

Embassy of the State of Palestine

General Delegation
of Palestine to Australia,
New Zealand, and the Pacific



INTERN POLICY REPORT

**Comprehensive report on the Australian government's
refusal to acknowledge the occupation of East Jerusalem**

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Executive Summary

On June 4, 2014, Senator George Brandis indicated a shift in Australian policy towards the Israeli occupation of Jerusalem by stating that Occupied East Jerusalem would be referred to as Disputed by the Abbott government. Senator Brandis is the Attorney-General and Minister for the Arts in the Abbott-led Liberal/National Coalition Government that was elected in the 2013 Australian Federal Election,¹ however on this occasion he was representing the Foreign Minister (Julie Bishop) in a Senate Estimates hearing into the Foreign Affairs, Defence and Trade Legislation Committee. The significance of the statements cannot be overstated as it signified the end of decades of bipartisan support for a two-state solution to the Israel-Palestine conflict based on international negotiations as supported by international law and resolutions of the United Nations General Assembly and the United Nations Security Council.

The purpose of this report is to provide accounts of all statements made relevant to Senator Brandis' initial statement and the follow-up statement made the following day, to provide an overview of the response from the Government, the Opposition and other politicians, from diplomatic figures and interested foreign actors, and from the media and the public. This information will be placed in the context of the gradual shift in policies regarding Israel and Palestine under the Abbott government which can be used to support actions and statements to be made in the future, as well as providing an historical record for the Palestinian Authority in the case of future similar events in Australia or in other nations.

¹ The Liberal Party is the conservative party in Australia and Labor is the liberal party. This can be confusing for non-Australians. The Australian political system most closely resembles the United Kingdom, with the Liberal Party aligning with the Conservative Party, and Labor with Labour.

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1. Introduction

The election of the Tony Abbott-led Liberal/National Coalition government in September 2013 was expected by virtually all members of Australian society and by all in the diplomatic circles. It was also known that the Abbott Government would take a more hard-line stance on Palestine than the previous Labor Government through statements made in Parliament, policy briefs, and in comments to the media. Numerous actions and statements have been made since the election to support this, as will be outlined in the report.

Despite this, the comments made by Senator Brandis on June 4, 2014, and then endorsed by the Foreign Minister and the Prime Minister were surprising and very regrettable. This comprehensive report will seek to place the comments in both their immediate and long term contexts in order to help give a better understanding of the motivations and implications of the statement. It will provide analysis of what was said and what has been said since, and provide recommendations based on the findings of the report.

2. Context: Past Statements and Actions of the Abbott Government

The statements of Senator Brandis and other ministers in the Abbott Government must be considered in the context of past statements. In an interview with the *Times of Israel* in January 2014, Julie Bishop questioned the illegality of all Israeli settlements in the Occupied West Bank:

“I don’t want to prejudge the fundamental issues in the peace negotiations,” Bishop said. “The issue of settlements is absolutely and utterly fundamental to the negotiations that are under way and I think it’s appropriate that we give those negotiations every chance of succeeding.”

Asked whether she agrees or disagrees with the near-universal view that Israeli settlements anywhere beyond the 1967 lines are illegal under international law, she replied: “I would like to see which international law has declared them illegal.”²

Despite much backlash, Ms Bishop stood by her statements:

I am aware of the debate about legality, however the political negotiations will determine the status of the settlements and not an interpretation of international law... The Australian government supports the final status negotiations and will not seek to pre-empt the outcome of any of the issues which will have to be resolved by the two parties.³

The Abbott government is one of the most pro-Israeli governments in the world. It is not surprising as the last Liberal Foreign Minister, **Alexander Downer**, stated in 2006 that “Australia had been more supportive of the Israelis than 99 per cent of the world ...being called pro-Israeli [is not] a badge of shame.”⁴

Prior to the 2013 election, the Guardian Australia published an article outlining ten policy platforms to expect under Ms. Bishop, number four being “Australia would 'again become a strong supporter of Israel’”⁵

² R. Ahren, ‘Australia FM: Don’t call settlements illegal under international law’.

³ G. Narunsky, ‘Bishop defiant over settlement comments’, *The Australian Jewish News*, (03/02/14) <http://www.jewishnews.net.au/bishop-defiant-over-settlement-comments/33867>

⁴ J. Wakim, ‘A question for Attorney-General George Brandis: occupied land or occupied mind?’, *The Sydney Morning Herald*, (6 June 2014) <http://www.smh.com.au/federal-politics/political-opinion/a-question-for-attorney-general-george-brandis-occupied-land-or-occupied-mind-20140607-zs0b8.html#ixzz37JscQVDV>

⁵ L. Taylor, ‘Ten things to know about foreign policy under Julie Bishop and Tony Abbott’, *The Guardian Australia*, (3 June 2013) <http://www.theguardian.com/world/2013/jun/02/foreign-policy-julie-bishop-coalition>

The article details this position as follows:

Bishop claims Bob Carr, the Labor foreign minister, came to the foreign affairs job fifteen months ago "telling everyone the one thing he wanted to achieve as foreign minister was to change Australia's stance on Israel." And according to Bishop, Carr succeeded when he played a leading role in overruling the prime minister's preferred position last December so that Australia abstained from the vote on upgrading the recognition of a Palestinian state, rather than voting with Israel against it, as Gillard unsuccessfully proposed. "We will return to what was previously bipartisan support for Israel," Bishop says. Gillard insisted the vote did not reflect diminished support for Israel.

Once in power, the Abbot Government withdrew Australian support for an order to stop "all Israeli settlement activities in all of the occupied territories", being one of only nine nations. They also indicated that they do not believe that Israel must comply with the 1949 Geneva Convention. The part which they disagree with states: "the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies".⁶

All statements made by Abbott Government ministers must be considered in the context of these past statements and actions.

⁶ J. Swan, 'Tony Abbott quietly shifts UN position to support Israeli settlements, upsetting Palestinians', *The Sydney Morning Herald*, (25 November 2014) <http://www.smh.com.au/national/tony-abbott-quietly-shifts-un-position-to-support-israeli-settlements-upsetting-palestinians-20131124-2y434.html#ixzz37QtuXOXD>

3. Statements

3.1 Senator George Brandis

On 4 June, 2014 the Senate Estimates for the Foreign Affairs, Defence and Trade Legislation Committee met for the third of a four day hearing.⁷ As per the program, the hearing reached the Middle East and Senator Brandis, representing Foreign Minister Julie Bishop, responded to questions about the official Australian policies regarding the occupation of Palestine and human rights abuses in the Occupied Territories. In particular, questions relating to an article in the *Times of Israel* in January titled ‘Australia FM: Don’t call settlements illegal under international law’,⁸ (Appendix C) and to the recently aired documentary of the ABC program *Four Corners* which highlighted the human rights abuses of minors occurring in the Occupied West Bank.⁹ This indicated that decades of bipartisan support for continuous UN, UNSC, and ICJ rulings declaring the Israeli settlement program illegal and a hindrance to the peace process was shifting to a Liberal policy of granting leniency to the program to the detriment of the Palestinian people and future peace negotiations. As the questions continued, Senator Brandis challenged Senator Lee Rhiannon of the Greens Party on her use of the term ‘occupied’ when describing East Jerusalem. The conversation was as follows:

Senator Rhiannon: Why did the Australian Ambassador to Israel attend a meeting in occupied East Jerusalem with the Israeli minister for housing and construction, the same minister who is forecasting a 50 per cent increase in settlements in the occupied Palestinian territories in the next five years?

Senator Brandis: I think I should say that the rather tendentious way in which you put that question, and in particular the use of the word 'occupied', is not something that the Australian government of either political persuasion acknowledges or accepts.

Senator Rhiannon: You do not use the term 'occupied Palestinian territories' even though it is a United Nations term used widely by a number of international agencies like the European Union et cetera?

⁷ An explanation of the purpose of Senate Estimates can be found in Appendix D

⁸ R. Ahren, ‘Australia FM: Don’t call settlements illegal under international law’, *The Times of Israel*, (January 15, 2014). <http://www.timesofisrael.com/australia-fm-dont-call-settlements-illegal-under-international-law/#ixzz358dJ4ewGChromeHTML\Shell\Open\Command>

⁹ The program can be viewed here: <http://www.abc.net.au/4corners/stories/2014/02/10/3939266.htm>

Senator Brandis: It is used by a lot of people. It is used by a lot of communists, too. Weren't you a member of the Communist Party once?¹⁰

Brandis refused to confirm the meaning of his statement for the remainder of the day despite continued questioning from Senator Rhiannon, Senator Nick Xenophon (Independent), and Senator Sam Dastyari (Labor).

Senator XENOPHON: Chair, I raise a point of order on relevance. I do not really give a rats what Senator Rhiannon may or may not be a member of previously; I just want to get to the questions. The minister has just made a statement about whether the territories are occupied or not. That seems to be a massive shift in Australia's policy.

Senator Brandis: No.

Senator DASTYARI: That is a huge shift.

Senator Brandis: No, that is not at all what I said.

Senator XENOPHON: Sorry, what did you say?

Senator Brandis: What I said is that the Australian government does not describe those territories by reference to that nomenclature, by reference to the terms in which Senator Rhiannon has chosen to put her question.

Senator XENOPHON: What about the Security Council resolutions of October 2012 and January 2011 where Australia did adopt that nomenclature?

Senator Brandis: That is not the way that we describe that territory.¹¹

The discussion continued to a question about a meeting attended by the Australian Ambassador to Israel, David Sharma, with the Israeli Housing and Construction Minister in Occupied East Jerusalem:

Senator RHIANNON: ... Has an explanation or apology been sent to the Palestinian authorities for this meeting being held?

Mr Varghese: I do not think either an explanation or an apology is required.

Senator RHIANNON: Even though it was in occupied Palestinian territory?

Mr Varghese: I have just explained what the policy context of that is.

¹⁰ Commonwealth of Australia, *Senate Estimates: Foreign Affairs, Defence and Trade Legislation Committee*, (June 4, 2014), 114-115.

¹¹ *Ibid.*, 115-116.

Senator Brandis: And you are the one who keeps using this term 'occupied East Jerusalem'. I know a lot of people do.

Senator RHIANNON: Most people discussing this issue use it. You are well aware of that.

Senator Brandis: Most people you mix with, I am sure, do.

Senator DASTYARI: So your view is that they are not occupied?

Senator Brandis: We are talking about the description of an area.

Senator DASTYARI: And you are saying they are not occupied.

Senator Brandis: The point I made is that the Australian government does not refer to East Jerusalem by the descriptor 'occupied East Jerusalem'. We speak of East Jerusalem.

Senator XENOPHON: Are they occupied or not? Through you, Chair—I apologise—are the Palestinian territories occupied or not?

Senator Brandis: I am not here to express views on the rights and wrongs of the Middle Eastern situation. I am merely making the point that the tendentious description that Senator Rhiannon chose to use... to describe the way in which the question was framed. It is not the descriptor—the proper noun, if you like—that the Australian government uses.

Senator XENOPHON: Are they occupied or not, in your view—

Senator Brandis: I do not profess a view on this matter.

Senator XENOPHON: But isn't there a view implied in the Security Council resolutions that Australia voted for?

Senator Brandis: I am not professing a view on this matter. I am merely correcting the use of a term as a descriptor or a proper noun by Senator Rhiannon which, as it were, prejudges the issue about which she inquires. That is all.¹²

When questioned further, Brandis indicated that the Abbott Government does not consider the occupation of East Jerusalem in not an impediment to peace talks:

Senator RHIANNON: So you agree that the occupation of East Jerusalem is an impediment to these peace talks?

Senator Brandis: No, I do not agree with that characterisation at all. When two or more parties are in dispute then they are in dispute about issues. Those matters are issues because

¹² *Ibid.*, 116-117.

they remain at issue between the parties. You characterise that as an impediment; I think it is a more accurate description to say that the status of East Jerusalem is one of the issues, an important issue.¹³

At this point, Senator Brandis began to clarify his original point through grammatical explanation:

Senator Brandis: ... I make the point that the use of that term as a descriptor or, as it were, as a proper noun is not a term that the Australian government customarily uses.

He continues later:

Senator Brandis: You need to be very careful in your use of language. What I took issue with and continue to take issue with is the use of the descriptor 'occupied East Jerusalem' as, as it were, a proper noun to describe the status of East Jerusalem. You have asked a different question now generally about the use of the word 'occupied'.¹⁴

The hearings were closed minutes later without a conclusion to the discussion about Senator Brandis' refusal to use the word 'occupied' as an adjective when describing East Jerusalem (Appendix D).

On June 5, 2014, the Senate Estimates for the Foreign Affairs, Defence and Trade Legislation Committee met for the fourth and final day of the hearing. The hearing commenced with the Chair (Senator Alan Eggleston, Liberal) allowing Senator Brandis to make a statement:

Senator Brandis: Yes, Mr Chairman. You will recall that, when the committee adjourned last night, there had been a number of questions and exchanges, in particular between Senator Rhiannon and me, concerning the description of East Jerusalem. I have had a conversation with the foreign minister and I want to make a short statement to the committee with her authority.

Australia supports a peaceful solution to the dispute between Israel and the Palestinian people which recognises the right of Israel to exist peacefully within secure borders and also recognises the aspiration to statehood of the Palestinian people. The description of areas which are the subject of negotiations in the course of the peace process by reference to historical events is unhelpful. The description of East Jerusalem as 'occupied' East Jerusalem is a term freighted with pejorative implications, which is neither appropriate nor useful. It

¹³ *Ibid.*, 117.

¹⁴ *Ibid.*, 117, 118.

should not and will not be the practice of the Australian government to describe areas of negotiation in such judgemental language.¹⁵

Senator Xenophon took umbrage at the lack of content:

Senator XENOPHON: Respectfully, Attorney, isn't your statement a non-statement, in that there is no position expressed as to the term 'occupied'?

Senator Brandis: The statement is a considered statement, which speaks for itself, and I will not be commenting it on it further.¹⁶

The statement was tabled and is viewable in Appendix E. Senator Brandis refused to elaborate on the statement, however it is important to note that the statement was reportedly made in collaboration with Foreign Minister Julie Bishop and is thus the official position of the Government.

Brandis has refused to comment further on his statements. In an interview on 7.30 on the ABC network on June 19 he stated "I have nothing to add to what I said in Senate estimates committee and I have nothing to add to what the foreign minister said today both of which are entirely consistent with each other."¹⁷

It has been implied that since his original comments, Brandis was making statements beyond the purview of his portfolios as Attorney General and Minister for Arts, and that subsequent statements by Abbott government ministers have been in accordance with this statement so as to appear non-contradictory.¹⁸

3.2 Prime Minister Tony Abbott

At the time of the initial statement and for a week after, Prime Minister Tony Abbott was overseas in his official capacity as Prime Minister of Australia. Little has been stated in relation to the supposed shift other than the following interaction in New York:

Interviewer: "I understand that the Palestinians have been seeking some clarification from the Australian Government with regards to the new policy not to mention 'occupied' when

¹⁵ Commonwealth of Australia, *Senate Estimates: Foreign Affairs, Defence and Trade Legislation Committee*, (June 5, 2014), 5.

¹⁶ *Ibid.*, 6-7.

¹⁷ ABC, 7.30, (19 June 2014), <http://www.abc.net.au/7.30/content/2014/s4029307.htm>

¹⁸ M. Kenny, 'Brandis 'disputed' claim ruffles Coalition feathers', *The Canberra Times*, (13 June 2014) <http://www.canberratimes.com.au/federal-politics/political-news/brandis-disputed-claim-ruffles-coalition-feathers-20140613-3a3f8.html>

it's reference East Jerusalem. Is this a new Government policy and can you offer an explanation to us?"

Prime Minister: "It is important, as far as you can, not to use loaded terms, not to use pejorative terms, not to use terms which suggest that matters have been prejudged and that is a freighted term. The truth is they are disputed territories and let's try to ensure that disputes are resolved fairly to all as best we can in an imperfect world."¹⁹

There was no mention of policy shift. It has been implied he "was given little choice because to contradict his senior minister and top law officer would have been deeply embarrassing."²⁰

In another statement, the Prime Minister reiterated that there had been no policy change:

"There has been no change in policy – absolutely no change in policy.

There's been a terminological clarification. We absolutely refuse to refer to occupied East Jerusalem. That was what the argument between Senator Brandis and the Greens was all about, but there has been no change in policy – simply a terminological clarification."²¹

3.3 Foreign Minister Julie Bishop

As Foreign Minister, statements such as those made by Senator Brandis on 5 June would normally come from Ms Bishop's office. Ms Bishop has attempted to scale back the significance of Senator Brandis's statement by also stating that it is a terminological clarification rather than a policy shift:

"I am not getting into that debate. I call it East Jerusalem, you can't force me to call it something ... if that is a geographic name that is its name."

She insisted there had been no change to policy and that the former Labor government, including former foreign minister Bob Carr had "often described it as East Jerusalem, he didn't refer to it as occupied, capital O proper noun occupied, East Jerusalem, he referred to it as East Jerusalem, so what we have said is what I thought was a non-contentious statement, the geographic location of East Jerusalem is precisely that, East Jerusalem."²²

¹⁹ Liberal Party Website, 'Doorstop Interview, New York Stock Exchange, New York', (11 June 2014) <https://www.liberal.org.au/latest-news/2014/06/11/prime-minister-doorstop-interview-new-york-stock-exchange-new-york>

²⁰ M. Kenny, 'Brandis 'disputed' claim ruffles Coalition feathers'.

²¹ L. Taylor, 'Julie Bishop avoids referring to East Jerusalem as 'disputed' or 'occupied'', *The Guardian Australia*, (17 June 2014) <http://www.theguardian.com/world/2014/jun/17/julie-bishop-avoids-referring-disputed-occupied>

²² *Ibid.*

3.4 Other Significant Members of the Abbott Government and its Representatives

3.4.1 Joe Hockey

As the Treasurer, Joe Hockey is one of the most senior ministers in the Abbott Government. Significantly, Mr. Hockey's father was an Armenian-Palestinian refugee from Jerusalem who immigrated to Australia in 1948.²³ One of his only statements followed the party line:

Look, the fundamental point is our position has not changed. Our position has not changed at all in relation to matters in the Middle East. It hasn't changed. And I am confident that when some of those interested parties see the full details of what's been said and the context in which it was said, they'll understand that there's been no change in policy.²⁴

3.4.2 Dave Sharma, Australian Ambassador to Israel

The Australian Ambassador to Israel has furthered the issue by including the West Bank in the new terminological shift in Australian policy:

“The statement that came out that was issued in Canberra last week didn't make reference to [the West Bank]... I think we just call the West Bank, ‘the West Bank,’ as a geographical entity without adding any adjectives to it, whether ‘occupied’ [the Palestinian position] or ‘disputed’ [the Israeli position]. We'll just call it what it is, which is ‘the West Bank.’”²⁵

²³ A. Fontaine, ‘No ordinary bloke: Joe Hockey’, *The Sydney Morning Herald*, (1 April 2009) <http://www.smh.com.au/executive-style/management/no-ordinary-bloke-joe-hockey-20090518-b9me.html>

²⁴ N. Woodley, ‘Govt defends change of language on east Jerusalem’, *PM, ABC Radio*, (13 June 2014) <http://www.abc.net.au/pm/content/2014/s4025049.htm>

²⁵ Y. Rosenburg, ‘Australian Ambassador: We Wouldn't Use the Term ‘Occupied’’, *Tablet*, (11 June 2014) <http://www.tabletmag.com/scroll/175672/australian-ambassador-we-wouldnt-call-the-west-bank-occupied>

4. Key Statements Against the Change in Terminology

4.1 Within the Liberal Party

According to the ABC, at the West Australian Liberal Party's State Council meeting in Manjimup, West Australia, on June 21, a number of rural delegates raised the issue of the government's statements with Defence Minister David Johnston.²⁶ The rural MPs were concerned that the statements could negatively impact on trade with Arab and Islamic countries. According to an article on the ABC: "The MP accused Senator Brandis of "intellectual arrogance", saying he does not spend enough time with normal people and instead operates in a Senate vacuum."²⁷

The article quotes Liberal backbencher Craig Laundry stating that he believes East Jerusalem is occupied: "If you were to go to East Jerusalem today, you would see Israeli soldiers walking through with guns... Now in terms of me being a simple guy from Reid, in Reid if it looks like a duck and it quacks like a duck, it's a duck."²⁸

It is important to note that in Australian politics it is extremely uncommon for dissention within any political party to be voiced publicly. This makes these statements, which not only disagree with the Attorney-General but ridicule his personality by accusing him of "intellectual arrogance", extremely significant.

4.2 The Labor Party

As the Federal Opposition, the Labor Party are the main source of policy debate in Australian politics. From the very beginning of the saga, the Labor party has challenged the Liberal party to clarify the meaning of the statements made by Senator Brandis (see the comments made by Senator Dastyari in part 1). It is important to note that the majority of the following statements made by prominent members of the Labor party were made outside of parliament.

²⁶ E. Borrello, 'Rural Liberals criticise Attorney-General George Brandis over East Jerusalem remarks', *ABC News*, (23 June 2014) <http://www.abc.net.au/news/2014-06-23/rural-liberals-criticise-brandis-over-east-jerusalem-remarks/5542114>

²⁷ *Ibid.*

²⁸ *Ibid.*

It has been reported that Senator Brandis' statement has created tensions between rival factions within the ALP, with Fairfax Media reporting that the NSW branch of the ALP and its Left faction are against Bill Shorten and the Victorian Right.²⁹

Mr Shorten and his allies are widely seen as too close to the so-called pro-"Israel lobby". And there is disquiet about Mr Shorten's muted condemnation of the government's shift on its description of East Jerusalem - a move that has provoked diplomatic protests from Arab communities but which the government says is only a change in terminology, not policy.³⁰

4.2.1 Opposition Leader Bill Shorten

The opposition Leader made very few public statements about Senator Brandis statement, and it was not raised in Parliament. His statements are as follows:

"The territory is occupied, and that's why Labor describes it like that." This statement was made by a spokesperson on June 19.³¹

It is also important to note how Mr. Shorten avoided commenting on the issue in other instances of its mention. On Wednesday June 18, the following correspondence occurred at a press conference at the Canberra Institute of Technology:

JOURNALIST: Do you think farmers should be concerned about Senator George Brandis' comments – or refusal to acknowledge that East Jerusalem is occupied?

SHORTEN: Sorry I didn't hear the first part of that, I thought you said farmers?

JOURNALIST: Yes, in Western Australia.

