SEA-BED BOUNDARY.

Senator McINTOSH (Western Australia) (6.42)—The matter I raise tonight concerns the question of the seabed boundary between Australia and East Timor. Negotiations between Australia and Indonesia on this boundary began in 1979—an act which was tantamount to Australia recognising de jure, Indonesian sovereignty over East Timor. Honourable senators will be aware that several sets of negotiations since then have failed to establish an agreement. Despite recent proposals for a joint development zone to exploit possible oil resources, the actual boundary line remains a key issue and will be important in defining the working arrangements for a joint zone. The new Law of the Sea Convention would appear to favour Indonesia's claim to a line roughly mid-way between Australia and East Timor. If so, it may well be that Australia will, after concluding negotiations, get no more than it already has.

However, I do not wish to speculate on possible outcomes of the negotiations. I wish instead to focus on the legitimacy of the negotiations in the first place. The question I raise is whether the status of East Timor at the United Nations has any bearing on the seabed negotiations being conducted by Australia and Indonesia. As honourable senators are aware, East Timor remains on the agends of the United Nations. Only a minority of countries have openly granted de jure recognition of Indonesia's annexation.

The gist of two Security Council resolutions and numerous General Assembly resolutions since 1975 is that Indonesia engaged in acts of aggression, the unlawful use of force against East Timor and assorted other breaches of the UN Charter. Now, we all know that Indonesia has chosen to ignore all of these resolutions with the obviously false claim that the East Timorese decided themselves to join Indonesia. The question for Australia is: What are our obligations to the UN Charter in the light of the forced annexation of East Timor? Let me remind honourable senators that Article 2, paragraph 4 of the United Nations Charter provides that:

> All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Most of us have heard that before and we all know that many members of the UN have breached that article. The article is a guiding principle for conduct by members, but it does not suggest how countries should respond to breaches of the Charter. However, there are United Nations resolutions since the declaration of the Charter which appear to provide members with a position to take in response to illegal annexations such as that of East Timor. For example, I understand that Australia agreed to and, in fact, sponsored a Declaration on Principles on International Law in 1970. That resolution, No. 2625, was unanimously adopted on the twenty-fifth anniversary of the coming into force of the UN Charter. Among its provisions is the following:

> The territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force.

The resolution continues, and I want to emphasise this:

> No territorial acquisition resulting from the threat or use of force shall be recognised as legal.

Again in 1974, Australia was among member states of the United Nations which unanimously agreed to resolution No. 3314 on the definition of aggression. Article 5, paragraph 3, of this resolution provides that:

> No territorial acquisition or special advantage resulting from aggression shall be recognised as legal.

Do we take seriously our commitment to these resolutions or do we ignore them when it is convenient? I would like the Government to answer these questions: Would not the Government agree that these resolutions, to which we are a party, spell out how we should implement and defend the United Nations Charter? Would the Government agree that these resolutions are tantamount either to international treaty law or, at least, customary international law? Having voted for these resolutions, is Australia under an international obligation not to recognise Indonesia's illegal acquisition of East Timor? I also refer to Article 301 of the 1982 Law of the Sea Convention. This article provides that:

> In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of International law embodies in the Charter of the United Nations.

As far as Indonesia's claims to the sea and continental shelf areas surrounding East Timor are concerned, Jakarta cannot claim to have refrained from the threat or use of force. In denying Timorese self-determination, Jakarta has acted in breach of other principles of law embodied in the UN Charter. I ask the Govern-

ment: Does not our recognition of Indonesia's right to negotiate the Timor seabed boundary, essentially make us a party to Indonesia's breach of the letter and spirit of Article 301 of the Law of the Sea Convention?

Australia has a long and honourable record at the forefront of calls for just conduct between nations. The United Nations is an organisation designed to promote that process. In the absence of internationally agreed means of enforcing resolutions of disputes, reliance must be placed on countries adhering to principles they purport to uphold. It appears that Australia will continue to negotiate with Indonesia over the East Timor seabed boundary. But, if these negotiations are in breach of the UN Charter and customary international law—and that appears to be the case—it makes a complete mockery of our oft-repeated commitment to the effectiveness of the United Nations. It makes a mockery of our calls for respect for international laws. If we choose to put aside our declared principles when they become inconvenient, then all we are really doing is ensuring that our declarations of support for just conduct between nations are dishonest or meaningless.

