animal husbandry and fishing. The DAIA offers between 6 and 28 regular positions per Island, depending upon population. These positions include such functions as Island Councillors and Representatives; administrative positions including Island Clerks and police; and service positions for teachers, school janitors, nurses, carpenters, radio assistants, water supply and sanitation workers. Appointments for all except the positions of Councillor and Representative are made on the basis of

recommendation by the Chairman and Councillors of each Island. Government teachers and government nurses may request specific assistants but even their requests must be approved by the Chairman and Councillors. These recommendations are made to the manager of the DAIA on Thursday Island, who approves all appointments and wages. Besides these political, administrative and service jobs, the DAIA is also indirectly responsible for regular employment associated with the running of the general store. Every Island has its own general store which is a branch of the Island Industries Board, a body corporate constituted under the provisions of the Aborigines and Torres Strait Islanders' Act 1965 to 1967. Each store has a manager and at least two assistants. Because it is essential that the branch store be efficiently run, appointments to posts of branch manager and store assistant are made by the manager of the Islands Industry Board on Thursday Island, although Island Councils can influence the appointment of assistants.

Apart from regular jobs, the DAIA establishes special works programs from time to time, which offer casual employment. For example, in 1973 construction commenced on Saibai on a wet canteen a sea wall and an airstrip. The average weekly wage for these occupations ranges from about \$20.00 to \$60.00. This cash income is supplemented in most cases by fishing and garden produce.

Fishing and gardening for cash is very limited. Occasionally neighbours exchange small amounts of produce for cash, but this is most unusual, and has negligible effect on aggregate Island income. The only other important source of cash income on the outer Islands is social service payments.

Consequently then, no economic advantage is involved in ownership of the Islands. In fact the reverse is true. Since the establishment of the Office of Aboriginal Affairs in 1968, something of the order of 6.4 million has been provided to the Torres Strait area proper, and \$2 million to Bamaga on the northern tip of Cape York. To quote M. Treadgold:

...transfer income (cash social service benefits) is estimated to account for 45% of household disposable income on the Northern 3 islands and 43% on the remaining islands. Taken together with incomes resulting from government expenditure on goods and services, it demonstrates the extraordinary high degree of dependence of the island economies on inflows of public authority funds. 4

On the other hand, it must be acknowledged that a large proportion of the population on the reserve Islands consists of those who would be eligible for social service payments wherever they lived in Australia - children, old people, and mothers - and that Duncan's data suggest that more than 50% of men between the ages of 20-29 go to the mainland for employment. These men, generally speaking, remit a high level of their earnings to their families remaining on the Islands and, of course, they contribute through the taxes they pay to the public revenue used for social service payments.

Although per capita incomes in the islands are less than one quarter of the Australian average, nonetheless, when compared with Southern Papua and other Asian and Pacific islands of comparable resources and size, the Torres Strait Islanders are relatively well off. Treadgold estimated that the population

4. Treadgold, M.L., "The economic significance of the disputed islands' In Fisk, E.K. et al, The Border and Associated Problems, Canberra, Australian National University Research School of Pacific Studies Department of Economics, 1974, p.44-54, esp. p. 49

of those islands north of 10°S enjoyed in 1973 a per capita income some 38% higher than that of the population of the adjacent western part of Papua.<sup>5</sup> As a large proportion of this difference is accounted for by the larger inflows of public moneys made available to the islands by the Commonwealth and Queensland State Governments, cession of the islands to Papua New Guinea would almost certainly lead to a fall in the inhabitants' per capita income. This obviously causes considerable concern among most community leaders on the Reserve Islands.

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5. *Idem.*, p.50

### CHAPTER III

#### KNOWN POSITION OF SOME OF THE PARTIES

##### Torres Strait Islanders

The present boundary encloses the whole of the Torres Strait region almost up to the low water mark on the south Papuan mainland. The position of the three northernmost inhabited islands of Boigu, Dauan and Saibai, which lie some three to five miles from the Papuan mainland, pose a particular problem.

The islands themselves are small and afford few economic opportunities - consequently emigration has been heavy. Nonetheless, those that remain do so by choice and would be resistant to plans to relocate them to more sparsely settled islands (like Darnley) further south.

The Islanders fear that any boundary revision would ultimately imply a transfer of sovereignty over the islands to Papua New Guinea and consequently, the loss to them of four generations of Queensland residency and Australian citizenship. "I told them straight 'the next thing you will want is our islands, because you have started from fishing rights. You want the sea, you want the seabeds and now you want our islands'".<sup>1</sup>

Citizenship is a highly emotive matter per se; all the more so when combined with economic advantage, sentiment,

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1. Mr. Getano Lui, Evidence, 4 August 1976, p. 95



tradition and war service. This latter is constantly referred to by those Islanders who served with the Australian forces during the war. At the base of the Islanders' objections to boundary changes is the fear that their traditional way of life is under threat.

In December 1972 the Chairman of the Torres Strait Islands Border Action Committee (Mr. George Mye) stated that the Islanders would secede from Australia and form their own government rather than be merged with Papua New Guinea. In May of this (1976) year the Chairman of the Tamwoy Reserve Council, Mr. K. Abednego, stated that "If we don't get support from the Australian government we might ask somebody else from outside. We could try the Indonesian Government". There has even been talk of armed resistance. Neither is likely to eventuate; however any resistance, even of a purely token nature, would be highly embarrassing. This possibility seems to have been closed however, by various assurances given to the Islanders. For example, in a telegram to the Chairman of the Torres Strait Islanders Advisory Council (Mr. Getano Lui) in May 1976 the Prime Minister the Rt. Hon. Malcolm Fraser said in part: "We are concerned not only to achieve a firm and stable relationship with Papua New Guinea on a border basis, but above all, an arrangement that will preserve the culture and traditions and the rights of the Torres Strait Islanders".

On 6 May 1976 in reply to a question in the House of Representatives by Mr. Hyde, the Prime Minister stated quite explicitly : "In any negotiations that we intend to have in relation to these matters the nationality of all Australians will certainly be protected. It is our objective to protect the land, culture, traditions and way of life of all Australians. There is no question about our intention and purpose in relation to these matters."<sup>2</sup>

Though there may be no question on the part of the Federal Government, there certainly are questions as far as the Islanders are concerned. This was made clear in Bishop Jamieson's evidence to the Sub-Committee:

CHAIRMAN - I just wonder whether you say that despite the fact that Mr. Peacock and Sir Maori Kiki, at least in the joint statement that was issued on 5 June said: 'Papua New Guinea...has accepted that Australia will retain all Australian-inhabited islands', you still do not believe, I take it, that there is a genuine concern for the people here?

BISHOP JAMIESON - There is on paper, but there have been many things on paper before, and also we have Sir Maori Kiki's statements. What I have tried to do in my submission to you is to interpret what the people of the Torres Strait are thinking and saying, not what I think and what I say.

CHAIRMAN - And just to make it clear, you maintain that they are thinking and saying that despite the fact that first of all Australia has made it plain that the territory of the islands---

BISHOP JAMIESON - They have not made it plain to these people.

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2. Australia, House of Representatives, Debates, 6 May, 1976 p. 1993

CHAIRMAN - You do not think Australia has made it plain that the ownership of the islands will remain in Australian ownership and jurisdiction?

BISHOP JAMIESON - They have not made that point plain, except on paper. And these people for many years have had broken promise after broken promise - broken, broken, broken; not just by the Federal Government but by the Queensland Government, by every government.

Similarly, Dr Coombs' submission notes that: "the Islanders clearly feared that they could be faced with a fait accompli. This fear is, in my view, well-founded." However, Dr Coombs does suggest a solution:

It is clear that the formal negotiations between the Governments of Australia and Papua New Guinea cannot include the Islanders as a third party, but there is no reason why the Australian delegation at the official or Ministerial levels could not have available to them leaders of the Islanders who could speak with knowledge and authority for them. Equally, there is no reason why the Islanders should not be as fully informed and consulted as the Queensland Government. There is grave reason to doubt The Queensland Government's intention or capacity to state or protect the Islanders' interests.<sup>3</sup>

The Commonwealth Government has agreed to negotiate a seabed boundary with Papua New Guinea, as announced in a joint statement on 5 June 1976 by Sir Maori Kiki and Mr. Andrew Peacock. This was followed by the "surprise" statement of 6 July 1976 by Sir Maori Kiki, announcing that Papua New Guinea wanted to convert the proposed seabed boundary into a full territorial border covering both the sea and air space. It seems that on this point the Islanders may be correct in maintaining that any lines, be they seabed or other, are only different

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3. Dr. H.C. Coombs, evidence before Sub-Committee

words for border change.<sup>4</sup>

Mr. Getano Lui has stated (and in this he has the support of virtually all the Island Chairmen) that they would never agree to any seabed boundary since "the seabeds are the main sources of our fish and shells. They are more important to us than the sea itself." Mr. Tabipa Mau, (Chairman, Dauan Island) expresses much the same sort of sentiment: "The water is important to us...it is where our livelihood is, where our bread lies...we will not give away one grain of sand nor one cup of water and we will not accept any decisions by outside people on our lives and our childrens' lives."

The latter part of the Mau statement is particularly crucial. Time and again Islander representatives have stressed their opposition to officials "thousands of miles away" deciding their fate. Their goal is settlement by a conference between themselves, the Papua New Guineans, the Prime Minister, and the Queensland Premier.

The Islanders' views were set out in greater detail at a Conference of Island Chairmen held on Thursday Island on 20 September 1975. The memorandum, which was signed by the Group Representatives, is given below.

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4. Islanders' Advisory Council, submission.

## 1. General

(a) The Islanders believe that the present discussions between the Papua New Guinea, Australian, and Queensland Governments about the border between Papua New Guinea and Australia are based on a misunderstanding of the traditional relationship between Torres Strait Islanders and coastal residents of the Papua New Guinea Mainland. They assert that there has from time immemorial been a border between the territories controlled by these two groups of peoples. It may from time to time in the historical past have been disputed in detail but they believe the coastal peoples would acknowledge its existence and agree that its location was generally similar to the present line encompassing Queensland controlled Islands of the Strait.

(b) The Islanders would therefore prefer that the border be not changed and the present status of the Islands, of their environment and of the Islanders be maintained.

(c) If some change in the border is necessary, the Islanders see no reason why it should run through the proposed protected zone which they believe could be maintained as a region within which Islanders and the coastal peoples of Papua New Guinea bordering on the Straits could live harmoniously as they have in past ages. They believe that the Governments of Australia and Papua New Guinea could work out a form of joint control which would be adequate in a zone where the protection of the environment and the embargo on mining and oil drilling would make many of the issues requiring the exercise of sovereignty unlikely or less difficult.

They believe this idea is worth serious consideration at least for an initial period of ten (10) years. It could then be reviewed in the light of experience and the views of the peoples concerned.

(d) If a border through the protected zone must be established to prevent a serious dispute and ill-will between the Papua New Guinea Government and people and the Governments and people of Queensland and people of Australia, the Islanders would be prepared to consider accepting such a border providing the following conditions are met.

## 2. Inhabited Islands

All inhabited Islands in the Torres Strait to remain Australian territory and part of Queensland.

## 3. Status of Islanders

All present residents of Torres Strait Islands and their descendants to retain Australian citizenship and all rights of that citizenship.

## 4. Rights of Movement and Access

Torres Strait Islanders to be free to move and have unrestricted access to all parts of the Straits, to uninhabited Islanders' reefs and cays, to the sea and the seabed for all traditional purposes and activities.

## 5. Protection of the Environment

(a) The Governments of Papua New Guinea, Australia and Queensland to agree to the establishment of an environmentally protected zone or marine park controlled so as to ensure the preservation of the total environment of the Torres Strait - The Islands, reefs and cays, the sea and seabed, and the air above it including the natural wild life and marine creatures as the basis for the traditional way of life at the Islanders and the coastal people of Papua New Guinea bordering on the Straits.

(b) This protected zone to extend from the coast of Papua New Guinea bordering on Straits to include all areas of the Straits used by the Islanders including Bramble Cay, the Barrier Reef, Deliverance Island and Turu Cay.

(c) That all new commercial ventures in this zone be subject to control to ensure that they will not damage the environment, that they are substantially owned and controlled by local residents and that the consent of the Representatives of the Islanders and the residents of Papua New Guinea bordering on Torres Strait has been given to their establishment.

(d) The Islanders and coastal residents of Papua New Guinea bordering on the Torres Strait to be effectively represented on any body appointed to administer the Protected Zone (or Marine Park) so to advise Governments in relation to it.

6. Mining and Oil Drilling

(a) That there be complete embargo on new mining and oil drilling or exploration for ten (10) years; the embargo to be continued thereafter unless agreed by the three Governments after the views of the Representatives of the Islanders and coastal residents of Papua New Guinea have been taken into account.

(b) Any proposals for mining or oil drilling received if the embargo is ended to be subject to the same conditions and control as other new commercial enterprises.

(c) Royalties for any mining or oil drilling project approved to be dealt with as those for mining on Aboriginal Reserves in the Northern Territory of Australia i.e.

1. Royalties to be double the standard rate; and
2. Royalties to be paid to Trustees appointed by the local community most affected and by the Representatives of Torres Strait Islanders and coastal residents of Papua New Guinea and to be used for the benefit of these people.

7. Termination of Agreement

If any Treaty or Agreement relating to this matter is to be terminated either by agreement or by one party, the Governments agree to confer with the Representatives of the Islanders and of coastal residents of Papua New Guinea and if agreement cannot be reached about arrangements to follow those provided for in the Treaty or Agreement the question to be referred to the International Court or to some other Arbitrator acceptable to the Representatives of the Islanders and coastal residents of Papua New Guinea.

8. Consultation During Negotiations

The Islanders expect to be kept informed of the progress of negotiations between the Governments and reserve the right to seek advice and to determine their final view on the questions involved at a later stage of these negotiations.

In summary, the strongest motivating force underlying the attitude of the Torres Strait Islanders in the border issue is their desire to protect -

- a. their status as Australian citizens and that of their habitat as Australian territory;
- b. the total environment of the Torres Strait area as a basis for their traditional economic and social way of life; and
- c. their capacity to conduct their own affairs with essential independence;
- d. their existing standard of living, which is heavily dependent on Australian Government social service payments.

#### Papua New Guinea

The Torres Strait dispute has been focussed in part by the statements of Mr. Ebia Olewale, Justice Minister in the Somare government and Member for South Fly Province. Western Papua is the most economically backward of all the regions of Papua New Guinea. It has lower standards of social services, lower levels of income and a poorer range of job opportunities. Consequently, the coastal people of the area (some 3 to 4,000 strong) have an acute interest in earning cash income, particularly by cray fishing in the Torres Strait.

To date the Somare government, at least publicly, has taken a rather unobtrusive position regarding the boundary; but it is under pressure from a number of backbenchers, particularly Mr. Naipuri Maina, the Member for Western Province. In 1976 a series of bills were introduced in the Papua New Guinea National Parliament to define the country's seabed limits -



including those in the Torres Strait. Mr. Somare withdrew those bills in June 1976.

Mr. Ebia Olewale's motion of September 1971: "That this House registers its dissatisfaction with a section of the present border between Papua and Australia", was not debated before the House of Assembly rose for elections and has therefore lapsed. It has not been reintroduced. However, the statement by Sir Maori Kiki in the Papua New Guinea National Parliament on 15 July 1976 that unless the boundary was redrawn a dispute would exist between the two Governments and his insistence that the seabed boundary be converted into a full territorial border covering both sea and air space, indicated a hardening of attitude.

Against this however, must be placed the fact that Papua New Guinea has accepted a negotiated approach. Presumably, it could have declined to negotiate with Australia and taken its case to the International Court of Justice.

In a speech to the Queensland Liberal Party October 3, 1976 the Prime Minister (Mr. Fraser) suggested that the Torres Strait Islanders might suffer if the border question was taken to the International Court of Justice. He said the result was unpredictable and the chances of getting a protected zone would be small.

## CHAPTER IV

### NEGOTIATIONS BETWEEN AUSTRALIA AND PAPUA NEW GUINEA

Normally when discussions are being conducted or negotiations entered into regarding a boundary question involving two sovereign states, these are the only major parties concerned. With regard to the Torres Strait issue, the situation is more complex. The provisions of the Australian Constitution, and the position of Queensland as a State of the Commonwealth, give the Queensland Government a significant interest in the conduct of negotiations, even though that Government does not have the status of a party principal. Likewise the Torres Strait Islanders, by virtue of their status as the indigenous people of the area, also have a significant interest and right to representation in the process of negotiation.

As has been stated in earlier chapters the question of a boundary between Australia and Papua New Guinea has been a matter of discussion since Federation. It is only since 1972, when the independence of Papua New Guinea became imminent, that the matter approached the stage of serious negotiation between Australia and Papua New Guinea. A statement on the progress of negotiations subsequent to his Government's assumption of office in December 1972 was made by the then Prime Minister, the Hon. E.G. Whitlam, to the House of Representatives on 9 October 1975, and the following pages of this chapter are largely based on that statement.

It is difficult to pinpoint a precise date when negotiations commenced but the so called Yam Island Agreement could perhaps be described as the first attempt in the post 1970 period to achieve

a settlement; this meeting was preceded by a joint statement by the Prime Ministers of Australia and Papua New Guinea in January 1973 as to their willingness to negotiate relocation of the boundary, and agreement by the Premier of Queensland for consultation with the Torres Strait Islanders. In common with most aspects of this general problem of the boundary, the question of exactly what was discussed is by no means clear.

The leaders of the Torres Strait Islanders and of the coastal region of West Papua met at Yam Island on 19 and 20 of September 1973 to discuss questions of general interest to the two countries. There appears to be some doubt as to whether the matter of the border was raised at this meeting. In his submission to the Sub-Committee, Mr Getano Lui, Chairman, Torres Strait Islands Advisory Council, who was present at the conference said: "On Yam Island in September 1973 our people sat down with our Papuan neighbours to discuss this question .... we told the Papuan people we did not want the border changed. They said they did not ask for it to be changed either".

Dr Coombs (who also attended the conference) in evidence before the Sub-Committee said "I cannot recall the precise resolutions but they, the Islanders and the coastal people of Papua, decided that the most important thing from their point of view was the protection of the environment of the Strait ... The question of whether or not there should be a shift in the border was not really discussed. I do not think the coastal people of Papua would have known what is involved in the concept of a border".

The Sub-Committee has not seen a copy of this "Agreement" if such a document exists and has had to rely on copies of press statements on the results of this meeting.<sup>1</sup> The statement

1. A reference to this conference is made in Australia, House of Representatives, Debates, 9 October 1975, p. 1993 (Ministerial statement by the Prime Minister, Mr E.G. Whitlam, on Australia-Papua New Guinea border)

emphasised the importance of preserving and protecting the unique environment of the Torres Strait on which the livelihood of both groups of people depend. Reference was made to the friendly and cooperative relationship which had existed between the two peoples for many generations and the importance of preserving that relationship. The Conference apparently carried the following resolutions:

(a) That the waterways between the Torres Strait and coastal areas of the western district of Papua New Guinea be reserved wholly and solely for the use of our two peoples, namely the coastal people of the villages of the western region of Papua New Guinea and the Islander inhabitants of the Torres Strait islands as was the tradition practised by our forebears;

(b) Drilling for oil in such waters which could result in possible oil spillage and the consequent threat of pollution to the environment be banned;

(c) Fishing by outside interests should also be banned.

This Conference in 1973 could be said to be the first occasion on which the persons most directly concerned, the inhabitants of the boundary area, became aware that problems in regard to the administration of their area existed. As can be seen there is some doubt as to whether the question of the boundary was discussed. What does appear to be clear was that the two parties acting without the advice of their Governments, Australia and Papua New Guinea, appeared to reach an amicable settlement of both current and possible future problems confronting the two peoples. The resolutions of this conference were not granted any official recognition by either the Administration of Papua New Guinea or the Government of Australia.

The next significant development was the adoption by the Queensland Parliament in April 3 1974 of a resolution moved by the Premier (Mr Bjelke Peterson) stating:

1. that the inhabited islands of the Torres Strait remain within Queensland so that their inhabitants wish to remain Queenslanders and Australian citizens can be fulfilled;
2. that the Torres Strait area should be designated an international marine park within which fishing would be reserved to Torres Strait Islanders and the people of coastal Papua and that all other exploitation of the natural resources of the sea and seabed shall be prohibited except for the continuance of present commercial operations for pearling and trochus fishing;
3. that outside the international marine park the border should be determined according to the principles of the Geneva Convention of 1958;
4. that there should be negotiations between the Governments of Queensland and Papua New Guinea leading to an agreed text.<sup>2</sup>

In discussion on this resolution the Premier confirmed that under his plan there would be no activities on the seabed and that oil exploration would be excluded for all time.

In May 1974 at the request of the Torres Strait Island Chairmen the Australian Government arranged a further conference at Daru in Papua New Guinea between the Chairmen and representatives of residents in the boundary area of Papua. As the Sub-Committee has not seen any official records of either the Yam or Daru Conferences (and, indeed, has not been able to determine whether or not such records even exist), we are unable to ascertain what exactly was agreed upon.

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2. Ibid.

In calling the meeting at Daru, the Torres Strait Islanders apparently intended it should be the forerunner of a series of biennial meetings to discuss common interests.<sup>3</sup> Unlike the Yam conference however, the question of the boundary issue was raised by the Papuans at the commencement of the talks. In evidence to the Sub-Committee given at Yam Island, in the course of the Sub-Committee's visit to the area, Mr Getano Lui said:

"It was then and there that they pointed out - the main topic of the talk was the border issue. We knew nothing about it. We thought we were going to talk about fishing or something of that sort, but right at the meeting the Chairman opened and told us our main topic now for talk was the border issue".<sup>4</sup>

Mr Lui went on to suggest that the coastal people representatives at the Daru conference were opposed to a border change but he said:

"I think there was a member representing the Western District or province - I do not know what they call it - but he said that he wanted to change the border".<sup>5</sup>

The Torres Strait delegation abruptly left Daru after it apparently became evident that the border issue which they claimed had been considered and settled at the earlier Yam conference of 1973, was to be the main topic of discussion.

Inconclusive as this Daru meeting was, it represents the first attempt by interested parties to discuss publicly a revision of the 1879 boundary, even if the parties to the discussion did not have plenipotentiary powers or international status.

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3. Islanders' Advisory Council, submission.

4. Evidence, 4 August 1976.

5. Ibid

In November 1974 preliminary discussions between a Commonwealth and Queensland officials were held to explore the issues involved in a treaty. This meeting followed a letter from the then Prime Minister, Mr E.G. Whitlam, to the Premier of Queensland expressing pleasure at the April 1974 resolution and that it apparently afforded common ground for fruitful negotiations. Following the January 1973 joint statement of the two Prime Ministers informal talks have also been in progress between Australian and Papua New Guinea officials. The general basis for the treaty put forward by the Australian officials to protect the essential interests of the Islanders was

1. all inhabited islands should remain Australian territory and their residents Australian citizens
2. the whole area of the Torres Strait should be declared a protected zone in which new commercial activities would be permitted only to the extent compatible with the protection of the environment; and
3. mining and drilling in the seabed would be prohibited, at least for an initial period and thereafter only with the agreement of the parties.<sup>6</sup>

As can be seen this basis was very close to the content of the April 1974 resolution passed by the Queensland Parliament. Discussions between Queensland and Australian Government officials were held in February 1975 when arrangements for further discussions in July were made.

In order to keep the Torres Strait Islanders informed of progress made in negotiations and to give them an opportunity to

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6. Ibid.

express their views the then Prime Minister, Mr E.G. Whitlam, invited representatives of the Torres Strait Chairmen to attend a meeting with him in Sydney on 30 June 1975. Queensland officials, though invited, declined to attend this meeting. Mr Whitlam at this meeting pointed out to the Islanders that if an agreement could not be reached with Papua New Guinea that country could, once it achieved independence, take the matter to the International Court of Justice. He pointed out there were precedents for such border issues to be settled by fixing the border approximately on the median line between the mainlands of the countries concerned.<sup>7</sup>

Despite this agreement, the Islanders pressed for a retention of the existing border and maintenance of their traditional way of life. They agreed it was important that good relations should be maintained between Australia and Papua New Guinea and between Torres Strait Islanders and residents of coastal Papua. They were prepared to consider some (unspecified) sacrifices to achieve these objectives but sought to consult their communities before entering into any commitment.