SHORTEN: I think Attorney-General Brandis should practice the policy of thinking first and then speaking. Foreign affairs and diplomatic relations require cool heads and sensible comments, not just changing protocols or making sudden announcements, so that's my concern.

JOURNALIST: On that issue, Barnaby Joyce has said he'll leave foreign affairs to people smarter than he. Are you worried that our trading relationship might be at risk because of the decision to drop 'occupied' in relation to Israeli occupation in Jerusalem?

²⁹ J. Massola, 'Labor factions split over government's decision to 'reclassify' East Jerusalem', *The Sydney Morning Herald*, (19 June 2014) <http://www.smh.com.au/federal-politics/political-news/labor-factions-split-over-governments-decision-to-reclassify-east-jerusalem-20140618-3ae6a.html>

³⁰ *Ibid.*

³¹ L. Cox, 'George Brandis blocks questions on government's position on East Jerusalem', *The Sydney Morning Herald*, (20 June 2014) <http://www.smh.com.au/federal-politics/political-news/george-brandis-blocks-questions-on-governments-position-on-east-jerusalem-20140620-3ahtp.html>

SHORTEN: I hadn't heard that Senator Barnaby Joyce had said he'd leave foreign affairs to people smarter than him. If that's what Senator Joyce believes, then perhaps that is good advice for himself. I don't know beyond that what he said and why he said it, or the context of what he said.

What I do know is that perhaps if this government is recognising that there are issues which require more thought, they should rethink their budget. While Senator Joyce may be talking about what's happening in Jerusalem, what I would say to Senator Joyce is look what's happening in your own backyard of Australia. Farming people do not need a new tax on petrol. There's a lot of pensioners in the bush on fixed incomes who are doing it hard, they do not need this government breaking their promises and lying to them, and cutting the real increase in pensions. Families in the bush are doing it tough. So I hope that Senator Joyce is spending more time concentrating on looking after rural and regional Australians rather than other matters.

JOURNALIST: Are you concerned that dropping of that word is going to potentially cause problems for our trading relationships?

SHORTEN: What I wish is this government would think first and talk second. Whereas what they seem to have a habit of doing in diplomatic relations is talking first and thinking second.³²

There were ample opportunities for Mr. Shorten to reassert the ALP's stance, however he avoided the issue instead using the statement for domestic political points.

4.2.2 Opposition Foreign Minister Tanya Plibersek

Ms. Plibersek has been more forthcoming in her opposition to Brandis' statement and the shift away from a bipartisan stance on the Israel-Palestine Peace Process. Ms. Plibersek's spokesman stated that: "We are committed to supporting an enduring and just two-state solution. Clear Department of Foreign Affairs and Trade advice to Labor in government was that the settlements are not in line with international law."³³

Ms. Plibersek further clarified her position, while downplaying a feud within the ALP, in an interview with Alison Carabine on ABC Radio National:

³² B. Shorten, 'Doorstop: Forrest', (23 June 2014) <http://billshorten.com.au/category/transcripts>

³³ K. Murphy, 'George Brandis's take on 'occupied east Jerusalem' comes under Labor fire', *The Guardian Australia*, (6 June 2014) <http://www.theguardian.com/world/2014/jun/06/george-brandis-take-on-occupied-east-jerusalem-comes-under-labor-fire>

CARABINE: Tanya Plibersek, also bubbling away is the Government's decision to refer to East Jerusalem as 'disputed' not 'occupied'. Ambassadors from Arab countries will meet the Foreign Minister today to voice their concerns, why do you think they haven't been reassured by the Prime Minister's statement, his firm statement that while there might be some revised language in play, there's not been any change to Australia's support for a two-state solution. Nothing's been changed on that front.

PLIBERSEK: Well, I think that the fact that Senator Brandis has been out freelancing on this sort of foreign policy issue, a very serious foreign policy issue, is not reassuring. It's not reassuring for Ambassadors and I think it worries people who understand that loose words in Australia have consequences. Obviously consequences for Australian farmers, they're worried about \$3.5 billion worth of agricultural exports to the Arab League countries. But beyond our own concerns here in Australia, these loose words have reverberations in the Middle East, they don't help the peace process, you've got people who are working very hard every day on the ground to try and build a sustainable two-state solution with a secure Israel and a viable Palestine next door to each other and George Brandis at 11 o'clock at night in Senate Estimates trying to divert attention from other problems that he's got by ratcheting up the discussions about East Jerusalem and settlements and occupied territories and so on. It's not a good look for Australia to be moving away from bipartisan, long-held positions, terminology that's been accepted and used by Liberal and Labor Governments in the past to what Senator Brandis is making up on the spot in Senate Estimates.

CARABINE: But the Prime Minister says the Government is still committed to the peace process and can I ask you how united is Labor in your support for the classification of East Jerusalem as occupied? There is a view that Bill Shorten and the Victorian right are too close to what's called the pro-Israeli lobby and you yourself coming from the left is unhappy that Bill Shorten has not used stronger language to condemn this change of wording.

PLIBERSEK: Well I don't know who has that view. Bill and I have an identical position here. We put out statements yesterday that show exactly that. It is important that we continue to focus on the issue of bringing people to the table, Palestinians, Israelis, bringing them to the table and ensuring that negotiations continue for a two-state solution. A safe and secure Israel behind internationally recognised borders, a viable Palestinian state; that's everybody's position in the Australian Labor Party.³⁴

³⁴ ABC Radio National Breakfast, 'Radio Interview', *Tanya Plibersek Official Website*, (19 June 2014) <http://tanyaplibersek.com/2014/06/abc-radio-national-breakfast/>

4.3 The Greens

The Greens have been the most active in support of Palestine and in voicing criticisms of Israeli policies and actions within Australian politics. The first attempt at Boycott, Divestment and Sanctions in Australia was by the Greens-led Marrickville Council in 2011,³⁵ and they also put forward a motion in the senate against Australia's support for Israeli settlement activity at the UN which was not supported by Labor.³⁶ The wording of the motion is as follows:

I give notice that on the next day of sitting I shall move that the Senate –

1) Notes that:

a. Australia voted against United Nations resolution L18, which reaffirms ‘that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development...’.

b. Previously Australia had voted for this resolution for 15 out of the last 20 years, including under the former Liberal National Party government.

c. Australia abstained in the vote on the United Nations resolution L17, regarding the applicability of the Geneva conventions to the West Bank.

d. Australia has voted for similar resolutions at the United Nations in 16 of the last 20 years, and abstained in only four other years.

e. A Roy Morgan poll of November 2011 showed that 64 per cent of Australians polled opposed the building of settlements on Occupied Palestinian Territories.

2) Calls on Prime Minister Tony Abbott to ensure Australia in future supports United Nations resolutions that identify illegal Israeli settlements as a major roadblock to peace in the Middle East.

3) Reaffirms commitment to a two state solution to the Israel-Palestine conflict.

³⁵ A. Aikman, ‘Greens forced to back down on Israel boycott’, *The Australian*, (20 April 2011) <http://www.theaustralian.com.au/national-affairs/marrickville-council-drops-israel-boycott/story-fn59niix-1226041840517?nk=43cb7212fe6aa98e45c39495d66051c2>

³⁶ ‘Voted Down – Greens Motion Against Australia’s Support for Illegal Israeli Settlements’, *The Greens*, (9 December 2013) <http://greens.org.au/news/voted-down-greens-motion-against-australias-support-illegal-israeli-settlements>

The original statement made by Senator Brandis occurred after he took umbrage at Greens Senator Lee Rhiannon's question about Occupied East Jerusalem in Senate Estimates, and the Greens have remained at the forefront of the issue.

4.3.1 Greens Leader Senator Christine Milne

On June 17, 2014, Senator Milne, with Independent Senator Nick Xenophon, introduced a motion to the Senate that the Senate:

(a) notes that:

(i) the use of the term 'Occupied Palestinian Territories' is an internationally accepted term in use by the United Nations (UN),

(ii) the International Court of Justice and the UN General Assembly have deemed East Jerusalem part of the West Bank and an occupied territory,

(iii) Australia has historically supported UN Security Council and General Assembly resolutions regarding the Israel-Palestine conflict and the status of Jerusalem,

(iv) the voting patterns of Australia in relation to the Israel-Palestine conflict have shifted dramatically under the Abbott Government, and

(v) these shifts in the position of the Australian Government have caused diplomatic tensions with a number of countries, including the threat of potential sanctions; and

(b) calls on the Minister for Foreign Affairs (Ms Bishop) to publicly acknowledge that:

(i) the Israeli settlements in the Occupied Palestinian Territories are illegal and in breach of the Fourth Geneva Convention; and

(ii) East Jerusalem is an occupied territory.³⁷ (Appendix F)

The following day, Senator Milne moved that the motion be taken as a formal motion, but this was blocked by the Labor party:

Senator MILNE: I ask that general business notice of motion No. 276 standing in my name and in the name of Senator Xenophon for today relating to recognition the United Nations accepted term 'occupied Palestinian territories' be taken as a formal motion.

The DEPUTY PRESIDENT: Is there any objection to this motion being taken as formal?

³⁷ Commonwealth of Australia, *Senate*, (June 17, 2014), 29.

Senator Fifield: Yes.

The PRESIDENT: Formality has been denied, Senator Milne.

Senator MILNE: I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator MILNE: I rise to say how disappointed I am that formality has been blocked for this particular matter. It is a critical issue, something which the Senate ought to be able to resolve today. The fact of the matter is 'occupied Palestinian territories' is an internationally accepted term and is used by the United Nations. The Australian government is an embarrassing Australia every day by refusing to use the United Nations recognised term. I do not accept the idea that because this is a foreign affairs matter it cannot be resolved. It is very specific. It is clear in the fourth Geneva convention and the Australian Greens believe that this Senate should make a very fair statement to the government in particular that we stand by the United Nations and the force Geneva convention. (Time expired)

Senator WONG (South Australia—Leader of the Opposition in the Senate): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for two minutes.

Senator WONG: I thank the chamber. Labor is denying formality on this motion for the reasons outlined in my statement to the Senate on 25 March this year. The Australian Labor Party believes that complex or contested matters of foreign policy should not be dealt with in summary fashion by this chamber and nor, in the absence of extraordinary circumstance, do we support the suspension of standing orders to bring on immediate debate. Senator Milne in her contribution, conflates two issues. One is the substantive issue and the second is the capacity of the Senate to resolve these matters. I do not think even the most ambitious of senators would suggest that a motion dealt with in summary fashion will resolve a foreign policy matter such as the one which is the substance of this motion.

I would emphasise that there is much in this motion which reflects the position of the Australian Labor Party on Palestine and the occupied territories including occupied east Jerusalem. Indeed, much of the motion is consistent with what used to be the bipartisan consensus in this country. Labor remains committed to supporting and enduring and just two-state solution to the Israeli-Palestinian conflict. The term 'occupied territories', including in relation to occupied east Jerusalem, is accepted in the international community. The United Nations General Assembly has, in many of its resolutions, used the same language. Freelancing on foreign policy has serious consequences. Senator Brandis's actions have

isolated Australia from the international community and are another foreign policy embarrassment the Abbott government.³⁸ (Appendix G)

In an article published on the Greens Official Website, Senator Milne expressed her disappointment with Labor's blocking of the motion, also stating her belief that the right faction was the cause:

The refusal to acknowledge the settlements as illegal is a massive slap in the face to Palestine and the global community. It is an outrageous back down and hugely embarrassing for Australia... It is also extremely disappointing that Labor has refused to take a strong stand despite decades of bipartisan support. The hard right of the Labor party has reared its ugly head.³⁹

4.4 Independent Senator Nick Xenophon

Senator Xenophon was also present at the Senate Estimates where Senator Brandis made his original statement. Senator Xenophon also sought clarification on Senator Brandis' statement and later joined Greens Leader Senator Christine Milne by introducing formal motion 276 to the Senate on June 18, 2014.

After Labor blocked a vote on the motion, Senator Xenophon had the following to say:

As co-sponsor with Senator Milne, I indicate my disappointment that we cannot have a vote on this motion. I refer to what Professor Ben Saul, Professor of International Law at the University of Sydney, has stated:

Australia's new view is starkly at odds with the true status of east Jerusalem under international law.

... ..

It also corrodes the international rule of law and violates Australia's international law obligations.

... ..

The term 'occupation' is therefore not pejorative or judgmental. It is an objective legal description of Israel's physical control of a place beyond Israel's borders at independence in 1948.

³⁸ Commonwealth of Australia, *Senate*, (June 18, 2014), 66.

³⁹ 'Labor Party Joins Abbott Government in Weak Position on Illegal Settlements', *The Greens*, (18 June 2014) <http://greens.org.au/node/5156>

I also refer honourable senators to the advisory opinion of the International Court of Justice in 2004 which confirmed that territory can be occupied even if there is an underlying dispute about sovereign ownership of that territory. I believe the Australian government has made a mistake in going down this course and I regret that we cannot vote on this motion.⁴⁰
(Appendix G)

⁴⁰ Commonwealth of Australia, *Senate*, (June 18, 2014), 66-67.

5. Former Australian Politicians and diplomats

As the Senator Bradis' remarks on June 4 indicated a shift in Australian policy, many former politicians, diplomats and experts in the field had much to say on the issue.

5.1 Bob Carr

Robert Carr was the Labor Premier of New South Wales⁴¹ from 1995 to 2005, and Senator for the Labor Party from 2012 to 2013, the majority of which he was the Foreign Minister under the Gillard-Rudd government. Mr. Carr was largely responsible for Australia abstaining on a motion before the UN General Assembly to grant observer state status to the Palestinian Authority, which Prime Minister Julia Gillard had earlier indicated Australia would vote against. It is understood that a majority of the Labor caucus supported abstention.⁴²

Mr. Carr also worked with the United Kingdom's Foreign Secretary William Hague at the fifth Australia-UK Ministerial Consultations (AUKMIN) in January 2013. The following statement calling on the US to show leadership in resuming peace talks was made after the meeting:

We agreed that there is a particularly urgent need at this time for progress on the Middle East Peace Process. The UK and Australia call on the US to lead a major effort in 2013 to achieve a negotiated two-state solution with a secure Israel alongside a Palestinian state. History has shown that only the US has the influence and capability to bring both sides together. Past progress has only been achieved through US leadership. Strong US engagement is in the interests of Israelis, Palestinians and the wider region. Resolution of the Israeli Palestinian conflict will strengthen the forces of democracy and moderation throughout the Middle East. The Palestinian Authority and the new Israeli government must engage seriously in negotiations without preconditions. Actions by both sides must be in the interests of peace. Neither side should create obstacles to that objective. We call on Israel to stop settlement activity. All settlements are illegal under international law and settlement activity undermines the prospects for peace. Australia and the United Kingdom expressed particular concern

⁴¹ The Commonwealth of Australia is a federation of six states and two territories. The Premier is the head of state politics, but does not have a say in federal politics.

⁴² P. Hudson, 'Julia Gillard backs down on plans to vote against improving Palestine's status in the United Nations', *News.com.au*, (28 November 2012) <http://www.news.com.au/national/victoria/julia-gillard-in-vote-reversal/story-fndo4cq1-1226525234878>

regarding the recent settlement announcements of the Israel Government including the proposed development of the E1 area.⁴³

Since retiring from politics, Mr. Carr has also publicly admonished the influence of the pro-Israel Lobby on Australian politics in public interviews and in his infamous autobiography.⁴⁴

On June 8, 2014, Mr. Carr wrote an article in conjunction with another former Labor Foreign Minister, **Gareth Evans** (1988 – 1996), detailing how this change in terminology from the Abbott Government is a hindrance to the peace process and a significant move away from decades of a bipartisan position. The following are significant excerpts (for full article see Appendix H):

The Abbott government's new position shatters what has been for nearly 50 years a completely bipartisan position. Neither Fraser and Peacock, nor Howard and Downer either adopted or even explored taking a similar stance. And for very good reason.

East Jerusalem was occupied by Israel in 1967. No other state – not even the US – describes the situation in any other terms. There are multiple Security Council resolutions rejecting Israeli sovereignty over East Jerusalem. The International Court of Justice in 2004 declared not only that the West Bank was occupied but that this was illegal. The court made no distinction between East Jerusalem and other parts of the Palestinian territories.

...

Four leading Israeli lawyers, including former attorney-general Michael Ben-Yair, wrote to Ms Bishop restating the international legal consensus. They said they viewed with deep concern the Foreign Minister's comments on settlements. So did a number of other eminent Israelis, including four winners of the Israel Prize, the country's most prestigious award.⁴⁵

⁴³ 'Archived: AUKMIN 2013 Communique', *Australian Minister for Foreign Affairs*, (18 January 2013) http://www.foreignminister.gov.au/releases/2013/bc_mr_130118a.html

⁴⁴ A. Loewenstein, 'Bob Carr was right to start a debate on the influence of the Zionist lobby', *The Guardian Australia*, (15 April 2014) <http://www.theguardian.com/commentisfree/2014/apr/15/bob-carr-was-right-to-start-a-debate-on-the-influence-of-the-zionist-lobby>; 'Former foreign minister Bob Carr says 'pro-Israel lobby' influenced government policy', *ABC News*, (10 April 2014) <http://www.abc.net.au/news/2014-04-09/bob-carr-lashes-out-at-melbourne-pro-israel-lobby/5379074>

⁴⁵ B. Carr and G. Evans, 'Australia hinders progress in Middle East peace process', *The Canberra Times*, (8 June 2014) <http://www.canberratimes.com.au/comment/australia-hinders-progress-in-middle-east-peace-process-20140608-zs15x.html#ixzz36MQCNiBU>

5.2 Peter Rodgers

Peter Rodgers was the Australian Ambassador to Israel from 1994 to 1997. In an interview with journalist Tanya Nolan on the ABC radio program *The World Today*,⁴⁶ (Appendix I) Mr. Rodgers had the following to say about Senator Brandis' statement and the Abbott Government's position:

I really see absolutely no logic to it. I see no benefit for a government that still proclaims that it has an interest in a two-state solution to be supporting activities on the ground that defy the prospect of that actually happening.

When asked about relocating Australia's embassy to Jerusalem as a result of the statements, he had this to say:

Oh, I'm sure they'll be invited. It's a question of whether they have the fortitude to resist the invitation. The US has come under significant pressure to do the same thing. In fact there is a congressional law that requires the administration to move the American embassy from Tel Aviv to Jerusalem.

The successive administrations have found ways to get around that. I would hope that, if the Australian Government is most likely comes under pressure from the Israelis and a few others to support a relocation to Jerusalem, it will see that that would be a highly foolish move.

...

I think Israel, the Israelis are very adept and they would be crazy not to use this opportunity to ramp up the pressure on Australia to re-locate. So yes, there'll undoubtedly be an invitation in the mail if not in the ether.

The most significant statement of the interview dealt with the impact the statement would have on Australia's future potential to have a role in the peace process: "So Australia's just basically dealing itself out of any opportunity to exercise an influence that I think for decades it did which was to be a, in a sense, a moderating force to support a two-state solution."

⁴⁶ T. Nolan, 'Fmr ambassador to Israel says Australia's position on Israel's occupation of Palestinian territories, 'absurd'', *The World Today: ABC News*, (6 June 2014) <http://www.abc.net.au/worldtoday/content/2014/s4020204.htm?site=canberra>

6. Response to Statements

The responses to Senator Brandis' statement from individuals and organisations outside of Australian politics were prompt and ranged from overwhelming support to outright condemnation. The following section will outline what these responses were and how they affected the situation as it progressed.

6.1 The Palestinian Response

The Palestinian response was to swiftly condemn the statement and seek further clarification of Brandis' statement and its policy implications. A press release from PLO Executive Committee member **Dr. Hanan Ashrawi** on June 5 stated:

It is absolutely disgraceful and shocking that on the 47th anniversary of Israel's military occupation of the West Bank (including East Jerusalem), and Gaza, Australian Attorney--- General George Brandis is issuing such inflammatory and irresponsible statements that 'occupied East Jerusalem' is 'a term freighted with pejorative implications, which is neither appropriate nor useful.' Such pronouncements are not only in blatant violation of international law and global consensus, but are also lethal in any pursuit of peace and toxic to any attempt at enacting a global rule of law.⁴⁷

A letter from **Dr. Saeb Erekat**, Head of the Palestinian Negotiations Team, to Foreign Minister Julie Bishop dated June 5 condemned Senator Brandis' statement and introduced to possibility of legal and diplomatic repercussions, outlined the legal basis for the term 'occupied', and noted a pattern of behaviour that will isolate Australia internationally on this issue. The following is a full reproduction of the text:

Dear Hon. Julie Bishop,

The State of Palestine condemns the statements made today by the Attorney-General, George Brandis, to the Australian Senate, to the effect that Australia will no longer use the term "occupied" in reference to Israeli settlements in East Jerusalem. Mr. Brandis' statements is the latest in a series of acts that demonstrate that your Government does not intend to comply with its duty under international law not to recognize Israeli sovereignty over any part of the Palestinian territory occupied by Israel in 1967, including East Jerusalem. Please be advised

⁴⁷ Press release, see Appendix A.

that Palestine views these developments in the gravest terms and is weighing the appropriate legal and diplomatic response.

Mr. Brandis is quoted as saying that references to East Jerusalem as “occupied” have “pejorative connotations” and are “neither appropriate nor useful.” Mr. Brandis is further quoted as saying that “[i]t should not and will not be the practice of the Australian government to describe the areas of negotiation in such judgemental language.”

As you know, Palestine is a state under occupation and was recognized as such by the United Nations General Assembly Resolution 67/19. Israel’s occupation of Palestine, now entering its 47th year, is governed by the Fourth Geneva Convention of 1949. While Israel denies this fact, the entire international community, including all other State Parties to the Convention, the International Committee of the Red Cross (ICRC) and all relevant UN bodies, rejected Israel’s position and recognizes that the Convention applies *de jure* to occupied Palestine. The International Court of Justice (ICJ) reaffirmed this position in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Contrary Mr. Brandis assertions, the term “occupied” is not “judgemental language” that prejudices final-status negotiations. Rather, “occupied” acknowledges the legal fact that the Israeli regime in occupied Palestine is governed by, and systematically violates, the law of occupation, i.e. international humanitarian law, including the Fourth Geneva Convention.

The ICJ further ruled that Israel’s settlement policy and practices since 1977 violate article 49 of the Convention, which prohibits an occupying power from transferring its own civilian population into the occupied territory. Under the First Additional Protocol, violations of article 49 are grave breaches which all High Contracting Parties are under a duty to suppress. While Israel has not adopted Additional Protocol I, many of the Protocol’s norms reflect customary international law. No country in the world recognizes Israel’s annexation of East Jerusalem as valid. In fact, the UN Security Council has adopted seven resolutions rejecting Israeli sovereignty over East Jerusalem.¹ The ICRC asserts [sic] that the status of violations of article 49 as a grave breach reflects customary international law. Accordingly, the illegality of Israeli settlements anywhere in occupied Palestine, including East Jerusalem, is beyond dispute.