Senator GARETH EVANS (Victoria—Minister for Resources and Energy) (6.49)—Thank you for the call, Mr Acting Deputy President. Senator McIntosh's speech contained a number of misunderstandings, to put it at its most charitable, which it is important for me, on behalf of the Government, to immediately correct, lest those misapprehensions and misunderstandings spread more widely. At the outset, I should make the point that it is neither accurate nor helpful to the national interest for Senator McIntosh to suggest that the Law of the Sea Convention somehow not only bears upon the present boundary negotiations with Indonesia on the Timor Gap area, but makes inevitable the acceptance of a geographical midline as the necessary outcome of those negotiations.

I simply say that the Law of the Sea Convention does nothing of the kind and Australia has a very strenuously maintained position to the contrary. But, of course, the central thrust of his speech was the allegation that somehow Australia is in breach of international law by virtue of negotiating with Indonesia over the Timor Gap insofar as this involves us in giving recognition to a state acquired by threat or by the use of force. I will just make a few points about that general allegation. Senator McIntosh draws primary nourishment from the United Nations General Assembly declaration of 1970, the so-called friendly relations declaration which states—he quoted it accurately:

> No territorial acquisition resulting from the threat or use of force shall be recognised as legal.

I make it plain that the legal status of this declaration, which is not a treaty in any sense, has long been very hotly contested. It is our understanding that there is no binding international legal obligation not to recognise the acquisition of territory that was acquired by force. In international law, the legality of the original acquisition of territory by a state must be distinguished from subsequent dealings between third states and the state acquiring new territory. It is the sovereign right of each state to determine what dealings it will have with states acquiring, by whatever means, new territory and to determine whether or not to recognise sovereignty over such a territory.

As the Prime Minister (Mr Hawke) stated in the House on 22 August 1985, in an answer to Mr Peacock, Australia has recognised Indonesia's sovereignty over East Timor since February 1979. Of course, that statement was accompanied by a recognition, again by Mr Hawke which has been expressed by Government representatives on many occasions, of our concern at the way in which East Timor was incorporated. The recognition does not modify in any way the continuing concern at that historical fact.

Let me go on to say that it is perfectly consistent with Australia's recognition of Indonesia's sovereignty over East Timor to engage in negotiations with Indonesia now on the Timor Gap. To engage in such negotiations does not as a matter of international law make Australia a party to the initial acquisition by Indonesia of East Timor any more than Australia's dealings with other sovereign states make Australia a party to the means they used to acquire territory in the first place; nor does it affect the legality of the negotiations; nor does it signify approval of the original acquisition of territory. Again, I make the point that the Prime Minister said in his statement of 22 August 1985 that the Government has expressed to Indonesia its concern at the way in which East Timor was incorporated.

I finally make the point that Senator McIntosh has also referred to Article 301 of the 1982 Law of the Sea Convention. That Article states:

> In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other

manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

Article 301 prohibits the threat or use of force agsinst the territorial integrity of another state in the context of implementation of the Convention, which of course is not in issue here. It does not affect the legality of dealings between other states and the state which has acquired territory by force.

Senator Kilgariff—Is a joint management possible, Minister?

Senator GARETH EVANS—Of course joint management and a joint development zone are possible and that is the subject matter of the present negotiations. The concept which seems to underlie Senator McIntosh's approach to this is that there must inevitably be a single line solution.

Senator McIntosh—It makes us a party to the incorporation.

Senator GARETH EVANS—I do not accept that and I think there has been enough nonsense espoused on this subject without Sentor McIntosh adding more to it on this occasion.

Senator GARETH EVANS—It is a peculiarly refined and exquisite form of torture to require a Minister who has been sitting almost non-stop in this chamber for the last two weeks to listen to an adjournment debate that has been going on for an hour and 20 minutes on the last sitting day of a sitting fortnight. But, such is life.....

I replied earlier to Senator McIntosh's contribution on Indonesia. The less said about that, perhaps the better. Senator Vigor's extended contribution on the subject of various alleged iniquities within the Department of Territories is something, again, that can be appropriately looked at by the Minister for Territories (Mr Scholes), who may or may not care to make a reply.....