In July 1975 renewed discussions were held between Australian and Queensland Government officials. From these discussions it became clear that Queensland had moved a long way from the position adopted in the April 1974 resolution. The marine park or protected zone concept was to apply only to the sea and seabed. It was not to include the islands or any resources below the seabed. It was also made clear that the Queensland Government wished to reserve to itself any decisions affecting applications to explore or drill for oil or minerals on the islands or in the

7. Ibid., p. 1994



seabed. Queensland officials undertook to explore the issue further when Australian Government officials pointed out that this position would hardly meet the Islanders' request for effective protection of their environment.

On 20 September 1975 a meeting of Torres Strait Council Chairmen was arranged on Thursday Island by the Commonwealth Department of Aboriginal Affairs. This meeting, originally arranged to discuss budgetary allocations, was considered by the Government to be a suitable forum at which to inform the Islanders of recent developments in the negotiations. Queensland officials were not invited to this meeting which was attended by Dr Coombs. Dr Coombs prepared a statement of the views of the Islanders which was endorsed by the Chairmen for presentation to the Government. In brief this document stated:

- (a) no change in the border and preservation of the present status of the Islands and the Islanders;
- (b) since time immemorial there had been a division between Papuan and Torres Strait Island territory;
- (c) within the proposed protected zone there should be no boundaries, but they were prepared to accept a boundary if their essential interests were protected;
- (d) all inhabited islands in the Strait to remain Australian territory;
- (e) the total environment of the area to be preserved by all interested Governments agreeing to the establishment of a protected zone or marine park;
- (f) a complete embargo on new mining and oil drilling or exploration for ten years;

- (g) Islanders to be kept informed of the progress of negotiations between the Governments.

In March 1976 Mr Somare, Prime Minister of Papua New Guinea, visited Canberra for consultations with the present Prime Minister, Mr Fraser, on a number of matters including the boundary issue. On 4 March a joint communique was issued stating it was agreed that "...the one object of the negotiations was to draw a seabed line between Australia and Papua New Guinea and to establish a protected zone in the area to preserve the environment and traditional way of life of the inhabitants". In a sense this represents a considerable hardening of the Australian position. It will be remembered that in January 1973, also in a joint communique with Mr Somare, Mr Whitlam pledged willingness to negotiate the relocation of the boundary.

In late April 1976 the Papua New Guinea Government put forward a proposal for a boundary change, the details of which are not known to the Sub-Committee. This suggested boundary apparently involved the shifting of the existing boundary line from its position adjacent to the Papuan coast, some 110 kilometres south to within 16 kilometres north of Cape York, apparently just north of Thursday Island and south of the 10°S latitude line. The Deputy Prime Minister, Mr J.D. Anthony apparently sought Queensland's reaction to this proposal. The Queensland Premier rejected the proposal which apparently included three-quarters of the inhabited islands in the Torres Strait. (It is possible that there may have been some confusion between the boundaries of the proposed protected zone and the seabed boundary. In the absence of any documentation this

must remain a conjecture.)

On 18 May 1976 the Australian Foreign Minister, Mr A. Peacock, went to Port Moresby for consultations with the Papua New Guinea Government on the boundary issue. On 5 June 1976 Mr Peacock and the Papua New Guinea Minister for Foreign Affairs and Trade, Sir Maori Kiki, issued a joint statement on the Torres Strait stating that agreement had been reached on a number of points mainly:

- (i) a seabed boundary will be delimited between Australia and Papua New Guinea, to run through a protected zone to be established and to run north of all inhabited islands except Boigu, Dauan and Saibai. (It is apparently based on delimitation of the continental shelf between the two countries according to certain unstated principles.);
- (ii) all inhabited islands will remain Australian.
- (iii) a protected zone will be established in the Torres Strait to protect the traditional way of life of the Torres Strait Islanders and residents of the adjacent coast of Papua New Guinea including fishing and freedom of movement. (The probable boundary of this zone is outlined in Map 1.)

The Premier of Queensland reacted promptly to this joint statement. He claimed the Federal Government had betrayed the Islanders to a foreign country and that the Government had achieved the distinction of being the first to give part of Australia away. He denied that Papua New Guinea had any moral or legal right to claim any part of the Torres Strait. He suggested the claim was based on the expectation of oil being found in that part of Queensland.

On 15 June 1976 Sir Maori Kiki made a statement to the National Parliament on the Torres Strait question. His main

points were:

- (a) the proposition that all islands should remain Australian is not considered to be "fair";
- (b) all inhabited islands will remain Australian subject to a satisfactory agreement being reached on all other points;
- (c) not all the claims of the Torres Strait Islanders can be met in a settlement between Australia and Papua New Guinea;
- (d) any boundary line chosen must be permanent and not subject to change;
- (e) Papua New Guinea rejects the present continental shelf claim made by Australia;
- (f) the Papua New Guinea Government withdrew certain bills from Parliament dealing with fisheries and seabed rights pending completion of the agreement.

The Australian Government's position appears to be firm on the following points:<sup>8</sup>

- (a) all islands (inhabited and uninhabited) to remain Australian;
- (b) the substance of negotiation is therefore a seabed boundary;
- (c) all islands will generate territorial seas;
- (d) a protected zone to be established, to be jointly administered by a commission representing the Australian and Papua New Guinea Governments;
- (e) a ten-year moratorium on minerals exploitation in the protected zone.

The Prime Minister, Mr Fraser, reaffirmed these points at a meeting with sixty Island Councillors and elders of Yam Island on 22 November 1976. At the same meeting the Islanders

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8. As revealed in press reports of discussions the Prime Minister, Mr Fraser, had with Torres Strait Island Councillors and elders at a meeting on Yam Island on 22 November, 1976.

· insisted that a seabed boundary was unacceptable to them.

· On 26 and 27 November 1976, Mr A. Peacock again met  
with Sir Maori Kiki in Port Moresby.

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CHAPTER V  
CONSTITUTIONAL ASPECTS

In any international negotiations between two countries each country is sovereign and has the power to annex or divest itself of territory subject only to the agreement of the other country and third party countries who might feel their interests are involved. Given the Australian Constitution, the power of the Commonwealth to divest itself of territory, which was within the boundaries of the original colonies at the time of Federation seems extremely limited. This important and complex question is of very real significance in the conduct of the current negotiations. Because of this complexity the opinion of the present Attorney-General, The Hon. R.J. Ellicott, Q.C., was sought by the Sub-Committee on a number of questions. The following material is drawn to a large degree from a letter written by Mr Ellicott in September 1976 to the Chairman of the Sub-Committee, Mr R.F. Shipton.

1879 Line

The 1879 "line" was drawn under authority of letters patent issued in 1878 and the Queensland Coast Islands Act of 1879 under which certain islands in Torres Strait were annexed to the Colony of Queensland. It is clear that the function of the line was only to indicate the islands in the Torres Strait that became annexed to the Colony.<sup>1</sup> The line embraces areas of high seas. From the

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1. "Mr Griffith said that under the Bill they would annex certain islands, and necessarily assume the responsibility of governing them. Although they would belong to the colony, the intermediate seas would not...The Imperial Government, of course, had dominion over all the Australian seas, but the colony's authority extended only to the coast and three miles from it..." Queensland Legislative Assembly. Debates, 27 May 1879, p.193.

very general description of the line it would be impossible to construct it with the precision required for an international boundary. The following extract from the schedule to the Queensland Coast Island Act 1879 demonstrates the generality of this description:

That is to say all islands included within a line drawn from Sandy Cape northward to the south eastern limit of Great Barrier Reefs thence following the line of the Great Barrier Reefs to their north eastern extremity near the latitude of nine and a half degrees south, thence in a north westerly direction ....

The present significance of the 1878/79 line is that it identifies those islands which are part of the State of Queensland.

There is of course no common land frontier between Australia and Papua New Guinea. The main matter that arises now that Papua New Guinea is independent, is that of maritime boundaries in the proper sense, particularly in those areas where the territorial seas and exclusive fishing zones of Australian islands and of Papua New Guinea would otherwise overlap and in relation to the continental shelf. There is a common continental shelf between Australia and Papua New Guinea not only in the Torres Strait but also in the Arafura and Coral Seas. These and related matters are of course the subject of current negotiations between Australia and Papua New Guinea.<sup>2</sup>

#### Law of the Sea (General)

In Chapter VI specific aspects of this subject, territorial waters, exclusive fishing zones and the continental shelf are discussed. In this section the general principles only of this matter are examined.

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2. Letter from The Hon. R.J. Ellicott, Q.C., Attorney-General, to the Chairman of the Sub-Committee Mr R.F. Shipton, 23.9.76.

The Fifth Session of the United Nations Law of the Sea Conference concluded on 17 September 1976. The Sixth Session will reconvene on 23 May 1977. No firm conclusions have been reached but a Revised Single Negotiating Text has been compiled and is under consideration by the Conference. During the 1976 discussions, however, several trends have clearly developed as can be seen from the following statement:

- (a) "There is a general recognition that coastal nations should be able to claim a territorial sea up to twelve miles in breadth. I am informed that as at mid-August 1974 about 70 countries already claimed a territorial sea of twelve miles breadth or more. The number today would be, I think, higher.
- (b) "There is also a clear trend favouring the establishment of economic zones for coastal nations to give them control over all resources, including swimming fish, in an area extending 200 miles from their shores.
- (c) "Also, the concept that archipelagic countries have rights to the resources of the seabed and the waters of their archipelagos has a reasonable change of acceptance provided that they concede a regime of transit through and over those waters. The archipelagic concept has been developed by island communities, principally Indonesia, the Philippines and Fiji, whose whole way of life is set in a maritime context.<sup>3</sup>"

It is clear from the above that there is an expanding international recognition of the already established general principle that the possession of land, including islands, generates a jurisdiction over associated maritime areas. Some of the principles which are emerging from the Law of the Sea Conference and could be applied to the Torres Strait situation

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3. Letter from the Hon. R.J. Ellicott, Q.C., Attorney-General, to the Chairman of the Sub-Committee Mr R.F. Shipton, 23.9.76.



are:

In applying to the Torres Strait the principles which appear to be emerging from the Law of the Sea Conference, the following (amongst other) questions could arise:

- (1) whether each island generates its own twelve mile territorial sea;
- (2) whether the islands or those that are closely grouped should be regarded as analagous to an archipelago so that the waters between them should be internal waters and the location of their territorial sea be determined accordingly;
- (3) where precisely should a boundary be drawn between Australia and Papua New Guinea in accordance with equitable principles so as to delimit their respective economic zones.<sup>4</sup>

#### Alteration of Existing Boundary

The decision of the High Court in the Seas and Submerged Lands Act Case (1975)<sup>5</sup> appears to make clear the competence of the Commonwealth to delimit territorial seas where these, as in the case of seas surrounding Saibai Island, would otherwise overlap with those of Papua New Guinea, and also appears to give to the Commonwealth power to negotiate a sea bed boundary.

The proposed transfer of the land territory of islands in the Torres Strait would raise different problems and would have to be considered in relation to Section 123 of the Constitution which reads as follows:

'The Parliament of the Commonwealth may, with the

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4. Ibid.

5. Australian Law Journal Reports, no. 50, 1975, C. 218.

consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected'.

The sub-committee heard a considerable amount of evidence on the possibility of transferring territory from the Commonwealth to another country without the use of Section 123 of the Constitution. The view has been advanced that Clause 8 of the Constitution Act and the Colonial Boundaries Act of 1895 could be used for the purpose of transferring islands in the Torres Strait forming part of Queensland to Papua New Guinea which would avoid the requirements of Section 123.

Clause 8 of the Australian Constitution Act provides that the [Imperial] Boundaries Act of July 1895 shall not apply to any colony which becomes a State. It seems clear that this was done because Section 123 makes provision for, and is concerned with, the alteration of the boundaries of the States forming the Commonwealth. More importantly for this issue, however, Clause 8 also includes the provision that after the passing of the Australian Constitution Act the Commonwealth shall be taken to be a self governing colony for the purposes of that (Colonial Boundaries) Act. Thus apparently a procedure has been made available, which to date has never been used, for the alteration of the boundaries of the Commonwealth by the Queen in Council with the consent of the Commonwealth Parliament.

In an Opinion of 28 June 1906 the Attorney-General The Hon. Isaac Isaacs, K.C., expressed the view that the King

(Queen) in Council with the consent of the Commonwealth Parliament had the power, under the Colonial Boundaries Act 1895, to alter the limits of the Commonwealth including the alteration of the external boundary of Queensland. He appeared to go further than to limit himself to external boundaries, thus:

"Covering Clause 8 cannot in my opinion be construed as referring solely to such extraordinary alterations.

I therefore think that the King [Queen] in Council has the power with the consent of the Parliament of the Commonwealth and without reference to the electors of Queensland, to alter the boundaries of the Commonwealth and incidentally those of Queensland, in the way proposed".<sup>6</sup>

On reflection, the Sub-Committee considers that this extract from the Opinion was not meant to imply a general power to alter boundaries common to two or more States since these boundaries are not the boundaries of the Commonwealth. Therefore the power of alteration must be limited to external boundaries which comprise the boundaries of the Commonwealth.

A contrary view to Isaacs's is put forward by Quick and Garran, in Annotated Constitution of the Australian Commonwealth (1901) p. 379. The authors took the view that the Commonwealth Parliament may not alter the limits of a State without observing the provisions stipulated in Section 123. They felt that the Commonwealth Parliament could not consent to an alteration of the boundaries of the Commonwealth by the Queen, involving an alteration of State limits, without the

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6. Opinion by Isaac A. Isaacs, K.C., Attorney-General, 28 June 1906. Commonwealth Archives Office A. 1, 06/5950.

consent of the State Parliament and the approval of the majority of State electors voting on the question.

In the debate on the Ashmore and Cartier Island Acceptance Bill 1933 the then Attorney-General, Mr J.G. Latham, K.C., held that "The Colonial Boundaries Act no longer applies in relation to the boundaries of Australia. Instead we have the provisions relating to the creation of new States and the alteration of the boundaries of new States, the meaning of which we fully understand".<sup>7</sup> The particular circumstances in which Mr Latham held the Colonial Boundaries Act could not be applied was extending the limits of Western Australia by the inclusion of the Ashmore and Cartier Islands within the boundaries of that State. The provisions relating to new States are contained in Section 122 of the Constitution and refers both to territory surrendered by a State and any territory placed by the Queen under the authority of an accepted by the Commonwealth.

#### General

The Sub-Committee has reservations about making definitive judgements in this most complex field of constitutional law. From the evidence tendered and advice received from a number of witnesses, however, it would seem that Section 123 of the Constitution must govern the relinquishment or cession by the Commonwealth of any territory forming part of one of the States. Unless this is so, it would leave the boundaries of the States very much subject to alteration by the Commonwealth Parliament. In effect, Section 123 sets the limits of Commonwealth

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7. Australia, House of Representatives. Debates, December 1933, p. 5379.

power to encroach upon the territorial integrity of the States. Thus the Sub-Committee feels that the limits of Queensland could not be altered by Commonwealth action without the consent of the Parliament and the electors of that State. Accordingly, the Sub-Committee feels that the Commonwealth's power to cede territory at present forming part of one of the States of the Commonwealth is exceedingly limited and can only take place with the consent of the people and the Parliament of the State concerned.

## Chapter VI

### MARITIME ASPECTS

#### (i) Law of the Sea

An able summary of the status of Australia's maritime boundaries in Torres Strait according to the 1958 Conventions on the Law of the Sea was provided by Dr J.R.V. Prescott\* in a submission to the Sub-Committee, and what follows is based largely upon that submission.<sup>1</sup>

Australia has been a party to the 1958 Conventions since 14 May 1963. Forty-three countries were party to the Convention on the Continental Shelf and thirty-six countries were party to the Convention on Territorial Waters. Papua New Guinea is not a party to these Conventions. The United Nations Conference on the Law of the Sea, which has held four major sessions since its first one in Caracas in December 1973, will resume in New York in May 1977 with the aim of reaching agreement on a new treaty.

Under the 1958 Conventions Australia is entitled to three sets of maritime boundaries: 1) territorial waters; 2) exclusive fishing zone; 3) continental shelf.

#### territorial waters

Australia claims a territorial waters limit of "one marine league", i.e. three nautical miles. The basis for this claim is

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<sup>1</sup> The Sub-Committee also took corroborating evidence on this subject from the Attorney-General's Department

\* Reader in Geography, University of Melbourne.

the Territorial Waters Jurisdiction Act (United Kingdom, 1878), which defines the "territorial waters of Her Majesty's dominions" as follows:

"The territorial waters of Her Majesty's dominions", in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; and for the purpose of any offence declared by this Act to be within the jurisdiction of the Admiral, any part of the open sea within one marine league of the coast measured from low water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions.

Under the Territorial Waters Jurisdiction Act 1878 a fringe of territorial sea "one marine league" wide appertains to all islands in the Torres Strait south of the 1879 line, even if the total area thus circumscribed covers more sea than dry land.

The 1958 Convention on Territorial Sea gives recognition to this state of affairs by defining an island as "a naturally-formed area of land, surrounded by water, which is above water at high tide", and by noting that "the territorial sea of an island is measured according to the provisions of [the Convention] (Article 10).

Map 1 shows the current actual Australian territorial jurisdiction in Torres Strait resulting from the above definitions. It may be noted that at points the territorial waters coalesce, that at certain places Australian waters completely surround areas of high seas, and that between the

islands of Kawai, Mata Kawa, Aubusi, Boigu, Moimi, Kassa, Dauan, Saibai and Kaumag, and the Papua New Guinea mainland, territorial waters are limited by a line running equidistant between those islands and the mainland.

The 1958 Convention makes no rules about areas of high seas completely enclosed by the territorial waters of one state, even though the problems thus caused were discussed as early as the first conference on the law of the sea in 1930. However, provision is made in Article 12 for drawing a territorial boundary line between coasts closer than the combined extent of territorial seas claimed by neighbouring states:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

Australia's territorial jurisdiction over the waters of Torres Strait could be altered by unilateral action on her part in at least two and probably three ways while still abiding by the conventions of international law. First, Australia could simply proclaim an extension of her offshore territorial waters limit from three to, say, twelve nautical miles. At present Australia is one of thirty countries claiming a three-mile limit. Ninety-eight other countries claim wider territorial waters and fifty-seven of these claim twelve nautical miles. Second, the area of



Australian territorial waters could properly be increased by drawing straight baselines connecting those islands which fringe Cape York, in accordance with Article 4.1 of the 1958 Convention:

In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

Third, nine states have drawn straight baselines around the perimeter of archipelagos: Denmark, Ecuador, Ethiopia, Fiji, Indonesia, the Maldives, Mauritius, and the Philippines. It is considered possible that any treaty resulting from the present discussions on the Law of the Sea will recognise the right of states to draw such straight baselines, subject to safeguards of unimpeded transit through the waters within the archipelagos' perimeters. Hodgson and Alexander have suggested that archipelagos might be objectively defined by three tests<sup>2</sup>. They are that the archipelago should be areally dispersed so that the length of the two major arcs were in the ratio 1:10 or larger, that none of the segments of the straight baselines around them should be longer than 48 nautical miles, and that the waters enclosed by the baselines should not exceed the aggregate of areas contained within circles 12 nautical miles in radius about each island. The Australian islands in Torres Strait satisfy all these tests.

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2. Hodgson, R.D. Islands: normal and special circumstances, Washington, State Department of the United States of America, Bureau of Intelligence and Research, 1973, pp. 35,6.

There is no precedent in international law for a territorial waters boundary between neighbouring states such that islands of one state are left as enclaves surrounded by the territorial waters of the other. In agreements on territorial seas boundaries reached between Indonesia and Malaysia, Indonesia and Singapore, Finland and the Soviet Union, France and Canada, and Sweden and Denmark, the principle followed was that stated in Article 12 of the 1958 Convention.

#### exclusive fishing zone

Since 1967 Australia has claimed an exclusive fishing zone extending twelve nautical miles from its coasts. Under the Fisheries Act of 1967 Papua New Guinea, as a Territory of Australia, shared in that zone and in effect was able to fish anywhere around the Australian coast between the three mile territorial limit and the twelve mile fishing limit<sup>3</sup>. When Papua New Guinea ceased to be a Territory and became an independent state on 18 September 1975, the definition of the exclusive fishing zone included in the Australian Fisheries Act had the effect of excluding Papua New Guinea along with other foreign states. This was explicitly given recognition in an Executive Minute of 2 July 1974, which declared that:

the following waters are no longer proclaimed waters for the purposes of the Fisheries Act 1952-1974, namely the waters referred to in paragraph (b) of the definition of "the declared fishing zone" in section 4

<sup>3</sup>. Territory of Papua New Guinea, House of Assembly Debates, 15 November 1967, p.2888.

of that Act that are waters adjacent to Papua New Guinea and having as their inner limits the baselines by reference to which the territorial limits of Papua New Guinea are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is distant twelve international nautical miles from the point on one of those baselines that is nearest the first mentioned point.<sup>4</sup>

The fishing grounds claimed by Mr Ebia Olewale in the Papua New Guinea House of Assembly on 21 August 1969 to be the traditional fishing grounds of the people of Mawatta and Tureture villages are mostly within the Australian twelve mile exclusive fishing zone, although they are almost entirely outside the Australian three mile territorial waters limit. Mr Ebia Olewale named the following reefs: Kimusi, Wappa, Mataromai, Ibumuba, Ura, Parakiwuro, Watawari, Arawgoro, Kokopi, Tepere, Todiwo and all reefs southward to Tudo (Warrior) Island. The area covered by these reefs is the area covered by the reefs shown in the British Admiralty chart Torres Strait and Approaches between Warrior Island and Bristow (Bobo) Island, i.e. Warrior Reefs, Wapa Rf., Kolkope Rf., Aragoro Rf., Kumusi Rf., Kumaderi Rf. and Gimini Rf.

#### continental shelf

According to Article 1 of the 1958 Convention on the Continental Shelf, the term "continental shelf" refers to:

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<sup>4</sup>. Executive Minute 25, 1974.

- a) the seabed and subsoil of the submarine areas adjacent to the coast outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas;
- b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Each Australian island in Torres Strait therefore generates a claim to a surrounding area of continental shelf.

Australia and Papua New Guinea share the same continental shelf in the Torres Strait area and, indeed, in the Coral Sea. The principle governing the delimiting of the boundary in such a case is stated in Article 6 of the 1958 Convention:

Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

Twenty-one international agreements dealing with continental shelf boundaries have been concluded in accordance with the 1958 Convention. In only seven cases was the boundary coincidental throughout with the line of equidistance. They were those between:

Bahrein-Iran; Norway-United Kingdom; Denmark-Norway;  
Denmark-United Kingdom; Netherlands-United Kingdom,  
Soviet Union-Finland; Norway-Sweden.

In thirteen cases the boundaries were a combination of negotiated segments and lines of equidistance. They were those between:

Argentina-Uruguay; Denmark-Germany; Germany-Netherlands;  
Germany-United Kingdom; Iran-Qatar; Iran-Oman; Bahrein-  
Saudi Arabia; Abu Dhabi-Qatar; Trinidad and Tobago-  
Venezuela; Norway-Soviet Union; Italy-Yugoslavia;  
Australia-Indonesia; Indonesia-Malaysia.

In only one case was there no correspondence between the boundary and the line of equidistance. Also only in one case was a boundary drawn such that an island belonging to one country was left surrounded by continental shelf awarded to the other country. The case concerned Argentina and Uruguay: the uninhabited Argentinian island of Martin Garcia lay 0.4 nautical miles on the Uruguayan side of the continental shelf boundary, in the estuary of the River Plata. The treaty states that that island should be devoted exclusively to a neutral preserve for the conservation and preservation of native flora and fauna.

The agreement between Bahrein and Saudi Arabia defined the Fasht bu Saafa Hexagon of 36 square nautical miles and stipulated that although the area was under the sovereignty of Saudi Arabia and would be developed in any manner chosen by Saudi Arabia, that country would give half the revenue derived from the area to Bahrein.