Mr. Brandis’ comments are the latest in a pattern of behaviour from Palestine concludes that Australia has no interest in complying with its duty under international law not to recognize the illegal Israeli settlement regime in Palestinian territory. I wrote you on May 15, 2014 to express Palestine’s grave concern that Australia’s ambassador to Israel had met with Israeli officials in East Jerusalem. Previously, on January 20, 2014, the PLO asked you to clarify your statement questioning the illegality of the settlements. This pattern of behaviour also

places Australia badly out of step with the international consensus that the 1967 border must be reinforced as the basis for negotiations towards a two-state solution.

Accordingly, please be advised that Palestine will request that the Arab League and the Islamic Conference review the relations of the Arab and Islamic world with Australia in light of Australia's unlawful recognition of the illegal Israeli settlement regime in occupied Palestine.⁴⁸

As indicated by Dr. Erekat's letter, a meeting of the Arab League and of the Islamic Conference were convened to discuss the matter.

6.2 General Delegation of Palestine to Australia and Arab Ambassadors

The threat of trade sanctions was introduced by Arab and Islamic countries in response to Senator Brandis' statement and the following statements by the Ms. Bishop. The Council of Arab Ambassadors met to discuss the issue and sought clarification before any actions would be taken.

As reported by John Lyons in *the Australian* on June 10:

The response from Arab countries may include a move to ban the \$2 billion-a-year trade in live sheep and agricultural products to Gulf states. "This is an issue that has brought all Arab countries together," Palestinian Authority spokesman Xavier Abu Eid, said.

"I can assure you that diplomats from all Arab countries are mobilised after the shameful and ignorant statement by the Australian Attorney-General.

"With its shameful statements against international law, the Australian government has become part of the problem rather than part of the solution."

The two largest political blocs in the Middle East — the Arab League, with 22 members, and the Organisation of Islamic Conference, with 56 members — will jointly hold an emergency meeting this month to decide their response to Australia's declaration.⁴⁹

Prior to the meeting, His Excellency **Izzat Abdulhadi**, Head of the General Delegation of Palestine to Australia and Ambassador to New Zealand, East Timor and the Pacific Nations, made the following statements to the media on June 18:

⁴⁸ See Appendix B

⁴⁹ J. Lyons, 'Arabs threaten to ban meat trade', *The Australian*, (10 June 2014) <http://origin.www.theaustralianls.com.au/national-affairs/policy/arabs-threaten-to-ban-meat-trade/story-fn59nm2j-1226948715978>

The occupation is a reality. Nobody can deny that, all West Bank and East Jerusalem are in occupied territories. This is obvious. It has been supported by tens of thousands of security councils' and United Nations' resolution and international law. I think it is unfortunate that a country like Australia, fair go, multicultural, respect human rights, is now saying that is not occupation with all the daily suffering of the Palestinian people.

He continued to say about the meeting to be held with Ms. Bishop the following day: “I hope that through this discussion we can reach a sort of fruitful and constructive discussion. We're hoping to discuss the statement by Mr Brandis, who claimed that East Jerusalem is not occupied.”⁵⁰

Ms. Bishop attended the meeting with ambassadors of Arab and Islamic states in Canberra to discuss the issue on June 19. Ms. Bishop wrote on her website:

I have held a constructive meeting this afternoon with the representatives of the Islamic and Arab countries accredited in Canberra.

At this meeting I provided a letter re-affirming that there has been no change in the Australian Government's position on the legal status of the Palestinian Territories, including East Jerusalem.

Our position is consistent with relevant UN resolutions adopted over many years, including UN Security Council Resolutions 242 and 338.⁵¹

Lenore Taylor reported for *the Guardian Australia* the following:

The head of the Palestinian delegation to Canberra, Izzat Abdulhadi, told Guardian Australia that Bishop had explained to the ambassadors at Thursday's meeting that Brandis had been “talking about occupied with a capital O as a noun and part of East Jerusalem's name, which the government did not support”. She said she was happy to say East Jerusalem was occupied with a small “o” as a description.

Bishop had also told the ambassadors “any policy change from Australia would come from her or the prime minister and not from anyone else”, he said.

⁵⁰ S. Whyte, 'Palestinian head slams government's refusal to call West Bank occupied', *The Sydney Morning Herald*, (18 June 2014) <http://www.smh.com.au/federal-politics/political-news/palestinian-head-slams-governments-refusal-to-call-west-bank-occupied-20140617-3abmu.html#ixzz37JtUDUCo>

⁵¹ 'Meeting with Islamic and Arab countries', *Minister for Foreign Affairs*, (19 June 2014) http://foreignminister.gov.au/releases/Pages/2014/jb_mr_140619a.aspx?ministerid=4

The ambassadors demanded Bishop release a statement containing her explanation. She agreed to release a letter she had written to some of the ambassadors on Monday.⁵²

Ms. Bishop agreed and released letter addressed to His Excellency Mohamed Mael-Ainin, Ambassador to the Kingdom of Morocco, dated June 16, 2014 (copy in Appendix ___):

Dear Excellency

I write in response to your letter of 12 June 2014, on behalf of the Heads of Mission of the Islamic and Arab countries accredited in Canberra, concerning the Australian Attorney General's statement issued on 5 June with regard to East Jerusalem.

I emphasise that there has been no change in the Australian Government's position on the legal status of the Palestinian Territories, including East Jerusalem. Our position is consistent with relevant UN resolutions on the issue, adopted over many years, starting with UN Security Council Resolutions 242 and 338. Senator Brandis' statement was about nomenclature, and was not a comment on the legal status of the Palestinian Territories.

Australia continues to be a strong supporter of a just and lasting two-state solution, with Israel and a Palestinian state existing side by side in peace and security, within internationally recognised borders. To this end, we are urging both sides to resume direct negotiations. We do not consider it helpful to engage in debates over legal issues, nor to prejudge any final status issues that are the subject of these negotiations.

Australia's longstanding commitment to contribute to the peace process in a practical way is reflected in the ongoing development assistance we provide to the Palestinian Territories. Since 2010-11, Australia has provided close to \$200 million in Palestinian aid. In 2014-15, Australia will provide approximately \$56.5 million in Palestinian aid - a three percent increase compared to 2013-14.

I look forward to continuing to work with you to strengthen Australia's relations with Morocco, as well as with all other Islamic and Arab countries.

Yours sincerely

Julie Bishop.⁵³ (Appendix J)

⁵² L. Taylor, 'Ministers set to condemn decision to call East Jerusalem 'disputed'', *The Guardian Australia*, (19 June 2014) <http://www.theguardian.com/world/2014/jun/19/ministers-condemn-australias-decision-to-call-east-jerusalem-disputed>

⁵³ 'Meeting with Islamic and Arab countries', *Minister for Foreign Affairs*.

The Organisation of Islamic Co-operation held a meeting on the same day in Saudi Arabia where the issue was discussed. The following statement resulted:

The (Council of Foreign Ministers) condemns all the positions that affect the legal status of the occupied Palestinian territory, including the city of Jerusalem. In this context, The Council of Foreign Ministers condemns the direction of the Australian government not to describe the city of East Jerusalem as 'occupied', and confirms (the Council) that this policy is in clear violations of international law, including the Fourth Geneva Convention, and the relevant United Nations resolutions, especially the UN Security Council resolutions. The Council calls the Government of Australia to respect its obligations under international law in this regard, and demands (the Council) Member States to follow up such illegal stands, and take actions necessary to respond to these illegal positions.⁵⁴

No sanctions were enacted.

⁵⁴ L. Taylor, 'Ministers set to condemn decision to call East Jerusalem 'disputed'', *The Guardian Australia*.

7. Media

7.1 Articles Against the Government's Position

Former diplomats and politicians were joined by prominent members of the press and academia in their condemnation of Senator Brandis' statement and the shift in terminology.

Ben Saul, Professor of International Law at Sydney University wrote an article for *the Guardian Australia* on June 11,⁵⁵ (Appendix K) outlining the myriad ways that this shift contravenes international law and norms:

Australia's new view is starkly at odds with the true status of east Jerusalem under international law. It also corrodes the international rule of law and violates Australia's international law obligations.

The situation is governed firstly by international humanitarian law, namely the Geneva conventions of 1949 and the customary Hague regulations of 1907. Territory is considered "occupied" when, as a result of military conflict, a country exercises effective administrative control over foreign territory. Legally, this is a question of fact: does Israel control east Jerusalem or not? Undoubtedly, it has since the 1967 war.

The term "occupation" is therefore not pejorative or judgmental. It is an objective legal description of Israel's physical control of a place beyond Israel's borders at independence in 1948. This area east of the "green line" includes east Jerusalem and the West Bank. The legal term does not imply anything further about whether Israel's occupation is "legal" or "illegal", or good or bad. It simply refers to the fact of control.

Professor Saul continues to explain why this terminology is important:

Declaring that east Jerusalem will not be described as "occupied" implies that Australia rejects the application of international humanitarian law. The Geneva conventions apply in occupied territory to protect the local population from abuses by a foreign military power. They protect civilians' basic humanitarian needs and human rights, but also their rights to property and natural resources.

Perhaps most importantly, Professor Saul explains how this change in terminology is in fact pejorative and judgemental:

⁵⁵ B. Saul, 'Australia won't describe east Jerusalem as 'occupied' – and is wrong to do so', *The Guardian Australia*, (11 June 2014) <http://www.theguardian.com/commentisfree/2014/jun/11/australia-wont-describe-east-jerusalem-as-occupied-and-is-wrong-to-do-so>

Calling east Jerusalem "occupied" simply recognises the near-universal legal status quo, namely that it is not sovereign Israeli territory. By contrast, it is precisely judgmental and pejorative to shatter the global legal consensus by implying that east Jerusalem is not occupied and belongs to Israel.

Professor William Maley, director of the Asia-Pacific College of Diplomacy at the Australian National University, endorsed Professor Saul's article in his article about the political motivations of Senator Brandis' statement in *the Sydney Morning Herald* on June 18.⁵⁶ (Appendix L). Professor Maley writes:

It is, however, the political dimensions of this case that are the most intriguing. While the Abbott government has leaned towards Israel more than any of its predecessors, Prime Minister Abbott himself engaged in some remarkable contortions to avoid the suggestion that any such tilt was intended over Jerusalem, arguing that "there has been no change in policy— simply a terminological clarification". Of course, where Jerusalem is concerned, any abandonment of the terminology of occupation will be universally and accurately viewed as a change of policy, something Mr Abbott surely knows. Yet several factors might explain his caution. One possibility, reported by journalist Mark Kenny, is that Senator Brandis was "freelancing" when he first decided to set out his views, and that they were not approved by either Cabinet or the Prime Minister. And it is inconceivable that professional diplomats in the Department of Foreign Affairs and Trade would have advised the government to change its language in this way. A more serious problem for the Prime Minister, however, is the position of The Nationals. Deputy Prime Minister Warren Truss and Agriculture Minister Barnaby Joyce must be beside themselves at the Senator's behaviour, since it gives rise to the risk of a boycott by Arab and Muslim states of Australia's agriculture and farm export industries.

We may never know exactly what prompted the Senator's rush of blood, but one possibility is that it arose from another policy he has been pursuing, namely the repeal of section 18C of the Racial Discrimination Act. It is no secret that this policy, seemingly designed to appease a right-wing journalist, has been very poorly received by members of the Jewish community who were understandably alarmed by the Senator's ill-considered defence of the right to be a bigot. Perhaps the Senator was attempting nothing more than to win back the support of a pressure group he had managed very effectively to alienate. But if so, he would have done better to reflect on what the wider ramifications of his statements might be.

⁵⁶ W. Maley, 'Diving into quicksand: George Brandis and the Jerusalem question', *The Sydney Morning Herald*, (16 June 2014) <http://www.smh.com.au/comment/diving-into-quicksand-george-brandis-and-the-jerusalem-question-20140617-zs93e.html>

It is important to consider the implications of Brandis' statement being made for his own political purposes and not as a statement on behalf of government policy. Considering the response from other senior cabinet ministers and the Prime Minister himself, it is likely that this is the case. It is therefore important that any shifts in portfolio positions within the cabinet are monitored in the coming months and years along with developments in regards to Australia's positions and policies, as individuals have made significant shifts without full party support.

This position is supported by **Joseph Wakim**, a freelance journalist and founder of the Australian Arabic Council.⁵⁷ Wakim also highlighted how unique this position is, stating: "Australia now is so out on a limb that it is the only country other than Israel to publicly deny the illegitimate settlements. Even Israel's arch-ally, the US, has reiterated that "we consider now and have always considered the settlements to be illegitimate"."⁵⁸

Wakim continued to make the point that this position does not represent the Australian people:

Our government has a mandate to speak on behalf of its own population, and to pursue our own best interests.

In November 2011 a Roy Morgan Research poll revealed that 51 per cent of Australians surveyed believed Australia should vote yes to recognise Palestine as a full member state of the UN, while only 15 per cent responded no. So where is the mandate to put Israeli interests above our own?

Just as the Attorney-General received more than 5000 submissions on the proposed amendments to the Racial Discrimination Act in April, it is time for the Foreign Minister to listen to Australians on the proposed changes to the Israel-Palestine policy.

7.2 Pro-Israel Support for Statement

It is important to note that there have been numerous articles in support of the shift in terminology. Prominent conservative political commentator and foreign editor for *the*

⁵⁷ J. Wakim, 'A question for Attorney-General George Brandis: occupied land or occupied mind?', *The Sydney Morning Herald*.

⁵⁸ *Ibid.*

Australian **Greg Sheridan** argued that Senator Brandis' statement was not changing government policy.⁵⁹ (Appendix M). Sheridan stated:

Foreign Minister Julie Bishop in several statements and interviews had made it clear that the government did not regard all Israeli settlements in the West Bank as illegal. Most importantly, she also did not state that the settlements were legal either.

The truth is they concern disputed territory, the status of which will have to be resolved in negotiations. This is what the relevant UN resolutions provide for, although UN resolutions themselves are not by their nature binding international law of and in themselves.

Brandis was right in international law. More importantly, he demonstrated significant political courage on a vexed and extremely complex issue.

Sheridan discusses a number of international disputes before stating that

...pre the [Bob] Carr incumbency in the foreign affairs portfolio, it was extremely rare for Australian ministers ever to refer to the occupied territories. It may have happened once or twice. I cannot recall a Coalition government minister ever using the term.

In my life I can never recall any government minister using the term occupied East Jerusalem.

This statement is in sharp contrast to the statements made by Bob Carr and Gareth Evans in their article cited earlier.

Greg Sheridan has been one of the most vocal, prominent members of the media in supporting the Israeli government. For example, in 2011 he wrote an article criticising Kevin Rudd (then Foreign Minister) for issuing a statement criticising the approval of new settlement construction in occupied territory.⁶⁰

Mark Liebler, a prominent tax lawyer, the national chairman for the Australia/Israel and Jewish Affairs Council, wrote an article in *the Sydney Morning Herald* on June 23,⁶¹

⁵⁹ G. Sheridan, 'An occupation with semantics won't crack the Mid-East puzzle', *The Australian*, (9 June 2014) <http://www.theaustralian.com.au/opinion/columnists/an-occupation-with-semantics-wont-crack-the-mideast-puzzle/story-e6frg76f-1226947643166#mm-premium>

⁶⁰ G. Sheridan, 'Kevin Rudd shouldn't join chorus line of Israel bashers', *The Australian*, (6 October 2011) <http://www.theaustralian.com.au/national-affairs/opinion/rudd-shouldnt-join-chorus-line-of-israel-bashers/story-e6frgd0x-1226159585001>

⁶¹ M. Liebler, 'Australia rights to stay out of Middle East's semantics games', *The Sydney Morning Herald*, (23 June 2014) <http://www.smh.com.au/comment/australia-right-to-stay-out-of-middle-east-semantics-games-20140623-zsj5n.html#ixzz37IzwLhry>

supporting the Abbott Government's new position by questioning the sovereignty of the occupied territory:

No one would disagree that Israel has indeed been 'controlling lands claimed by the Palestinians' – but the word for land controlled by one party but claimed by another is 'disputed' not 'occupied'. International law, in the form of treaties like the Fourth Geneva Convention and 1907 Hague regulation, has generally used 'Occupied territory' to mean the sovereign territory of one state that is controlled by another.

That is not a reasonable description of the areas in question. While Jordan controlled the area from 1948 to 1967, it is not sovereign Jordanian territory, because Amman's ownership was never recognised by the international community and Jordan renounced any claim in 1988. And there has never been a Palestinian state there – despite twenty years of negotiations devoted to the details of how and where to establish one.

This is also why Foreign Minister Julie Bishop had a point when she questioned in January what made Israeli settlements illegal, as is so often claimed. Contrary to The Age's assessment that it showed a 'disturbing ignorance of the Geneva conventions', the West Bank is arguably not 'occupied' under the terms of the Fourth Geneva Convention.

Or Avi-Guy, a policy analyst at Australia/Israel and Jewish Affairs Council and a PhD candidate at the University of Melbourne, followed suit in his article in *the Sydney Morning Herald* on June 23,⁶² highlighting territorial disputes in other parts of the world like Sheridan, and contesting the appropriateness of 'occupied' a descriptor of any occupied territory like Liebler.

Avi-Guy continues to discuss past negotiations and blames the Palestinian delegation for the failure of the talks:

Since the 1993 Oslo Accords, Israel has been attempting to achieve a negotiated peace settlement ending the conflict with the Palestinians with the establishment of a Palestinian state in the West Bank and Gaza Strip.

Under Israeli Prime Ministers Ehud Barak (2000-01) and Ehud Olmert (2008) Israel offered a Palestinian state on nearly all of the West Bank, Gaza Strip and the Arab neighbourhoods of east Jerusalem. Land swaps were offered to compensate for the areas Israel proposed to keep.

⁶² O. Avi-Guy, 'Why terminology matters in pursuit of a peace deal', *The Sydney Morning Herald*, (23 June 2014) <http://www.smh.com.au/comment/why-terminology-matters-in-pursuit-of-a-peace-deal-20140624-zsio4.html>

The Palestinian leadership walked away from these offers.

Avi-Guy continues to make claims about how the term ‘occupied’ will continue to affect future negotiations:

[The] use of the term "occupation" amounts to an implied assertion that legality dictates the situation should return exactly to the status quo of May 1967 - and thus makes the compromises needed to make a peace deal work harder by essentially endorsing inflexibility.

The Palestinians and their allies like to insist everyone call the territory occupied because it implies that it is all already rightfully theirs and they should not have to compromise or agree to a final peace with Israel to get it “back”.

But this attitude is one of the greatest barriers to a two-state deal, and arguably an important reason for the Palestinian refusal to respond positively to three reasonable Israeli peace offers in 2000, 2001 and 2008.

8. Conclusion

The only nation in the world to endorse Senator Brandis' statement and the endorsement of it by the majority of the Abbott Government is Israel. Foreign Minister Avigdor Lieberman said that the comment showed "integrity and decency", and claimed "The territories have been part of Jewish history for thousands of years and were never a part of any Palestinian state, which never actually existed."⁶³ These comments, although sudden and delivered in an unconventional manner, were not surprising in content as the Government of Tony Abbott has demonstrated that it is the most vocal supporter of Israel in current international affairs.

Whether or not Senator Brandis made the original comments to appease a vocal Australian-Jewish community whom he had upset with proposals to change racial discrimination laws is largely irrelevant when looking at the impact that this may have in the future. By taking such a stance, the Abbott government has undermined the ability of Australia to play any role in future negotiations as it cannot be viewed as a neutral party despite its many statements to the contrary. The fact that the government can say that the term 'occupied' is pejorative and tendentious, but claim that no policy has changed demonstrates a misconception of both the realities of the conflict and international law.

What must also be considered is the real possibility of other allies of Israel following suit. Stephen Harper, Prime Minister of Canada, has been an extremely vocal supporter of Israel in the past, and in a speech to the Knesset proclaimed his belief that political anti-Zionism is in fact anti-Semitism, saying: "It is nothing short of sickening. It targets the Jewish people by targeting Israel and attempts to make the old bigotry acceptable for a new generation."⁶⁴

Remaining in Australia, Palestine will continue to receive its most vocal support from the Greens Party and from independents like Nick Xenophon. Differences within the Labor Party prevented stronger support for the Palestinian position, however they have traditionally been more favourable to the Palestinian cause and it is likely that future Labor governments will follow the neutral approach as interpreted by the Rudd/Gillard Government of abstaining at the United Nations on matters relating to Palestinian statehood, and abiding by the language of United Nations' conventions and international law. The Liberal Party will continue to have

⁶³ 'Lieberman lauds Australia for dropping 'occupied' Jerusalem label', *Israel Hayom*, (6 June 2014) http://www.israelhayom.com/site/newsletter_article.php?id=17993

⁶⁴ M. Kennedy, 'Harper heckled as PM warns of 'new strain' of anti-Semitism in historic Israeli parliament speech', *National Post*, (20 January 2014) <http://news.nationalpost.com/2014/01/20/stephen-harper-heckled-during-historic-speech-to-israeli-legislature/>

the most vocal support for Israel, however as this saga revealed there is antipathy within the party over this.

9. Recommendations

Given that it is unlikely that the Abbott Government will voluntarily reintroduce the issue, the Palestinian Authority and its supporters, from foreign dignitaries to grass-roots organisations, will need to maintain pressure on the government to not exacerbate the issue and refrain from making any further statements contrary to United Nations conventions and international laws and norms.

It will be extremely important to monitor the Australian embassy in Tel Aviv, as it is expected that they will again be invited to relocate to Jerusalem. Future announcements of settlement activity in the West Bank, which is almost certain with the current Israeli government, will also need to be monitored so that further clarification of Ms. Bishop's statements about the illegality of settlements can be ascertained. Ultimately, the goal should be to have the government condemn all settlement activity in accordance with UN conventions. As Australia is hosting the G20 summit later this year, it is important that the Issue of Palestine remains high on the priority list.

It is also important to remain engaged with the Labor party as their lack of support during this saga was disappointing. There are many members, such as Tanya Plibersek, who are solid supporters for years to come.

Finally, the unity shown throughout the saga was extremely positive. The Arab and Islamic leaders and ambassadors worked together extremely well, as did the support network within Australian civil society. It is important that these strong connections are maintained, not just for the benefit of Palestine, but for all nations including Australia.

References

- ‘Archived: AUKMIN 2013 Communique’, *Australian Minister for Foreign Affairs*, (18 January 2013) http://www.foreignminister.gov.au/releases/2013/bc_mr_130118a.html
- ‘Former foreign minister Bob Carr says 'pro-Israel lobby' influenced government policy’, *ABC News*, (10 April 2014) <http://www.abc.net.au/news/2014-04-09/bob-carr-lashes-out-at-melbourne-pro-israel-lobby/5379074>
- ‘Labor Party Joins Abbott Government in Weak Position on Illegal Settlements’, *The Greens*, (18 June 2014) <http://greens.org.au/node/5156>
- ‘Lieberman lauds Australia for dropping 'occupied' Jerusalem label’, *Israel Hayom*, (6 June 2014) http://www.israelhayom.com/site/newsletter_article.php?id=17993
- ‘Meeting with Islamic and Arab countries’, *Minister for Foreign Affairs*, (19 June 2014) http://foreignminister.gov.au/releases/Pages/2014/jb_mr_140619a.aspx?ministerid=4
- ‘Voted Down – Greens Motion Against Australia’s Support for Illegal Israeli Settlements’, *The Greens*, (9 December 2013) <http://greens.org.au/news/voted-down-greens-motion-against-australias-support-illegal-israeli-settlements>
- ABC, 7.30, (19 June 2014), <http://www.abc.net.au/7.30/content/2014/s4029307.htm>
- Ahren, R. ‘Australia FM: Don’t call settlements illegal under international law’, *The Times of Israel*, (January 15, 2014). <http://www.timesofisrael.com/australia-fm-dont-call-settlements-illegal-under-international-law/#ixzz358dJ4ewGChromeHTML\Shell\Open\Command>
- Aikman, A. ‘Greens forced to back down on Israel boycott’, *The Australian*, (20 April 2011) <http://www.theaustralian.com.au/national-affairs/marrickville-council-drops-israel-boycott/story-fn59niix-1226041840517?nk=43cb7212fe6aa98e45c39495d66051c2>
- Avi-Guy, O. ‘Why terminology matters in pursuit of a peace deal’, *The Sydney Morning Herald*, (23 June 2014) <http://www.smh.com.au/comment/why-terminology-matters-in-pursuit-of-a-peace-deal-20140624-zsio4.html>
- Borrello, E. ‘Rural Liberals criticise Attorney-General George Brandis over East Jerusalem remarks’, *ABC News*, (23 June 2014) <http://www.abc.net.au/news/2014-06-23/rural-liberals-criticise-brandis-over-east-jerusalem-remarks/5542114>
- Carr, B. and G. Evans, ‘Australia hinders progress in Middle East peace process’, *The Canberra Times*, (8 June 2014) <http://www.canberratimes.com.au/comment/australia-hinders-progress-in-middle-east-peace-process-20140608-zs15x.html#ixzz36MQCNiBU>
- Commonwealth of Australia, *Senate Estimates: Foreign Affairs, Defence and Trade Legislation Committee*, (June 4, 2014).

- Commonwealth of Australia, *Senate Estimates: Foreign Affairs, Defence and Trade Legislation Committee*, (June 5, 2014).
- Commonwealth of Australia, *Senate*, (June 17, 2014).
- Commonwealth of Australia, *Senate*, (June 18, 2014).
- Fontaine, A. 'No ordinary bloke: Joe Hockey', *The Sydney Morning Herald*, (1 April 2009) <http://www.smh.com.au/executive-style/management/no-ordinary-bloke-joe-hockey-20090518-b9me.html>
- Hudson, P. 'Julia Gillard backs down on plans to vote against improving Palestine's status in the United Nations', *News.com.au*, (28 November 2012) <http://www.news.com.au/national/victoria/julia-gillard-in-vote-reversal/story-fndo4cq1-1226525234878>
- Kennedy, M. 'Harper heckled as PM warns of 'new strain' of anti-Semitism in historic Israeli parliament speech', *National Post*, (20 January 2014) <http://news.nationalpost.com/2014/01/20/stephen-harper-heckled-during-historic-speech-to-israeli-legislature/>
- Kenny, M. 'Brandis 'disputed' claim ruffles Coalition feathers', *The Canberra Times*, (13 June 2014) <http://www.canberratimes.com.au/federal-politics/political-news/brandis-disputed-claim-ruffles-coalition-feathers-20140613-3a3f8.html>
- Liebler, M. 'Australia rights to stay out of Middle East's semantics games', *The Sydney Morning Herald*, (23 June 2014) <http://www.smh.com.au/comment/australia-right-to-stay-out-of-middle-east-semantics-games-20140623-zsj5n.html#ixzz37IzwLhry>
- Liberal Party Website, 'Doorstop Interview, New York Stock Exchange, New York', (11 June 2014) <https://www.liberal.org.au/latest-news/2014/06/11/prime-minister-doorstop-interview-new-york-stock-exchange-new-york>
- Loewenstein, A. 'Bob Carr was right to start a debate on the influence of the Zionist lobby', *The Guardian Australia*, (15 April 2014) <http://www.theguardian.com/commentisfree/2014/apr/15/bob-carr-was-right-to-start-a-debate-on-the-influence-of-the-zionist-lobby>
- Lyons, J. 'Arabs threaten to ban meat trade', *The Australian*, (10 June 2014) <http://origin.www.theaustralianls.com.au/national-affairs/policy/arabs-threaten-to-ban-meat-trade/story-fn59nm2j-1226948715978>
- Massola, J. 'Labor factions split over government's decision to 'reclassify' East Jerusalem', *The Sydney Morning Herald*, (19 June 2014) <http://www.smh.com.au/federal-politics/political-news/labor-factions-split-over-governments-decision-to-reclassify-east-jerusalem-20140618-3ae6a.html>

- Narunsky, G. 'Bishop defiant over settlement comments', *The Australian Jewish News*, (03/02/14) <http://www.jewishnews.net.au/bishop-defiant-over-settlement-comments/33867>
- Nolan, T. 'Fmr ambassador to Israel says Australia's position on Israel's occupation of Palestinian territories, 'absurd'', *The World Today: ABC News*, (6 June 2014) <http://www.abc.net.au/worldtoday/content/2014/s4020204.htm?site=canberra>
- Rosenburg, Y. 'Australian Ambassador: We Wouldn't Use the Term 'Occupied'', *Tablet*, (11 June 2014) <http://www.tabletmag.com/scroll/175672/australian-ambassador-we-wouldnt-call-the-west-bank-occupied>
- Saul, B. 'Australia won't describe east Jerusalem as 'occupied' – and is wrong to do so', *The Guardian Australia*, (11 June 2014) <http://www.theguardian.com/commentisfree/2014/jun/11/australia-wont-describe-east-jerusalem-as-occupied-and-is-wrong-to-do-so>
- Shorten, B. 'Doorstop: Forrest', (23 June 2014) <http://billshorten.com.au/category/transcripts>
- Sheridan, G. 'Kevin Rudd shouldn't join chorus line of Israel bashers', *The Australian*, (6 October 2011) <http://www.theaustralian.com.au/national-affairs/opinion/rudd-shouldnt-join-chorus-line-of-israel-bashers/story-e6frgd0x-1226159585001>
- Sheridan, G. 'An occupation with semantics won't crack the Mid-East puzzle', *The Australian*, (9 June 2014) <http://www.theaustralian.com.au/opinion/columnists/an-occupation-with-semantics-wont-crack-the-mideast-puzzle/story-e6frg76f-1226947643166#mm-premium>
- Swan, J. 'Tony Abbott quietly shifts UN position to support Israeli settlements, upsetting Palestinians', *The Sydney Morning Herald*, (25 November 2014) <http://www.smh.com.au/national/tony-abbott-quietly-shifts-un-position-to-support-israeli-settlements-upsetting-palestinians-20131124-2y434.html#ixzz37QtuXOXD>
- Taylor, L. 'Ten things to know about foreign policy under Julie Bishop and Tony Abbott', *The Guardian Australia*, (3 June 2013) <http://www.theguardian.com/world/2013/jun/02/foreign-policy-julie-bishop-coalition>
- Taylor, L. 'Julie Bishop avoids referring to East Jerusalem as 'disputed' or 'occupied'', *The Guardian Australia*, (17 June 2014) <http://www.theguardian.com/world/2014/jun/17/julie-bishop-avoids-referring-disputed-occupied>
- Taylor, L. 'Ministers set to condemn decision to call East Jerusalem 'disputed'', *The Guardian Australia*, (19 June 2014) <http://www.theguardian.com/world/2014/jun/19/ministers-condemn-australias-decision-to-call-east-jerusalem-disputed>

Wakim, J. 'A question for Attorney-General George Brandis: occupied land or occupied mind?', *The Sydney Morning Herald*, (6 June 2014) <http://www.smh.com.au/federal-politics/political-opinion/a-question-for-attorneygeneral-george-brandis-occupied-land-or-occupied-mind-20140607-zs0b8.html#ixzz37JscQVDV>

Whyte, S. 'Palestinian head slams government's refusal to call West Bank occupied', *The Sydney Morning Herald*, (18 June 2014) <http://www.smh.com.au/federal-politics/political-news/palestinian-head-slams-governments-refusal-to-call-west-bank-occupied-20140617-3abmu.html#ixzz37JtUDUCo>

Woodley, N. 'Govt defends change of language on east Jerusalem', *PM, ABC Radio*, (13 June 2014) <http://www.abc.net.au/pm/content/2014/s4025049.htm>

Appendix A



منظمة التحرير الفلسطينية
دائرة الثقافة والاعلام
The Palestine Liberation Organization
Department of Culture & Information

PRESS RELEASE
For Immediate Release

PLO Executive Committee
Department of Culture and Information

June 5, 2014

Dr. Ashrawi describes Australia's Attorney-General's comments on East Jerusalem as 'disgraceful and shocking'

PLO Executive Committee member, Dr. Hanan Ashrawi strongly denounced Australian Attorney-General George Brandis' announcement that East Jerusalem is not occupied:

"It is absolutely disgraceful and shocking that on the 47th anniversary of Israel's military occupation of the West Bank (*including East Jerusalem*), and Gaza, Australian Attorney-General George Brandis is issuing such inflammatory and irresponsible statements that 'occupied East Jerusalem' is 'a term freighted with pejorative implications, which is neither appropriate nor useful.' Such pronouncements are not only in blatant violation of international law and global consensus, but are also lethal in any pursuit of peace and toxic to any attempt at enacting a global rule of law."

"Israel's illegal annexation of East Jerusalem is beyond 'pejorative' and 'inappropriate'; it is a deliberate and egregious violation, not just of international humanitarian law and consensus, but of the basic norms of responsible behavior that governs relations among civilized states."

"Trying to fabricate or distort the law to fit Israel's lawless behavior is shameful and dangerous. Attorney-General Brandis, whether out of

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ignorance or whether out of blind bias, is trying to render Australia complicit in the Israeli occupation, and is forcing it to become an advocate of international criminal behavior,” concluded Dr. Ashrawi.

Appendix B

Palestine Liberation Organization
State of Palestine
Negotiations Affairs Department



منظمة التحرير الفلسطينية
دولة فلسطين
دائرة شؤون المفاوضات

Hon. Julie Bishop, MP
Minister for Foreign Affairs
R.G. Casey Building
John McEwen Crescent
Barton ACT 0221, Australia

June 5, 2014

Dear Hon. Julie Bishop,

The State of Palestine condemns the statements made today by the Attorney-General, George Brandis, to the Australian Senate, to the effect that Australia will no longer use the term “occupied” in reference to Israeli settlements in East Jerusalem. Mr. Brandis’ statements is the latest in a series of acts that demonstrate that your Government does not intend to comply with its duty under international law not to recognize Israeli sovereignty over any part of the Palestinian territory occupied by Israel in 1967, including East Jerusalem. Please be advised that Palestine views these developments in the gravest terms and is weighing the appropriate legal and diplomatic response.

Mr. Brandis is quoted as saying that references to East Jerusalem as “occupied” have “pejorative connotations” and are “neither appropriate nor useful.” Mr. Brandis is further quoted as saying that “[i]t should not and will not be the practice of the Australian government to describe areas of negotiation in such judgmental language.”

As you know, Palestine is a state under occupation and was recognized as such by United Nations General Assembly Resolution 67/19. Israel’s occupation of Palestine, now entering its 47th year, is governed by the Fourth Geneva Convention of 1949. While Israel denies this fact, the entire international community, including all other State Parties to the Convention, the International Committee of the Red Cross (ICRC) and all relevant UN bodies, rejects Israel’s position and recognizes that the Convention applies *de jure* to occupied Palestine. The International Court of Justice (ICJ) reaffirmed this position in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Contrary to Mr. Brandis’ assertions, the term “occupied” is not “judgmental language” that prejudices final-status negotiations. Rather, “occupied” acknowledges the legal fact that the Israeli regime in occupied Palestine is governed by, and

systematically violates, the law of occupation, i.e. international humanitarian law, including the Fourth Geneva Convention.

The ICJ further ruled that Israel's settlement policy and practices since 1977 violate article 49 of the Convention, which prohibits an occupying power from transferring its own civilian population into the occupied territory. Under the First Additional Protocol, violations of article 49 are grave breaches which all High Contracting Parties are under a duty to suppress. While Israel has not adopted Additional Protocol I, many of the Protocol's norms reflect customary international law. No country in the world recognizes Israel's annexation of East Jerusalem as valid. In fact, the UN Security Council has adopted seven resolutions rejecting Israeli sovereignty over East Jerusalem.¹ The ICRC asserts that the status of violations of article 49 as a grave breach reflects customary international law. Accordingly, the illegality of Israeli settlements anywhere in occupied Palestine, including East Jerusalem, is beyond dispute.

Ms. Brandis' comments are the latest in a pattern of behavior from Palestine concludes that Australia has no interest in complying with its duty under international law not to recognize the illegal Israeli settlement regime in Palestinian territory. I wrote you on May 15, 2014 to express Palestine's grave concern that Australia's ambassador to Israel had met with Israeli officials in East Jerusalem. Previously, on January 20, 2014, the PLO asked you to clarify your statement questioning the illegality of the settlements. This pattern of behavior also places Australia badly out of step with the international consensus that the 1967 border must be reinforced as the basis for negotiations towards a two-state solution.

Accordingly, please be advised that Palestine will request that the Arab League and the Islamic Conference review the relations of the Arab and Islamic world with Australia in light of Australia's unlawful recognition of the illegal Israeli settlement regime in occupied Palestine.



Dr. Saeb Erekat

PLO Executive Committee Member – Head of Palestinian Negotiations Team

¹ UNSC Res. 252 (1968); UNSC Res. 267 (1969); UNSC Res. 271 (1969); UNSC Res. 298 (1971); UNSC Res. 465 (1980); UNSC Res. 476 (1980); UNSC Res. 478 (1980).

Appendix C

Australia FM: Don't call settlements illegal under international law

In candid interview, Julie Bishop expresses skepticism about the peace process, says boycott Israel activists are 'anti-Semitic'

BY [RAPHAEL AHREN](#) January 15, 2014, 8:00 pm

Read more: [Australia FM: Don't call settlements illegal under international law | The Times of Israel](#) <http://www.timesofisrael.com/australia-fm-dont-call-settlements-illegal-under-international-law/#ixzz37UCiWWJv>

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Australian Foreign Minister Julie Bishop, left, with FM Avigdor Liberman in Jerusalem, January 13, 2014 (photo credit: Yossi Zamir)

In a rare show of support for Israel's settlement enterprise, Australia's foreign minister has said that the international community should refrain from calling settlements illegal under international law, without waiting for their status to be determined in a deal with the Palestinians.

In an exclusive interview with The Times of Israel, Julie Bishop suggested that, contrary to conventional diplomatic wisdom, the settlements may not be illegal under international law. She refrained from condemning Israeli initiatives to build additional housing units beyond the Green Line or from calling on Israel to freeze such plans, merely saying the fact that settlements were being expanded showed the need for the sides to quickly reach a peace agreement.

"I don't want to prejudge the fundamental issues in the peace negotiations," Bishop said. "The issue of settlements is absolutely and utterly fundamental to the negotiations that are

under way and I think it's appropriate that we give those negotiations every chance of succeeding.”

Asked whether she agrees or disagrees with the near-universal view that Israeli settlements anywhere beyond the 1967 lines are illegal under international law, she replied: “I would like to see which international law has declared them illegal.”

The position that settlements breach international law — adopted by the United Nations Security Council, the European Union and many other states and international bodies, but rejected by Israel — is based on an interpretation of the Fourth Geneva Convention. Article 49, paragraph 6, states that an occupying power “shall not deport or transfer parts of its own civilian population into the territory it occupies.” Violations of the convention are considered war crimes under international law. Israel is a party to the convention and therefore bound by it.

‘I don't think it's helpful to prejudge the settlement issue if you're trying to get a negotiated solution’

“Our interest is in a negotiated peace between the Israelis and the Palestinians and we believe that every opportunity should be given to those negotiations to proceed to its solution,” said Bishop, who came to Israel on Monday to attend the funeral of former prime minister Ariel Sharon. “I don't think it's helpful to prejudge the settlement issue if you're trying to get a negotiated solution. And by deeming the activity as a war crime, it's unlikely to engender a negotiated solution.”

The issue of Israeli settlements should be determined in the course of the current US-brokered peace talks, she added.

Settlements are widely considered damaging to the peace process, with even Israel's closest allies condemning Jewish construction in the West Bank. Canada, for example, officially considers them “a violation of the Fourth Geneva Convention” and a “serious obstacle” to peace.

But since September, when the center-right Liberal Party of Prime Minister Tony Abbott came to power in Canberra, Australia has been going to great lengths to demonstrate staunch support for Jerusalem's policy on the international stage. Under Bishop's stewardship, Australia has changed its voting patterns at the UN in favor of Israel. While under her predecessor, Bob Carr, Canberra often supported anti-Israel resolutions at the UN General Assembly, she has had Australia oppose or abstain from several such measures.

In November, Australia was one of only eight countries to abstain in a vote on a resolution demanding that Israel cease “all Israeli settlement activities in all of the occupied territories.” Nearly 160 nations supported the resolution. In December, Australia was one of 13 countries that did not vote in favor of a resolution calling on Israel to “comply scrupulously” with the Geneva Convention (169 countries voted yes).

“I considered each one [of these votes] on its merit and looked at the totality of the resolutions on similar matters across the UN and I decided and asked the [Foreign Affairs and Trade] Department to take on my instructions accordingly that we would consider each resolution and ensure that what we're doing was balanced,” Bishop told The Times of Israel

in the interview. “The Australian government is confident that the position it has adopted is balanced. It’s not one-sided.”

The current Israeli-Palestinian peace talks “should be given any chance of succeeding,” the minister said, yet she sounded pessimistic when asked how realistic were the prospects of a final-status deal.

Citing regional turmoil, Bishop appeared to echo her Israeli counterpart, Avigdor Liberman, who often argues that it is foolish to seek to lay the foundation for a new building amid an earthquake.

“I wonder whether the timing will work against us, given the instability in the region, with Syria and Lebanon and Jordan and Egypt and Iraq,” she said. “The peace process is a challenge in and of itself. But in these current times, in this current context, I expect it will be even more challenging.”

Bishop also condemned what she said was excessive pressure exerted on Israel by Western states and civil society, including the threat of boycotts.

“Israel has to be ever vigilant against such tendencies on the part of the international community,” the minister said. While private organizations were free to boycott whomever they wanted, any Australian body that received state funding should be barred from calling for boycotts, she continued.

She also strongly condemned the global anti-Israel BDS movement: “It’s anti-Semitic. It identifies Israel out of all other nations as being worthy of a boycott, divestment and sanctions campaign? Hypocritical beyond belief.”

During the interview, conducted Monday at Jerusalem’s King David Hotel, Bishop also denied that the so-called “Prisoner X” affair surrounding Ben Zygier, a Melbourne-born Mossad operative who killed himself in an Israeli high-security prison cell in 2010, led to strained bilateral relations.

“I don’t believe that it caused diplomatic tensions between Australia and Israel — far from it,” she said.

The circumstances of the affair are still somewhat unclear. Zygier is said to have embarked on a one-man rogue mission after he failed to satisfy his Mossad handlers. He was then reportedly arrested in Israel after unwittingly leaking sensitive information to a Hezbollah operative that led to the arrests of Israeli assets spying on Hezbollah in Lebanon.

After the story first broke last February, Carr, the then-Australian foreign minister, ordered an internal investigation. “We have asked the Israeli government for a contribution to that report,” Carr said at the time. “We want to give them an opportunity to submit to us an explanation of how this tragic death came about,” he said.

Bishop, who at the time served as Australia’s deputy opposition leader, met with Israel’s Ambassador to Australia Yuval Rotem to discuss the episode.

“If Mr. Zygier was using his Australian passports while working for Mossad, and that use was approved, I would expect the Australian government to be registering a protest with the government of Israel,” Bishop said in March. She also censured her government for failing to

act in the same decisive manner as in 2010, when Canberra expelled the Mossad station chief in Australia, after Israeli agents used Australian passports in an operation to assassinate senior Hamas official Mahmoud Al-Mabhouh in Dubai.

But on Monday, Bishop didn't initially recall having expressed any disapproval of Israeli actions over the Prisoner X affair. "As far as I recollect, I made no statement critical of Israel," she said. Only after her quote from last year was read to her did she remember having publicly demanded explanations from Jerusalem.

"I never got an answer," she said, adding that the topic did not come up in her meetings with Israeli officials during her first visit as foreign minister this week. During a stay of less than 24 hours, she met with Liberman and Intelligence Affairs and International Relations Minister Yuval Steinitz.

Last year, Bishop said, she asked why Australia had a "vastly different response" to two cases of suspected abuse of Australian passports by Israeli intelligence officers. "I'll have to get a briefing on whether or not the Israeli government has come back to Australia with details of that. And I expect that even if we ask, there won't be an answer."

Appendix D (Only relevant sections)



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE

Estimates

(Public)

WEDNESDAY, 4 JUNE 2014

CANBERRA

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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

Wednesday, 4 June 2014

Members in attendance: Senators Dastyari, Edwards, Eggleston, Farrell, Faulkner, Fawcett, Hanson-Young, Kroger, Ludwig, Ian Macdonald, Madigan, McEwen, Milne, Rhiannon, Stephens, Wong, Xenophon.