(ii) Seaways

The Torres Strait seaways are of concern to Australia as a route between major oceans (it is used by more than 1,000 vessels each year);<sup>5</sup> as a point of access to the Australian mainland; and in terms of the bauxite trade from Weipa. The Strait is really the boundary between the Indian and Pacific Oceans and is a shallow, reef bound area with strong currents and substantial tides. What is more, the North West Monsoon from December to March and strong Trade Winds between June and September thwart easy sea traffic. However, one advantage of the Torres Strait route is that most of it lies in Australian territorial waters, unlike the alternatives of the Lombok and Sunda Straits which are Indonesian territory. Consequently the search for deep water channels (able to accommodate 100,000 and 200,000 ton carriers) has been underway for a number of years.

All routes through Torres Strait for vessels up to 39 foot draught make use of the Prince of Wales Channel (10° 30'S). This would remain within Australian territorial waters irrespective of any changes of sovereignty so far contemplated. From the eastern end of the Prince of Wales Channel, alternative currently navigable routes through the Torres Strait pass through:

- (a) The Great North East Channel (GNEC) to Papua New Guinea and the Coral Sea.
- (b) The inner reef and Grafton Passage (17°S, opposite Cairns, some 500 miles south of the Great North East Channel) to the Coral Sea.

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5. See appendix Five.

- (c) The inner reef passage to Eastern Australian ports.

Another passage through the Great Barrier Reef, the Second Three Mile Opening (13°S, in the vicinity of Cape Direction) has recently been surveyed. This channel when lit, will provide sufficient water and sea room for passage of vessels which can use the Prince of Wales Channel. Hence the importance to Australia of the Great North East Channel as a link between the Coral and Arafura Seas has diminished - inasmuch as the Second Three Mile opening affords an alternative route. At present the whole of the Great North East Channel is either high seas or Australian territorial sea (by virtue of Australian sovereignty, inter alia, over Bramble Cay and Pearce Cay). Bramble Cay marks the northern entrance to the Channel, and transfer of this cay and/or Pearce Cay to Papua New Guinea could place parts of the channel within Papua New Guinean territorial waters. In the event of any changes that might affect rights of navigation, it would be important to establish in perpetuity the right of Australian vessels to free and unrestricted passage throughout the Strait, and to ensure the maintenance of navigation aids to internationally accepted standards.

(iii) Seabed Resources

Much of the interest in the Strait stems quite obviously from the likelihood of oil deposits in the sedimentary basins west of the Warrior Reefs stretching down to the Gulf of Carpentaria and Cape York. Dr Coombs' submission puts it more forcefully: "The Central issue in the so-called 'border' question is the control over the sea bed resources of the Torres Strait. The Government of Queensland wishes to retain

effective control over these and the Government of Papua New Guinea wishes to obtain a substantial share of them".

There are at present two Australian offshore petroleum exploration permits in the Torres Strait, Q/10p and Q/11p, but there has been no exploration or drilling since the establishment of the Royal Commission into Exploratory and Production Drilling for Petroleum in the Area of the Great Barrier Reef in May 1970. Prior to that, the one drilling by Tenneco Australia Incorporated, was unfruitful.

The Royal Commission's report states that there are seven sedimentary basins in the Great Barrier Reef Province and that with one exception their official classification as petroleum potentials vary between "fair" and "poor". The exception is the Papuan Basin (North and East of Cape York) which is classified as "good". In December 1969 permits in the area were at Q/1p, Q/2p, Q/3p, Q/10p and Q/11p (see Map 2). Ownership was as follows:

<u>Permit No.</u>	<u>Actual Permit Holder</u>	<u>No. of Blocks</u>	<u>Ownership</u>
Q/1p	Tenneco Aust. Inc. and Singal (Aust) Pet. Co.	115	Foreign
Q/2p	"	186	"
Q/3p	"	97	"
Q/10p	California Asiatic Oil Co. and Texaco Overseas Pet. Co.	278	"
Q/11p	Gulf Interstate Overseas Ltd.	126	"

All offshore exploration and production is governed by the Petroleum (Submerged Lands) Acts 1967-1974 which were passed by both the Commonwealth and the States following the conclusion



of the 1967 Offshore Petroleum Agreement. That Agreement provides for consultation between the Commonwealth and the States mainly in respect of granting, variation and transfer of permits and licences, and in regard to certain specific constitutional powers of the Commonwealth such as defence, trade, and external affairs.

As stated earlier there are at present two Australian offshore petroleum exploration permits in the Torres Strait. These were issued in 1968 under the Commonwealth and Queensland Petroleum (Submerged Lands) Acts, which provide for an initial permit period of 6 years and renewal for periods of 5 years. Formal authority to renew permits rests with the Queensland Minister for Mines, but under the Offshore Petroleum Agreement the prior consent of the Commonwealth is required. Though the permittees of Q/10p and Q/11 p applied for renewal in 1974, a decision by the Commonwealth has not yet been made. The legislation provides that if a permit term expires after an application for renewal has been made then the permit continues in force until a decision on the renewal application is made. The Queensland Premier, Mr Bjelke Petersen, for one, believes that major reserves are located in the area. In an interview with Mr Peter Hastings published on 4 June 1976 the Premier stated:

Our information, going back to John Gorton's time is that the Torres Strait area is highly sought after by drilling companies, which believe it to be as good as Gippsland and the Bass Strait.

Evidence received by the Sub-Committee does not support the Premier's contention that the area is highly sought after and "as good as Gippsland and Bass Strait". The following statement was given in evidence to the Sub-Committee

I think we would rate it lower than any part of Bass Strait. I am talking of Bass Basin as well as the Gippsland Basin. It would have to rate lower than most parts of the North West Shelf. Offshore in the Perth Basin there have been some shows of hydrocarbons which there have not been up here. On that basis we would have to rate this lower than that....There are some structures which have not been drilled and it has the possibility of getting quite significant quantities of hydrocarbons if there is any there at all.<sup>6</sup>

It is also significant that of the original five companies who were granted permits in 1968 only two sought a renewal in 1974. To date only one well has been drilled, this has been plugged and abandoned. There has been insufficient evidence presented to the Sub-Committee for it to reach a final judgement as to whether or not there are commercially exploitable resources of hydrocarbons in the Torres Strait area.

(iv) Protection of the Marine Environment

On 2 April 1974 the Queensland Premier introduced the following motion in the Queensland Parliament:

...That an area of sea between Cape York and Papua, whose size and co-ordinates are to be agreed upon, but within the area bounded by the coast of Papua in the north to the parallel of 9 degrees South latitude and to the south by the parallel of latitude 10 degrees 30 South and the parallels of longitude 141 degrees 50 East and 145 degrees East be designated an international marine park.<sup>7</sup> Within this area fishing is to be reserved to Torres Strait Islanders and the people of Papua who shall have equal rights from the low-water mark of their respective shores, such fishing is to be subsistence fishing and minor commercial fishing only and all other exploitation

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6. Evidence, p.589

7. The approximate boundaries of this zone or park are shown in Map 1.

of the natural resources of the sea and seabed shall be prohibited. Special arrangements shall, however, be reached for pearling and trochus fishing together with commercial operations already established in that area. In addition, provision shall be made for the Marine Parks Board to authorise, in special circumstances, the establishment of any industry by local indigenous people where the resources involved are within the area of the international marine park. A Marine Parks Board shall be set up to administer the park and promote conservation measures with respect to its natural riches.

The Sub-Committee in its visit to the area, found widespread support for the protected zone proposal (though lack of familiarity with its details); agreement on shared subsistence fishing; and fear of the environmental consequences of oil exploration. The last point was particularly stressed:

Mr Billy - We told the previous Prime Minister, Mr Whitlam, that they do not want any oil drilling in the Straits, because it would spoil all our fishing grounds ....

Mr Elder Kbisu Mosby - I am worried about the environment. My people make their livelihood from fish and turtle. What will happen when that oil spills? I definitely do not want it....

Mr Fry - Are there any conditions under which you would support the exploration of oil? Or are you against it in any form at all?

Mr Wilson Khris - I am against it.<sup>8</sup>

The major exception to the above view, but one that still stresses the need for proper safeguards, is that held by Mr Ted Loban: "If the country is going to go ahead, and it is within their boundaries, go ahead and drill..."

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8. Evidence, 3 August 1976

As to the likelihood of spillage and the resultant environmental consequences, the report of the Royal Commission into Exploratory and Production Drilling for Petroleum in the area of the Great Barrier Reef, is instructive:

Our answer cannot be given in precise or mathematical terms because the degree of risk (and the quantum of any pollution) will vary with and depend inter alia on such factors as (a) the care and skill of drilling and production personnel and of all concerned with the collection, storage and transportation of oil from the well to shore, (b) the design, inspection and maintenance of all equipment, (c) the efficiency of governmental regulation and supervision, (d) the number of wells, and (e) external forces (i.e. the presence or absence of tectonic faults and risks of subsidence, cyclones and storms, currents, water temperatures and abnormal pressures and formations)<sup>9</sup>

If petroleum drilling be permitted within the Great Barrier Reef Province there will be and remain a real but small to very small risk of blowouts...<sup>10</sup>

It is almost certain that some measure of chronic and random spills and leaks of oil will from time to time occur. The amount of pollution caused thereby will range from small to substantial, that is to say from a few gallons to hundreds of barrels...<sup>11</sup>

In answer to the probable effects of oil and gas leaks, (i.e. not only major blowouts but chronic and random spills and the release of oil contaminated mud, cuttings, brines and wastes into the sea), a full treatment has been given of the lengthy scientific

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9. Report of the Royal Commission into Exploratory and Production Drilling for Petroleum in the Area of the Great Barrier Reef, Volume 1, p. 324.

10. Ibid... p. 31.

11. Ibid... p. 324.

evidence presented to the Commission on such subjects as the composition and properties of crude oils, their toxicities and the important changes both in composition and toxicity which occur as the result of migration and weathering...<sup>12</sup>

The majority of the Commission are of the view that oil which has been at sea in the area of the GBRP and subject to weathering for some 1-1½ days will probably be depleted of the toxic components originally present in the freshly spilt crude oil to the point where it is virtually non-toxic to marine organisms...<sup>13</sup>

...Nonetheless both physical and chemical(toxic) deleterious effects appear to operate as real hazards to many organisms of the intertidal and marginal wetlands of shores. Massive spills of fresh crude oil may consequently be regarded with some confidence as being damaging to shore line eco-systems. Evidence was given that the chronic spills on or near to shore lines can cause impoverishment or, on occasions virtual destruction of marine life in the immediate vicinity of a spill....Although fishes are potentially able to avoid oil-affected areas there is no evidence that they do so. The possibility that many species of fish that habitually live in association with coral reefs may be unable or disinclined to forsake their normal situation may put them at risk to oil spilled in the neighbourhood of reefs.<sup>14</sup>

The Islander's fears stem in part from their experience with the grounding of the 55,000 ton tanker 'Oceanic Grandeur' on 3 March 1970 in the main inter-ocean steamer channel off Wednesday Island. Over 5,000 gallons was lost. The combination of oil and detergents virtually destroyed the local pearl and pearl shell industries.

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12. Ibid., p. 547

13. Ibid., p. 32

14. Ibid., pp. 544-46.

(v) Defence

In recent years, approximately 1,400 piloted ships and about 200 unpiloted ships annually have used the shipping route through Torres Strait<sup>15</sup>. Therein lies the strategic significance of the Strait.

It was the importance of the Torres Strait shipping route which led Sir George Bowen, first Governor of Queensland to authorize the establishment of Somerset at the tip of Cape York in 1862 as a garrison post, coaling station, harbour of refuge, and entrepot for trade. Somerset proved an unsuitable site for a port, and in 1877 the settlement and garrison were removed to Thursday Island. The garrison on Thursday Island was in an excellent position to command with its batteries the entire navigation of the Strait. For as Captain John Moresby, who surveyed the area in the 1870s, put it:

The space of thirty-six miles which lies between Jarvis Island /Mabuiag<sup>7</sup> and the low mangrove-covered coast of New Guinea is a mass of coral reefs, and contains no passage for ships, and scarcely any for boats. Thus all the passages by which ships can enter Torres Strait lie between Jarvis Island and Cape York, and are now British waters. These passages are very narrow, under two miles in width; whilst the one most generally taken - the Prince of Wales Channel, between Hammond Island and the north-west reef - is barely a mile and a half wide. We hold this great highway of the ocean therefore on the best strategic terms. The average

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15. Department of Transport, Evidence, p.497.

depth of water in these channels is only seven or eight fathoms, and a few torpedoes /i.e. submarine mines/ judiciously placed would effectually block up this route to an enemy.

Even in an age of satellite-mounted, laser beam-guided electronic weapons systems, actual control of geographically determined points of strategic significance is important in most kinds of military conflict.

At present Australia, as well as commanding the navigation channels of Torres Strait from the key position of Thursday Island, also holds all the inhabited and uninhabited islands, islets and cays in the Strait south of the 1879 Line. It is important to recall how this situation came about. Queensland control was extended northward in 1879 for two reasons. First, to extend the authority of the Thursday Island police magistrate over all the islands in the Strait in the interests of law and order<sup>16</sup>. Second, and the prime reason, as is clear from the official correspondence on the subject, was to secure Dauan as a point d'appui from which to command the southern coast of New Guinea. In a letter to the Admiralty dated 21 August 1875, Robert G.W. Herbert, Permanent Under-Secretary of the Colonial Office, stated that the Colonial Secretary, Lord Carnarvon "desires me to request that you will state to the Lords

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16. Letter from G.P. Heath (Brisbane Portmaster) to the Colonial Treasurer, 11 December 1877. Great Britain, Accounts and Papers, 1883, vol.47. "Further Correspondence respecting New Guinea", C.3617, no.3, Encl.3, p.28.

Commissioners of the Admiralty that his Lordship thinks it desirable that a survey should be made by one of Her Majesty's ships of the coast of New Guinea more immediately opposite Cape York, as it is his Lordship's opinion important that Her Majesty's Government should at any moment be in a position to secure the best situation for the formation of a Settlement on that part of the coast without prejudice to the question of whether or not a more extended annexation should eventually take place"<sup>17</sup>.

In reply, the Admiralty Hydrographer, Captain Frederick J. Evans, wrote in a letter dated 16 September 1875:

Tauan (Mt Cornwallis) is a small, but lofty island (800 feet high), and appears suited for an outpost; a vessel of moderately heavy draft can anchor close to. The occupation of this island would practically give possession of the mainland of New Guinea immediately opposite to Cape York, and at the narrowest parts of Torres Strait.

With the new settlement at Thursday Island, and its signal station on Goode Island, the Prince of Wales channel is commanded, and the only navigable channel north thereof overlooked.<sup>18</sup>

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17. Great Britain, Accounts and Papers, 1876, vol.54. "Correspondence respecting New Guinea", C.1566, nos 17,18, pp.39-41.

18. Ibid.; also in Colonial Office, Confidential Printing, Australia No.53, C.O. 881/15.



As it happened, Dauan played no part in the history of Australian control of British New Guinea (the later territory of Papua), and Australian possession of the three islands of Boigu, Dauan and Saibai in 1976 is, from a strictly defence point of view, a relic of Imperial considerations that are now a century out of date.

There is, of course, a widely held point of view of which this Sub-Committee must take account, which sees the Torres Strait Islands as having the potential to serve as stepping stones for an enemy invasion via New Guinea. This point of view was succinctly expressed by Mr Jeff Bate in the House of Representatives on 1 September 1966:

...You can commute between Thursday Island and New Guinea. Torres Strait Islanders move over to Merauke in West New Guinea. Australia adjoins Asia, and aircraft and ships would not be needed either. Invaders could walk or row here; they would be here ....Torres Strait Islanders go from Thursday Island to Merauke. They go across a chain of islands...<sup>19</sup>

That a similar point of view is still held by senior defence advisors to the Commonwealth Government is indicated in the submission this Sub-Committee received from the Defence Department:

Viewed from a specifically defence standpoint, Torres Strait has military significance first as a sea route...

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<sup>19</sup>. Australia, House of Representatives, Debates, 1 September 1966: 741-42.

second as a possible point of access to the Australian mainland for hostile elements established in the archipelago to our North.<sup>20</sup>

However, the major part of the Defence Department's submission was taken up in a discussion of Australia's interest in safeguarding unimpeded navigation in the Torres Strait.

The Defence Department advised the Sub-Committee in its submission that Australian right of passage could conceivably be affected only by the transfer of Bramble Cay and/or Pearce Cay to Papua New Guinea, as such a transfer would place parts of the Great North East Channel within Papua New Guinea territorial waters. On the other hand, there are two factors which virtually nullify the possibility of any adverse consequences arising from such a transfer. First, the alternative sea-lane through the Adolphus Channel, completely under Australian control, would still be available. Second, the right of innocent passage through territorial waters is guaranteed by Articles 14 to 23 of the 1958 Convention on the Territorial Sea. Although Papua New Guinea does not adhere to the 1958 Convention, a similar provision is contained in the draft text of the Law of the Sea, which it is hoped will form the content of a treaty to be agreed upon in 1977, and to which Papua New Guinea has intimated she will be a signatory.

The transfer of any other of the islands and islets north of 10°S would not affect Australia's strategic interest in unimpeded

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20. Australia, Department of Defence, Submission, par. 2.

. navigation of the Strait at all. Naturally, it remains true that  
the more islands that might be occupied the more options for  
. military exploitation would be available to the occupant, whoever  
he might be. However the desirability of this option could be  
countervailed if transfer of the islands could guarantee a  
comprehensive and permanent resolution of differences with Papua  
New Guinea in the area.

The Defence Department made quite clear in its submission to  
the Sub-Committee that the overriding defence consideration in  
Torres Strait was to prevent an unresolved boundaries dispute  
becoming a source of friction in a general sense between Papua  
New Guinea and Australia. The two countries presently enjoy an  
unusually close identity of defence interests, and cooperate  
. effectively in safeguarding those interests. Any final  
. settlement of the boundaries issue must be made with reference  
to the wider concern of maintaining this community of interests  
and high level of cooperation.

## CHAPTER VII

### CONCLUSIONS

The Committee has examined the question of the boundary between Australia and Papua New Guinea. The Committee visited and travelled through a large area of Torres Strait and contacted local leaders and residents. Submissions received from governmental and private organisations and from individuals. Witnesses gave evidence to the Committee which was supplemented by information from published sources.

The Committee has looked at the question of demarcation in the Torres Strait. Until the general principle of demarcation between national entities is settled the subsidiary problems that flow from such agreement (if obtained) remain.

The Committee's principal conclusions are:

1. The Committee supports the existing boundary which is taken to be the 1879 line. The inhabitants of the border region have access to Torres Strait waters as does marine traffic between the Papuan coast in the boundary area and other parts of Papua New Guinea.
2. No definitive statement was received, from the Australian Government presenting a case in support of changes in the existing boundary with Papua New Guinea. Possibly the Government was inhibited by the continuance of negotiations with Papua New Guinea. As far as such a statement can be inferred, the reasons for supporting a change appear to be based on a moral feeling that

Papua New Guinea is disadvantaged by the existing boundary. To maintain good relations therefore the existing boundary should be altered in favour of that country.

3. Evidence presented to the Committee indicated that no significant deposits of commercial hydrocarbons had been discovered in the Torres Strait region to date and that prospects for future discoveries are not considered to be favourable.

4. Available published information and investigation at the local level suggests that the Torres Strait community is heavily dependent on welfare payments as a source of cash income. It appears unlikely that this trend towards a dependent community will be reversed in the foreseeable future.<sup>1</sup>

5. Migration both of family groups and of individuals from the Torres Strait area to mainland Australia has been an established pattern over the past 25 years. Of a total population of some 10,000 persons in the Torres Strait community more than 60 per cent now live permanently in Australia. The Committee found no evidence that this pattern of migration was likely to be reversed.

6. The existing provisions of the Australian Constitution, particularly s.123, places legal restraints on proposals to change the boundary of a State, or to cede a portion of a State to another country without the consent of the people of the State concerned.

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1. As has been stated in Chapter 2 p.33 the community also receives a considerable income from remittances of islanders who have migrated to the mainland seeking employment.

7. Apart from these general constitutional difficulties, in regard to cession of territory, under the archipelagic theory advanced by Dr Prescott, there appears to be a strong case for the Torres Strait Islands to remain Australian territory.

8. The establishment of a Protected Zone in the Torres Strait would clarify the existing situation and could defuse the relatively low level of political activity caused by proposals to alter the existing boundary.

9. An essential provision of the establishment of this Zone is that mining and drilling of the seabed is to be prohibited for an agreed period and no new commercial activities would be permitted unless they were compatible with protection of the environment.

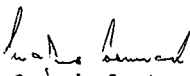
10. The Committee is not clear on how such a Protected Zone would be administered. If an independent Commission were established for this purpose the powers of the Commission should be clearly defined, particularly in relationship to the powers already exercised by State and local government authorities operating within the Torres Strait.

11. To be effective such a Commission should be representative of all parties including: Australia, Papua New Guinea, Queensland and the Torres Strait Islanders.

12. The Committee considers the Government should, at an appropriate time, make a public statement, preferably in Parliament, setting out the progress made in the negotiations outlined in Chapter IV, the general principles and parameters

• within which Australia is conducting these negotiations, and  
the tentative date for final agreement.  
•

By order of the Committee.

  
Magnus Cormack, Senator  
Chairman



## STATEMENT OF RESERVATIONS BY MR JACOBI

Whilst I endorse a number of findings in the "Sub-Committee's Report", I have found it necessary to express my own views in a separate report. I would summarise these views in the following way:-

- i) negotiation is preferable to arbitration, and is in the best interests of both countries.
- ii) Australia should acknowledge that the existing border is a legitimate grievance to Papua New Guinea, and that a delineation of the seabed boundary south of the existing boundary is a realignment that Papua New Guinea can reasonably expect.
- iii) The resolution of such a question should not be allowed to be impeded by purely domestic constitutional difficulties in Australia, which have nothing to do with Papua New Guinea and which Papua New Guinea can legitimately claim should not adversely affect her interest.
- iv) The Australian Government should make every effort to ensure that the inhabitants of the Torres Strait Islands are kept fully informed and are consulted in any settlement that is negotiated with the Government of Papua New Guinea.

### REASONS

1. Under the Australian Constitution the National Government is responsible for the conduct of Australia's foreign relations including negotiations of any settlement with the Government of Papua New Guinea in regard to the boundary separating our two countries.

To acknowledge this undoubted fact however, is not to deny the very real need on the part of the Australian Government to consult with and keep fully informed

the inhabitants of the Torres Strait Islands.

As long as Australia exercised external responsibilities for "peace, order and good government" on behalf of the people of Papua New Guinea, the border issue was very largely academic.

However, New Guinea, prior to independence, was a Trust Territory and as such was subject to scrutiny and report by a visiting U.N. Mission in 1971, which declared the desirability of a border change.

In the run up to independence this matter was in fact raised in the Australian Parliament in 1971 and the Papua New Guinea Parliament in 1969 and 1971.

2. Because of the very general nature of the description of the 1879 line, it is almost impossible to use it to construct the border with the precision required for an international boundary.

Since initial annexation in 1879, the border between both nations has been the subject of a number of exchanges, resulting in a number of recommended border re-alignments, but no change to the 1879 line has been made.

The very fact that the 1879 line lacks the essential attribute of precision, and that this line lies only a few hundred metres from the coast of Papua New Guinea must necessarily be a source of grievance, if not even offence.

That this is so was acknowledged long before Papua New Guinea became independent. Speaking in 1903, a former Premier of Queensland, Sir Samuel Griffiths, first Chief Justice of the High Court, said:

"With regard to the boundary when it was fixed in 1878, it was not unreasonable for Queensland to require to get all she could. She could not get New Guinea, but managed

to get as near as possible. We followed round as close as we could get between the Islands and the coast of New Guinea, taking in practically everything at that time and those parts were equally unknown and unsettled; but later when New Guinea had what was after all a civilised Government ... it became extremely absurd that some of the islands should be governed by Queensland".