FOREIGN AFFAIRS AND TRADE PORTFOLIO

In Attendance

Senator Brandis, Attorney-General

Department of Foreign Affairs and Trade

Portfolio and Budget Overview

Mr Peter Varghese, Secretary

Ms Jan Adams, Deputy Secretary

Mr Ewen McDonald, Deputy Secretary

Mr John Fisher, First Assistant Secretary, Corporate Management Division

Mr Paul Wood, Chief Finance Officer

Mr Jeff Roach, Assistant Secretary, Executive, Planning and Evaluation Branch

Dr Angela Macdonald, Assistant Secretary, Parliamentary and Media Branch

Ms Jennifer Rawson, First Assistant Secretary, Integration Taskforce

Outcome and Program Structure

Outcome 1—The advancement of Australia's international strategic, security and economic interests including through bilateral, regional and multilateral engagement on Australian Government foreign, trade and international development policy priorities

Program 1.1—Foreign Affairs and Trade Operations

North Asia: This includes China, Democratic People's Republic of Korea, Hong Kong and Macau, Mongolia, Japan, Republic of Korea, Taiwan

Mr Peter Rowe, First Assistant Secretary, North Asia Division

South-East Asia: This includes Brunei, Myanmar, Cambodia, East Timor, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam, ASEAN, East Asia Summit

Mr Allaster Cox, First Assistant Secretary, South-East Asia Maritime Division

Americas and Africa:

Americas: This includes Canada, United States of America, Latin America and the Caribbean

Dr Brendon Hammer, First Assistant Secretary, Americas Division

Africa: This includes: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Reunion, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, South Africa, Swaziland, Tanzania, Togo, Uganda, Zambia, Zimbabwe

Mr Marc Innes-Brown, Acting First Assistant Secretary, Middle East and Africa Division

Mr Adam McCarthy, Assistant Secretary, Africa Branch

Europe: This includes European Union, Austria, Albania, Andorra, Armenia, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom

Mr Jeremy Newman, First Assistant Secretary, Europe Division

South and West Asia and Middle East

South and West Asia: This includes Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka

Mr Paul Robilliard, First Assistant Secretary, South and West Asia Division

Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan

Mr Paul Robilliard, First Assistant Secretary, South and West Asia Division

Middle East and North Africa: This includes Algeria, Bahrain, Egypt, Iraq, Iran, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestinian Territories, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, Yemen

Mr Marc Innes-Brown, Acting First Assistant Secretary, Middle East and Africa Division

Mr Adam McCarthy, Assistant Secretary, Africa Branch

Pacific: This includes Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Nauru, Regional Pacific, Republic of Palau, Pacific Islands Forum, Papua New Guinea, Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu

Ms Kathy Klugman, First Assistant Secretary, Pacific Division

International organisations, legal and environment: This includes international law, sea law, international climate change policy and negotiations, Commonwealth, treaties, sanctions, transnational crime, domestic and administrative law, human rights, indigenous issues, people smuggling, refugees, United Nations

Ms Harinder Sidhu, First Assistant Secretary, Multilateral Policy Division

Ms Katrina Cooper, First Assistant Secretary, Legal Division

Mr Craig Chittick, Ambassador for People Smuggling, Multilateral Policy Division

Mr Jon Merrill, Head, UN Security Council Taskforce

Security, nuclear disarmament and non-proliferation: This includes the Australian Safeguards and Non-Proliferation Office (ASNO), arms control, counter-proliferation, counter-terrorism, regional and national security, cluster munitions

Dr Robert Floyd, Director General, Australian Safeguards and Non-Proliferation Office

Mr Peter Tesch, First Assistant Secretary, International Security Division

Mr Miles Armitage, Ambassador for Counter-Terrorism, Assistant Secretary, Counter-Terrorism Branch

Services to other agencies: This includes services to Parliament, attached agencies, business, state governments and other organisations

Mr Rob Tranter, First Assistant Secretary, Public Diplomacy and Communications Division

Mr John Fisher, First Assistant Secretary, Corporate Management Division

Mr Tuan Dao, Chief Information Officer, Information Management and Technology Division

Mr Scott Dawson, First Assistant Secretary, Contracting and Aid Management Division

Mr Jeff Roach, Assistant Secretary, Executive Branch

Services to diplomatic/consular representatives: This includes protocol, privileges and immunities, protection

Ms Sally Mansfield, Assistant Secretary, Protocol Branch

Public information services and public diplomacy: This includes international public diplomacy, website services and social media including the *smartraveller* website, Special Visits Program, International Cultural Visits program, Direct Aid Program (DAP), freedom of information

Mr Rob Tranter, First Assistant Secretary, Public Diplomacy and Communications Division

Program 1.2—Payments to International Organisations (Administered): This includes payments to international organisations and international treaty secretariats including the UN

Ms Harinder Sidhu, First Assistant Secretary, Multilateral Policy Division

Ms Clare Walsh, First Assistant Secretary, Multilateral Development Partnerships Division

Program 1.3—Public Information Services and Public Diplomacy (Administered): This includes the International relations grants program; Australia Network, Australia and New Zealand School of Government – China Advanced Leadership Program

Mr Rob Tranter, First Assistant Secretary, Public Diplomacy and Communications Division

Program 1.4—International Climate Change Engagement (Administered)

Ms Harinder Sidhu, First Assistant Secretary, Multilateral Policy Division

Mr Justin Lee, Ambassador for Climate Change, Multilateral Policy Division

Program 1.5—New Colombo Plan – Transforming Regional Relationships

Ms Kate Duff, Assistant Secretary, New Colombo Plan Secretariat Branch

Aid Overview/Budget—This includes the Development Policy Division, General Aid questions, Aid budget, Product Development Partnerships, ODA budget – Climate Change, Global environment and climate change programs, economic growth and poverty alleviation, Deforestation in developing countries, Polio Eradication and other multilateral commitments, health, Medical Research Strategy Funding

Mr Ewen McDonald, Deputy Secretary

Mr Paul Wood, Chief Finance Officer

Program 1.6—Official Development Assistance – PNG and Pacific

Ms Kathy Klugman, First Assistant Secretary, Pacific Division

Mr Mat Kimberley, Assistant Secretary PNG Development and Solomon Islands Branch

Program 1.7—Official Development Assistance – East Asia: This includes Burma, Cambodia, Laos, Mongolia, North Korea, Regional East Asia, Philippines, Timor-Leste, Vietnam, Indonesia. (This includes Indonesia-Australia Forest Carbon Partnership)

Mr Allaster Cox, First Assistant Secretary, South-East Asia Maritime Division

Ms Angela Corcoran, Assistant Secretary, Indonesia Program Delivery and Timor-Leste Branch

Program 1.8—Official Development Assistance – East Asia AIPRD (Australia-Indonesia Partnership for Reconstruction and Development)

Mr Allaster Cox, First Assistant Secretary, South-East Asia Maritime Division

Ms Angela Corcoran, Assistant Secretary, Indonesia Program Delivery and Timor-Leste Branch

Program 1.9—Official Development Assistance – Africa, South and Central Asia, Middle East and Other: This includes Mining for Development

Mr Marc Innes-Brown, Acting First Assistant Secretary, Middle East and Africa Division

Mr Adam McCarthy, Assistant Secretary, Africa Branch

Program 1.10—Official Development Assistance – Emergency, Humanitarian and Refugee Program

Mr Laurie Dunn, First Assistant Secretary, Humanitarian Division

Mr Blair Exell, First Assistant Secretary, Development Policy Division

Program 1.11—Official Development Assistance – Multilateral Replenishments

Ms Clare Walsh, First Assistant Secretary, Multilateral Development Partnerships Division

Program 1.12—Official Development Assistance – UN, Commonwealth and Other International Organisations: This includes the Global Partnership for Education, UN post-2015 sustainable development agenda, Overseas aid gift deduction scheme (OAGDS); GAVI Alliance, Nutrition for Growth, Green Climate Fund and Global Environment Programs

Ms Clare Walsh, First Assistant Secretary, Multilateral Development Partnerships Division

Program 1.13—Official Development Assistance – NGO, Volunteer and Community Programs

Ms Clare Walsh, First Assistant Secretary, Multilateral Development Partnerships Division

Departmental Program Support Outcome 1

Outcome 2—The protection and welfare of Australian abroad and access to secure international travel documentation through timely and responsive travel advice and consular and passport services in Australia and overseas

Program 2.1—Consular Services: This includes assisting Australians overseas, Travellers emergency loans, Consular emergency services keeping Australians informed

Mr Justin Brown, First Assistant Secretary, Consular and Crisis Management Division

Program 2.2—Passport Services: This includes passport security, development of P-series passport

Mr Bob Nash, Executive Director, Australian Passport Office

Mr Tuan Dao, Chief Information Officer, Information Management and Technology Division

Outcome 3—A secure Australian Government presence overseas through the provision of security services and information and communications technology infrastructure, and the management of the Commonwealth's overseas owned estate

Program 3.1—Foreign Affairs and Trade Operations: This includes overseas physical security, personnel security and clearances, ICT

Mr John Fisher, First Assistant Secretary, Corporate Management Division

Mr Tuan Dao, Chief Information Officer, Information Management and Technology Division

Program 3.2—Overseas Property: This includes management of the Commonwealths overseas owned estate

Mr Kevin Nixon, Executive Director, Overseas Property Office and Services

Other agencies...

Foreign Affairs and Trade Portfolio

Australian Centre for International Agricultural Research (ACIAR)

Outcome 1: To achieve more productive and sustainable agricultural systems for the benefit of developing countries and Australia through international agricultural research and training partnerships.

Program 1: International agriculture research for development for more productive and sustainable agriculture.

Witness Names to be provided by ACIAR

Trade Portfolio

Department of Foreign Affairs and Trade—Trade Programs

Bilateral, regional and multilateral trade negotiations: This includes free trade agreements (including TPPA and PACER Plus), intellectual property, WTO compliance and dispute settlement, WTO accessions, trade law, trade policy, trade commitments

Mr Chris De Cure, First Assistant Secretary, Office of Trade Negotiations

Mr Sam Gerovich, First Assistant Secretary, Trade and Economic Diplomacy Division

Mr Graham Fletcher, First Assistant Secretary, Free Trade Agreement Division

Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division

Trade development/policy coordination: This includes APEC, G20, OECD, international economy and finance, market information, trade advocacy, trade finance, liaison and analysis, UNCTAD, coordinates policy advice relating to EFIC, Extractive Industry Transparency Initiative (EITI)

Mr Chris De Cure, First Assistant Secretary, Office of Trade Negotiations

Mr Sam Gerovich, First Assistant Secretary, Trade and Economic Diplomacy Division

Mr Graham Fletcher, First Assistant Secretary, Free Trade Agreement Division

Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division

Mr Daniel Sloper, First Assistant Secretary, G20

Export Finance and Insurance Corporation (EFIC)

Witness Names to be provided by EFIC

Australian Trade Commission (Austrade)

Witness Names to be provided by Austrade

Outcome 1—Contribute to Australia's economic prosperity by promoting Australia's export and other international economic interests through the provision of information, advice and services to business, associations, institutions and government.

Program 1.1—Promotion of Australia's export and other international economic interest (includes Tourism division)

Program 1.2—Programmes to promote Australia's export and other international economic interests (Export Market Development Grants (EMDG) Scheme and Asian Business Engagement (ABE) Plan)

Outcome 2—The protection and welfare of Australians abroad through timely and responsive consular and passport services in specific locations overseas.

Program 2.1—Consular and passport services

Department of Foreign Affairs and Trade (tourism program)**Program 1.14: Programs to Promote Australia's International Tourism Interests**

Mr Sam Gerovich, First Assistant Secretary, Trade and Economic Diplomacy Division

Tourism Australia

Outcome 1—Grow demand and foster a competitive and sustainable Australian tourism industry through partnership marketing to targeted global consumers in key markets.

Witness Names to be provided by Tourism Australia

Program 1.1—Supporting Outcome 1**Component 1.1—Grow demand****Component 1.2—Industry Development**

Committee met at 09:03

CHAIR (Senator Eggleston): I declare open this meeting of the Foreign Affairs, Defence and Trade Legislation Committee. I welcome here today the minister, George Brandis. I welcome Mr Peter Varghese, the head of the department of foreign affairs, and his various officers at the table and also in the audience.

The Senate has referred to the committee the particulars of proposed expenditure for the 2014-15 budget and certain other documents for the portfolio of Foreign Affairs and Trade. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee is due to report to the Senate on 24 June and has fixed Friday, 25 July as the date for the return of answers to questions taken on notice. Senators should provide their written questions on notice to the secretariat by Thursday, 12 June.

The committee's proceedings today will begin with the examination of the Department of Foreign Affairs and Trade until 11 tonight and will continue tomorrow. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice.

I remind all witness that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purposes of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

The Senate has resolved also that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009, specifying a process by which a claim of public interest immunity should be raised. Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information in the document.

The extract read as follows—

Public interest immunity claims

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
 - (1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders, pp 124-125)

CHAIR: As I said in my opening, I welcome Senator the Hon. George Brandis QC, representing the Foreign Minister, and Mr Peter Varghese, the secretary to the department, and officers from the Department of Foreign Affairs and Trade. Minister, do you wish to make an opening statement?

Senator Brandis: No, thank you.

Senator FAULKNER: This question, I think, is best directed to you, Mr Varghese. There has been quite some media discussion or analysis of staffing impacts and changes in the Department of Foreign Affairs and Trade and I wonder whether I could perhaps start by exploring that a little and asking you what the current staffing establishment is in the department, please—you or whichever official you prefer perhaps to answer.

Mr Varghese: We are in the process at the moment of implementing the decisions taken by the government in the 2014-15 budget. That imposed savings measures on the portfolio. Our staffing numbers at the beginning of this financial year were 4,161. Since then, of course, we have also had an additional 54 added to our staffing numbers by the transfer of responsibilities under machinery-of-government arrangements for climate change and tourism, and that amounts to another 54. The budget imposes cuts on our operating expenditure of the order of \$400 million over the forward estimates, of which \$110 million will be in 2014-15. That translates to a reduction of around 500 staff that we will have to achieve by the end of the 2014-15 financial year. We have already taken decisions about how we will implement that reduction. We have conducted a rebasing exercise for numbers across divisions, including numbers at state offices and posts. We expect to be able to achieve the reduction target through voluntary redundancies and through a freeze on recruitment, not across the board but a freeze on recruitment in a number of areas. That is just a snapshot of where we are and I am happy to try to answer any of the detail.

Senator FAULKNER: I appreciate that and it is helpful. So thank you for that. You talk of the figure of around 500 by the end of the 2014-15 financial year. Are you able to indicate, in the first instance, what might be the situation at the end of the 2015-16 financial year and the out years more generally, or at this stage are you

Senator FAULKNER: It is possible. It is hard to believe that a cabinet colleague of mine might have been wrong.

Senator Brandis: It is not hard for me to believe that.

Senator FAULKNER: There we are.

Senator Brandis: I think what you say is by and large true, but that is not uncontroversial.

Senator FAULKNER: What I have always tried to progress on these matters—this might assist Senator Xenophon—is the process questions around advice. That is whether advice has been sought on a particular matter and provided on a particular matter is reasonable, and as to whom it has been provided and a range of other process issues. I agree with what has been said by both yourself, as minister, and Mr Varghese, as secretary, about advice content.

But there is a definitional issue that I feared may have been misinterpreted by my own additional comment, because I thought it related to a document that Senator Carr had provided. That is totally within the gift of any minister to provide whatever material they wish to provide. I am sure you would acknowledge that that is the case. That is not the nature of the advice, but a matter on which advice is sought has generally been always accepted as a process question. If the questioner is clever enough, they can make sure that it is a process question and not a question that goes to the content of the advice.

Senator Brandis: I think all of that is true. I agree with your statement of the principle, by the way, but I would just point out to you that some of your cabinet colleagues in the last government did not observe that principle.

Senator FAULKNER: That goes to show that nobody is perfect, not even my cabinet colleagues in the last government.

Senator DASTYARI: Just a point of clarification on something you said earlier. You used this language around a layman and construing legal advice. They were your words. I do just want to put back on the record the exact quote from Senator Bob Carr back then when this document was initially tabled. His words were:

Senator, I am happy to release the departmental advice on precisely that point: the illegality of settlements. I should have that to you in 10 minutes.

The document, as I understand it, at the time—again, take this on notice, Mr Varghese—actually did not just come from the minister's office. It actually was departmental advice that was provided to the government.

Senator Brandis: I do not know what your point is.

Senator DASTYARI: You made the point that he construed it himself based on legal advice. I am saying that it was actually from the department.

Senator Brandis: Mr Carr described a document that he did not table and may not have understood. Mr Varghese has said that he wants to consider the matter.

Senator DASTYARI: Sure. I am just giving him more information for when he considers it.

Senator Brandis: I am sure Mr Varghese is perfectly capable of reading the *Hansard*, but thank you.

Senator XENOPHON: I say this genuinely: you are a distinguished lawyer and you are a Queen's Counsel. Do you have a view as to whether Israeli settlement activity is a violation of the Fourth Geneva Convention?

Senator Brandis: It is not a matter that I have ever considered from a legal point of view. I do not profess to be a specialist in public international law, by the way. It is not something, as a lawyer, I have ever tuned my mind to for the purpose of forming or articulating a legal opinion about.

Senator XENOPHON: Given that I have to ask questions through you—and I respect that—are you minded to ask the department that is present with you this evening what their view is so that you can answer the question I put to you?

Senator Brandis: You have asked me whether I have ever applied my mind to a particular legal question in a field which I do not profess to be a specialist in, and the answer to that question is no, so I do not know what you want me to ask Mr Varghese about.

Senator XENOPHON: Whether the department has formed a view as to whether the settlements are illegal or not.

Senator Brandis: I think we are running different things together here. There is legal advice, evidently, that Mr Carr chose to characterise and Mr Varghese has not adopted or, for that matter, disputed that characterisation, because to do so would reveal—

Senator XENOPHON: He is neither adopting nor not adopting, though.

Senator Brandis: That is what I said—would reveal the content. That is advice that evidently the department received. You should not assume, therefore, that that is the department's view. The department may not have a view. The department may be in receipt of legal advice on any one of a number of matters. The conclusion of the lawyers who advise the department on those matters is not necessarily the department's view, just as, if you are a client and you ask for counsel's opinion on a point of law and your barrister gives you an opinion about that point of law, that does not necessarily become your view. It is just something you are advised is the lawyer's view.

Senator XENOPHON: Can we just deconstruct that?

Senator DASTYARI: Ha, ha!

Senator XENOPHON: I am saying that without any irony.

Senator Brandis: I have written lots of advice for clients over the years, and I am not sure that they understood a word of them. They govern their steps commercially on the basis of the conclusions I may have expressed, but they were not in a position to have a view about the legal issues.

Senator FAULKNER: After that answer, I am not sure that you understood a word of them!

Senator XENOPHON: I am shocked! I am sure your advice would have been in plain English, Attorney.

Senator Brandis: Well, it was not.

Senator XENOPHON: I am shocked to hear that as well.

Senator Brandis: It was a carefully articulated expression of a legal view.

Senator XENOPHON: Do you have confidence in the department's legal advisers?

Senator Brandis: I do not even know who they are.

Senator XENOPHON: As a general principle, do you—

Senator Brandis: I do not even know who they are. In general, I am sure those who advise the various departments and agencies of the Commonwealth of Australia are competent lawyers.

Senator XENOPHON: Since I have to go through you, Attorney, I would like to ask Mr Varghese on notice whether he has confidence in the advice of his legal advisers.

Senator Brandis: I think Mr Varghese can answer that question.

Senator XENOPHON: Can he? Oh thank you.

Mr Varghese: I do not need to take that on notice. I have complete confidence in the legal advisers of the Department of Foreign Affairs and Trade.

Senator DASTYARI: Ms Cooper is just going, 'Phew!'

Senator XENOPHON: But the department's views on an issue are formed after receiving advice from its legal advisers on an issue such as this, as to whether the Israel settlements are legal or illegal?

Senator Brandis: I hate to be a pedant, Senator; I think it might be—

Senator XENOPHON: You are a lawyer and I am a lawyer and that is okay.

Senator Brandis: I think it would probably put it a little more accurately to say that, unless there is reason to believe otherwise, the department accepts the legal advice. That does not mean it has got a view about it. It assumes that its lawyers are right, in a sense.

Senator XENOPHON: Can I ask Mr Varghese if I may: if your senior lawyers give you advice, as a general rule, do you accept that advice?

Mr Varghese: Legal advice is one input into forming a policy position or—

Senator XENOPHON: You are sounding like Ross Garnaut.

Mr Varghese: forming a policy piece of advice. It does not mean that your legal advice determines your policy position, but you certainly take very careful account of it.

Senator Brandis: What Mr Varghese says is absolutely right. No decision maker who receives legal advice in relation to an issue which is sufficiently vexed to require legal advice is likely only to have regard to that legal advice—and a person is not bound to accept legal advice, though people usually do.

Senator XENOPHON: Okay. I apologise for making this too complex. Through you, Attorney, respectfully, does the department have a view as to the legality or otherwise of the Israeli settlements?

Senator Brandis: In view of what Mr Varghese has already said about reserving his position in relation to this legal advice, that is not really something we can take any further.

Senator XENOPHON: Although the advisers are here, tonight.

Senator Brandis: Yes. But, for the reasons recited by Senator Faulkner, and by Mr Varghese, and by me—I think all of us are saying essentially the same thing—the content of legal advice is not disclosed, and that means that questions which might tend to disclose or reveal the content of that advice are not answered.

Senator XENOPHON: Can I just take that one tiny step further, Attorney. I am simply asking whether the department has a view on the legality, or otherwise, of Israeli settlements. Answering that would not be disclosing the content of that advice.

Senator Brandis: I am sorry Senator Xenophon, but in a sense, because of the way you have set this up, it would.

Senator FAULKNER: It is not provided—normally provided, that is true—unless the minister at the table decides to provide it.

Senator Brandis: Yes, that is a qualification to the general proposition. Nobody is disputing either the general proposition or the qualification. So, we cannot really take this any further, Senator.

Senator XENOPHON: Yes, we can. I think we can. And I say respectfully that I think we can. I have not finished yet.

Senator Brandis: We are not going to answer questions that might tend to disclose the legal advice that you have identified.

Senator XENOPHON: But you do not know what my next question will be.

Senator FAULKNER: Whatever it is, you are going to say no, apparently.

Senator Brandis: If you want to ask me a question about the price of tea in China today, then that would obviously raise different issues.

Senator XENOPHON: Respectfully, I would like to put this to Mr Varghese, but I understand that you may be answering, Attorney. Are you familiar, Mr Varghese, with an article in *The Times of Israel*, by Raphael Ahren, of 15 January 2014, headed, 'Australia FM: Don't call settlements illegal under international law'? I think that refers to the foreign minister, not a radio station. Are you familiar with that article?