In the words of a noted academic authority on the subject, "the present maritime boundary between Queensland and Papua is an anachronism and contains the seeds of future conflict".

(Mr. P.W. van der Veur "Search for New Guinea Boundary" P.35 (1966).)

3. At independence, Papua New Guinea assumed the rights and obligations conferred upon it as a sovereign state. Of necessity, it had to assess the limits of its territory and territorial jurisdiction, the rights of freedom of movement of its people, their freedom of access for the purposes of trade and commerce, its requirements for defence, both national and international, and its freedom of access to the seas adjacent to its mainland for the purpose of exploiting the natural resources on or beneath the seabed.
  
4. The evidence indicates an intention on the part of the government of Australia and Papua New Guinea to reach an acceptable settlement involving a re-alignment of present boundary. Because of certain Australian Constitutional difficulties (see clause 7) Australia may be restricted to a delineation of the maritime and seabed boundary. The proposed line involves a delineation of the seabed boundary and would be drawn to the south of the present line subject to the following conditions:-
  - i) The three inhabited islands of Boigu, Saibai and Dauan (which may be left north of the new seabed boundary) remaining Australian and their people Australian citizens.
  - ii) Uninhabited islands remaining Australian territory.

- iii) Such islands generating a three (3) mile territorial sea.
  - iv) The establishment of a protective zone in the Torres Strait to preserve the traditional way of life and livelihood of the islanders and the people of Papua New Guinea, to be administered by a Commission having representation from all parties.
  - v) The resolution of outstanding issues: in particular, the need to define the geographical limits of both the "protected zone" and the "seabed boundary" and the matter of drilling within the protected zone.
5. The failure to concede to Papua New Guinea the rights proposed by the two Governments could well lead to the following consequences:-

Papua New Guinea may pass its "National Seas Bill". This would create overlapping and conflict of claims between the Australian Government and the Papua New Guinea Government as to respective areas of influence and jurisdiction, both national and international.

The issue may well then be referred to the International Court of Justice or some other international arbitral institution, as being used, for instance, to resolve the dispute between France and the U.K. over certain islands in the English Channel.

This might result in a decision adverse to Australia, so we face the real dilemma of a conflict between "international law" and Australian "municipal law", with all the attendant difficulties of compliance with, and implementation of, the international decision.

6. Strategic and Defence Considerations

The evidence indicates that in so far as our strategic interests are concerned the transfer of any other of the islands and islets north of 10°S would not affect Australia's strategic interest in unimpeded navigation of the Strait. Naturally, it remains true that the more islands that might be occupied the more options

for military exploitation would be available to the occupant, whoever that might be. However, the desirability of this option could be countervailed if transfer of the islands could guarantee a comprehensive and permanent resolution of differences with Papua New Guinea in the area.

The Defence Department made quite clear in its submission to the Sub-Committee that the over-riding defence consideration in Torres Strait was to prevent an unresolved boundaries dispute becoming a source of friction in a general sense between Papua New Guinea and Australia. The two countries presently enjoy an unusually close identity of defence interests, and co-operate effectively in safeguarding those interests. Any final settlement of the boundaries issue must be made with reference to the wider concern of maintaining this commonality of interests and high level of co-operation.

#### 7. AUSTRALIAN CONSTITUTIONAL POSITION

- i) Finally it is necessary to discuss the legal and constitutional issues involved in the changes that are proposed regarding Australia's boundary with Papua New Guinea.
- ii) Three possible courses of action require discussion:-  
Islands
- iii) The first such possible course of action would entail the transfer to Papua New Guinea of some or any of the Islands themselves. This possibility would undoubtedly give rise to serious human problems. It would also give rise to difficult legal problems stemming from the scope and operation of Section 123 of the Australian Constitution.
- iv) Section 123 empowers the Australian Parliament to alter the limits of a State but only if the alteration takes place:-
  - (a) with the consent of the State Parliament concerned, and also

- (b) with the approval of the electors of the State concerned.

These requirements are intended to safeguard the territorial integrity of a State. They are reinforced by the further requirements that were written into the procedure for amending the Constitution in the last paragraph of Section 128.

- v) There are other legal powers that may perhaps be used to alter State boundaries. However, the existence of the special power contained in Section 123 has given rise to the difficult legal question whether these other powers are capable of being exercised at all or alternatively exercised without also complying with the special requirements created by Section 123.

The other powers include the following:

- (a) the power of the Queen to alter Australia's boundaries by Order-in-Council or by letters Patent with the consent of the Commonwealth under the Colonial Boundaries Act 1895 (IMP).
- (b) the power of the Australian Parliament to legislate with respect to external affairs in Section 51 (XXIX), (in conjunction with the executive power enjoyed by the Australian Government by virtue of Section 61 of the Constitution).
- (c) The power of a State to surrender any part of its territory to the Commonwealth under Section 111.

(This section could in fact provide a vehicle for co-operative federalism in that State territory could be transferred to the Commonwealth, which Commonwealth could then cede if so desired.)

The question of whether these powers could be used to avoid the need to

act with the consent of the Parliament and people of any affected State has given rise to serious differences of legal opinion.

In the absence of any judicial authority on the matter, the question must remain unresolved and subject to considerable doubt.

- vi) The existence of this doubt poses grave internal legal problems in the way of transferring any territory that forms part of the State of Queensland without the approval of the Government of that State. It would appear that the Torres Strain Islands fall into that category.

#### The Waters

- vii) The second possible course of action would only involve the delineation of a maritime boundary between Australia and Papua New Guinea, i.e., determining the waters in the Torres Strait over which both countries would exercise international rights of sovereignty.
- viii) Despite some confusion in the past, the better view today would appear to be that the 1879 line did not have the effect of making the waters surrounding the Islands part of the State of Queensland. Moreover it is clear since the off-shore sovereignty case (N.S.W. v. the Commonwealth 1976) (50. A.L.J.R. 218) that the territorial waters adjacent to a State do not form part of that State.
- ix) Accordingly, there can be no possibility of Section 123 applying to the delineation of the maritime boundary, to require the consent and approval of the Parliament and people of Queensland to that delineation.

#### The Continental Shelf

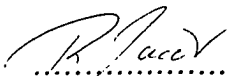
- x) The third possible course of action would involve

the delineation of Australia's seabed boundary, i.e., defining the areas of the continental shelf over which both countries would exercise international rights of sovereignty.

Similar considerations apply because the shelf does not form part of the State of Queensland. This would appear to be so especially in the light of the off-shore sovereignty case.

Likewise, the special requirements of Section 123 can have no application to any proposals designed to alter or delineate the seabed boundary between Australia and Papua New Guinea.

- xi) In conclusion, any changes that are made to Australia's maritime and seabed boundaries, will not, as a matter of law, require the consent and approval of the Queensland Government, however desirable it might be to obtain such consent and approval for other reasons. The proposals at present under consideration between the two Governments which are referred to in this report, would only involve a delineation of Australia's seabed boundary.



.....  
(RALPH JACOBI) M.F.

26 November 1976.



Statement of Reservations by Dr R. Klugman, M.P.

I am not convinced that the concept of a "Protected Zone" is a long-term solution to the problem. I also have two specific disagreements with the recommendations of the Committee. The final point in Recommendation 2 should read:

"New commercial ventures in the Protected Zone only to be permitted when these were agreed to by the inhabitants."

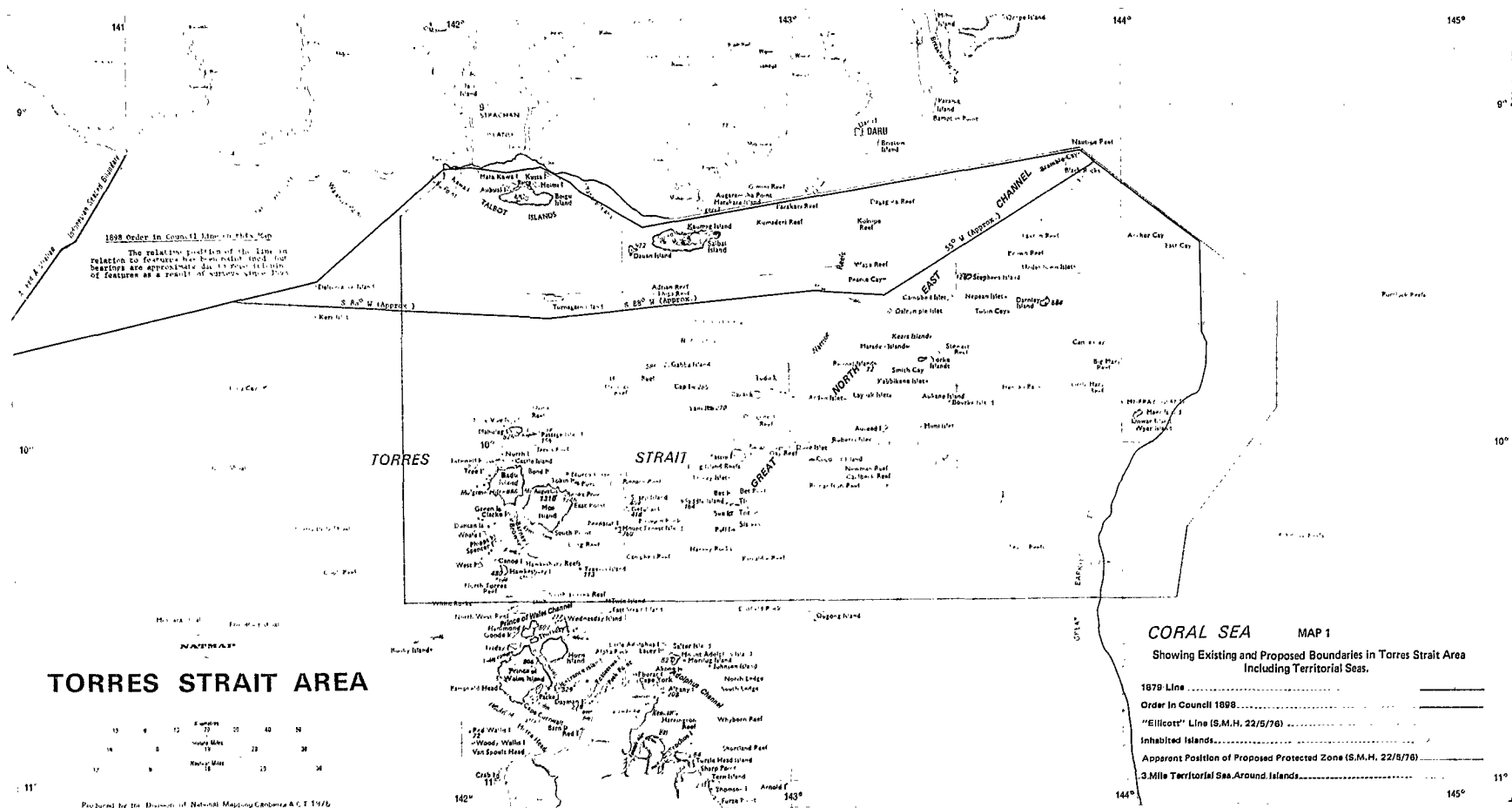
People should be entitled to choose between environmental and other benefits and disbenefits.

Recommendation 3 should read:

"Every effort should be made to help those Torres Strait Islanders who wish to preserve their existing culture and customs, to do so."

Sixty per cent of the islanders have in fact moved to Australia permanently for economic and other reasons. No attempt should be made to discourage this voluntary movement.

(sgd) R. Klugman, M.P.



**1879 Order in Council** *Inter-Islands Map*  
 The relative position of the line in relation to features has been established but bearings are approximate due to poor delineation of features as a result of various ship logs

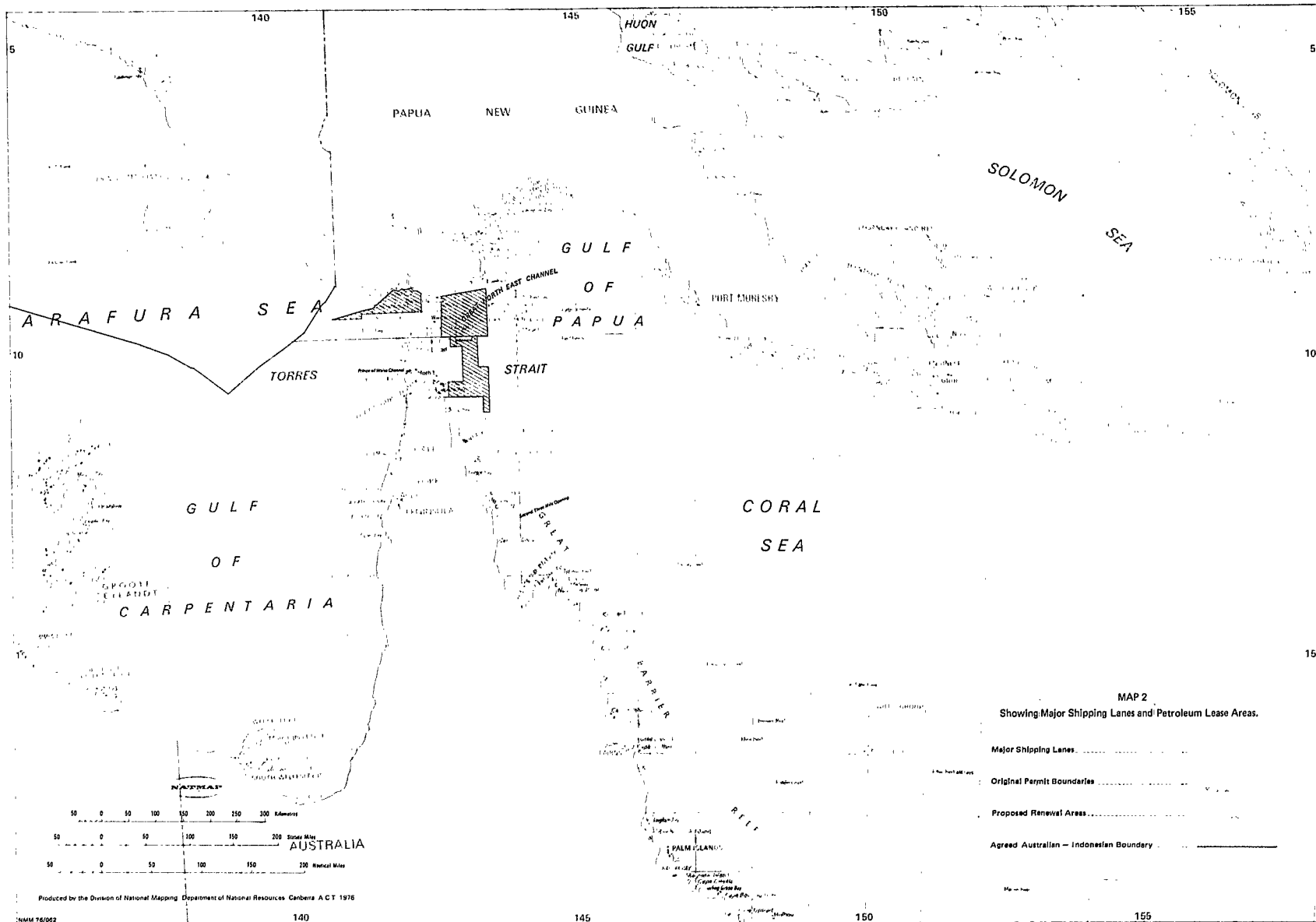
### TORRES STRAIT AREA

13	9	12	20	40	50
14	8	10	20	38	48
15	7	9	18	35	45

### CORAL SEA MAP 1

Showing Existing and Proposed Boundaries in Torres Strait Area Including Territorial Seas.

- 1879 Line .....
- Order in Council 1888 .....
- "Ellicott" Line (S.M.H. 22/5/76) .....
- Inhabited Islands .....
- Apparent Position of Proposed Protected Zone (S.M.H. 22/5/76) .....
- 3-Mile Territorial Sea Around Islands .....



APPENDIX I

Distribution of Torres Strait Islanders at Census 30 June, 1971

State			Males	Females	Persons
Queensland	Torres Strait Region	Reserve Islands	1,057	1,291	2,348
		Thursday Island and Adjacent Unreserved Islands	674	904	1,578
		Banaga Reserve (Cape York)	289	295	584
		Torres Strait Region Total	2,020	2,490	4,510
		Cairns Statistical Division	490	521	1,011
		Townsville Statistical Division	422	350	772
		Mackay Statistical Division	203	155	358
		Brisbane Statistical Division	153	155	308
		Other Queensland	319	230	549
		<u>Queensland Total</u>	3,607	3,901	7,508
	<u>N.S.W. Total</u>	409	364	773	
	<u>Victoria Total</u>	355	360	715	
	<u>W.A. Total</u>	210	68	278	
	<u>S.A. Total</u>	87	72	159	
	<u>Tasmanian Total</u>	58	38	96	
	<u>Northern Territory Total</u>	88	40	128	
	<u>A.C.T. Total</u>	1	6	7	
	<u>All States - Total</u>	4,815	4,649	9,464	

## APPENDIX II

### AUSTRALIAN CONSTITUTION - SELECTED SECTIONS

#### Section 111

The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

#### Section 123

The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

#### Section 128

This Constitution shall not be altered except in the following manner:

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the

proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

APPENDIX III

A. COLONIAL BOUNDARIES ACT 1895

An Act to provide in certain Cases for the Alteration of  
the Boundaries of Colonies. (6th July 1895)

Be it enacted by the Queen's most Excellent Majesty, by and  
with the advice and consent of the Lords Spiritual and  
Temporal, and Commons, in this present Parliament assembled,  
and by the authority of the same as follows:-

1. - (1) Where the boundaries of a colony have, either  
before or after the passing of this Act, been altered by  
Her Majesty the Queen by Order in Council or letters patent  
the boundaries as so altered shall be, and be deemed to have  
been from the date of the alteration, the boundaries of the  
colony.

(2) Provided that the consent of a self-governing  
colony shall be required for the alteration of the boundaries  
thereof.

(3) In this Act "self-governing colony" means any of  
the colonies specified in the schedule to this Act.

2. This Act may be cited as the Colonial Boundaries Act,  
1895.

B. CLAUSE 8 COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT 1900

8. After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.



APPENDIX IV

JOINT STATEMENT BY THE FOREIGN MINISTERS  
OF AUSTRALIA AND PAPUA NEW GUINEA : TORRES STRAIT

5th June 1976

The Australian Minister for Foreign Affairs, the Honourable Andrew Peacock, M.P., and the Minister for Foreign Affairs and Trade of the Government of Papua New Guinea, Sir Maori Kiki, today issued a joint statement on Torres Strait.

The two Ministers said that, subsequent to their meeting on 18 and 19 May, they had met again in Port Moresby on 28 and 29 May to carry further their negotiations.

The Ministers said that, with the authority of their Governments, they had reached agreement on a number of points which were basic to a settlement:

- \* A seabed boundary will be delimited between Australia and Papua New Guinea. It will run through the protected zone which, the two Ministers agreed, will be established in the Torres Strait. Papua New Guinea agreed that the seabed boundary will lie to the north of all Australian inhabited islands except Boigu, Dauan and Saibai. Australia has accepted that the seabed boundary will be drawn in a location more southerly than the line at present applying under Australian legislation for offshore petroleum administration purposes, that this line does not represent the Australian view of the appropriate permanent location of the seabed boundary, that the seabed boundary will run to the south of Boigu, Dauan and Saibai and it will be continuous.
- \* Papua New Guinea, in view of the wishes of the Torres Strait Islanders which Mr. Peacock had stressed, has accepted that Australia will retain all Australian inhabited islands. It has been agreed that the Australian territorial sea around the islands of Boigu, Dauan and Saibai, which will lie to the north of the seabed boundary, will be three miles, and that there will be a line delimiting the territorial seas between these islands and Papua New Guinea.

- \* A zone will be established 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 fishing and freedom of movement throughout such a zone, both north and south of the seabed boundary.

The two Ministers expressed satisfaction at the progress achieved in their negotiations. They instructed officials to proceed with further negotiations to build on the agreement they had reached on these fundamental points, and to direct their attention jointly to a number of other matters which would need to be included in a final settlement. The Ministers reaffirmed their determination to arrive as soon as possible at an equitable and stable settlement, in respect of an area which was of great importance to both countries, which would take due account of the humanitarian, environmental and other interests of all concerned.

APPENDIX V

SHIPS PASSING THROUGH TORRES STRAIT 1971/72-1975/76

The number and type of vessels accepting pilotage over the last five years by the Queensland Coast and Torres Strait Pilot Service are as follows:

<u>Types of Vessels</u>	<u>1971/72</u>	<u>1972/73</u>	<u>1973/74</u>	<u>1974/75</u>	<u>1975/76</u>
Tankers	272	366	358	368	287
Bauxite	201	185	197	241	220
Sugar	148	135	118	121	156
Iron Ore	103	77	49	50	65
Passenger	82	70	54	55	37
Sillicate	26	75	58	48	31
Meat	52	39	13	37	26
Grain	42	35	37	76	78
Steel	41	36	21	33	43
Warships	21	4	9	2	2
Timber	19	10	12	9	11
Container	-	-	15	87	111
Tugs	4	1	4	6	2
Tows	6	1	7	9	2
Oil Rigs	4	-	-	3	-
Coal	7	15	38	45	25
Phosphate	13	20	21	29	16
Geophysical	5	5	2	2	-
Dredge	1	-	-	3	-
Trawler	-	-	3	-	-
Yacht	-	1	-	-	-

General & Others	387	415	374	338	281
(a)	<u>1434</u>	<u>1490</u>	<u>1390</u>	<u>1562</u>	<u>1393</u>

(a) Included in the table are vessels piloted between major Queensland ports and not proceeding via Torres Strait. In the same five years, the amount of this coastwise traffic was 189, 226, 200 and 157, thus making Torres Strait traffic 1245, 1264, 1168, 1362 and 1236.

Great North East Cannnel traffic is also included in the table and for the five years was 216, 230, 213, 227 and 173. The majority of these vessels are tankers servicing the Pacific Islands and returning west bound in ballast.

APPENDIX VI

Witnesses

Oral evidence was presented by the following individuals and organisations, some of whom spoke to written submissions previously submitted.

Abednego	Mr Kenwel	Chairman, Tamwoy Reserve Council
Adikuian	Mr Adidi	Chairman, Bamaga Council
Baruna	Father	Warraber(Sue) Island
Billy	Mr Nelson	Chairman, Warraber(Sue) Island Council
Bob	Mr Sario	Warraber(Sue) Island
Bob	Mr Scotty	Warraber(Sue) Island, member of Island Council
Bourchier	Mr Murray	Department of Foreign Affairs
Brazil	Mr Patrick	Attorney Generals Department
Brooks	Dr James	Department of National Resources
Coombs	Dr Herbert Cole	Canberra
Fisk	Mr Ernest Kelvin	Executive Director, Research School of Pacific Studies, Australian National University
Francombe	Mr Anthony	Department of Transport
Hastings	Mr Peter	Senior Research Fellow, Australian National University
Howard	Professor Colin	University of Melbourne
Jamieson	Hamish Thomas	Bishop of Carpentaria, Thursday Island
Jawai	Mr	Deputy Chairman, Bamaga Council
Khris	Mr Sam	Banks (MOA) Island
Khris	Mr Wilson	Banks (MOA) Island
Larry	Mr John	Warraber(sue) Island
Loban	Mr Ted	National Aboriginal Consultative Council

Lui	Mr George	Coconut Island
Lui	Mr Getano	Chairman, Torres Strait Islanders Advisory Council
Lui	Mr Smith	Member, Bamaga Council
Miskim	Mr Sails	Chairman, Wasaga Community Project, Horn Island
Murray	Mr Edward	Coconut Island
Mosby	Mr Joe	Chairman, Yorke Island Council
Mosby	Mr Kbisu Elder	Yorke Island
Moss	Mr John	Deputy Registrar, Diocese of Carpentaria, Queensland
Mort	Captain Stanley Wallace	Torres Strait Pilot Service
McLeod	Mr James	Ships' engineer, Thursday Island
Namok	Mr Andrew	Chairman, St Pauls Village Council
Nona	Mr Tanu	Member, Badu Island Council
Nona	Mr Joey	Chairman, Badu Island Council
Pablo	Mr Gordon	Chairman, New Mapoon Community, Bamaga
Prescott	Dr Robert Victor	Reader in Geography, University of Melbourne
Wasaga	Sergeant	Horn Island
Waia	Mr Wagea	Chairman, Saibai Island Council
Waia	Mr Kala	Deputy Chairman, Saibai Island Council
Waigana	Mr Pili	Member, Saibai Island Council
Ware	Mr Freddie	Thursday Island
Williams	Mr Leslie	Bureau of Mineral Resources

APPENDIX VII

SUBMISSIONS RECEIVED

A. Australian Government Departments\*

Attorney General's Department  
Department of Aboriginal Affairs  
Department of Defence  
Department of Foreign Affairs  
Department of National Resources  
Department of Transport

\* A submission was sought but not obtained from  
the Department of the Prime Minister and Cabinet.