Mr Varghese: I do recall the article at the time but, I have got to say, I cannot now remember the contents.

Senator XENOPHON: I do have a copy that I can provide to you if I may, through the secretariat. Chair, may I may have a copy of this handed to Mr Varghese?

CHAIR: You may do so, Senator Xenophon. Perhaps we should all have a copy of it?

Senator XENOPHON: It is a very interesting article. I think the secretariat is arranging that now. There is a passage in the article where the foreign minister, the Hon. Julie Bishop, says, in the context of the settlements:

I would like to see which international law has declared them illegal.

Has the department provided advice, either prior to that statement or subsequent to that statement, as to the legality or otherwise of the Israeli settlements?

Mr Varghese: I did confirm earlier this evening that the department has provided legal advice on this question. That is where we started this rather long discussion.

Senator XENOPHON: I am trying to keep it short, believe me. I would like to go home, and I think we all would. The foreign minister made those statements to *The Times of Israel* on 15 January this year. Has the foreign minister been provided with a briefing from the department, or advice, subsequent to that statement that she made to *The Times of Israel*? I do not want to verbal the foreign minister; I am assuming that that was an accurate quote.

Mr Varghese: I do not know whether it is an accurate quote, because I was not at the interview.

Senator XENOPHON: But no complaint has been made about the quote, I understand.

Mr Varghese: I am not saying it is inaccurate. I am just saying I do not know if it is accurate. I would have to check whether, since this was published, which was on 15 January, we have provided advice on this question. Can I also make the point that the quote attributed to the foreign minister in this article does not necessarily equate to the foreign minister saying that settlements are legal. If this is to be believed as an accurate quote, she is simply saying, 'I would like to see which international law has declared them illegal'.

Senator XENOPHON: Therefore, I am asking whether the department gave advice as to whether, further to the statement of the foreign minister, and you are quite accurate in terms of—

Mr Varghese: I would have to take on notice whether we provided advice subsequent to this article, unless someone at the table is able to confirm it on the spot.

Senator Brandis: Senator Xenophon, I think you would be aware, as I think most people who follow this issue would be aware, that there is a dispute among public international lawyers on this question about the legality or otherwise of these settlements. Different issues arise in relation to different settlements, too. There are some international lawyers who have published learned articles that assert that the settlements—or some of them, or all of them—are illegal and there are international lawyers who have expressed in learned articles and opinions the contrary proposition. The quote you have given to Mr Varghese merely, it seems to me, acknowledges the reality that there exists, as in so many other issues in public international law, a controversy.

Senator XENOPHON: Attorney, do you acknowledge the reality of the International Court of Justice's Israeli wall Advisory Opinion of 9 July 2004, which I understand was unanimous, which said that the settlements were illegal?

Senator Brandis: I am aware that the International Court of Justice made a determination in relation to some of the settlements. I am also aware that there are some public international lawyers who have a contrary view.

Senator XENOPHON: I would be very grateful if you could, on notice, provide me with details of any law journal articles with respect to that.

Senator Brandis: I have been to Israel since that ICJ decision, and I have discussed this issue with Israeli lawyers, and I am aware that there are some illustrious Israeli lawyers who argue a contrary point of view. It is not at all unusual that there should be a difference of view, particularly in an area, by the way, as contestable as public international law.

Senator XENOPHON: I am not sure whether you went to Hebron on that visit, at all.

Senator Brandis: No, I did not go to Hebron. But I did go to the supreme court.

Senator XENOPHON: Do you consider that an advisory opinion of the International Court of Justice would carry some weight?

Senator Brandis: Of course, decisions of the International Court of Justice are an important source of public international law.

Senator XENOPHON: And you would give appropriate weight to that?

Senator Brandis: In any consideration of an issue of public international law, a relevant and recent decision of the International Court of Justice would always be regarded as an important source.

Senator XENOPHON: I am conscious of time constraints. Mr Varghese, can you advise me—and I understand this may have to be through the Attorney—of the department's views as to the weight of the International Court of Justice's advisory opinion—

Senator Brandis: We all know where you are trying to go, Senator Xenophon.

Senator XENOPHON: I do not know where I am trying to go. I am just trying to get an answer.

Senator Brandis: I think you may take it as a given that everyone at this table understands that decisions of the International Court of Justice on a question of public international law are important sources of public international law.

Senator XENOPHON: If there was a Senate order for the production of that legal opinion, is that something you would claim public interest immunity on?

Senator Brandis: I have not thought about it. Let me take that on notice.

Senator XENOPHON: Can I go to the *Four Corners* program earlier this year by *Australian* correspondent in the Middle East John Lyons about the incarceration and the detention of Palestinian children by Israeli authorities. Mr Varghese, is that something that the department has considered or provided an opinion on to the Australian government?

Mr Varghese: I would need to check with colleagues whether we have or have not.

Senator RHIANNON: Why did the Australian Ambassador to Israel attend a meeting in occupied East Jerusalem with the Israeli minister for housing and construction, the same minister who is forecasting a 50 per cent increase in settlements in the occupied Palestinian territories in the next five years?

Senator Brandis: I think I should say that the rather tendentious way in which you put that question, and in particular the use of the word 'occupied', is not something that the Australian government of either political persuasion acknowledges or accepts.

Senator RHIANNON: You do not use the term 'occupied Palestinian territories' even though it is a United Nations term used widely by a number of international agencies like the European Union et cetera?

Senator Brandis: It is used by a lot of people. It is used by a lot of communists, too. Weren't you a member of the Communist Party once?

Senator DASTYARI: Come on, Senator, that is just low.

Senator RHIANNON: Answer the question. You are using your usual tactics to insult people when you are hard up for an answer.

Senator Brandis: I thought you were very proud of being a member of the Communist Party.

Senator RHIANNON: You are hard up for an answer. You have taken over an hour to avoid talking about Palestine and you have been asked a very simple direct question and you not allowing the department to speak.

Senator Brandis: I have just observed that you have asked a tendentious question which contains a lot of very, very controversial assumptions, and the Australian government of either coalition or Labor political persuasion does not adopt that description of those territories. A lot of people do, including obviously people like you.

Senator RHIANNON: Why did the Australian ambassador attend a meeting with the Israeli minister for housing in East Jerusalem?

Mr Varghese: It is the case—

[inaudible]

Senator RHIANNON: That is right, he would be perfect there. Our Australian version of McCarthy. I apologise for interrupting you, Mr Varghese.

Senator FAULKNER: Senator Brandis, are you now or have you ever been a member of the Communist Party?

Senator DASTYARI: This is an incredible shift that not seeing them—

Senator FAULKNER: Senator Joseph McCarthy was—

Senator Brandis: Senator Rhiannon is very proud of her involvement from a very young age in the Communist movement in Australia. Why she claims to be insulted to have been reminded of it—

Senator RHIANNON: No, it is insulting when for one hour—

Senator Brandis: when it is a matter of public knowledge of which she has spoken often and proudly is beyond me.

CHAIR: Order.

Senator RHIANNON: It is insulting when for one hour you have avoided talking about Palestine.

CHAIR: Let's just stop for a minute.

Senator FAULKNER: I think, rather, if you were in the chamber, a point of order on relevance would be taken.

Senator XENOPHON: Chair, I raise a point of order on relevance. I do not really give a rats what Senator Rhiannon may or may not be a member of previously; I just want to get to the questions. The minister has just made a statement about whether the territories are occupied or not. That seems to be a massive shift in Australia's policy.

Senator Brandis: No.

Senator DASTYARI: That is a huge shift.

Senator Brandis: No, that is not at all what I said.

Senator XENOPHON: Sorry, what did you say?

Senator Brandis: What I said is that the Australian government does not describe those territories by reference to that nomenclature, by reference to the terms in which Senator Rhiannon has chosen to put her question.

Senator XENOPHON: What about the Security Council resolutions of October 2012 and January 2011 where Australia did adopt that nomenclature?

Senator Brandis: That is not the way that we describe that territory.

Senator DASTYARI: Does Mr Varghese want to answer that?

Mr Varghese: I think the question that was posed to me was in relation to—

Senator DASTYARI: We are going back to what Senator Xenophon just said about the nomenclature, about the language that was used. We have used that language before.

Mr Varghese: We have referred to the 'occupied territories' previously but I think the point—

Senator DASTYARI: Thank you.

Mr Varghese: Let me finish my answer, if you do not mind. The context in which the Attorney-General was making his comments was in response to a question which referred to the position of East Jerusalem. So we just need to be a little bit careful about what exactly we are referring to here. Senator Rhiannon asked about a meeting between our ambassador to Israel and the Israeli housing and construction minister—

Senator DASTYARI: In East Jerusalem—is that correct?

Mr Varghese: which did indeed take place in East Jerusalem. That meeting in no way alters Australia's position, which is that the status of East Jerusalem is one of the core issues that need to be resolved through direct negotiations between Israel and the Palestinians towards a two-state solution.

Senator RHIANNON: Were senior DFAT officials aware of the ambassador's meeting prior to it occurring?

Mr Varghese: I would have to check whether we had advance notice of it. The answer, I gather, is no.

Senator RHIANNON: Were the envoy's actions in accepting a meeting in this part of Jerusalem approved by senior officials?

Mr Varghese: If we did not have any prior knowledge, I doubt that we would have approved it.

Senator RHIANNON: One needs to ask one questions in different ways, one learns, when one is with Minister Brandis. Was the Minister for Foreign Affairs aware that the meeting was taking place?

Mr Varghese: Again, if we did not have prior knowledge of it, I doubt that the minister would have been aware.

Senator RHIANNON: The question was about the Minister for Foreign Affairs. You are saying you doubt it. Do you need to take it on notice?

Mr Varghese: I will take that on notice. I find it difficult to believe that she would have had prior knowledge if her officials did not, but I am happy to take it on notice.

Senator RHIANNON: Thank you. Has an explanation or apology been sent to the Palestinian authorities for this meeting being held?

Mr Varghese: I do not think either an explanation or an apology is required.

Senator RHIANNON: Even though it was in occupied Palestinian territory?

Mr Varghese: I have just explained what the policy context of that is.

Senator Brandis: And you are the one who keeps using this term 'occupied East Jerusalem'. I know a lot of people do.

Senator RHIANNON: Most people discussing this issue use it. You are well aware of that.

Senator Brandis: Most people you mix with, I am sure, do.

Senator DASTYARI: So your view is that they are not occupied?

Senator Brandis: We are talking about the description of an area.

Senator DASTYARI: And you are saying they are not occupied.

Senator Brandis: The point I made is that the Australian government does not refer to East Jerusalem by the descriptor 'occupied East Jerusalem'. We speak of East Jerusalem.

Senator XENOPHON: Are they occupied or not? Through you, Chair—I apologise—are the Palestinian territories occupied or not?

Senator Brandis: I am not here to express views on the rights and wrongs of the Middle Eastern situation. I am merely making the point that the tendentious description that Senator Rhiannon chose to use—

Senator DASTYARI: That is the sixth time you have used the word 'tendentious' tonight.

Senator Brandis: That is because it is the appropriate word—

Senator XENOPHON: It is a beautiful word.

Senator Brandis: to describe the way in which the question was framed. It is not the descriptor—the proper noun, if you like—that the Australian government uses.

Senator XENOPHON: Are they occupied or not, in your view—

Senator Brandis: I do not profess a view on this matter.

Senator XENOPHON: But isn't there a view implied in the Security Council resolutions that Australia voted for?

Senator Brandis: I am not professing a view on this matter. I am merely correcting the use of a term as a descriptor or a proper noun by Senator Rhiannon which, as it were, prejudices the issue about which she inquires. That is all.

Senator XENOPHON: Does Mr Varghese have a view on whether the territories are occupied or not?

CHAIR: I am not sure that that is a fair question to ask the head of the department.

Senator DASTYARI: How is it not a fair question to ask the secretary?

Senator RHIANNON: The question can be asked.

CHAIR: Because it is a political question.

Senator XENOPHON: Could the secretary take it on notice?

Mr Varghese: I will take it on notice.

Senator XENOPHON: Thank you, I appreciate that.

Senator RHIANNON: Israel's continued occupation of East Jerusalem has been recognised widely as a serious impediment to the peace negotiations that the Secretary of State, John Kerry, has been engaged in, as has former British Prime Minister Tony Blair and many other people in trying to resolve the issue. Is that an issue you have given advice on in terms of documenting how those talks are going and what the impediments are to the resolution of these peace talks?

Senator Brandis: What is the question, Senator? There are about five different propositions rolled up in what you have just said. Obviously the status of East Jerusalem, as Mr Varghese said before, is an issue and has for decades been an issue in the Middle East peace process. It is uncontroversial that it is an issue. What specifically are you asking?

Senator RHIANNON: Do you disagree that an impediment to the peace talks has been the issue of the occupation of East Jerusalem?

Senator Brandis: It all depends what you mean by impediment. Certainly the status of East Jerusalem is an issue in dispute between the parties to the peace talks. It is uncontroversial that that is so.

Senator RHIANNON: So you agree that the occupation of East Jerusalem is an impediment to these peace talks?

Senator Brandis: No, I do not agree with that characterisation at all. When two or more parties are in dispute then they are in dispute about issues. Those matters are issues because they remain at issue between the parties. You characterise that as an impediment; I think it is a more accurate description to say that the status of East Jerusalem is one of the issues, an important issue.

Senator RHIANNON: On the term that for the past hour and five minutes you have been disputing with regard to occupied Palestinian territories, has a directive been issued within the department that the term is no longer to be used, that the Palestinian territories are not to be described as 'occupied'?

Senator Brandis: I will let Mr Varghese answer your question, but before he does I make the point that the use of that term as a descriptor or, as it were, as a proper noun is not a term that the Australian government customarily uses.

Senator RHIANNON: Mr Varghese, now that Senator Brandis has said that that term is not used, could you inform us when you stopped using that term?

Mr Varghese: There is not anything like a directive along the lines that you suggested. As I indicated previously, from time to time the phrase 'occupied territory' has been used by Australian governments. I think the point that triggered this line of questioning and the point that the Attorney-General was making was the special case of Jerusalem within the context of the peace negotiations between Israel and the Palestinians and the fact that the final status of Jerusalem is one of the key issues that will need to be resolved before we can see an agreement to a two-state solution.

Senator RHIANNON: Could you come back to the question about the use of the term 'occupied'. We have sat in these estimates previously when that description has been used—

Senator Brandis: You need to be very careful in your use of language. What I took issue with and continue to take issue with is the use of the descriptor 'occupied East Jerusalem' as, as it were, a proper noun to describe the status of East Jerusalem. You have asked a different question now generally about the use of the word 'occupied'.

Senator RHIANNON: It is your opportunity and Mr Varghese's opportunity to clarify this. You have been avoiding the issue and muddying the waters now for an hour and 10 minutes.

Senator Brandis: Who, Mr Varghese has?

Senator RHIANNON: Again you are doing it: you avoid answering the question.

Senator Brandis: I am merely asking for a little definitional clarity in an area where words matter.

Senator RHIANNON: That is your job, how you want to use it with an O on occupied or an o on occupied, I am asking for clarity.

Senator FAULKNER: It wouldn't be a proper noun if it didn't have an upper case O, would it?

Senator Brandis: Quite right, Senator Faulkner. Senator Rhiannon, you may or may not be aware—though I would have thought a person with your long familiarity with international relations would be aware—that, in these issues, words matter a lot, and subtle shades of meaning and nuance matter a lot, which is why I am being very particular—

Senator RHIANNON: But you are not answering the question.

Senator Brandis: in insisting that you not use loaded terms—

Senator DASTYARI: It's not a loaded term!

Senator Brandis: or words, or change, from one question to the next, the use of the words that you have chosen to adopt.

Senator RHIANNON: We are in estimates, and our job in estimates is to ask questions.

Senator Brandis: No, no, no—we may be in estimates, but the topic that you are addressing is a topic in which the meaning of words matters a lot, and I am afraid I am not going to let you get away with trying to shift between various shades of meanings of words as if there was no difference between them, because there is. Just ask your question, and specify precisely what you are asking.

Senator RHIANNON: You have made it clear that you are not going to answer it, and you have barely let the department people answer it. Mr Varghese, in 1967, did Israel enter East Jerusalem and stay there, or not?

Senator Brandis: Senator Rhiannon, this is not a history lesson, all right? It is not a history lesson.

Senator RHIANNON: Oh! This is—

Senator Brandis: In 1967, we know there was a war; we know there were troop movements; we know there was a change of control of various territory—

Senator RHIANNON: You have just been stonewalling for an hour and 15 minutes on answers. Mr Varghese, does the ambassador have to go to the embassy in Tel Aviv or not for meetings, and does he have to go through military checkpoints to get there?

Mr Varghese: I do not know the answer to the second part of your question—

Senator RHIANNON: Could you take it on notice, please.

Mr Varghese: I do not know whether Mr Innes-Brown is in a position to answer it? No. We will take it on notice.

Senator RHIANNON: So you will take both parts on notice. Have the Israeli defence forces withdrawn from East Jerusalem since 1967 or haven't they?

Mr Varghese: Well, no they have not.

Senator RHIANNON: They have not withdrawn. So, if they have not withdrawn, that means that that is an occupation—is that what you conclude from that?

Mr Varghese: I think we are going around in circles.

Senator RHIANNON: No. It is a question, again, that can be answered 'yes' or 'no'.

Senator Brandis: It is not really a question that has a simple answer, because that word you keep using, 'occupation', means different things to different people, and, depending on what it means to those who have different points of view in a very, very difficult dispute, the interpretation of that word is extremely consequential.

You throw this word around very loosely. You started this line of questioning by describing an area of Jerusalem as 'Occupied East Jerusalem' as if that were a geographical or political descriptor—a proper noun, as I said. Now you are talking about 'occupation', which, in international law, by the way, is itself an expression that has a variety of shades of meaning. This is the very thing I counselled you against.

Senator RHIANNON: Mr Varghese, in the last two minutes, could you answer that earlier question: has the department been advised on how to use the word 'occupied' in whatever meaning that you might use it in?

Senator Brandis: By whom?

Senator RHIANNON: You are the one—it is obviously the government. We have got a minute to go.

Senator Brandis: No, it is not obvious. Your processes of thought—

Senator RHIANNON: Your stonewalling is disgraceful.

Senator Brandis: Your processes of thought, Senator Rhiannon—

Senator RHIANNON: You should be the one who respects Senate estimates.

Senator Brandis: are by no means obvious to anyone other than you.

Senator RHIANNON: It is just avoiding the question. Mr Varghese?

Senator Brandis: Can you put the question again, because it is not clear to me what you are asking.

Senator RHIANNON: It is very clear.

Senator Brandis: It might be clear to you, but it is not clear to me.

Senator RHIANNON: You are just trying to talk the time out—

Senator Brandis: There is at least one person at the table who is asking you to ask your question with a little more particularity or a little more clarity.

Senator XENOPHON: Chair, may I just have some time? I think the question from Senator Rhiannon was whether the Israeli defence forces have withdrawn from East Jerusalem since 1967. I do not think the word 'occupied' was used—

Senator Brandis: And that question was answered by Mr Varghese. It was not objected to. And it was answered by Mr Varghese.

Senator XENOPHON: Okay; thank you, Attorney.

Senator RHIANNON: So, Mr Varghese—

CHAIR: I notice that the time is now 11 o'clock, so I think it is now appropriate to close these hearings. We will resume tomorrow morning at 9 am.

Committee adjourned at 23:00

Appendix E (Only relevant sections)



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE

Estimates

(Public)

THURSDAY, 5 JUNE 2014

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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

Thursday, 5 June 2014

Members in attendance: Senators Carol Brown, Dastyari, Edwards, Eggleston, Faulkner, Fawcett, Kroger, Ian Macdonald, McEwen, Rhiannon, Stephens, Whish-Wilson, Wong, Xenophon.

Mr Sam Gerovich, First Assistant Secretary, Trade and Economic Diplomacy Division

Tourism Australia

Outcome 1—Grow demand and foster a competitive and sustainable Australian tourism industry through partnership marketing to targeted global consumers in key markets.

Mr John O'Sullivan, Managing Director

Ms Karen Halbert, General Manager Corporate Affairs

Mr Mark Craig, General Manager, Corporate Services

Program 1.1—Supporting Outcome 1

Component 1.1—Grow demand

Component 1.2—Industry Development

Committee met at 09:04

CHAIR (Senator Eggleston): I formally opening this hearing and call the meeting to order. I understand that the Attorney-General wishes to make a statement.

Senator Brandis: Yes, Mr Chairman. You will recall that, when the committee adjourned last night, there had been a number of questions and exchanges, in particular between Senator Rhiannon and me, concerning the description of East Jerusalem. I have had a conversation with the foreign minister and I want to make a short statement to the committee with her authority.

Australia supports a peaceful solution to the dispute between Israel and the Palestinian people which recognises the right of Israel to exist peacefully within secure borders and also recognises the aspiration to statehood of the Palestinian people. The description of areas which are the subject of negotiations in the course of the peace process by reference to historical events is unhelpful. The description of East Jerusalem as 'occupied' East Jerusalem is a term freighted with pejorative implications, which is neither appropriate nor useful. It should not and will not be the practice of the Australian government to describe areas of negotiation in such judgemental language.

CHAIR: Thank you very much, Attorney-General.

Senator Brandis: I will table that statement.

CHAIR: If you would table it, it will be incorporated in *Hansard*.

Senator XENOPHON: Chair, I have some questions following on from the Attorney's statement.

CHAIR: I am going to open the meeting, so perhaps you would like to wait.

Senator XENOPHON: Aren't we open yet?

Senator DASTYARI: How can we table a document if the meeting has not been opened?

Senator FAULKNER: Chair, there is certainly no need to incorporate—

CHAIR: I did open the meeting and I now have an opening statement to read, following the Attorney-General's statement.

Senator FAULKNER: Before you do, can I raise a procedural point?

CHAIR: Yes, of course.

Senator FAULKNER: There is no need to incorporate the statement that the Attorney has actually ensured is on the *Hansard* record. You requested the statement be incorporated; I am just making the point that there is no need to do so, as the Attorney has read it into the record.

CHAIR: That is technically correct and I thank you for that point.

Senator Brandis: Senator Faulkner, although I have read the statement into the record—so it will appear in *Hansard*—if it is also tabled in this committee, it becomes a parliamentary paper, does it not?

Senator FAULKNER: Yes, of course; and you, as a courtesy, which I thought was appropriate, offered to table the statement. But the Chair said, 'We will incorporate the statement in *Hansard*,' which does not assist you in that regard. It is a very minor point and—

Senator Brandis: It is a very minor point.