B. Private Organisations and Individuals

1. R.O. Brown, Northwood, New South Wales
2. R. Jackway, Mareeba, Queensland
3. W. Duffield, Townsville, Queensland, former pearler at Thursday Island
4. J. Haynes, Wewak, Papua New Guinea, District Officer
5. Mrs K. Lang, Redcliffe, Queensland
6. Eddie Bosuen )  
Krismas Young ) Weipa, Queensland
7. Dr A.M. Rapson, Airlie Beach, Queensland, formerly member of Papua New Guinea Administration
8. Group of Torres Strait Islanders Resident at Weipa, Queensland
9. Getano Lui Chairman, Torres Strait Islanders Advisory Council
10. J. McCarthy, former District Commissioner, Papua New Guinea
11. A.J. Strong, Donnybrook, Queensland
12. Cairns Cane Growers Executive, Queensland
13. Applied Ecology Limited, Woden, Australian Capital Territory
14. G. Thompson, Mount Waverley, Queensland

15. The Australian Gauge, Hampton, Victoria, (a non-political group promoting Australia)
16. National Peoples Party, East Maitland, New South Wales
17. G. Kaye, Killarney Heights, New South Wales
18. H.K. Roberts, Caloundra, Queensland, former resident of Papua New Guinea
19. Bishop of Carpentaria, Thursday Island
20. Douglas Shire Council, Queensland
21. Dr R.V. Prescott, Reader in Geography, Melbourne University
22. Action for World Development, Fitzroy, Victoria
23. Far North Queensland Development Bureau, Cairns, Queensland
24. Dr H.C. Coombs, private citizen, Canberra
25. Professor P.E. Nygh, Head, School of Law, Macquarie University
26. Mr Peter Hastings, Senior Research Fellow, Australian National University
27. Australian Littoral Society, Queensland



APPENDIX VIII  
TORRES STRAIT ISLANDS

"Reserve" and other islands in the Torres Strait 1971.  
Populated islands are indicated thus \*

EASTERN GROUP

Murray Islands (Mer, Dauar, Waier)\*  
Darnley Island (Erub)\*  
Stephen Island (Ugar)\*  
Campbell Island (Zapker)  
Nepean Island (Edgor)  
Merad Cay  
Bramble Cay  
East Cay  
Raine Island

CENTRAL GROUP

Yorke Island (Massig) \*  
Cap Island (Mukar)  
Yam Island (Turtle Backed)\*  
Cocoanut Island (Parremar)\*  
Sue Island (Warraber)  
Bet Island (Burrar)  
Poll Island (Guijar)  
Two Brothers Island (Gabar)  
Rennel Island (Mauar)  
Aureed Island (Aurid)  
Halfway Island  
Layoak Island  
Bourke Island  
Kebiken Island  
Auken Island  
Momay Island  
Keats Island (Homogar)  
Saddle Island (Ulu)  
Dungeness Island (Jeaka)  
Long Island (Sassie)  
Village Island (Yarpar)  
Dalrymple Island (Damuth)  
Marsden Island (Egabu)

WESTERN GROUP

Mulgrave Island (Badu)\*  
Banks Island (Moa)\*  
Jervis Island (Mabuiag)\*  
Saibai Island\*  
Talbot Island (Boigu)\*  
Cornwallis Island (Dauan)\*  
Mount Ernest Island (Naghir)  
Red Island  
Albany Island (Pabaju)  
Bamaga Community\*  
Portlock Island (Kulbi)  
Pole Island (Getullai)  
Mount Adolphus Island (Mori)  
North Brother Island )  
Mid Brother Island ) Manar  
South Brother Island ) Group  
Green Island (Elap)  
High Island  
Clarke Island  
Barney Island  
Brown Island  
Quoin Rock  
Burke Island (Suaraji)  
Tree Island (Tuwin)  
Hawkesbury Island  
Tuesday Island  
Yoran Island  
Takupai Island  
Matu Island  
Maitak Island  
Kanig Island  
West Island  
Nur Island  
Bond Island (Sarbi)  
Possession Island (Bisinti)  
Zurat Island  
Kulbai-Kulbai Island  
Sanswit Island  
Deliverance Island  
Kiss Island  
Turn Again (Buru)

Barn Island  
Dayman Island

NON RESERVE ISLANDS

Hammond Island\*  
Horn Island\*  
Thursday Island\*  
Prince of Wales  
Wednesday Island  
Friday Island  
Goode Island  
Entrance Island

APPENDIX IX

Documents and Correspondence relating to the alteration of the  
Maritime Boundary of Queensland in 1879  
to incorporate certain Islands in  
Torres Strait.

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No. 17.

COLONIAL OFFICE TO ADMIRALTY.

Sir, Downing Street, August 21, 1875.

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 9th ultimo, inclosing a memorandum by the hydrographer of the Admiralty relating to New Guinea.

In forwarding herewith the inclosed copies of Captain Evans's Report, which has been printed in this Office in accordance with the suggestion contained in your letter, Lord Carnarvon desires me to request that you will state to the Lords Commissioners of the Admiralty that his Lordship thinks it desirable that a survey should be made by one of Her Majesty's ships of the coast of New Guinea more immediately opposite Cape York, as it is in his Lordship's opinion important that Her Majesty's Government should at any moment be in a position to secure the best situation for the formation of a Settlement on that part of the coast without prejudice to the question whether or not a more extended annexation should eventually take place.

I am, &c.  
(Signed) ROBERT G.W. HERBERT.

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No. 18.

ADMIRALTY TO COLONIAL OFFICE.

Sir, Admiralty, September 22, 1875.

I AM commanded by my Lords Commissioners of the Admiralty to acknowledge the receipt of your letter of 21st ultimo, and to convey to you their Lordships' thanks for the printed copies inclosed therein of Captain Evans' Report of 2nd July, 1875, relative to the discovery and exploration of the coasts of New Guinea, with other hydrographic information bearing on the question of the annexation of the eastern portion of the island by Great Britain.

2. With reference to the opinion expressed by the Earl of Carnarvon, that it is desirable that a survey should be made, by one of Her Majesty's ships of the coast of New Guinea,

as it is important that Her Majesty's Government should be in a position, at any moment, to secure the best situation for the formation of a settlement on that part of the coast, I am desired by my Lords to inclose herewith a copy of some further remarks by the hydrographer of the Admiralty, from which it would appear that no new exploration or survey would add any material facts to the knowledge already possessed, of the coast opposite Cape York, and of the navigation of Torres Straits.

I am, &c.  
(Signed) VERNON LUSHINGTON.

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Inclosure in No. 18.

REPORT OF THE HYDROGRAPHER OF THE ADMIRALTY ON THE SUGGESTION OF THE COLONIAL OFFICE THAT A MORE DETAILED SURVEY SHOULD BE MADE OF THE COAST OPPOSITE CAPE YORK, NEW GUINEA.

NO new explanation would, I think, add any material facts to the knowledge we possess of the coast of New Guinea more immediately opposite to Cape York, and of the navigation of Torres Straits, as resulting chiefly from surveys made in Her Majesty's ships within the last thirty-five years.

I attach a portion of the general chart of this region, accompanied also by two special charts (Torres Straits sheets, 1 and 2), wherein it will be seen that Torres Strait, at its narrowest part, can alone be passed through with any degree of safety or certainty, whether from east or west, by two channels--the one Endeavour Strait, the other Prince of Wales' Channel. Between Prince of Wales' Channel and Banks Island the several channels have been closely surveyed, but they are nevertheless considered unsafe for navigation without the greatest caution.

Between Banks Island and the mainland of New Guinea the navigation is practically closed to all but small vessels by innumerable coral reefs and sand banks.

We also know that the seaboard of the mainland of New Guinea, between Talbot and Bristow Islands (opposite Cape York) consists of an almost unbroken line of mangroves with thick scrub inshore. The coast line is fringed with a mud bank from a half to one and a-half miles from the shore; and this, judging from the shoal nature of the sea westward of Torres Strait, is probably the prevailing coast feature to Marianne Strait in 139 east.

Off this mainland of New Guinea, opposite to Cape York at a distance of two to three miles, are two groups of low and swampy islands--Talbot and Saibai--they are cultivated in part, inhabited by warlike but friendly natives, and have been frequently visited from the settlement at Somerset, and more lately by Her Majesty's ship "Basilisk."

At Tauan (Mt. Cornwallis, of old navigators), near Saibai, there is a native mission station, of which, and the neighbouring country, there is an interesting account by the Rev. W. Gill, in the Royal Geographical Society's proceedings for 1874. (Three visits to New Guinea.)

Tauan (Mr. Cornwallis) is a small, but lofty island (800 feet high), and appears suited for an outpost; a vessel of moderately heavy draft can anchor close to. The occupation of this island would practically give possession of the mainland of New Guinea immediately opposite to Cape York, and at the narrowest part of Torres Strait.

With the new settlement at Thursday Island, and its signal station on Goode Island, the Prince of Wales' channel is commanded, and the only navigable channel north thereof overlooked.

In considering the navigation of Torres Strait, it may be observed that outside or beyond the channels I have named, no marine survey, however elaborate, will render navigation secure; the interminable coral reefs and hidden sandbanks that exist can alone be threaded by eye. I write from three years' personal experience in those regions.

(Signed) FREDK. JNO. EVANS, Hydrographer.  
September 16, 1875.

ROYAL GEOGRAPHIC SOCIETY PROCEEDINGS

24 Nov 1873

2. Three Visits to New Guinea. By the Rev. W. Wyatt Gill, B.A.

FIRST VISIT TO MAUAT

On a bright morning, the 27th of October, 1872, I first saw from our anchorage at Tauan, the low south-western coast of New Guinea, like a dark line drawn across the horizon. The vast unknown land was but four miles distant. One sympathized with the exultant cry of the immortal Ten Thousand on first catching a glimpse of the Euxine, *ὸ Ἄρκτου, ὸ Βαλτικῆς*.

About the same distance from New Guinea, but separated from Tauan by a narrow strait of  $3\frac{1}{2}$  miles, lies the sister island of Saibai, as yet unmarked on charts. The Chiefs of these islands are brothers. The inhabitants speak a dialect, and practice the customs of the mainland, and maintain a friendly intercourse with the people of Katau and Torotoram. And yet, perversely enough, the portion of New Guinea in sight is entirely inaccessible to strangers - the tribe occupying it being in constant feud with their neighbours on the mainland and on the adjacent islands.

Five teachers of the London Missionary Society greeted our arrival at Tauan. Next day the Rev. A.W. Murray and I sailed in a boat to Saibai, which is a low, fruitful, unhealthy island. The interior is a vast morass, with myriads of snipes, curlews, &c., &c. The inhabitants are a fine Negrillo race, suspicious of strangers. The women here, and on the mainland are excessively timid; they are slender in figure, wear a meagre grass petticoat, and have their heads closely shaved.

On Saibai and Tauan, the houses of chiefs and warriors are ornamented with strings of skulls of New Guinea bushmen. The owners of these ghastly trophies were very unwilling that we should touch these "malakai," i.e. ghosts. In the village stands a tall coco-palm, with two branches growing out of the parent stem at the same point. All three crowns were richly laden with - a botanical fact new to me. Their war-weapons



and house-building are of a superior kind, precisely similar to what we afterwards saw on the mainland of New Guinea.

At daylight on the 29th of October, we steamed for Katau, a village distant some 20 miles on the south-western coast of New Guinea. As we passed along, the eye wearied of miles of stately, melancholy mangroves, very unlike the scrub bearing that name afterwards seen in Queensland. A conical hill, some miles inland alone relieved the monotony of the scene.

The navigation of this unsurveyed coast is most tical. At 3 p.m. we touched an unknown coral-reef, without however receiving damage. Next day, a few miles farther on, we discovered at low water sunken rocks lying in the direct path of the steamer.

Our proximity to Katau was indicated by an apparently interminable forest of coco-nut palms. The swellings composing this village - the first we had seen on the mainland of New Guinea - are but few in number but of immense length. On the morning of the 30th we pulled ashore, unarmed, at the western mouth of Katau River. Our interpreters, Mamut and Joe, shouted to the chief Maino, and thus insured us a good reception. We were at once conducted to a covered place in the centre of the village. Unarmed natives crowded about us with smiling faces. The formidable Papuan pipe, sometimes 33 inches in length, was filled with tobacco-smoke, and politely passed round to the visitors, who however declined to swallow the fragrant vapour. This pipe consists of a piece of bamboo with a movable bowl. The smoke is drawn into the bamboo by applying the lips to the open end, which is then closed with the palm of the hand. The bowl is now removed, and friends are expected to inhale the fumes through the small aperture.

We discovered a second or eastern mouth to Katau River thus making the somewhat elevated ground opposite to our first landing place a picturesque island.

The village of Torotoram is larger than Katau. To reach it we had to wade more than half a mile over a bank of fine black sand. The entire population had fled into the bush, with all their valuables, excepting four or five men, who stood doubtfully in front of a house watching our movements. The

very pigs had been taken out of the stys and carried off. But, as soon as it became evident to the scouts that our intentions were pacific, and especially when they heard the voice of Maino calling to them, the whole adult male population came out of their hiding-places and gave us an unmistakable welcome.

Their canoes are invariably hollowed out of a single tree, and measure 45 feet in length. Each is furnished with a double outrigger, and three mat-sails. Mauat natives travel in entire families, and with all their worldly gear. In the centre of the canoe is a raised platform, on which they carry fire for the purpose of cooking fish, smoking, and for warmth at nights. In little square compartments on this raised platform they stow their property - fishing hooks, lines, firewood, women's grass girdles, &c., &c. In the body of the canoe are large water-jugs with lids. They often spend two or three weeks in fishing on one of the numerous coral-reefs near their coast.

They call us "Malakai," i.e. "ghosts" or "spirits". God is spoken of by our teachers as "the true or great Malakai." The heathen of this part of New Guinea, and of the Straits, invariably associate the idea of whiteness with the notion of a spirit. Our gifts were elliptically designated "malakai," i.e. ("belonging to) glistening spirits". Very similar to this was the notion formed by the natives of Mangaia, in 1777, of Captain Cook, whom they mistook for a god. The skulls ornamenting the houses of warriors on Tauan and Saibai, are, as already remarked, called "malakai," i.e. ("belonging to) ghosts." Such was their delight at seeing the whiteness of our skins that they would, had they been permitted, have stripped us in order to ascertain whether we were really white, and not, as some imagined, painted like dolls. One actually wetted his forefinger and vigorously rubbed by arm to see if the white would come off! They said we were the first whites that had ever landed at their village.

On leaving, all the men (110) followed us; some carrying food, others helping to drag our boat into deep water. The writer had a double escort of athletic natives, anxious to put their heads under his umbrella. When the food was finally deposited in the boat, and we were ready to start, these amusing

savages simultaneously raised the right-hand palm open, and most gracefully bade us, "I aua" = Farewell".

Not a woman, or child, or decrepit man, was seen by us all that memorable day. Those with whom we had such agreeable intercourse were the fighting-men of Tototoram.

We saw Bristowe Island in the distance. Several villages on the mainland, to the east of Tototoram, were pointed out to us by Maino. This part of New Guinea, from the western limits of the Katau district (indicated by a river opposite the uninhabited islet Kau) to Bristowe Island, is called Mauat by the natives themselves, and by the Torres Strait Islanders.

Opposite to Bristowe Island is a deep navigable river, half a mile across, supposed to be a branch of the Fly. Captain Hastings went up 5 or 6 miles in search of a missing boat. He found no village whatever, - the entire country being a swamp. Yet there were evident traces of inhabitants; as here and there places had been cleared for canoes to rest at night, and baskets were still hanging on the lopped mangrove trees. The river was swarming with crocodiles.

The aborigines of this part of New Guinea call their great island Daudai. Torres Strait islanders corrupt this into "Daudi", just as they corrupt "Torotoram" into "Tureture". Australia is known as "Great Daudai", New Guinea as "Little Daudai". Although we spent upwards of seven weeks in New Guinea waters, never once did we hear this famous island called "Papua".

The drums of the Mauat natives are, like hour-glasses, smaller in the middle than at the extremities. One end is invariably covered with iguana-skin. The other is open, but carved so as to represent a crocodile's mouth. A profusion of cassowary feathers usually adorns this remarkable musical instrument, which is about 3 feet in length. When struck with the tips of the fingers the sound emitted is very agreeable. But the songs accompanying the music are harsh and guttural.

Cassowary feathers (of which there seemed to be plenty) are also employed in adorning their grand canoes. I purchased a head-dress of these feathers intended for dancing

occasions. In the centre of the forehead a stuffed bird of paradise (*Paradisea apoda*) was inserted as a plume. Their name for the beautiful bird of paradise is "kakalama."

At dawn of Thursday, October 31st, we parted from our kind friends on board the steamer, and sailed pleasantly in our own little boat along the coast, carefully noting the various indentations. Two small rivers empty themselves into the Straits opposite to two islets not marked on any chart. On one of these islets once stood a populous village; but the Saibai warriors almost exterminated the inhabitants, driving the miserable remnant into the primeval forest of the mainland. The smoke of their distant fires as distinctly visible in the clear October atmosphere; but prudence forbade our landing. Here and there tall mangroves actually grew out of the open sea - their wonderful roots of course resting in some unknown sandbank. We passed several stations for spearing dugong. In seven hours we reached Tauan, a distance of 25 Miles.

We asked Sauai one day where the spirits of the dead go. Pointing due west, he promptly replied, "They all go the Kipo". He told us that "Kipo" is an island in the region of the setting sun, inhabited by disembodied spirits. One would imagine it to be a mythical name for Hades, in accordance with the almost universal belief of Polynesia, that the spirit-traveller follows the track of the setting sun, and descends with the sun-god Ra into the invisible subterranean world.

#### SECOND VISIT TO MAUAT

We spent a week on Tauan, awaiting the arrival of a cutter chartered for the purpose of conveying teachers and goods to Mauat and to various islands in Torres Straits.

At last the Viking, a cutter of only seven tons, arrived. On the 7th of November this tiny craft, literally packed with passengers, sailed for Mauat. Besides the captain, there was but one sailor, who also officiated as cook. Yet, with the help of our interpreter Joe and the teachers, we succeeded in beating up to Katau the same day, and anchored by moonlight in Katau River. A native stood on the brink of the river to inquire who we were.

At dawn we were roused by a chorus of strange bird-music from the densely wooded islet at the mouth of the river. Strange palms, of immense height, looked contemptuously down upon our diminutive vessel.

Mr. Murray and I at once went ashore to see Maino and the people, who were on the qui vive. All seemed delighted at the arrival of their two teachers. A house was at once allotted for their residence (but we advised them to build one for themselves as soon as practicable). In a short time their goods were safely stowed inside - the teachers themselves keeping watch. The wonder of wonders was the landing of the teachers' wives - the first stranger women that ever landed on Mauat. It was pleasing to note their curious, yet perfectly respectful behaviour towards these courageous women. This circumstance entirely diverted attention from ourselves, and afforded us an opportunity of meeting Maino and his brother alone, to impress upon their minds the duty of protecting the teachers left in their charge. "But what, Maino, if the wild bush tribes should desire to molest them?". The Chief smiled, and signified that his was the conquering tribe, asserting that his mere name was a terror to these bushmen. These Mauat men are a fine race, above the average height, but black. Their hair is woolly; their heads for the most part shaved. Their ears were universally slit, and elongated by means of weights, but with a regular series of holes, in each of which was inserted a short piece of the midrib of the coco-nut leaf. Their bows, upwards of 6 feet in length, are the best I have ever seen. They are made of male bamboo, highly polished; strips of which are used as string. These bows carry to a great distance. Their arrows are of reed, of which those intended for killing game (4 feet long) are pointed with hard wood, and, or course, are not poisoned; whilst those intended for war (5 feet long) are pointed with human bone, barbed, and dipped in deadly poison.

At midday we reached Torotoram; but had to wade ashore, as on the previous occasion. Auta told us that from the day succeeding our departure in the steamer he had begun to expect the arrival of the promised teachers. He vacated his own house for their accommodation. We therefore landed the two appointed to Torotoram at once; not, however, without considerable fatigue, on account of the long sandbank in front of the village.

During this visit I took a more accurate view of their dwellings. Each domicile here, as at Katau, is of great length built on lofty piles, and provided at each gable-end with a wide verandah and a ladder. To peep into one is like looking through a railway tunnel - light appearing at the other end through a small door. The object in building on piles is for security against crocodiles, serpents, and the annual inundations. In the wet season the natives are compelled to go to their plantations on the higher ground in canoes.

Their houses are thatched with the leaves of the sago-palm. We climbed up a rough ladder in the largest in Torotoram. The front verandah would seat a dozen adults. The flooring throughout was of cabbage-palm. From the verandah a door opens into the interior on both sides of which are slight partitions of bamboo, large enough to admit a man and his wife, who sleep on the bare boards. No door of screen exists. A rough fireplace of clay is allotted to every pair of cribs, for warmth and to drive away mosquitoes. Close to each berth is a shelf for tinder (bark of the Melaleuca) and firewood, which is also available as a sleeping-place for a young child. For the elder children there is no accommodation in the house. To the best of our judgement, there must have been inside this building accommodation for from sixty to eighty couples. The Chiefs have houses of their own. In each Mauat village there are two large houses - one for boys, the other for girls. Elderly custodians are duly appointed to keep the inmates in order. This custom obtains on Saibai and Bampton Island (Barama), proving those islanders to be colonies from "Little Daudai."

One of our party walked into the bush at Katau for 2 miles among luxuriant plantations of bananas and taro. The country was almost a dead level; the soil of the richest description. It had been planned that we should penetrate into the interior at Torotoram to seek for a healthier location for our teachers. To our great chargin, the natives of this village would on no account allow us to leave the coast. Yet Auta had formally given permission. We endeavoured to but over those who resolutely stood in our path; but to no purpose. They accepted our gifts, but still opposed our further progress, shouting,

"Your feet will be bitten by serpents!" This was merely intended to deter us from pursuing the bush-path. We might roam along the intolerably hot, sandy beach as much as we liked. We afterwards learned that the women and children, with their treasures, were hidden in the very locality through which we had purposed to travel. In fact, only the fighting-men were seen by us at Katau and Torotoram on this, as on our previous visit to Mauat. The population of Katau may be estimated at 400; that of Torotoram at 500.

Some miles to the west of Mauat lies Baigo or Talbot Island. There is a considerable population at Baigo, all friendly to the teachers, who paid them a visit in a canoe from Tauan a few weeks before our arrival in the Straits. Several spears were hurled at the canoe at first, under the erroneous impression that it was a descent of their enemies. Kereseano and his companion were afterwards loaded with kind presents of food. The inhabitants of the mainland near Baigo are numerous, but by no means to be trusted. The drums of this district differ in form from those of Mauat.

Colonial Office 201/582, No. 12763, 21 October 1876:

MOST SUITABLE SPOT FOR A SIGNAL STATION  
ON COAST OF NEW GUINEA

Mr Malcolm,

The last paper as to possible French annexation is  
F.O. 10794  
E.B.  
25 October 1876

This is so far satisfactory as it shows the impossibility of making a settlement in the Gulf of Papua & Torres Strait. The mainland opposite Cape York has been described pretty often with an agreement that it is a hideous & noisome swamp. It would thus appear that Tauan & Saibai Islands are about the only places open for acquisition. Might they be offered to Queensland? It would be a test of the sincerity of the desire of Australians for annexation in these parts.