Senator FAULKNER: Let us table it and move on.

CHAIR: Yes, I think that is true, Senator Faulkner; it is time to move on and it was a minor point. Today the committee will examine the budget estimates for the Foreign Affairs and Trade portfolios in the following order: the Department of Foreign Affairs and Trade non-trade programs until 6:30 pm today; then the Trade portfolio

from 7:30 to 11:00 pm, beginning with the Department of Foreign Affairs and Trade trade programs, followed by the Export Finance Insurance Corporation, or EFIC, as it is otherwise known, Austrade, the Department of Foreign Affairs and Trade tourism programs and Tourism Australia.

Topics will be considered in the order set out on the agenda. However, the committee hopes to reach sections of the program dealing with aid by the morning tea break, although this may not be possible. The committee has agreed that it will move to aid sections, commencing with aid overview/budget after the lunch break if the committee has not reached that point in the program. A full opening statement was read into the record yesterday morning. Copies are available from the secretariat.

[09:09]

CHAIR: We will now begin with outcome 1, program 1.1, West Asia and the Middle East. Senator Xenophon has the call.

Senator XENOPHON: Thank you, Chair; and thank you, Attorney, for the statement of the foreign minister that has been tabled and read into the *Hansard* this morning. I put this to both you and the secretary: in a media release of 15 December 1981 headed 'Golan Heights', the Hon. Tony Street, the Minister for Foreign Affairs at the time, stated:

The Minister recalled that last year the Australian Government had also expressed its opposition to the declaration by the Israeli Knesset that all Jerusalem, including occupied East Jerusalem, is the united capital of Israel.

That was the position of the coalition government back then. Is there now a different position of this government in relation to occupied East Jerusalem?

Senator Brandis: The reason the foreign minister agreed with me that it was appropriate to read the statement I have just read—which, as I say, she has authorised—is that, for obvious reasons, it is not desirable that expressions of the foreign policy of Australia should be made, as it were, in the course of backwards and forwards between a senator and a minister at the table during the course of estimates. The debate that I had—if you could call it a debate—with Senator Rhiannon and, indeed, you and Senator Dastyari last night was not an ideal vehicle for the expression of the Australian government's position on an important diplomatic question.

For that reason, overnight, the foreign minister, the secretary of the department and I have had a conversation and have developed the statement that I have just read as a clear and considered expression of the Australian government's position, so that there can be no dispute about what the position is and no misinterpretation of what was said last night. The statement that I have read is obviously a statement which has been put together after careful consideration and it represents the Australian government's position on this issue. For the reasons I have just expressed, I think it would be unhelpful for me, the secretary or anyone to be a commentator on the statement or to gloss the statement; the statement speaks for itself.

Senator XENOPHON: Attorney, thank you for that response. I am just trying to put this in context. The *Hansard* record shows that, on 8 June 1978, in response to a question on notice by EG Whitlam to Minister Ian Sinclair, reference was made by the minister to 'the occupied territories' and reference was made 'to support Israel's right to live within secure and recognised boundaries', which is very similar to the government's current position. He also stated:

The Australian Government has also made known, in international forums, its view that the territories occupied by Israel in 1967 are 'occupied territories' in the international legal sense of that expression and the convention relative to the protection of civilian persons in a time of war.

Also, in terms of historical context, on 20 May 1990, the Hon. Paul Keating, as Acting Prime Minister, made this reference in an address to the Zionist Federation of Australia on 20 May 1990:

Australia, together with most other countries, has expressed the view that Israeli settlements in the Occupied Territories, and in East Jerusalem, are contrary to international law and are a significant obstacle to peace.

Is there or is there not now a change in that bipartisan position of previous Australian governments, in that you do not consider these territories to be occupied?

Senator Brandis: You have read some extracts from *Hansard* of some decades ago. I have read a statement authorised by the foreign minister, which—unlike, inevitably, the exchange last night which, in the way of these things, was a spontaneous exchange—is the considered position of the Australian government. The statement speaks for itself and I will not be commenting on it, glossing it or departing from it. It is a considered expression of the position on this issue—it is an issue about the use of language—of the Australian government.

Senator XENOPHON: Respectfully, Attorney, isn't your statement a non-statement, in that there is no position expressed as to the term 'occupied'?

Senator Brandis: The statement is a considered statement, which speaks for itself, and I will not be commenting it on it further.

Senator XENOPHON: Can I ask the secretary, Mr Varghese: does the minister's statement, or the foreign minister's statement, represent a change in the policy of Australian governments?

Senator Brandis: I am not going to have officials asked that question. The statement was developed in consultation with Mr Varghese, Ms Bishop, me and the foreign minister's office and it is the position of the Australian government.

Senator XENOPHON: Perhaps I could ask a more neutral question and maybe this will assist me, or the committee. I ask this to Mr Varghese and to you, Attorney: has the government of Israel asked Australia, at any time since 1967, to move our embassy from Tel Aviv to Jerusalem? Mr Varghese?

Mr Varghese: I would have to take that on notice. You are asking me a question going back to 1967, so I will take that—

Senator XENOPHON: No; since 1967.

Mr Varghese: Yes; it is a long period of time.

Senator DASTYARI: Are you aware of any times on your watch?

Mr Varghese: I will take it on notice.

Senator XENOPHON: Supplementary to that: if we have been asked, why haven't we?

Mr Varghese: Why haven't we been asked?

Senator XENOPHON: No. If we have been asked to move our embassy from Tel Aviv to Jerusalem, what has the response been and why have we not done so, if we have been asked?

Mr Varghese: I had better take that on notice.

Senator XENOPHON: I have further questions on this, but I understand that Senator Dastyari was—

CHAIR: No; we do not want to proceed down this line. We have agreed to a program for this morning.

Senator XENOPHON: Can I just ask one point of clarification?

CHAIR: I do not think so. I would prefer you not to.

Senator XENOPHON: Chair, can I just put one question on notice and then you can be done with me on this issue?

CHAIR: By all means, yes.

Senator XENOPHON: You can be done with me.

CHAIR: Good.

Senator XENOPHON: Mr Varghese, in respect of Palestinian children in custody, I refer to the *Four Corners* story by the *Australian's* correspondent in the Middle East, John Lyons, earlier this year. I think you are familiar with the story, or familiar with the program?

Mr Varghese: I did not see the program.

Senator XENOPHON: Could you please take this on notice: in respect of Palestinian children in custody, have any representations—and, if so, what was the nature of those representations—been made to the Israeli government?

Mr Varghese: I am happy to take that on notice.

Senator XENOPHON: Thank you. Thank you, Chair.

Senator FAWCETT: Mr Varghese, could we have somebody at the table to talk about India, please?

Mr Varghese: Yes.

Senator FAWCETT: I will start off with questions to you and I guess the officials can follow up as required. Obviously, with Narendra Modi having just been elected as the Prime Minister of India, it is a whole new chapter there. I just wonder whether you could outline what steps Australia is taking to engage with the new administration in India.

Mr Varghese: The relationship with India is a very important one for Australia. It engages first-order economic trade and investment interests; our strategic interests are converging. We have a very strong people-to-people connection. India is our largest source of permanent migrants and our second largest source of international students; a large Indian diaspora in Australia.

Appendix F (Only relevant sections)



COMMONWEALTH OF AUSTRALIA

SENATE

Hansard

TUESDAY, 17 JUNE 2014

CORRECTIONS

This is a **PROOF ISSUE**. Suggested corrections for the Official Hansard and Bound Volumes should be lodged in writing with Hansard DPS as soon as possible but not later than:

Tuesday, 24 June 2014

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**FORTY-FOURTH PARLIAMENT
FIRST SESSION—THIRD PERIOD**

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His Excellency General the Hon. Sir Peter Cosgrove AK, MC (Retd)

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President—Senator Hon. John Joseph Hogg

Deputy President and Chair of Committees—Senator Stephen Parry

Temporary Chairs of Committees—Senators Cory Bernardi, Thomas Mark Bishop,
Suzanne Kay Boyce, Sean Edwards, David Julian Fawcett, Mark Lionel Furner,
Alexander McEachian Gallacher, Scott Ludlam, Gavin Mark Marshall,
Anne Sowerby Ruston, Dean Anthony Smith, Ursula Mary Stephens, Glenn Sterle and
Peter Stuart Whish-Wilson

Leader of the Government in the Senate—Senator Hon. Eric Abetz

Deputy Leader of the Government in the Senate—Senator Hon. George Henry Brandis QC

Leader of the Opposition in the Senate—Senator Hon. Penny Wong

Deputy Leader of the Opposition in the Senate—Senator the Hon Stephen Conroy

Manager of Government Business in the Senate—Senator Hon. Mitchell Peter Fifield

Manager of Opposition Business in the Senate—Senator Claire Moore

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Deputy Leader of the Liberal Party in the Senate—Senator Hon. George Henry Brandis QC

Leader of The Nationals in the Senate—Senator Hon. Nigel Scullion

Deputy Leader of The Nationals in the Senate—Senator Hon. Fiona Nash

Leader of the Australian Labor Party—Senator the Hon Penny Wong

Deputy Leader of the Australian Labor Party—Senator the Hon Stephen Conroy

Leader of the Australian Greens—Senator Christine Anne Milne

Chief Government Whip—Senator Helen Kroger

Deputy Government Whips—Senators Christopher John Back and David Christopher Bushby

Chief Opposition Whip—Senator Anne McEwen

Deputy Opposition Whips—Senators Catryna Louise Bilyk and Anne Elizabeth Urquhart

Australian Greens Whip—Senator Rachel Siewert

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Members of the Senate

Senator	State or Territory	Term expires	Party
Abetz, Hon. Eric	TAS	30.6.2017	LP
Back, Christopher John	WA	30.6.2017	LP
Bernardi, Cory	SA	30.6.2014	LP
Bilyk, Catryna Louise	TAS	30.6.2014	ALP
Birmingham, Simon John	SA	30.6.2014	LP
Bishop, Thomas Mark	WA	30.6.2014	ALP
Boswell, Hon. Ronald Leslie Doyle	QLD	30.6.2014	NATS
Boyce, Suzanne Kay	QLD	30.6.2014	LP
Brandis, Hon. George Henry, QC	QLD	30.6.2017	LP
Brown, Carol Louise	TAS	30.6.2014	ALP
Bushby, David Christopher	TAS	30.6.2014	LP
Cameron, Douglas Niven	NSW	30.6.2014	ALP
Carr, Hon. Kim John	VIC	30.6.2017	ALP
Cash, Michaelia Clare	WA	30.6.2014	LP
Colbeck, Hon. Richard Mansell	TAS	30.6.2014	LP
Collins, Jacinta Mary Ann	VIC	30.6.2014	ALP
Conroy, Hon. Stephen Michael	VIC	30.6.2017	ALP
Cormann, Mathias Hubert Paul	WA	30.6.2017	LP
Dastyari, Sam ⁽⁶⁾	NSW	30.6.2017	ALP
Di Natale, Richard	VIC	30.6.2017	AG
Edwards, Sean	SA	30.6.2017	LP
Eggleston, Alan	WA	30.6.2014	LP
Farrell, Donald Edward	SA	30.6.2014	ALP
Faulkner, Hon. John Philip	NSW	30.6.2017	ALP
Fawcett, David Julian	SA	30.6.2017	LP
Fierravanti-Wells, Concetta Anna	NSW	30.6.2017	LP
Fifield, Mitchell Peter	VIC	30.6.2014	LP
Furner, Mark Lionel	QLD	30.6.2014	ALP
Gallacher, Alexander McEachian	SA	30.6.2017	ALP
Hanson-Young, Sarah Coral	SA	30.6.2014	AG
Heffeman, Hon. William Daniel	NSW	30.6.2017	LP
Hogg, Hon. John Joseph	QLD	30.6.2014	ALP
Johnston, Hon. David Albert Lloyd	WA	30.6.2014	LP
Kroger, Helen	VIC	30.6.2014	LP
Lines, Susan ⁽⁶⁾	WA	30.6.2017	ALP
Ludlam, Scott	WA	30.6.2014	AG
Ludwig, Hon. Joseph William	QLD	30.6.2017	ALP
Lundy, Kate Alexandra	ACT		ALP
Macdonald, Hon. Ian Douglas	QLD	30.6.2014	LP
McEwen, Anne	SA	30.6.2017	ALP
McKenzie, Bridget	VIC	30.6.2017	NATS
McLucas, Hon. Jan Elizabeth	QLD	30.6.2017	ALP
Madigan, John Joseph	VIC	30.6.2017	DLP
Marshall, Gavin Mark	VIC	30.6.2014	ALP
Mason, Hon. Brett John	QLD	30.6.2017	LP
Milne, Christine Anne	TAS	30.6.2017	AG
Moore, Claire Mary	QLD	30.6.2014	ALP
Nash, Fiona Joy	NSW	30.6.2017	NATS
O'Neill, Deborah ⁽¹⁰⁾	NSW	30.6.2014	ALP
O'Sullivan, Barry James ⁽⁷⁾	QLD	30.6.2014	NATS
Parry, Stephen Shane	TAS	30.6.2017	LP
Payne, Marise Ann	NSW	30.6.2014	LP
Peris, Nova Maree AOM	NT		ALP
Polley, Helen Beatrice	TAS	30.6.2017	ALP
Pratt, Louise Clare	WA	30.6.2014	ALP
Rhiannon, Lee	NSW	30.6.2017	AG
Ronaldson, Hon. Michael	VIC	30.6.2017	LP
Ruston, Anne Sowerby ⁽⁵⁾	SA	30.6.2017	LP
Ryan, Scott Michael	VIC	30.6.2014	LP

Senator	State or Territory	Term expires	Party
Scullion, Hon. Nigel Gregory	NT		CLP
Seselja, Zdenko Matthew	ACT		LP
Siewert, Rachel Mary	WA	30.6.2017	AG
Singh, Hon. Lisa Maria	TAS	30.6.2017	ALP
Sinodinos, Arthur ⁽¹⁾	NSW	30.6.2014	LP
Smith, Dean Anthony ⁽²⁾	WA	30.6.2017	LP
Stephens, Hon. Ursula Mary	NSW	30.6.2014	ALP
Sterle, Glenn	WA	30.6.2017	ALP
Thorp, Lin Estelle ⁽³⁾	TAS	30.6.2014	ALP
Tillem, Mehmet ⁽⁹⁾	VIC	30.6.2014	ALP
Urquhart, Anne Elizabeth	TAS	30.6.2017	ALP
Waters, Larissa Joy	QLD	30.6.2017	AG
Whish-Wilson, Peter Stuart ⁽⁴⁾	TAS	30.6.2014	AG
Williams, John Reginald	NSW	30.6.2014	NATS
Wong, Hon. Penelope Ying Yen	SA	30.6.2014	ALP
Wright, Penelope Lesley	SA	30.6.2017	AG
Xenophon, Nicholas	SA	30.6.2014	IND

Pursuant to section 42 of the Commonwealth Electoral Act 1918, the terms of service of the following senators representing the Australian Capital Territory and the Northern Territory expire at the close of the day immediately before the polling day for the next general election of members of the House of Representatives

Territory	Senator	Party	Senator	Party
Australian Capital Territory	Lundy, K.	ALP	Seselja, Z.M.	LP
Northern Territory	Scullion, N. G.	CLP	Peris, N.M.	ALP

- (1) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice H. Coonan, resigned 22.8.11), pursuant to section 15 of the Constitution.
- (2) Chosen by the Parliament of Western Australia to fill a casual vacancy (vice J. Adams, died in office 31.3.12), pursuant to section 15 of the Constitution.
- (3) Chosen by the Parliament of Tasmania to fill a casual vacancy (vice Hon. N. Sherry, resigned 1.6.12), pursuant to section 15 of the Constitution.
- (4) Chosen by the Parliament of Tasmania to fill a casual vacancy (vice Hon. B. Brown, resigned 15.6.12), pursuant to section 15 of the Constitution.
- (5) Chosen by the Parliament of South Australia to fill a casual vacancy (vice M. J. Fisher, resigned 15.8.12), pursuant to section 15 of the Constitution.
- (6) Chosen by the Parliament of Western Australia to fill a casual vacancy (vice C. Evans, resigned 12.4.13), pursuant to section 15 of the Constitution.
- (7) Chosen by the Parliament of Queensland to fill a casual vacancy (vice B. Joyce, resigned 8.8.13), pursuant to section 15 of the Constitution.
- (8) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice M. Thistlethwaite, resigned 9.8.13), pursuant to section 15 of the Constitution.
- (9) Chosen by the Parliament of Victoria to fill a casual vacancy (vice D. Feeney, resigned 12.8.13), pursuant to section 15 of the Constitution.
- (10) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice R. Carr, resigned 24.10.13), pursuant to section 15 of the Constitution.

PARTY ABBREVIATIONS

AG—Australian Greens; ALP—Australian Labor Party; CLP—Country Liberal Party;
DLP—Democratic Labor Party; IND—Independent, LP—Liberal Party of Australia; NATS—The Nationals

Heads of Parliamentary Departments

Clerk of the Senate—R Laing

Clerk of the House of Representatives—D Elder

Secretary, Department of Parliamentary Services—C Mills

Parliamentary Budget Officer—P Bowen

ABBOTT MINISTRY

Title	Minister
Prime Minister	The Hon Tony Abbott MP
Minister for Indigenous Affairs	Senator the Hon Nigel Scullion
<i>Minister Assisting the Prime Minister for the Public Service</i>	<i>Senator the Hon Eric Abetz</i>
<i>Minister Assisting the Prime Minister for Women</i>	<i>Senator the Hon Michaelia Cash</i>
<i>Parliamentary Secretary to the Prime Minister</i>	<i>The Hon Josh Frydenberg MP</i>
<i>Parliamentary Secretary to the Prime Minister</i>	<i>The Hon Alan Tudge MP</i>
Minister for Infrastructure and Regional Development (Deputy Prime Minister)	The Hon Warren Truss MP
Assistant Minister for Infrastructure and Regional Development	The Hon Jamie Briggs MP
Minister for Foreign Affairs	The Hon Julie Bishop MP
Minister for Trade and Investment	The Hon Andrew Robb AO MP
<i>Parliamentary Secretary to the Minister for Foreign Affairs</i>	<i>Senator the Hon Brett Mason</i>
Minister for Employment (Leader of the Government in the Senate)	Senator the Hon Eric Abetz
Assistant Minister for Employment (Deputy Leader of the House)	The Hon Luke Hartsuyker MP
Attorney-General	Senator the Hon George Brandis QC
Minister for the Arts (Vice-President of the Executive Council) (Deputy Leader of the Government in the Senate)	Senator the Hon George Brandis QC
Minister for Justice	The Hon Michael Keenan MP
Treasurer	The Hon Joe Hockey MP
Minister for Small Business	The Hon Bruce Billson MP
Acting Assistant Treasurer	Senator the Hon Mathias Cormann
<i>Parliamentary Secretary to the Treasurer</i>	<i>The Hon Steven Ciobo MP</i>
Minister for Agriculture	The Hon Barnaby Joyce MP
<i>Parliamentary Secretary to the Minister for Agriculture</i>	<i>Senator the Hon Richard Colbeck</i>
Minister for Education (Leader of the House)	The Hon Christopher Pyne MP
Assistant Minister for Education	The Hon Sussan Ley MP
<i>Parliamentary Secretary to the Minister for Education</i>	<i>Senator the Hon Scott Ryan</i>
Minister for Industry	The Hon Ian Macfarlane MP
<i>Parliamentary Secretary to the Minister for Industry</i>	<i>The Hon Bob Baldwin MP</i>
Minister for Social Services	The Hon Kevin Andrews MP
Assistant Minister for Social Services (Manager of Government Business in the Senate)	Senator the Hon Mitch Fifield
Minister for Human Services	Senator the Hon Marise Payne
<i>Parliamentary Secretary to the Minister for Social Services</i>	<i>Senator the Hon Concetta Fierravanti-Wells</i>
Minister for Communications	The Hon Malcolm Turnbull MP
<i>Parliamentary Secretary to the Minister for Communications</i>	<i>The Hon Paul Fletcher MP</i>
Minister for Health	The Hon Peter Dutton MP
Minister for Sport	The Hon Peter Dutton MP
Assistant Minister for Health	Senator the Hon Fiona Nash

Title	Minister
Minister for Defence	Senator the Hon David Johnston
Minister for Veterans' Affairs	Senator the Hon Michael Ronaldson
<i>Minister Assisting the Prime Minister for the Centenary of ANZAC</i>	<i>Senator the Hon Michael Ronaldson</i>
Assistant Minister for Defence	The Hon Stuart Robert MP
<i>Parliamentary Secretary to the Minister for Defence</i>	<i>The Hon Darren Chester MP</i>
Minister for the Environment	The Hon Greg Hunt MP
<i>Parliamentary Secretary to the Minister for the Environment</i>	<i>Senator the Hon Simon Birmingham</i>
Minister for Immigration and Border Protection	The Hon Scott Morrison MP
Assistant Minister for Immigration and Border Protection	Senator the Hon Michaelia Cash
Minister for Finance	Senator the Hon Mathias Cormann
Special Minister of State	Senator the Hon Michael Ronaldson
<i>Parliamentary Secretary to the Minister for Finance</i>	<i>The Hon Michael McCormack MP</i>

Each box represents a portfolio. **Cabinet Ministers are shown in bold type.** As a general rule, there is one department in each portfolio. However, there is a Department of Human Services in the Social Services portfolio and a Department of Veterans' Affairs in the Defence portfolio. The title of a department does not necessarily reflect the title of a minister in all cases.