For the present perhaps it would be best to ask for the additional information which the Admiralty can supply with regard to the adjacent country.

R.G.W.H. Herbert  
25-10-76

Mr Blake,

Have any steps been taken for the removal of the Somerset Settlement to an island in the Straits? And what is about the distance of Saibai from Thursday Island or from Cape York?

R.G.W.H. Oct. 26



Mr Herbert,

In a despatch by last mail, dated 25 July, Mr Cairns says "I take this opportunity of acquainting your Lordship that the Government have "accepted contracts for the conveyance to Thursday Island, the locality "of the new harbour of refuge, (superseding the settlement at Somerset) "of the materials procured for the buildings to be created there"

This is all we know as to the removal.

Saibai Island is a little under 80 miles from Thursday Island, and a little over 80 miles from Cape York.

E.B.

27 October 1876

As the Queensland Government have an Island Station as near to these Islands, I think it is well deserving of consideration whether the offer of annexing them to the Colony should not be made; though I fear the Colonial Government would say that they cannot afford to suddenly take the cost of governing the

In any case we ought, I presume, to take possession to them formally.

R.G.W.H. Oct. 27

Despatch to Admiralty saying that it appears desirable to take possession of these two islands and shall be glad to learn whether there is any difficulty, or what steps they would in such case be prepared to recommend.

28 October

C.

Colonial Office to Queensland - Secret

Sir A.E. Kennedy,

Downing St.,  
29 January 1877

Governor,

Since the date of my despatch of the 8th of December 1876 to the Governor of New South Wales, a copy of which was enclosed to your predecessor and to the Governors of the other Australian Colonies & my Circular despatch of the 13th of January 1876, Her Majesty's Government have not failed to give their most anxious consideration to the steps which it might be desirable to take with the view of asserting (whenever the interests of Australia may require it) the rights and jurisdiction of the Crown of this Country over any part of New Guinea or the adjacent Islands to which the Government of the Netherlands is not reported to have established any claim.

2. I now enclose for the consideration of your Government copies of correspondence with the Lords Commissioners of the Admiralty whom I have recently consulted as to the points on the Mainland of New Guinea in the vicinity of Torres Strait and in the neighbouring Islands which it might be desirable to take formal possession of in the name of this country.

3. It will be seen from the correspondence that the Islands of Tauan and Saibai, and possibly the Talbot Islands, would appear to be the most suitable for the purpose.

4. Former correspondence will, however, have made it clear that Her Majesty's Government can not undertake the cost and responsibility of establishing any station of British officers at any of these places being decidedly of opinion that if the occupation of these places is desirable it is probably at least in the interest of the Australasian Colonies that it can be so considered. Before, therefore, taking any further steps in the matter Her Majesty's Government wish to learn whether you

your Government would desire the annexation of these Islands to Queensland, a course which, if any annexation at all is to be effected appears to Her Majesty's Government to be the most convenient in the present condition of affairs, regard being had to the circumstance that they are situate only a few miles beyond the present limits of Queensland territory and within 100 miles of the Settlement on Thursday Island.

5. If, Lordship, your Government should be unable to agree to the annexation of these Islands to Queensland, I should be glad to be informed whether they are of opinion that arrangements could be made for visiting the Islands occasionally from the Settlement at Thursday Island, and whether in that case they will be prepared to defray the expenses connected with such supervision, either alone or in conjunction with any other Colony or Colonies that may be willing to cooperate.

6. In communicating this despatch to your Ministers you will impress upon them the urgent importance of keeping the subject to which it relates as Secret as possible though it may be necessary for you to communicate confidentially on the subject with the Governors of the other Australian Colonies.

I have,

Sir,

The Honour & c.

Carnarvon

Sir,

With reference to your letter of the 6th September respecting information as to the spots on the mainland of New Guinea in the vicinity of Torres Straits, which might be eligible for occupation, should it become a question of annexing one of the outlying Islands (Tauan Island for example) as a Signal Station: I am commanded by my Lords Commissioners of the Admiralty to request you will lay before the Earl of Carnarvon the following observations on the coast line of New Guinea in the proximity of Tauan Island, that is to say, on that part of the mainland between the 142d. meridian and Bristow Island where the Gulf of Papua commences.

2. This Coast & shore is sheltered from the S.E. Trade Winds, which blow with great strength in July, August & Sept. as well as during the N.W. Monsoon period, by the many islands and coral reefs forming the East and West boundaries of Torres Straits; and a fairly clear & navigable channel for shipping, with smooth waters, extends from Cape York & its neighbourhood up to the groups of islands skirting the mainland of New Guinea.

3. These must be considered as advantageous features attending a settlement on this part of New Guinea apart from the question of local capabilities, suitability of climate & native character.

4. From Bristow Island to the Eastward the geographical features of the country changes, and the whole of the West and South Western part of the Gulf of Papua is intersected by numerous large areas of fresh water. All this region is unapproachable, or nearly so, during the strength of the S.E. Trade Winds from the heavy sea on the outlying banks, and there is further no place in the Gulf of Papua where a ship can readily approach and anchor in safety at all seasons of the year until Hall Sound (an its S. Eastern part) is reached. This Sound is 195 miles from Bristow Island and 275 from Cape York.

From Hall Sound to the S.E. extreme of New Guinea there are numerous sheltered havens.

5. Settlement on the mainland of New Guinea appears therefore, as far as the course of trade at present & relationship with the Coast of Australia is concerned, to be alone practicable on the part to which their Lordships refer, viz. the sheltered district Westward of Bristow Island as far as 142d. meridian: but it must be added that this does not appear an inviting shore. The sea board is low, flat & swampy with an almost unbroken coast line of mangroves fringed with sand banks which dry from  $\frac{1}{2}$  to  $1\frac{1}{2}$  miles from the shore. It is finited by two groups of low islands, viz: the one known as Talbot Islands, and the other as Saibai Island and the adjacent lofty island Tauan. The channel between the Saibai Islands and the mainland of New Guinea is barely 2 miles wide, the deep water apparently reaching closer home to the mainland than on any other part of the coast. This sheltered channel with its good anchorage and contiguity to Tauan Island (which would form a good Signal Station) would appear to point to this special part of the New Guinea coast as suitable for a settlement under the conditions named by Lord Carnarvon.

6. Saibai Island has a large native population. On Captain Moresby's visit in 1873 he estimated the principal village as consisting of 600 inhabitants, and much of the Western parts of the island as under cultivation, but we have no information respecting the capabilities of the mainland adjoining. The small river "Kaua" runs into the sea here, but its mouth is very shallow; two other adjoining rivers have the same features of shallow approaches and mud banks covered with thick scrub, alligators abounding.

7. Although their Lordships have no special information respecting the immediate neighbourhood so far as its settlement could be effected, thsi information, if it was considered necessary, could no doubt be obtained from the authorities of Somerset (Australia) who are in frequent communication with the Pearl Shell fishers resorting to Torres Straits.

8. A tracing of the coast region in the vicinity of Saibai Island, referred to in this letter, is appended.

I am  
Sir  
Your obedient servant

Robert Hall.

Colonial Office 201/582, 20 November 1876

Proposed formal occupation of the Islands of Tauan & Saibai  
in the name of Her Majesty

No difficulty is apprehended in carrying preparations into effect when C.O. have decided. However Adm'y. will give necessary instr'ns.

21 Nov. 1876

Lord Carnarvon,

Would it not be well to send the correspondence to Queensland also; the Government to state whether they would desire the annexation of these Islands to the Colony, and if not, whether they are of opinion that a sufficient amount is paid for visiting them occasionally from the Thursday Island Settlement.

R.G.W.H.

The Under Secretary of State,  
Colonial Officer

Admiralty  
20th November 1876

Sir,

In reply to your letter of the 6th Instant, respecting Lord Carnarvon's opinion that it might be desirable to take

formal possession of the Islands of Tauan and Saibai and requesting to be informed what their Lordships would recommend in regard to this matter, I am commanded by my Lords Commissioners of the Admiralty to acquaint you that there would be no difficulty, from a practical point of view, in taking possession of the Tauan Saibai and Talbot Islands. The presence of the Commodore in the flagship, or failing this, one of the other vessels of the Australian Squadron, and possibly also the presence of some of the Queensland Government officers, would be desirable as giving to such an act as taking possession of these Islands the importance it would deserve.

2. The limits of the Queensland territory being 60 miles from the mainland of Australia, and these Islands being only 80 miles, it would appear desirable that pro tem they should be an appendage to that Colony. It is presumed that Lord Carnarvon is aware that Captain Bligh R.N., in 1792, took possession of all the Islands which he had seen in his passage through Torres Strait in H.M.S. "Providence", and that he specified as having seen Mount Cornwallis (on the Island of Tauan): see Flinder's Voyage to Australia, Vol. I page xxvi of Introduction.

3. My Lords desire me to add that, when it has been decided by H. Ma's. Government to carry out Lord Carnarvon's proposal, they will be prepared to give the necessary orders to the Commodore in Australia, so far as the participation of the Navy would be required.

I am,  
Sir,  
Your most obedient Servant,

Robert Hall

Colonial Office 234/37, No. 9064 10 May 1877

New Guinea,  
Further to Memorandum from Vice-President of Executive  
Council in favour of annexation of

Governor Kennedy - Secret

Mr. Malcolm,

In Lord Carnarvon's despatch of 29th of January last, to which this is an answer the Islands of "Tauan" and "Saibai" and possibly the "Talbot Islands" were pointed to as Islands which it might be desirable to take formal possession of in the name of this Country (vide Despatch 50 of Papers printed for this office 53:7 July/76). It was pointed out that, the Australian Colonies were previously at least interested in the occupation of these places and it was asked whether the Government of Queensland would desire the annexation of these Islands or, failing this, whether they were of opinion that arrangements should and could be made for writing the Islands regularly from Thursday Island (about 100 miles distant), the seat of their Settlement, and whether in that case they were prepared to defray the expenses attending such supervision either alone or in conjunction with other Colonies that might be willing to co-operate.

The Governor remarks that he is disposed to concur in the news of Mr. Douglas (The Prime Minister) as stated in the Memorandum from him which he enclosed. Mr. Douglas states that he feels justified in assuring the Governor that the proposed annexation of these Islands referred to is received with satisfaction by his Government - that the Secretary of State may rely on their co-operation in maintaining any communication across the Straits which may be considered necessary - but that they are not prepared at the present time to accept any responsibility beyond the confines of their territory. He goes on to say that if the other Governments of Australasia should agree to contribute a portion of the expenditure necessary for the formation of



a Settlement on the Coast of New Guinea his Government would be prepared to take their share of the responsibility, and he calls attention to some remarks made by the Commander Heath, in which he agrees, respecting the present Maritime Boundary of Queensland.

Mr. Douglas' remarks, as regards maintaining communication across the Straits if a Settlement is formed on the Coast of New Guinea, is I presume intended to cover communication with the Islands referred to.

I do not gather from Lord Carnarvon's despatch of the 29th of January that it was in contemplation to establish a Settlement on New Guinea, and as regards the Islands I understand that it was only intended to take formal possession of them by a visit of a Ship of War.

It appears from the Enclosure to the present despatch that the Islands are inhabited by the same tribe. The Natives appear to be on friendly terms with one another and are described as Warlike. They might possibly not understand the formalities which it may be necessary to go through for the purpose of taking possession without previous communication. If the Islands could be annexed by simply issuing Letters Patent enlarging the Maritime Boundaries of the Colony from a sixty to an eighty mile limit the matter could be easily arranged, but I apprehend that this method can no longer be acted on in the face of the Law Officer's opinion in 2211 of the subsequent letter from the Lord Chancellor 5328.

It will be seen that in his letter (2nd Enclosure) to the Colonial Governor of 23rd April Commander Heath takes exception to the present Boundary and suggests that it should be altered in some parts so as to include certain Islands which he names and which do not come under the scope of the Kidnapping Act 1872. The present 60 miles limit was suggested by the Colonial Secretary of Queensland in a letter which he addressed to the Governor under date 18th December/71. D. 2176/72.

The Chart showing the Maritime Boundary (the only copies I can find) are in the Volume of Board Commissions. The position

and extent of the Great Barrier Reefs referred to by Commander Heath is clearly defined in one of them. It is I think clear from the despatches from the Governor contained in the Printed Paper D:53 that there is little chance of the Australasian Governments contributing to the cost of establishing and maintaining a Settlement in New Guinea.

W.D.

18th May 1877

The proposal was to annex these Islands to Queensland. Mr. Douglas approved of annexation but is not prepared to take any responsibilities beyond the limits of Queensland. If he means the Existing limits this position does not agree very well with the suggestions of the later part of the despatch that the limits should be extended. Of course if the Islands are annexed to Queensland they will be within its limits.

We might point out that it is proposed to include the Islands in question formally within the limits of Queensland and ask whether that would be acceptable. We might I think firmly maintain our position that the Islands would be annexed to an Australian Colony unless the Colonies choose to combine to form a Settlement there.

W.R.M.

24th August 1877

I agree that there should be no room for doubt as to Lord Carnarvon's adherence to his decision that the small Islands off New Guinea should be annexed to Queensland.

Write as Mr. Malcolm proposes.

R.G.W.H.

24th August 1877

Mr. Douglas' minute, as I read it, disclaims all responsibility in a money point of view unless the other Australian Colonies come forward to share it with Queensland. He takes credit for all the Queensland Government have done to advance Missionary work and scientific inquiry and he offers to continue to support this: but nothing more. The "Existing Limits" of the Colony I understand clearly mean the now existing.

Proceed as proposed.

3 September

C.

Queensland

Government House,  
Brisbane,

Secret

18 May, 1976

The  
Right Honourable  
The Earl of Carnarvon

My Lord,

I have the honour to acknowledge receipt of your Lordship's Secret despatch dated 29th January 1877 (Adm'y, 43911/76 Australia).

2. Having submitted that despatch for the information and consideration of the Vice President of my Executive Council, I now transmit a memorandum which he addressed to me dated 29th April 1877, covering two recommendations written by Commander Heath Ref. dated 23rd April 1877.

3. The limited time and means at my disposal for acquiring information on the subject of your Lordship's despatch, prevented me from offering an undivided opinion of any value.

4. I concur generally in the views of Mr. Douglas, and am further of opinion that the possession of any strategic point

in the Torres Straits by a hostile power, would eventually prove disastrous to Australian interests generally.

5. The Straits which (within the period of my first connection with Australia) were considered perilous and impracticable for commercial purposes, are rapidly becoming the world's highway.

6. I shall not cease to give my attention to this important subject with a view to acquiring further information.

I have the hon. to be,  
My Lord,  
Your Lordship's  
Most obedient,  
humble servant,

A.E. Kennedy  
Governor

Secret

29th April 1877

Memorandum for His Excellency  
The Governor

Mr. Douglas presents his duty to your Excellency and begs to say that he has placed Lord Carnarvon's Circular despatch of 20th January before the Cabinet.

The interests of the several Australasian Governments do unquestioningly require that no foreign Power should acquire territorial rights on the coast of New Guinea, or any portion of it, not claimed by the Netherlands Government.

It is therefore very desirable that the rights of British Sovereignty, under the authority of the Queen should be asserted.

It is most especially desirable that the Islands commanding the approaches of Torres Straits should be held beyond dispute.

I feel justified in assuring your Excellency that the proposed annexation of the Islands referred to by Lord Carnarvon is received with satisfaction by this Government.

The settlements established by the Government of Queensland on the Peninsular of Cape York and at Thursday Island afford an excellent basis for the formation of a similar settlement across the Straits. The Government of Queensland has already contributed most effectively to the preliminary exploration and occupation of New Guinea by the support given through its Officers to missionary enterprise and to those persons who have of late years been engaged in scientific researches on the mainland.

I can undertake to say that this Government will continue this support and I hope that your Excellency will assure Lord Carnarvon that he may rely upon our co-operation in maintaining any communications across the Straits which may be considered necessary, but are not however prepared at the present time to accept any responsibility beyond the confines of our territory.

If the other Governments of Australasia should agree to contribute a proportion of the preliminary expenditure necessary for the formation of a settlement on the Coast of New Guinea this Government will be prepared to take their share of the responsibility, and to ask Parliament for a Vote on this account.

I forward herewith a copy of a memorandum from Commander Heath (23 April 1877) which contains the latest information we possess with the Islands which it is proposed to annex.

I take this opportunity also of drawing Your Excellency's attention to a letter lately addressed by Commander Heath to the Treasurer at my request (23 April 1877), a copy of which I enclose. It refers to the Maritime Boundary of Queensland, and concurring, as I do, in the recommendations

therein made, I hope that your Excellency will bring the matter under the notice of Her Majesty's Government.

John Douglas  
Vice President

Department of Ports and  
Harbours,  
Brisbane,

Premier:

The Islands of Saibai and Tauan are inhabited by the same tribe of Natives consisting of about 150 adults, 100 living at the former and 50 at the latter Island. The Natives of Talbot Island and Katau are related to those of Saibai and are on friendly terms with them. They are all a warlike and fine set of people, cultivating the soil and living in well built homes raised off the ground. The principal business consists in obtaining from Kiwai at the mouth of the Fly River, large logs of timber roughly dug out as canoes, and towing them to Saibai and Tauan, where they finish them off neatly and fit them out as war canoes and sell them to other tribes.

Saibai is about 12 miles long and  $3\frac{1}{2}$  wide. It contains only one village which is situated upon its north-western side where the soil is good and the ground cultivated, but except some three or four spots on the seaboard which are 10 to 15 above sea level and guarded by small, sandy beaches the remainder of the Island is one large mangrove swamp formed by tall mangrove trees standing in brackish water.

Tauan lies  $2\frac{1}{2}$  miles to the westward of Saibai and is about  $1\frac{1}{2}$  miles in extent. Mt. Cornwallis, which is 795 feet high seems to be nearly the whole Island. There is a small patch of good ground on the north side which is cultivated, and near it towards the north-east side the native village is situated where there is a good landing and sandy beach except when the narrow fringing reef dries at low water. There was at one time a missionary station on the east side of the Island which was abandoned. Mt. Cornwallis itself is a steep, rough granite peak covered with boulders and more or less dense vegetation to the top of which is of small extent.

There appears to be spur running out onto its southern side about half way down and unless a level spot can be found on it, the small area at the top is the only part of the mountain which does not stand at a steep slope. There is plenty of good and permanent water on this island.

The formation of Talbot Island and Katow is similar to that of Saibai, abreast of the barrier to a good sized river - the Mai Cussar, the mouth of which is nearly a mile wide. It has a deep channel but the approach to the river is intersected with reefs and no navigable deep water channel into it is yet known. On the west side of the mouth of the river is a small patch of dry ground upon which a village stands. The whole of the mainland shore from there to Katow is, with the exception of a few patches of raised ground, an immense mass of mangroves, and although the Natives are numerous both up the Katow and Mai Cussar, they appear to avoid the inhospitable shore lying between these two Rivers.

(signed) G.P. Heath  
Commander R.N.

Department of Ports and  
Harbours  
Brisbane, April 23

1877

Sir,

I have the honour to draw your attention to the desirability on the earliest opportunity of changing the boundary of the eastern and north-eastern limits of the territorial jurisdiction of Queensland. I have no idea why the present limits of 60 miles from the main coast line was fixed upon for the boundary, when nature had already provided a natural and defined line of demarcation along the greater portion of the distance, especially as such a limit is quite unnecessary in some portions of the coast, while in others it is equally insufficient.

For instance the Darnley and Murray Islands, though lying within the Great Barrier Reef are yet neither within the Pacific Ocean - and consequently not within the scope of the "Kidnapping Act of 1872", nor yet under Queensland jurisdiction, and they thus are peculiarly adapted and have, I believe, occasionally been made use of as a resort for some of the more lawless and turbulent spirits connected with the Pearl Shell Fisheries in the Straits, to the great annoyance of the Natives of those Islands, Bramble Cay also is a spot upon which, at no distant date, a Light House should be erected, being the landfall of all vessels bound through Torres Straits from the eastward and south-eastward and should therefore be enclosed within Queensland territory.

I would therefore recommend that when practicable the boundary of the territorial jurisdiction of the Colony should be revised, and instead of 60 miles from the Coast, should be considered as comprehending all Islands included within a line drawn from Sandy Cape northward to the south eastern limits to the Great Barrier Reef, and thence following the Barrier to its North Eastern extremity to East, Anchor and Bramble Cay, and from Bramble Cay through the Straits by such northern boundary line as may be considered advisable.

I have, etc  
(signed) G.P. Heath  
Commander, R.N.  
Portmaster

To  
The Hon  
The Colonial Treasurer



Queensland

Secret

19 September 1877

Governor Sir Arthur Kennedy

Sir,

I have the honour to acknowledge your despatch marked "Secret" of the 18th of May enclosing a Memorandum of the Vice President of your Executive Council relating to the proposed annexation of certain Islands lying off the Coast of New Guinea together with a letter from Commander Heath relating to the adjustment of the Maritime Boundaries of Queensland.

2. Mr. Douglas states that the proposed annexation of the Islands referred to in my Secret despatch of the 29th of January is received with satisfaction by the Government of Queensland and in a further passage in his Memorandum that the Government are not prepared "at the present time to accept any responsibility beyond the confines of their territory".

3. I am unable to gather from Mr. Douglas' Memorandum any definite impression of the wishes of the Queensland Government upon the suggestion in my despatch, which was to the effect that the Islands in question might be formally included within the limits of Queensland. This is the course which Her Majesty's Government are disposed to think the most unobjectionable if the Islands are to become British Territory, and as there appears to be a wish on the part of your Ministers that certain other Islands not coming within the present maritime boundaries should be included within the limits of Colonial jurisdiction I conclude that the formal annexation to the Colony of the Islands off New Guinea to which I have adverted would be no less acceptable to the Colonial Government.

(It does not necessarily follow that any immediate Settlement of the Islands need be attempted. This is a function which may be left for further consideration and discussion

and for arrangement with regard to the expenses attaching to such settlement with the them Australasian Colonies - the Islands being taken possession of in the interests of Australia generally and merely annexed to Queensland as a matter of form and convenience.

- Should anything be said in this regard? W.M. 17/9/77

- I think not. They are aware of it. R.G.W.H.) [Deleted from letter actually sent.]

4. I shall leave the consideration of Commander Heath's recommendations in regard to the alteration of the maritime boundaries until I receive your answer to this despatch.

I am,

G.

No. 3.

GOVERNOR SIR A.E. KENNEDY, K.C.M.G., C.B. (QUEENSLAND), to the  
RIGHT HON. THE EARL OF CARNARVON. (Received March 20,  
1878.)

Government House, Brisbane,  
MY LORD, 14th January 1878.

I HAVE the honour to transmit copies of papers on the  
subject of enlarging the present maritime boundaries of this  
Colony.

Having given the proposal my careful consideration, I see  
no reason to dissent from the views expressed by my Ministers.

I have, &c.  
The Right Hon. the Earl of Carnarvon, (Signed) A.E. KENNEDY.  
&c. &c. &c.

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Enclosure 1 in No. 3.

EXTRACT from the MINUTES OF PROCEEDINGS of the EXECUTIVE  
COUNCIL OF QUEENSLAND.

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At the Government House, Brisbane, 2nd January 1878.

Present:

HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

HIS EXCELLENCY the Governor, at the instance of the Hon.  
the Colonial Secretary, lays before the Council a copy of a  
letter from the Port-master, Brisbane, addressed to the  
Hon. the Colonial Treasurer, covering a tracing showing the  
present boundary line of the Queensland coast and the islands  
proposed to be brought within the Queensland jurisdiction.

The Council advise that the Memorandum of the Hon. the  
Vice-President of the Executive Council to His Excellency  
the Governor in reference thereto be approved.

(Signed) A.V. DENNY,  
Clerk of the Council.

Enclosure 2 in No. 3.

MEMORANDUM for HIS EXCELLENCY THE GOVERNOR.

Executive Council Office,  
27th December 1877.

REFERRING to previous correspondence in connection with the proposed rectification of the maritime boundary of Queensland, I beg now to submit to your Excellency a sketch plan, prepared by Commander Heath, showing approximately the present 60 mile boundary and the amended boundary if the suggested alterations are carried into effect.

I see no objection to the acceptance on the part of this Government of the responsibilities which this territorial rectification may involve. I can speak with some slight knowledge of the subject, as your Excellency is aware that I have lately returned from the pearl-shell fisheries in Torres Straits, and have visited some of the islands referred to. A sort of police surveillance is even now exercised over some of the islands outside our limits, but it is certainly desirable that we should possess a real authority to deal with the somewhat doubtful characters who are occasionally found to act in a very independent way. It does not at all follow that we should form settlements. They will be frequented by pearl-shellers, and probably eventually by more permanent settlers. They ought to be visited occasionally by the Resident Magistrate at Thursday Island, but it would not be necessary to do more than this at present, and I don't think that we should have to increase our expenditure on that account. If, therefore, Her Majesty's Government should see fit to rectify and amend the present maritime boundary of the Colony I see no reason why this should not be done in the manner suggested by Commander Heath.

JOHN DOUGLAS,  
Vice President.

Enclosure 3 in No. 3.

SIR, Department of Ports and Harbours, Brisbane,  
December 11, 1877.

In order to show more clearly the proposed change of the boundary of Queensland, I have the honour to forward herewith a tracing, showing in blue the present boundary line, and in red the islands now proposed to be brought within Queensland jurisdiction.

As to the question of practically taking charge of these additional islands, it would seem to be simpler that such should be the case than that the existing state of affairs in the Straits should continue. Where any lodgment of islanders or others for questionable purposes had been made on the islands beyond our jurisdiction, and yet not within the limits of Polynesia, the police have been obliged to act as though islands did belong to Queensland; the Police Magistrate wisely considering it a lesser evil to exceed his authority in this matter than to allow any attempt at settlement on these islands for improper purposes.

I have, &c.,  
(Signed) G.P. HEATH,  
Commander, R.N.,  
Portmaster.

The Hon. The Colonial Treasurer,  
&c. &c. &c.

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No. 4.

ADMIRALTY to COLONIAL OFFICE.

SIR, Admiralty, 17th April 1878.

WITH reference to previous correspondence, and to your letter of the 5th instant, forwarding correspondence with the Government of Queensland upon the subject of the proposed annexation to that Colony of certain islands situated in Torres Straits, and commanding the principal channels of navigation between Australia and New Guinea, and asking for information as to whether any of these islands or reefs are known to their Lordships to be claimed by any foreign power, I am commanded by my Lords Commissioners of the Admiralty to transmit, for the information of Sir Michael Hicks Beach, a copy of a Report from the Hydrographer of the Navy on the subject, with a chart showing the line of boundary, and I am to observe that their

Lordships are not aware of any objection to these islands being annexed.

I am also to return to you the tracing furnished by the Government of Queensland.

The Under Secretary of State,  
Colonial Office.

I have, &c.  
(Signed) ROBERT HALL.

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Enclosure in No. 4.

REMARKS by the HYDROGRAPHER of the NAVY on the proposed ANNEXATION of certain ISLANDS to the GOVERNMENT of QUEENSLAND.

IN reference to former correspondence which has passed between the Admiralty and the Colonial Office on the subject of taking possession of certain islands in Torres Straits, contiguous to the shores of New Guinea, the Secretary for the Colonies, after communication with the Queensland Government, asks the following questions:-

1. Whether any of the islands and reefs which the Colonial Government (now) wish to annex are known to their Lordships to be claimed by any Foreign Power?
2. Whether their Lordships see any objection to any of these islands and reefs being included within the boundaries of the Colony of Queensland?
3. And whether it would be possible to define such boundaries in words?

On these questions I would offer the following remarks:-

1. For the most part these islands and their adjacent reefs have been discovered and taken possession of at various times by British navigators. They have further been thoroughly surveyed in H.M. ships, and, so far as is known at the Admiralty, no Foreign Power has made any claim to them.
2. There can be no objection, so far as the Admiralty is concerned, to these islands and reefs being included within the boundaries of the Colony of Queensland; indeed these islands are geographically a part of the outer sea-board of Australia, and would appear to come fitly within the jurisdiction of Queensland.
3. There would appear to be no difficulty in describing in words the proposed new seaward boundary (East and North) of the Colony of Queensland, adopting with modifications the

proposal of Commander Heath in the enclosed papers.

The boundary thus defined would comprehend all islands included within a line drawn from Sandy Cape northward to the S.E. limit of Great Barrier reefs, thence following the line of the Great Barrier reefs to their N.E. extremity near the latitude of  $9^{\circ} \frac{1}{2}$  S., thence in a N.W. direction, embracing East, Anchor, and Bramble Cays. From Bramble Cays in a line W. by S. ( $S. 79^{\circ} W.$ ) true, embracing Warrior Reef, Saibai, Juan, and Deliverance Islands, and onwards in the same W. by S. (true) direction to the meridian of  $138^{\circ}$  East longitude.

A chart, on which the proposed amended boundary is marked, is attached.

(Signed) FREDK. JNO. EVANS,  
Hydrographer.

11th April 1878.

Governor Kennedy, No. 91  
1878  
Jan'y. 14

Queensland.  
Maritime boundary of the colony.  
Enclosed copies of papers respecting  
enlargement of, with sketch plan  
prepared by Commander Heath showing  
Islands proposed to be included  
in the boundary.

Mr. Malcolm,

The name of New Guinea does not appear in these papers, but it was with the view of obtaining command of the Channels between New Guinea and Australia (Cape York) that it was proposed that certain Islands lying in Torres Straits shld. be annexed to Queensland.

I gather from the papers and from the sketch plan contained, that the Queensland Govt. are willing to accept the annexation to the Colony of the two most important Islands, viz. Tauan (Teiuan) and Saibai (Sibia), but it is not clear what their wishes are with respect to the Talbot Islands. These Islands do not however appear to be of the same importance as Tauan and Saibai.

The Queensland Govt. also wish to annex various other Islands lying to the West and to the East of those which are important from an Imperial point of view, and unless any of the Islands are claimed by Foreign Powers I shld. think there is no objection to a compliance with the request.

If the Secretary of State approves in principle of the annexation to Queensland of the islands lying in and commanding the channels in Torres Straits, between Australia and New Guinea, the first step wld. appear to be to consult with the Admiralty again, and to enquire whether any of the Islands & reefs coloured red in the accompanying sketch plan are claimed by any Foreign Power?

When the Admiralty reply it will be necessary to consult the Foreign Office, and perhaps hereafter the Law officers, as was done in 1872 when the boundaries of Queensland were extended to 60 miles from the Coast.



It will also be desirable to ascertain from Sir S. Walcott whether any of the Islands now proposed to be annexed to Queensland, are granted on Guano licenses by the Governor of N.S.Wales.

E.B.  
25 March 1878.  
W.O. 25/3

I think there cannot be any objection to annexing the Islands in question to Queensland.

They practically are part of a group of Islands to which Queenslanders resort for pearl fishing & where small settlements are springing up. I wd. propose therefore to reply to Queensland if the results of the four suggested inquiries fr. the Admiralty & F.O. are satisfactory that H.M. will annex the Islands in question to the Colony, the Colony taking charge of administering the Govt. of them.

R.V.M.  
26.3.78

To Mr. Hicks Beach,

The blue line in the enclosed map is the 60 mile limit: all Islands within its limits were brought within the jurisdiction of Queensland in 1872.

It has been thought very desirable that the important Islands in the Strait between New Guinea & Australia should become British, as if they fell into the hands of a foreign power they would dangerously threaten our coasts.

I would therefore proceed as Mr. Malcolm proposes.

R.G.W.H. Mar. 28  
I agree.

Hicks Beach,  
March 28.

Out of the 18 Islands named on the Map enclosed in Governor Kennedy's despatch of 14th. January last, Bramble Cay is the only one as far as I know, that is under licence. The Licence was granted by the Governor of New South Wales to Louis Laurence Smith of Melbourne for 7 years which will expire on 3rd November 1879. A Royalty was in the first instance received, which was subsequently changed into a rent of £100 per annum (see Governor's despatch 20th. May 1876).

S. Walcott, 30 March 78.

Mr. Malcolm,

Now write to Adm'y. & Foreign Office.

W.W.

at once.

R.M. 2.4.

The Secretary of the  
Admiralty

5 April 1878

Sir,

With reference to previous correspondence, as noted in the margin, (C.O. 6 Sept. 1876; Adm'y. 21 Oct. 1876; C.O. 6 Nov. 1876; Adm'y. 20 Nov. 1876; C.O. 22 Dec. 1876; C.O. 20 Jan. 1877; Adm'y. 25 Jan. 1877.), I am directed by the S.S. for the Colonies to transmit to you, to be laid before the L.C. of the Admiralty, a copy of the correspondence with the Government of Queensland upon the subject of the proposed annexation to that Colony of certain islands situated in Torres Straits, and commanding the principal Channels of Navigation between Australia and New Guinea.

Their Lordships will learn from the sketch plan enclosed in the last despatch from the Governor of Queensland, that the Colonial Govt. desire that many other Islands besides Tauan and Saibai shld. be annexed to Queensland. Sir M. Hicks Beach is disposed to think that the proposal of the Queensland Govt. may with advantage be acceded to, but desires in the first place to learn whether any of the Islands and reefs which the Colonial Government wish to annex are known to their Id'ps. to be claimed by any Foreign Power.

Sir Michael Hicks Beach wld. also be glad to be informed whether the L.C. of the Admiralty have any objections to any of the islands & reefs being included within the boundaries of Queensland, and also whether it wld. be possible from the information supplied by the sketch plan furnished by the Colonial Govt. to lay down the proposed new boundaries of Queensland correctly upon the charts and to define such boundaries in words. As bearing upon this point I am to refer you to the correspondence, as noted in the margin (C.O. 6 March 1872; Adm'y. 13 March 1872; C.O. 29 March 1872.), which took place in 1872 when the Islands within sixty miles of the Coast

of Queensland were included within the boundaries of that Colony.

I am,  
R.S.M.

P.S. It is requested that the sketch plan furnished by the Govt. of Queensland may be returned with your reply.

COPY BY SENATE COMMITTEE SECRETARIAT, 30 NOVEMBER 1976

Colonial Office 234/38, No. 4087

Queensland

Admiralty Proposed annexation of certain Islands to  
1878 Queensland.  
April 17 Am not aware of any objection to Forwarded  
Report of Hydrographer showing line of  
boundary.

Mr. Malcolm,

The next step in the matter is to consult the Foreign  
Office, sending them the correspondence which has passed.

E.B.  
20 April 1878

At once.

W.M.  
20/4

The Under Secretary of State  
Foreign Office

27 April 1878

With reference to previous correspondence as noted in the  
margin [C.O. 22 Dec 1876; F.O. 3 Jan 1877; C.O. 8 Jan 1877;  
F.O. 15 Jan 1877], I am directed by the S.S. for the  
Colonies to transmit to you, to be laid before the  
S.S. for Foreign Affairs, a copy of a correspondence with  
the Government of Queensland upon the subject of the proposed  
annexation to that Colony of certain islands in Torres Strait  
which command the principal channels of Navigation between  
Australia and New Guinea.

I am also to enclose a copy of a letter which has been  
addressed to the Admiralty upon the Subject, together with  
a copy of the reply received from the Despatch from which  
it will be seen that the L.C. of the Admiralty are not aware  
of any objection to these islands being annexed by

Queensland.

It will be clear on reference to the letter from this Department to the Admiralty that Sir M. Hicks Beach is of opinion that all the Islands which the Queensland Government desire to annex may with advantage be included within the boundaries of that Colony, and I am to request to be informed whether the Marquis of Salisbury has any objection to a compliance with the application of the Colonial Government.

I am,

R.G.W.H.

Colonial Office 234/38. No. 5725

For. Office                      Proposed annexation to Queensland of Islands  
1878                                      in Torres Straits

May 6

F.O. have nothing to add to previous letters  
of 15th January/77 on this subject.

Mr. Malcolm,

The Foreign Office refer to their previous letter of 15 Jan 1877 (657 Australia) in which it was stated that as the part of New Guinea which the Netherlands may assume to have annexed has never, as far as the F.O. is aware, been supposed to extend beyond the 141 st. Meridian of East Longitude, Lord Derby did not consider that any fear need be entertained of interfering with claims of sovereignty on the part of the Netherlands in the event of the Islands of Tauan and Saibai and the Talbot Islands being annexed by this Country.

The Queensland Government have however asked that many more Islands may be annexed, and on reference to the Chart prepared by the Admiralty it will be seen that the proposed new boundary of the Colony extends to 138° East Longitude [the western boundary of Queensland]. As however the new boundary does not approach the Coast of New Guinea West of the 141 st. Meridian the Dutch Government would seem to have no ground of complaint.

As regards French views in reference to annexation of New Guinea - see F.O. 10132/76.

I suppose the new boundary of Queensland will be authorized by Letters Patent as was done in 1872 when the Islands within 60 miles of the Coast were brought within the boundary of the Colony. In that case the Law Officers were consulted as to the sufficiency of the Letters Patent as well as to the possibility of the Dutch Government raising objections, but this latter point seems to be settled by their reply (L.O. 4320/72 Queensland).

E.B.  
11 May 1878

I do not think that we need expect opposition from either Dutch or French and that we may safely proceed with this annexation so far as they are concerned.

W.R.M. 11/5/78

It is quite clear that no Foreign Power has any claims to any of these Islands now proposed to be annexed to Queensland and for several years past the question of the annexation of very extensive groups of Islands besides New Guinea itself has been fully and publicly discussed both in England and in Australia, so that all Foreign Governments have had abundant notice of what has been proposed.

I would not delay further to issue the necessary Letters Patent.

R.G.W.H. May 11

Proceed accordingly.

W.R.M. May 12

C. May 15

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Foreign Office  
May 6, 1878

The  
Under Secretary of State  
Colonial Office

Sir,

I am directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 27th ultimo requesting the annexation to Queensland of Islands in the Torres Straits; and I am to state that, as regards the view taken of the annexation by this Office His Lordship has nothing to add to the letter

which was addressed to you on the 15th of January 1877.

The chart which accompanies your letter is returned herewith.

I am,

Sir,

Your most obedient  
humble servant

T.V. LISTER

The Secretary to the  
Admiralty

D. Street  
11th June 1878

Sir, With reference to previous correspondence I am requested by the Secretary of State to transmit the Draft of proposed Letters Patent, for the rectification of the Maritime Boundary of the Colony of Queensland and for the annexation of certain Islands to that Colony, and to request to be informed whether the Boundaries are correctly set forth in the enclosed Draft.

I am, also, to request that the Lords Commissioners of the Admiralty will be good enough to cause this Department to be furnished with six additional copies of the chart enclosed in your letter of the 17th of April last with the red line showing the proposed new seaward Boundary of the Colony marked on each copy.

I am,

J.B.

[Copy of Draft Letters Patent attached]





Admiralty  
13 June 1878

The Under Secretary of State  
for the Colonies

Sir,

With response to your letter of the 11th June respecting the rectification of the Maritime Boundary of the Colony of Queensland, and the annexation of certain Islands to that Colony, I am commanded by my Lords Commissioners of the Admiralty to acquaint you for the information of the Secretary of State for the Colonies that a few alterations appear to be necessary in the wording of this Boundary as set forth in the Draft Letters Patent, which is herewith returned with corrections marked in Red Ink.

2. As requested in your letter referred to above, 6 additional copies of the Chart on which the Maritime Boundary of Queensland is shown are herewith forwarded.

I am

Sir

Your obedient Servant

Robert Hall

1878

July 2.

Queensland.

Rectification of Maritime boundary and  
annexation of certain Islands.

Forwarded approving Order.

I do not make out whether it is important to include Talbot Island - it seems now to be to the North of the Boundary. Before sending this off it might be safer to say so to Admiralty & ask for information as to the island & whether it is important not to let it fall into the hands of another nation. In that case we should have a new O. in C. naming Talbot Island specifically as lying outside this line of boundary.

Bramble Cay is under licence till Nov. 1879: it might be wise to tell Govt. of Queensland & N.S.W. that the latter should retain the rent for /79 & pay it to Queensland & that any application for a new licence should be of course referred to Govt. of Q'd.

J B 20.7

I think as much. Clearly includes

Talbot Island: it wd. never do to leave it open to annexation by another power. It is mentioned in the Order in Council, but owing to the mode in which the Adm'y. has defined the boundaries it has dropped out of the Letters Patent.

Ask Admiralty in what manner they wd. propose to include it whether by name, as outside their line, or by altering their line.

at once, R.G.W.H.

AT THE COURT AT WINDSOR  
The 29th day of June 1878

PRESENT,  
THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL.

WHEREAS there was this day read at the Board a letter to the Lord President of the Council from the Right Honourable Sir Michael Edward Hicks-Beach, Bart., one of Her Majesty's Principal Secretaries of State, transmitting the Draft of Letters Patent for the rectification of the Maritime Boundary of the Colony of Queensland, and for the annexation to that Colony of Tuan, Saibai, Talbot, Deliverance, and other Islands lying in Torres Straits and between Australia and New Guinea : Her Majesty having taken the same into consideration was pleased, by and with the advice of Her Privy Council, to approve thereof, and to order, as it is hereby ordered, that the Right Honourable Sir Michael Edward Hicks-Beach, Bart., one of Her Majesty's Principal Secretaries of State, do cause a Warrant to be prepared for Her Majesty's Royal Signature for passing under the Great Seal of the United Kingdom Letters Patent conformable to the said draft (a copy of which is hereunto annexed).

Gt. Seal

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India: To all to whom these Presents shall come; Greeting:

WHEREAS it is expedient that certain islands in Torres Straits, and lying between the Continent of Australia and Island of New Guinea, that is to say, all Islands included within a line drawn from Sandy Cape northward to the south-eastern limit of Great Barrier Reefs, thence following the line of the Great Barrier Reefs to their north-eastern extremity, near the latitude of nine and a-half degrees south, thence in a north-westerly direction, embracing East, Anchor, and Bramble Cays, thence from Bramble Cays in a line west by south (south seventy-nine degrees west) true; embracing Warrior Reef, Saibai, Tuan, and Deliverance Islands, and onwards in the same west by south direction (true) to the meridian of one hundred and thirty-eight degrees of east longitude, should be annexed to and form part of Our Colony of Queensland. Now we do, by these Our Letters-Patent, under the Great Seal of Our United Kingdom of Great Britain and Ireland, authorize Our Governor for the time being of Our said Colony of Queensland, by Proclamation under his hand and the public seal of the said Colony, to declare that, from and after a day to be therein mentioned, the said Islands shall be annexed to and form part of Our said Colony. Provided always that Our said Governor issues no such Proclamation as aforesaid until the Legislature of Our said Colony of Queensland shall have passed a law providing that the said Islands shall, on the day aforesaid, become part of Our said Colony, and subject to the laws in force therein. Provided also that the application of the said laws to the said Islands may be modified either by such Proclamation, as aforesaid, or by any law or laws to be from time to time passed by the Legislature of Our said Colony for the government of the said Islands so annexed.

II. And We do hereby reserve to Us, Our heirs and successors, full power and authority, from time to time, to revoke, alter, or amend these Our Letters-Patent as to Us or Them shall seem meet.

III. And We do further direct and enjoin that these Our Letters-Patent shall be read and proclaimed at such place or places as Our said Governor shall think fit within Our said Colony of Queensland.

In witness whereof We have caused these Our Letters to be made Patent.

Witness Ourselves at Westminster, the        day of  
in the forty-second year of Our Reign.

By Warrant under the Queen's Sign-Manual.

The Secretary to the  
Admiralty.

24th July, 1878

Sir,

With reference to previous correspondence upon the subject of the rectification of the maritime boundary of Queensland and with especial reference to the letter from this Department of the 11th of June and to your reply of the 13th of the same month, I am directed by the S. of S. for the Colonies to request you to draw the attention of the Lords Commissioners of the Admiralty to the fact that, whilst in the title of the Draft of the Letters Patent, which formed an enclosure to the letter from this Department of the 11th of June, Talbot Island is expressly mentioned as to be included within the annexed boundary, in the body of the draft itself no allusion is made to its inclusion.

The island appears to be situated outside the boundaries as described, and as indicated by the coloured line on this chart which was enclosed in your letter of the 17th of April.

If this island is in fact not included within the new boundary, Sir M. Hicks Beach would be glad to be informed upon their Lordships' views as to the best way of rectifying this omission in the amended Draft that will be required; whether by mentioning Talbot Island by name and then proceeding "and all islands included etc." in the language of the memorandum of the Hydrographer of the Navy, forwarded in your letter of the 17th of April, or by altering the boundary line in such a way as to include the island.

I am & c.

J.B.

COLONIAL OFFICE 234/38, No. 9859

Admiralty                      Queensland.  
1878  
Aug. 3                      Rectification of the Maritime Boundary  
so as to include Talbot Islands.  
States alterations required in draft  
Letters Patent.  
Enc. Copy of amended Chart.

Mr. Bramston,

Now prepare a fresh draft of an Order in Council, &  
write to Council saying that an error has been discovered,  
& asking them to revoke the former order & pass the new one.

H.B.  
at once  
R.G.W.H.

The Under Secretary of State                      Admiralty  
Colonial Office                                      3rd. August 1878

Sir,

In reply to your letter of the 24th. ultimo expressing  
the wish of Sir Michael Hicks Beach to include the Talbot  
Islands within the limits of the Colony of Queensland, and  
requesting to be informed of the best mode of altering the  
Drafts of the Letters so that this group may be therein mentioned,  
I am commanded by my Lord Commissioners of the Admiralty  
to acquaint you that the definition of the boundary of Queensland  
as given in the draft of the Letters Patent would require to  
be amended so as to read there:

"~~XXX~~ embracing Warrior Reef, Saibai and Tauan,  
thence diverging in a north Westerly direction so as to embrace  
the group known as the Talbot Islands; thence to and embracing  
the Deliverance Islands and onwards in a West by South direction  
to the Meridian of ~~XXXX~~"

2. A copy of the Chart amended in accordance with the foregoing is transmitted herewith.

I am,  
Sir,  
Your obedient Servant,  
Thos. Murray.

The Secretary to the  
Admiralty

D. Street  
10th. August 1878.

Sir,

With reference to previous correspondence I am requested by the Secretary of State to transmit the Draft of Letters Patent, for the rectification of the Maritime Boundary of the Colony of Queensland and for the annexation of certain Islands to that Colony, amended as proposed in your letter of the 3rd. Instant and I am to draw your attention to the omission of the word "Islands" which apparently should come after the word "Tauan" in your sketch of the proposed alteration in the description of the Boundaries as set forth in the Letters Patent.

I am, also, to request that you will move the Lords Commissioners of the Admiralty to cause this Department to be furnished with 6 additional copies of the corrected Chart enclosed in your letter of the 3rd. with the red line shewing the new maritime Boundary. I return the 6 copies of the Chart enclosed in your letter of the 13th. of June last.

I am & c.  
Bramston.



Admiralty                      Queensland.  
1878                              New Maritime Boundary of Queensland.  
Aug. 17                          Forwarded 6 copies of Chart shewing the  
   boundary.

Mr. Bramston,

If you approve of the annexed Draft in which I have inserted the word "Islands" after Tauan it could be sent in to the next Council and the Letters Patent would then be approved.

F.O.A. 30/8/78  
So proceed.     at once  
E.W.     31.8

The Under Secretary of State  
Colonial Office

Admiralty  
17th. August 1878

Sir,

With reference to your letter of the 10th. Instant and to previous correspondence, I am commanded by my Lords Commissioners of the Admiralty to transmit to you herewith, for the information of the Secretary of State for the Colonies, six copies of the Admiralty Chart on which are shown the new Maritime Boundary of Queensland, as defined in the "Draft of the Letters Patent" forwarded with your letter before quoted. As regards the introduction of the word "Islands" after the word "Tauan" in the proposed description of the boundaries, my Lords have no objection to this alteration being made.

I am,  
Sir,  
Your obedient Servant,  
Robert Hall.

QUEENSLAND

(New Maritime Boundary.)

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DRAFT OF LETTERS PATENT passed under the Great Seal of the United Kingdom for the rectification of the Maritime Boundary of the Colony of Queensland, and for the annexation to that Colony of Tuan, Saibai, Talbot, Deliverance, and other Islands lying in Torres Straits and between Australia and New Guinea.

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Letters Patent,  
Dated 16th July, 1878.

Victoria, by the Grace of God,  
of the United Kingdom of  
Great Britian and Ireland,  
Queen, Defender of the Faith,  
Empress of India: To all  
to whom these Presents shall  
come: Greeting:

Preamble.

Recites that certain Islands  
should be annexed in  
Queensland.

WHEREAS it is expedient that  
certain islands in Torres  
Straits, and lying between the  
Continent of Australia and  
Island of New Guinea, that is  
to say, all Islands included  
within a line drawn from Sandy  
Cape northward to the south-  
eastern limit of Great Barrier  
Reefs, thence following the  
line of the Great Barrier  
Reefs to their north-eastern  
extremity, near the latitude  
of nine and a-half degrees  
south, thence in a north-  
westerly direction, embracing  
East, Anchor, and Bramble Cays,  
thence from Bramble Cays in  
a line west by south (south  
seventy-nine degrees west),  
true; embracing Warrior Reef,

Proclamation to be issued for  
the annexation of the Islands  
to the Colony.

Proviso. Law to be passed  
extending Laws of the Colony  
to the territory annexed.

Proviso. Application of such  
Laws may be modified by  
Proclamation, &c.

Saibai, Tuan and Deliverance  
Islands, and onwards in the  
same west by south direction  
(true) to the meridian of one  
hundred and thirty-eight  
degrees of east longitude,  
should be annexed to and form  
part of Our Colony of Queens-  
land. Now we do, by these  
Our Letters-Patent, under the  
Great Seal of Our United  
Kingdom of Great Britian and  
Ireland, authorise Our Governor  
for the time being of Our said  
Colony of Queensland, by  
Proclamation under his hand  
and the public seal of the  
said Colony, to declare that,  
from and after a day to be  
therein mentioned, the said  
Islands shall be annexed to  
and form part of Our said  
Colony. Provided always that  
Our said Governor issues no  
such Proclamation as aforesaid  
until the Legislature of Our  
said Colony of Queensland  
shall have passed a law  
providing that the said Islands  
shall, on the day aforesaid,  
become part of Our said Colony,  
and subject to the laws in  
force therein. Provided also  
that the application of the  
said laws to the said Islands  
may be modified either by  
such Proclamation, as afore-  
said, or by any law or laws  
to be from time to time passed  
by the Legislature of Our said  
Colony for the government of  
the said Islands so annexed.

Powers reserved to Her Majesty to revoke, alter, or amend the present Letters-Patent.

II. And We do hereby reserve to Us, Our heirs and successors, full power and authority, from time to time, to revoke, alter, or amend these Our Letters-Patent as to Us or Them shall seem meet.

Publication of Letters-Patent.

III. And We do further direct and enjoin that these Our Letters-Patent shall be read and proclaimed at such place or places as Our said Governor shall think fit within Our said Colony of Queensland.

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the 18th day of July in the forty-first year of Our Reign.

By Warrant under the Queen's Sign-Manual.

QUEENSLAND LEGISLATIVE ASSEMBLY DEBATES

20 May 1879

QUEENSLAND COAST ISLANDS BILL - SECOND READING

The Colonial Secretary said the Bill he proposed to read a second time was a very short one and its object was known to most honourable members, and to the members of the late Government especially. It followed as a sequence to despatches which has been received from the Imperial Government on the subject of annexing certain islands in Torres Straits. He could not explain the object of the Bill better than by reading the preamble:-

"Whereas by letters patent under the great seal of the United Kingdom of Great Britain and Ireland bearing date the tenth October in the forty-second year of the reign of Her Majesty Queen Victoria her said Majesty did authorise the Governor for the time being of the colony of Queensland by proclamation under his hand and the public seal of the colony to declare that from and after a day to be therein mentioned certain islands which are described in the schedule hereto shall be annexed to and form part of the said colony. And in the said letters patent it was provided that the said Governor is not to issue such proclamation as aforesaid until the legislature of the said colony shall have passed a law providing that the said islands shall on the day aforesaid become part of the said colony and subject to the laws in force therein. And in the said letters patent it was also provided that the application of the said laws to the said islands might be modified either by such proclamation as aforesaid or by any law or laws to be from time to time passed by the legislature of this colony for the government of the said islands so annexed. And whereas it is desirable that the said islands shall be annexed to and form part of the said colony of Queensland."

That proclamation, he might state for the information of honourable members, was brought out after a long correspondence

between the Imperial authorities and the then Ministry of the colony. It was then deemed desirable - and he quite agreed with the opinions expressed by the leader of the late Ministry - that the islands in the Torres Straits lying outside the present jurisdiction of the colony - that was to say, at more than sixty miles from the coast - should be brought within the boundary. Many of those islands, it was very well known, had become the resort of criminals from all parts of the world - a lawless set of men under no jurisdiction, except the nominal one of the Imperial Commissioner for the Pacific, the Governor of Fiji, Sir Arthur Gordon, which was to all intents and purposes none whatever. It had been considered that those islands should be brought under the jurisdiction of Queensland, but the proclamation, the preamble of which he had read, was entirely dependent on the legislature passing an Act to bring it into force. The Bill, therefore, only contained one clause, namely -

"From and after such day as His Excellency the Governor of Queensland shall by such proclamation under his hand and the public seal of the colony as it authorised by the said letters patent mention and appoint for that purpose the Islands described in the schedule hereto shall be annexed to and become part of the Colony of Queensland and shall be and become subject to the laws in force therein."

He did not wish the House to pass even the second reading of the Bill without understanding that the annexation of these islands entailed some expense upon the colony, as it would be ridiculous to suppose they could assert a right over the islands without taking steps to enforce our laws there. It was absolutely necessary that the Government should have a cruiser there, both for the repression of violence on the part of the natives and for the enforcement of the law on the many people of all nations congregated on those islands. Those things had been, no doubt, well weighed by the previous Government, before they recommended the annexation. He agreed to the full extent with what had been done, though he could have wished that the Island of Saibai had been left out. Under the proclamation, however, they could not draw a line but must take all or none. The island

to which he referred lay too close to the Island of New Guinea, and there was a probability they might be brought into unpleasant contact with the inhabitants there, who were credited with a taste for human flesh. That was a remote contingency, which he felt it was his duty to mention to the House. If the House agreed to pass this small Bill, it would, to some extent, become necessary that the Government should keep a cruiser. Believing that the Bill would pass without objection, as the Ministry of the day were in favour of it and the previous Ministry brought it to the condition in which it now stood, the Ministry had purchased the schooner formerly engaged in the survey of the coast, the Pearl, at a very fair, or even low, price, with the intention of sending her out there should the Bill pass. She would be manned and armed sufficiently to enforce law and order. Although there would be some charge upon the colony, he might state that the income derived from Thursday Island as a Customs port - which income would be considerably augmented by revenue derived from these islands - would more than treble as far as they could judge, the expense. The present Customs receipts averaged £4,000 a-year, while the expense of the cruiser in round numbers, after purchase and outfit, would be master, £200; mate, £120; four seamen, cook, and provisions. That, as far as he could arrive at it, would be the expenditure the country would be called upon to provide. He had pleasure in recommending the House to pass the Bill, and, without, further remarks, could move, that it be read a second time.

Mr. Griffith said he had no objection to the Bill becoming law, and it was worth notice that on this occasion the Imperial Government had recognised more fully than previously the right of the colony itself to have a voice in the annexation of territory. On previous occasions they had not been consulted, but in this instance the proclamation was made contingent on the legislation of this colony. That marked an important change in the policy of the Imperial Government toward the Australian Colonies, no doubt to be traced to the events of a few years back. It was a matter for serious consideration whether they could not decline the responsibility of taking Sabai, but with the rest of the measure he entirely agreed. It was, however, his duty to call attention to what

appeared to him to be a serious invasion of the privilege of the House in the mode in which it had been introduced - by message from the Governor. The Constitution Act provided that all measures requiring expenditure from Consolidated Revenue should be introduced at the instance of the Governor; and that no Bill authorising expenditure should be introduced until the expenditure or appropriation of money had been first recommended by the Governor during the same session. By the Standing Orders of the House, the House considered, in Committee, the desirableness of introducing the Bill. Thus a Message was first sent by the Governor recommending the appropriation, and then the deliberate consideration of the House, in Committee, took place as to whether the Bill should be introduced. If carried in the affirmative, the Bill was then introduced. There had not been any resolution of the House with reference to this Bill. The Standing Orders ran thus -

"214. Every Bill shall be ordered to be brought in upon motion made and question put that leave be given to being in such a Bill, unless such Bill shall have been directed to be brought in by resolution of the House.

"215. Every Bill shall be ordered to be prepared and brought in by one or more members named by the House.

"216. Every Bill not prepared to the order of leave, or according to the rules and orders of the House, will be ordered to be withdrawn.

"217. A Bill shall be presented by a member."

All those Standing Orders had been violated by the way in which this Bill had been introduced. New members might think this was to some extent a matter of form, but it was really a matter of substance. It was an acknowledged principle that the House could not be interfered with by any authority outside the House. The Representative of Her Majesty could recommend an appropriation, but beyond that he had no authority, conferred either by the Constitution or by the Standing Orders, to introduce measures. The idea of a Bill being so introduced had never been even suggested in England, and such a practice was entirely unknown to the Imperial Parliament. He had looked in this colony for a precedent, but as far as he was aware there was only one, which occurred in 1876. Reference had



been made to the case of the 19th September, 1866, when four money Bills were sent down - "Additional Customs", "Stamp Duties." "Additional Treasury Bills," and "Government Treasury Notes" Bills. Those were introduced by message from the Governor, and were read a first time then. But they were all money Bills, properly introduced by message from the Governor, and formed no precedent of any use whatever in this case. He could not say what took place between then and 1872; but from the latter date no Bills were so introduced until 1876, when two Bills - "the 'Victoria Bridge" and the "Members' Expenses" Bills - were introduced on the 14th September, and ordered to be read a first time : they were both money Bills. A day or two afterwards the honourable gentleman who was lately Minister for Justice, one of the oldest members of the House, and whose opinion was much valued in such cases, took objection that the Bills could not be introduced in that way, and pointed out that they must be introduced in Committee. In consequence of that objection the Bills were both discharged from the paper. He found that on the 26th September -

"Mr. Thompson objecting that the motion was not in order, inasmuch as there had been no previous compliance with the 18th section of the Constitution Act, the Speaker gave it as his opinion that the point of order was premature until it had been seen what course would be taken by the Committee of the Whole House, were the question of introducing such a Bill referred to the Committee."

A debate ensued, and Mr. Thompson's objection was allowed to be valid. On the 27th September, on the motion of Mr. Thorn, the Speaker left the chair, and the House went into Committee. The Chairman reported the resolution to the House, when -

"Mr. Thompson objecting that if this Bill were so introduced, the provisions of the 18th section of the Constitution Act would have not been complied with, which provides that it shall not be lawful for this House to originate any Bill for the appropriation of any part of the Consolidated Revenue which shall not first have been recommended by a message of the Governor, and asking the ruling of the Speaker whether the message of the 14th instant, transmitting a similar Bill which had since been discharged from the paper, could be held to apply to the Bill now proposed to be introduced, the

Speaker said that, although he could find no precedent to guide him, he was of opinion that as the Bill transmitted by the message in question had been discharged from the paper, the proposed Bill should either be introduced by another message from the Governor, or after the necessary appropriation had been recommended by message.

On that occasion it was held that in introduction of the Bill was not in order, and that not only was it necessary there should be a resolution of the Committee of the Whole House, but that there should be a fresh message. There were the only precedents that could be found in the colony bearing upon the subject. There was no precedent in this colony, and none that he knew of in Great Britain, for May's Practice was silent, as to introducing a Bill which was not a money Bill otherwise than in the ordinary form. This was an important matter; it was quite conceivable that a Bill might thus be brought before the House which the House would have declined to allow to be introduced. Their Standing Orders embodied great principles, and it was desirable that the forms of the House should be complied with. He therefore felt it his duty to raise the point. The usual forms had been dispensed with in this instance, and the Bill had been introduced without the necessary notice. He remembered a case where the House had refused to allow a Bill to be brought in.

The Colonial Secretary said, without going back to the dark ages he thought that if he had followed a bad precedent it had been one laid down by the late Attorney-General, when in 1878 he introduced a Bill precisely similar in character to the one before the House in the same way as this was being brought in. He found that on the 9th May, 1878, a message was received for the introduction of a Bill to provide for the Construction of Drains and Sewers in South Brisbane.

Mr. Griffith: That was a money Bill.

The Colonial Secretary said it was a money Bill, as this was incidentally a money Bill. This Bill would involve the expenditure of money, although there was not a word about money in it. The Bill was thrown out on its merits - not on a point of order, but on a division by 19 to 16. If he had gone wrong,

he had only followed the bad example of the late Attorney-General. He should leave the question entirely to the Speaker.

Mr. Griffith said that in the case referred to, in 1878 the correct practice followed; the Bill was recommended by message, was considered in Committee, and the Committee affirmed the desirability of introducing it, and it was then introduced.

Mr. Douglas, speaking to the question or order, said the assertion made by the Colonial Secretary - that it involved the expenditure of money - would apply to all Bills; there was hardly a Bill brought under the notice of the House which did not involve some expenditure of money; and, if so, then all Bills should be introduced by message; but, unless there was a specific reference to the raising of money, the ordinary course would be to introduce in the way described by the senior member for North Brisbane.

The Speaker: With reference to the point of order raised by the senior honourable member for North Brisbane, I understand it to be that our Standing Order 214 provides that no Bill shall be brought in except upon a motion or by a resolution of the Committee of the House. The Standing Order is certainly precise, but it will at once strike everybody that it does not refer in any way to Bills received by message from the Legislative Council. During every session we have Bills originated by the Council sent here and accepted without leave being first obtained, thereby clearly showing that the 214 Standing Order does not affect the privileges of the Legislative Council with regard to the introduction of Bills here without leave being first obtained. It is consequently evident that, as the Legislative Council has the privilege, the Crown, also may have a like privilege. With reference to the distinction drawn by the senior member for North Brisbane as to the introduction of money Bills and those which are not money Bills, I may point out that in the beginning of Parliamentary Government here, it was not the custom to send down money Bills; but it was customary to bring down a message for the necessary appropriation. The objection seems to be to be on technical ground. We are bound to receive a message

from the Crown on any subject. In admitting this Bill it seems to me that the Crown does directly that which it might have done indirectly, since every Bill which is introduced by Ministers would first have to receive the sanction of the Executive Council; - there is therefore not sufficient ground for ruling that the Crown cannot introduce a Bill in the absence of any express enactment. The law to which the honourable member has referred with respect to money Bills does not appear to limit the Crown from recommending other Bills, I certainly should not think of giving a ruling which would restrict, on purely technical grounds, the privilege of the Crown of referring matters to this House. There is no substantial difference between a recommendation to consider a particular subject, a Bill dealing with it being introduced shortly after, and a message direct from the Crown enclosing a Bill. In the absence of any express authority declaring that such course is forbidden, I see nothing to prevent the course adopted in this instance being sanctioned.

Mr. Douglas, speaking to the general question, said that the Colonial Secretary had stated all that was necessary in explaining the scope of the Bill. It was very desirable it itself that certain islands close to the Queensland coast should be incorporated, and the boundary proposed in the Bill was much beyond that at present in force. Sixty miles from their shores was a somewhat indefinite distance, and, therefore, the boundary proposed was better for every purpose. He noticed that it included Murray, Darnley, Talbot, Deliverance and Sabai Islands, which were near the coast of New Guinea. It was not likely, however, that they would get into hot-water by embracing those islands; it was not likely that their incorporation would interfere with any number of natives, though a few from New Guinea resorted to Sabai and Talbot Islands. There were good and fertile islands on our coast which it was desirable to incorporate; and in reference to the report that a band of Italians were on their way to colonise New Guinea, he might suggest that here was an opening for the Colonial Secretary to make a good bargain. For an advance party one of the islands named was more suitable than the coast of New Guinea. The islands were really eligible sites for a colonising party, and the same might be said of many others still unoccupied. Inducements

might very well be held out to people to occupy some of them, and he was quite sure, if the information was made known generally that they could be occupied, that many persons would be found who would take up their residence on them. With regard to the cruiser which had been purchased, she would be sufficient for all present purposes; but the "Pearl" was not a smart sailer, and it would probably be found desirable to have a smart schooner, or a screw steamer like the "Ellangowan" or the "Laura". In the meantime, the "Pearl" would do the work very well, but he did not think it would be for long. He had much pleasure in supporting the Bill.

The question was put and passed, and the committal of the Bill was made an Order of the Day for Tuesday next.

#### COAST ISLANDS BILL - COMMITTEE

On the motion of the Colonial Secretary, the House went into Committee upon the Queensland Coast Islands Bill.

The Colonial Secretary moved that clause 1 - Governor to issue proclamation - as read, stand part of the Bill.

Mr. Dickson said that, in the course of the debate on the second reading, the Colonial Secretary mentioned that a cruiser had been purchased to carry out the jurisdiction of the colony with regard to the extended boundaries proposed. They knew that the honourable gentleman was fond of armaments, but he hoped that while he had given them a standing army a naval establishment also would not be added. Recurring to the purchase of the cruiser, he should like to have fuller particulars. He believed that the whole of the "Pearl" belonged to the Government. What was paid for her?

The Colonial Secretary said the price was £600, of which the colony paid half. He never understood that the whole of the vessel belonged to the colony, but half only. At the time the "Pearl" was bought the colony and the Imperial Government paid half each, and the expense of the coast service was borne in equal proportions. How the whole of the "Pearl" could, therefore, be considered to belong to the

colony he could not understand. She was a cheap vessel at the price.

Mr. Dickson considered the information supplied by the Colonial Secretary satisfactory.

Mr. Douglas presumed that £300 more would be required to fit out the "Pearl". If they could purchase the vessel and fit her out for £600 they should do very well.

The Colonial Secretary said the amount mentioned by the honourable member as the cost of fitting out the cruiser was the amount the Government proposed to place on the Estimates. The "Pearl" had been placed on the slip, the whole of her copper had been stripped off and she had been re-coppered, and her bottom had been found to be quite good. She was a cheap ship, and might last for many years.

Mr. Griffith said that under the Bill they would annex certain islands, and necessarily assume the responsibility of governing them. Although they would belong to the colony the intermediate seas would not, and the Government would have no authority whatever to transport an offender from one of the islands to their own territory. Supposing a court was held in Prince of Wales Island, and an offender was convicted and sentenced to be imprisoned, they had no authority to transport him to the colony. A draft measure dealing with the subject was lately transmitted by the Imperial Government to the Governor for report. The point that he now raised was a very serious one. The Imperial Government, of course, had dominion over all the Australian seas, but the colony's authority extended only to the coast and three miles from it, and when their officers got that distance from one of these islands with a prisoner the man would be at perfect liberty to escape.

The Colonial Secretary could not understand how the law laid down by the honourable member held good. Had they no authority to shift a man from Moreton Island, the Percy Group, or Fraser's Island? The legal aspect of the question had never struck him, but he had no alarm about any serious results, feeling quite sure that the Imperial Government would take every means to enable the colony to

carry out the authority under which the islands named in the Bill were proposed to be annexed. If he were on board a cutter in charge of a prisoner he should risk the technical doubt, if he had one, and stick to the prisoner, because he was quite sure if any difficulty occurred the Imperial Government would remedy it. How did Sir Arthur Gordon, High Commissioner for the South Pacific, exercise his authority? He moved and banished men from island to island, and even hanged them.

Mr. Griffith said the High Commissioner acted under Imperial authority and under special powers. The point he had raised was a serious one, and he had brought it forward because it was deserving of consideration. He would also like to ask if it was the intention of the Government to appoint a travelling commissioner to administer justice in the islands? Would it be necessary to appoint a new judicial officer?

The Colonial Secretary said there would be, as he had said the other evening, a captain, mate, four seamen, and cook for the "Pearl", and they would be under the orders of the Police Magistrate on Thursday Island. It was not intended to appoint a commissioner. The very fact of the Police Magistrate named having the "Pearl" and such a crew under his orders would be sufficient, he believed, to keep the inhabitants in order. He had had very little trouble hitherto, without a boat, it might be said, as the cutter was chiefly engaged in pilot service. The Police Magistrate at Thursday Island now held a commission from Sir Arthur Gordon, but would, he presumed, be relieved when the annexation was completed; and, not believing in divided allegiance, he hoped he would be relieved. As for the unruly refugees on some of the islands, there would be still less trouble in keeping them in order - they would clear out.

Mr. Douglas said that the powers vested in the Police Magistrate at Thursday Island as Deputy Commissioner would no doubt be withdrawn. His commission simply extended to Murray and Darnley Islands, which would be included in out boundaries and when that took place the powers would be unnecessary, and would be withdrawn, he fancied. He quite agreed with the

Colonial Secretary, that the mere fact of the annexation would be quite sufficient to set all difficulties at rest. Only now and then were there objectionable characters upon the islands, and, knowing that at the present time no one could legally touch them, they were enabled to go on to the islands with impunity; but that would cease when it was discovered that they had been annexed by Queensland. An occasional visit from the cruiser would be quite sufficient to keep everything in order. A very great advantage was being conferred upon the rest of Australia by the annexation of these islands: they commanded the passage of Torres Straits; and he considered it an important thing for the future of Australian trade that the passage connecting the Pacific and Indian Oceans should belong to Queensland and be under its control.

Question put and passed.

The schedule and preamble being put and passed, the Chairman reported the Bill with amendments. The report was adopted, and the third reading made an Order of the Day for to-morrow.



QUEENSLAND COAST ISLANDS\*

An Act to provide that certain Islands in Torres Straits and lying between the Continent of Australia and the Island of New Guinea shall become part of the Colony of Queensland and subject to the Laws in force therein.

24 JUNE, 1879

Whereas by letters patent under the great seal of the United Kingdom of Great Britain and Ireland bearing date the tenth October in the fourth-second year of the reign of Her Majesty Queen Victoria Her said Majesty did authorise the Governor for the time being of the Colony of Queensland by proclamation under his hand and the public seal of the colony to declare that from and after a day to be therein mentioned certain islands which are described in the schedule hereto should be annexed to and form part of the said colony. And in the said letters patent it was provided that the said Governor is not to issue such proclamation as aforesaid until the Legislature of the said colony shall have passed a law providing that the said islands shall on the day aforesaid become part of the said colony and subject to the laws in force therein. And in the said letters patent it was also provided that the application of the said laws to the said islands might be modified either by such proclamation as aforesaid or by any law or laws to be from time to time passed by the Legislature of this colony for the government of the said islands so annexed. And whereas it is desirable that the said islands shall be annexed to and form part of the said Colony of Queensland. Now be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

- \*1. From and after such day as His Excellency the

Governor of Queensland shall by such proclamation under his hand and the public seal of the colony as is authorised by the said letters patent mention and appoint for that purpose the islands described in the schedule thereto shall be annexed to and become part of the Colony of Queensland and shall be and become subject to the laws in force therein.

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#### SCHEDULE

Certain islands in Torres Straits and lying between the Continent of Australia and Island of New Guinea that is to say all islands included within a line drawn from Sandy Cape northward to the south-eastern limit of Great Barrier Reefs to their north-eastern extremity near the latitude of nine and a half degrees south thence in a north-westerly direction embracing East Anchor and Bramble Cays thence from Bramble Cays in a line west by south (south seventy-nine degrees west) true embracing Warrior Reef Saibai and Tuan Islands thence diverging in a north-westerly direction to as to embrace the group known as the Talbot Islands thence to and embracing the Deliverance Islands and onwards in a west by south direction (true) to the meridian of one hundred and thirty-eight degrees of east longitude.

\*Annexed to Queensland as from the 1st August, 1879, by proclamation in the "Gazette" of the 21st of July 1879.

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