SHADOW MINISTRY

Title	Shadow Minister
Leader of the Opposition	Hon Bill Shorten MP
Shadow Minister Assisting the Leader for Science	Senator the Hon Kim Carr
Shadow Minister Assisting the Leader for Small Business	Hon Bernie Ripoll MP
<i>Shadow Parliamentary Secretary for Small Business</i>	<i>Julie Owens MP</i>
<i>Shadow Cabinet Secretary</i>	<i>Senator the Hon Jacinta Collins</i>
<i>Shadow Parliamentary Secretary to the Leader of the Opposition</i>	<i>Hon Michael Danby MP</i>
<i>Shadow Parliamentary Secretary to the Leader of the Opposition</i>	<i>Dr Jim Chalmers MP</i>
<i>Shadow Parliamentary Secretary to the Leader of the Opposition</i>	
Deputy Leader of the Opposition	Hon Tanya Plibersek MP
Shadow Minister for Foreign Affairs and International Development	
Shadow Minister for Women	Senator Claire Moore
Manager of Opposition Business (Senate)	
Shadow Minister for the Centenary of ANZAC	Senator the Hon Don Farrell
<i>Shadow Parliamentary Secretary for Foreign Affairs</i>	<i>Hon Matt Thistlethwaite MP</i>
Leader of the Opposition in the Senate	Senator the Hon Penny Wong
Shadow Minister for Trade and Investment	
<i>Shadow Parliamentary Secretary for Trade and Investment</i>	<i>Dr Jim Chalmers MP</i>
Deputy Leader of the Opposition in the Senate	Senator the Hon Stephen Conroy
Shadow Minister for Defence	
Shadow Assistant Minister for Defence	Hon David Feeney MP
Shadow Minister for Veterans' Affairs	Senator the Hon Don Farrell
<i>Shadow Parliamentary Secretary for Defence</i>	<i>Gai Brodtmann MP</i>
Shadow Minister for Infrastructure and Transport	Hon Anthony Albanese MP
Shadow Minister for Tourism	
Shadow Minister for Regional Development and Local Government	Hon Julie Collins MP
<i>Shadow Parliamentary Secretary for Regional Development and Infrastructure</i>	<i>Allanah MacTiernan MP</i>
<i>Shadow Parliamentary Secretary for Western Australia</i>	
<i>Shadow Parliamentary Secretary for External Territories</i>	<i>Hon Warren Snowdon MP</i>
Shadow Treasurer	Hon Chris Bowen MP
Shadow Assistant Treasurer	Hon Dr Andrew Leigh MP
Shadow Minister for Competition	
Shadow Minister for Financial Services and Superannuation	Hon Bernie Ripoll MP
<i>Shadow Parliamentary Secretary to the Shadow Treasurer</i>	<i>Hon Ed Husic MP</i>
Shadow Minister for Finance	Hon Tony Burke MP
Manager of Opposition Business (House)	
Shadow Minister for Environment, Climate Change and Water	Hon Mark Butler MP
<i>Shadow Parliamentary Secretary for the Environment, Climate Change and Water</i>	<i>Senator Louise Pratt</i>
Shadow Minister for Higher Education, Research, Innovation and Industry	Senator the Hon Kim Carr
Shadow Minister for Vocational Education	Hon Sharon Bird MP
<i>Shadow Parliamentary Secretary for Manufacturing</i>	<i>Tony Zappia MP</i>
Shadow Minister for Communications	Hon Jason Clare MP
Shadow Assistant Minister for Communications	Michelle Rowland MP

Title	Shadow Minister
Shadow Attorney General	Hon Mark Dreyfus QC MP
Shadow Minister for the Arts	
Deputy Manager of Opposition Business (House)	
Shadow Minister for Justice	Hon David Feeney MP
<i>Shadow Parliamentary Secretary to the Shadow Attorney General</i>	<i>Senator the Hon Lisa Singh</i>
<i>Shadow Parliamentary Secretary for the Arts</i>	<i>Hon Michael Danby MP</i>
Shadow Minister for Education	Hon Kate Ellis MP
Shadow Minister for Early Childhood	
<i>Shadow Parliamentary Secretary for Education</i>	<i>Julie Owens MP</i>
Shadow Minister for Agriculture	Hon Joel Fitzgibbon MP
Shadow Minister for Resources	Hon Gary Gray AO MP
Shadow Minister for Northern Australia	
Shadow Special Minister of State	
<i>Shadow Parliamentary Secretary for Northern Australia</i>	<i>Hon Warren Snowdon MP</i>
Shadow Minister for Health	Hon Catherine King MP
Shadow Assistant Minister for Health	Stephen Jones MP
Shadow Minister for Mental Health	Senator Hon Jan McLucas
Shadow Minister for Sport	Hon Bernie Ripoll MP
<i>Shadow Parliamentary Secretary for Health</i>	<i>Hon Amanda Rishworth MP</i>
Shadow Minister for Families and Payments	Hon Jenny Macklin MP
Shadow Minister for Disability Reform	
Shadow Minister for Human Services	Senator the Hon Doug Cameron
Shadow Minister for Housing and Homelessness	Senator the Hon Jan McLucas
Shadow Minister for Carers	Senator Claire Moore
Shadow Minister for Communities	
<i>Shadow Parliamentary Secretary for Families and Payments</i>	<i>Senator Carol Brown</i>
Shadow Minister for Immigration and Border Protection	Hon Richard Marles MP
Shadow Minister for Citizenship and Multiculturalism	Michelle Rowland MP
<i>Shadow Parliamentary Secretary for Immigration</i>	<i>Hon Matt Thistlethwaite MP</i>
Shadow Minister for Indigenous Affairs	Hon Shayne Neumann MP
Shadow Minister for Ageing	
<i>Shadow Parliamentary Secretary for Indigenous Affairs</i>	<i>Hon Warren Snowdon MP</i>
<i>Shadow Parliamentary Secretary for Aged Care</i>	<i>Senator Helen Polley</i>
Shadow Minister for Employment and Workplace Relations	Hon Brendan O'Connor MP
Shadow Minister for Employment Services	Hon Julie Collins MP

NOTICES

Presentation

Senator Bernardi and Senator Faulkner to move:

That the following matters be referred to the Committee of Privileges for inquiry and report:

In relation to the use of closed circuit television footage by officers of the Department of Parliamentary Services (DPS) for internal investigations involving DPS staff:

(a) whether there was any improper interference, or attempted improper interference, with the free performance by Senator Faulkner or any other senator of their duties as a senator;

(b) whether disciplinary action was taken against any person in connection with the provision of information to Senator Faulkner or any other senator; and

(c) if so, whether any contempts were committed in respect of those matters.

Senator Furner to move:

That the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity be authorised to hold a public meeting during the sitting of the Senate on Thursday, 19 June 2014, from 5 pm, to take evidence for the committee's inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity.

Senator Sterle to move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport References Committee on the future of beekeeping and pollination service industries in Australia be extended to 25 June 2014.

Senator Wright to move:

That the Legal and Constitutional Affairs References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Thursday, 19 June 2014, from 3.45 pm.

Senator Waters to move:

That the following matter be referred to the Environment and Communications References Committee for inquiry and report by the third sitting day in 2015:

The Abbott Government's attacks on Australia's environment, and their effects on our natural heritage and future prosperity, including:

(a) attacks on carbon pricing, the Clean Energy Finance Corporation, the Australian Renewable Energy Agency and the renewable energy target, the Climate Change Authority and the Climate Commission;

(b) attacks on federal environmental protection through handing approval powers over to state governments, which have poor track records and recent environment staff cuts;

(c) attacks on funding for community environment organisations and the Environmental Defenders Offices, abolition of the Biodiversity Fund, and cuts to programs including, Landcare and Caring for our Country;

(d) undermining Australia's compliance with the World Heritage Convention, the Convention on Biological Diversity, and the Ramsar Convention, in particular by attacking the Great Barrier Reef and the Tasmanian Wilderness World Heritage Areas; and

(e) any other related matters.

Senator Milne and Senator Xenophon to move:

That the Senate—

(a) notes that:

(i) the use of the term 'Occupied Palestinian Territories' is an internationally accepted term in use by the United Nations (UN),

(ii) the International Court of Justice and the UN General Assembly have deemed East Jerusalem part of the West Bank and an occupied territory,

(iii) Australia has historically supported UN Security Council and General Assembly resolutions regarding the Israel-Palestine conflict and the status of Jerusalem,

(iv) the voting patterns of Australia in relation to the Israel-Palestine conflict have shifted dramatically under the Abbott Government, and

(v) these shifts in the position of the Australian Government have caused diplomatic tensions with a number of countries, including the threat of potential sanctions; and

(b) calls on the Minister for Foreign Affairs (Ms Bishop) to publicly acknowledge that:

(i) the Israeli settlements in the Occupied Palestinian Territories are illegal and in breach of the Fourth Geneva Convention; and

(ii) East Jerusalem is an occupied territory.

Appendix G (Only relevant sections)



COMMONWEALTH OF AUSTRALIA

SENATE

Hansard

WEDNESDAY, 18 JUNE 2014

CORRECTIONS

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Wednesday, 25 June 2014

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(i) bravery of the crews of the Customs and Border Protection vessel, ACV Triton, and the Royal Australian Navy vessel, HMAS Pirie, and the people of Christmas Island who rescued 41 survivors in treacherous conditions at considerable risk to their own personal safety,

(ii) work done by officers of the Australian Customs and Border Protection Service and the Australian Navy who serve as part of Border Protection Command in protecting our borders, is recognised and appreciated, and

(iii) findings of the Joint Select Committee on the Christmas Island Tragedy in relation to the efforts of Customs, Navy and Australian Federal Police (AFP) on the day and that 'The committee believes the response by Customs, Navy and AFP on the day was a tremendous rescue effort made in atrocious circumstances'.

Question agreed to.

Middle East

Senator MILNE (Tasmania—Leader of the Australian Greens) (16:07): I ask that general business notice of motion No. 276 standing in my name and in the name of Senator Xenophon for today relating to recognition the United Nations accepted term 'occupied Palestinian territories' be taken as a formal motion.

The DEPUTY PRESIDENT: Is there any objection to this motion being taken as formal?

Senator Fifield: Yes.

The PRESIDENT: Formality has been denied, Senator Milne.

Senator MILNE: I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator MILNE: I rise to say how disappointed I am that formality has been blocked for this particular matter. It is a critical issue, something which the Senate ought to be able to resolve today. The fact of the matter is 'occupied Palestinian territories' is an internationally accepted term and is used by the United Nations. The Australian government is an embarrassing Australia every day by refusing to use the United Nations recognised term. I do not accept the idea that because this is a foreign affairs matter it cannot be resolved. It is very specific. It is clear in the fourth Geneva convention and the Australian Greens believe that this Senate should make a very fair statement to the government in particular that we stand by the United Nations and the force Geneva convention. (*Time expired*)

Senator WONG (South Australia—Leader of the Opposition in the Senate) (16:09): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for two minutes.

Senator WONG: I thank the chamber. Labor is denying formality on this motion for the reasons outlined in my statement to the Senate on 25 March this year. The Australian Labor Party believes that complex or contested matters of foreign policy should not be dealt with in summary fashion by this chamber and nor, in the absence of extraordinary circumstance, do we support the suspension of standing orders to bring on immediate debate. Senator Milne in her contribution, conflates two issues. One is the substantive issue and the second is the capacity of the Senate to resolve these matters. I do not think even the most ambitious of senators would suggest that a motion dealt with in summary fashion will resolve a foreign policy matter such as the one which is the substance of this motion.

I would emphasise that there is much in this motion which reflects the position of the Australian Labor Party on Palestine and the occupied territories including occupied east Jerusalem. Indeed, much of the motion is consistent with what used to be the bipartisan consensus in this country. Labor remains committed to supporting and enduring and just two-state solution to the Israeli-Palestinian conflict. The term 'occupied territories', including in relation to occupied east Jerusalem, is accepted in the international community. The United Nations General Assembly has, in many of its resolutions, used the same language. Freelancing on foreign policy has serious consequences. Senator Brandis's actions have isolated Australia from the international community and are another foreign policy embarrassment the Abbott government.

Senator XENOPHON (South Australia) (16:11): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator XENOPHON: As co-sponsor with Senator Milne, I indicate my disappointment that we cannot have a vote on this motion. I refer to what Professor Ben Saul, Professor of International Law at the University of Sydney, has stated:

Australia's new view is starkly at odds with the true status of east Jerusalem under international law.

... ..

It also corrodes the international rule of law and violates Australia's international law obligations.

... ..
 The term 'occupation' is therefore not pejorative or judgmental. It is an objective legal description of Israel's physical control of a place beyond Israel's borders at independence in 1948.

I also refer honourable senators to the advisory opinion of the International Court of Justice in 2004 which confirmed that territory can be occupied even if there is an underlying dispute about sovereign ownership of that territory. I believe the Australian government has made a mistake in going down this course and I regret that we cannot vote on this motion.

Asylum Seekers

Senator HANSON-YOUNG (South Australia) (16:12): I ask that general business notice of motion No. 281 standing in my name for today relating to a moratorium on deporting Iraqi asylum seekers back to Iraq be taken as formal.

The DEPUTY PRESIDENT: Is there any objection to this motion being taken as follow?

Senator Fifield: Yes.

The DEPUTY PRESIDENT: Formality has been denied, Senator Hanson-Young.

Senator HANSON-YOUNG: I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator HANSON-YOUNG: I find it extremely disappointing to hear, of all people, the Labor Party denying leave to have this issue dealt with in the Senate today. This is a matter of such urgency. There is unrest, horror and war unfolding before our eyes in Iraq and the government continues to remove Iraqi asylum seekers as recently as this week. Today I was given the flight details of an asylum seeker who was returned to Iraq last Sunday. He was forcibly removed by this government. That is why this issue is so urgent. There should be a moratorium on their return so that nobody else has to die. (*Time expired*)

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (16:13): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator FIFIELD: A fundamental part of Australia's immigration system is that people found not to engage Australia's protection obligations and/or who have no lawful basis to remain in Australia are expected to depart. If someone is considering returning home, it is important to remember the decision to return is theirs. It is not always an easy decision to make. The government is continuing to monitor what is a dynamic and evolving situation in Iraq to take into account any emerging risks. Refugee status determination decisions, whether in Australia, or by the Papua New Guinea or Nauruan governments, are made using the most recent country information available.

Senator MOORE (Queensland) (16:14): Mr Deputy President, I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator MOORE: Labor objects to this particular motion being taken as formal. As stated by Senator Wong previously, we do not believe that a complex matter such as this should be dealt with in a summary fashion in this chamber. The matter is an outstanding example of one that senators should be afforded an opportunity to consider with more than one day's notice. That is Labor's longstanding position.

The humanitarian crisis unfolding in Iraq is of grave concern, and we share that concern—that is not owned by any particular senator in this place. It will have flow on effects across the world.

We have a strong and proud history of compassion in circumstances where events in home countries make it difficult to return—for instance, the Tiananmen Square massacre, and issues in Bosnia and East Timor. Most recently, Labor's shadow minister for foreign affairs, Tanya Plibersek, made representations to the government regarding the unfolding situation in Ukraine.

We have been assured that the Department of Foreign Affairs and Trade has confirmed that there are NGOs operating in Iraq who are in a position to effectively deliver Australian-funded humanitarian assistance.

The DEPUTY PRESIDENT: Thank you, Senator Moore. That concludes formal business.

MATTERS OF PUBLIC IMPORTANCE

World Heritage Areas

The DEPUTY PRESIDENT (16:16): The President has received the following letter from Senator Siewert:

Pursuant to standing order 75, I propose that the following matter of public importance be submitted to the Senate for discussion:

Appendix H

Australia hinders progress in Middle East peace process

June 8, 2014



Refusal to describe East Jerusalem as "occupied": Not the first time Foreign Minister Julie Bishop has broken a bipartisan position on Israel.

Australia's new policy of refusing to describe East Jerusalem as "occupied", confirmed by a statement made by Attorney-General George Brandis in consultation with Foreign Minister Julie Bishop, will not be helpful to Australia's reputation, the peace process or Israel itself.

The Abbott government's new position shatters what has been for nearly 50 years a completely bipartisan position. Neither Fraser and Peacock, nor Howard and Downer either adopted or even explored taking a similar stance. And for very good reason.

East Jerusalem was occupied by Israel in 1967. No other state – not even the US – describes the situation in any other terms. There are multiple Security Council resolutions rejecting Israeli sovereignty over East Jerusalem. The International Court of Justice in 2004 declared not only that the West Bank was occupied but that this was illegal. The court made no distinction between East Jerusalem and other parts of the Palestinian territories.

If East Jerusalem is not to be referred to as "occupied", why not Nablus or Bethlehem? If the Australian government can say "occupied East Jerusalem" is fraught with "pejorative implications" what is to stop Ms Bishop applying this to the occupied West Bank as a whole? It is a short step away for the Coalition government to declare that all the West Bank, with its population of more than 2 million Arabs, is no more than a "disputed" territory.

The government's statement follows Julie Bishop's earlier break from bipartisan consensus when she said in Israel in January that she'd like to see which international law has declared Israel's settlements illegal. The answer is that there is overwhelming international consensus that Israel is in clear breach of the Fourth Geneva Convention, specifically Article 49, paragraph 6, which states that "The

Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”.

Even within Israel, there is distinguished support for that view. Then-legal counsel to the Foreign Ministry and now a leading international judge, Theodore Meron, told Prime Minister Eshkol at the start of the occupation in 1967 that settlements would be illegal, and he adheres to this advice today.

Four leading Israeli lawyers, including former attorney-general Michael Ben-Yair, wrote to Ms Bishop restating the international legal consensus. They said they viewed with deep concern the Foreign Minister’s comments on settlements. So did a number of other eminent Israelis, including four winners of the Israel Prize, the country’s most prestigious award.

None of this means that it is neither desirable nor possible to negotiate a peace settlement in which some of the Palestinian territory now occupied and illegally settled by Israel is recognised as part of Israel, in return for Israel giving up an equivalent land area in return. Every realistic two-state formula envisages some territory swaps.

The successive statements of the Abbott government reinforce the annexationists and rejectionists within the Israeli government, who are now engaged in a torrent of further settlement building, and are utterly unhelpful in creating an environment in which the peace talks that US Secretary of State John Kerry has tried so hard to kick start can resume.

Israeli realists know that indefinite occupation of the West Bank will degrade their own country, maintaining its Jewish identity only at the price of compromising its democracy. As former prime minister Ehud Barak put it so clearly: “As long as in this territory west of the Jordan river there is only one political entity called Israel, it is going to be either non-Jewish or non-democratic. If this bloc of millions of Palestinians cannot vote, that will be an apartheid state.”

In March this year US casino owner and mega-donor to the Republican Party Sheldon Adelson hosted a gathering of what is known as the Republican Jewish Coalition, an opportunity for presidential candidates to strut their wares.

When New Jersey Governor Chris Christie referred to visiting Israel and flying over "the occupied territories", he was immediately upbraided by Adelson and required to issue a clarification. Tea Party Republican orthodoxy prohibits reference to occupation: "occupied territories" are now “disputed” only.

This has never been the American position under any Democrat or Republican president. It should not be the Australian one.

Bob Carr was Foreign Minister (2012-13) and Gareth Evans was Foreign Minister (1988-96).

Appendix I

Fmr ambassador to Israel says Australia's position on Israel's occupation of Palestinian territories, 'absurd'

Tanya Nolan reported this story on [Friday, June 6, 2014](#) 12:14:00

[Listen to MP3 of this story \(minutes\)](#)

| [MP3 DOWNLOAD](#)

TANYA NOLAN: And staying with Israel, the former Australian ambassador to Israel Peter Rodgers says it's an illogical position for Australia to take, especially if it still professes to support a two-state solution.

(to Peter Rodgers)

Obviously much has been written and debated on this very subject. The UN Security Council Resolution 478 though declared that Israel's move to define Jerusalem as the "complete and united capital of Israel" should be null and void and that the international community does not recognize Israeli sovereignty over East Jerusalem.

Would you agree that that is the widely accepted principle of most countries and if so, how can Australia take an alternate position? Is it effectively going against that resolution?

PETER RODGERS: Well, it is widely accepted by the international community. What Australia has done over the last few months is get into bed with such international heavy hitters as South Sudan, Cameroons, Panama and a bunch of others.

I really see absolutely no logic to it. I see no benefit for a government that still proclaims that it has an interest in a two-state solution to be supporting activities on the ground that defy the prospect of that actually happening.

TANYA NOLAN: Resolution 478 also called on countries to move their diplomatic delegations outside of Jerusalem and most nations, with the small exception have done that.

What do you think the risk is now by Australia not recognising the occupation of Israel in Jerusalem, that they may now be invited to relocate?

PETER RODGERS: Oh, I'm sure they'll be invited. It's a question of whether they have the fortitude to resist the invitation. The US has come under significant pressure to do the same thing. In fact there is a congressional law that requires the administration to move the American embassy from Tel Aviv to Jerusalem.

The successive administrations have found ways to get around that. I would hope that, if the Australian Government is most likely comes under pressure from the Israelis and a few others to support a relocation to Jerusalem, it will see that that would be a highly foolish move.

TANYA NOLAN: So you think it's inevitable that Israel will now invite Australia to re-locate its embassy?

PETER RODGERS: I think Israel, the Israelis are very adept and they would be crazy not to use this opportunity to ramp up the pressure on Australia to re-locate. So yes, there'll undoubtedly be an invitation in the mail if not in the ether.

TANYA NOLAN: And what would be the reaction if Australia couldn't resist the invitation?

PETER RODGERS: Well, Australia would join, I don't know the exact number, but I think Australia would join about one other country that has accepted that invitation and my recollection is that was Costa Rica.

So Australia's just basically dealing itself out of any opportunity to exercise an influence that I think for decades it did which was to be a, in a sense, a moderating force to support a two-state solution.

TANYA NOLAN: Did it realistically have much influence at that negotiating table?

PETER RODGERS: No, no it didn't, it didn't, but I think it was a voice that was listened to and a voice that was listened to and indeed respected because it did see where both sides were coming from.

TANYA NOLAN: Bob Carr recently described the undue influence the Israel lobby had on the Labor Party while in government and probably beyond. Do you think that influence also pervades the Liberal Party in this Liberal Government?

PETER RODGERS: Well, I mean I think the, the Jewish community in Australia is not monolithic and there is some members of the Jewish community who are highly critical of settlement policy so I think we need to be wary about seeing it as some monolith.

I think those who are very die hard supporters of current Israeli policies are doing exactly what they should be doing and that's pressuring the Government. I don't think we should blame the community. I think we should blame the lack of fortitude in the Government to be able to adopt a more balanced approach.

TANYA NOLAN: Peter Rogers, thanks so much for your time.

PETER RODGERS: A pleasure.

TANYA NOLAN: Peter Rodgers was Australia's ambassador to Israel between 1994 and 1997 and he is the author of two books on the Middle East and the peace process.

[©2010 ABC](#)



THE HON JULIE BISHOP MP

 COPY

Minister for Foreign Affairs

HE Mohamed Macl-Ainin
Ambassador
KINGDOM OF MOROCCO

Dear Excellency

I write in response to your letter of 12 June 2014, on behalf of the Heads of Mission of the Islamic and Arab countries accredited in Canberra, concerning the Australian Attorney General's statement issued on 5 June with regard to East Jerusalem.


I emphasise that there has been no change in the Australian Government's position on the legal status of the Palestinian Territories, including East Jerusalem. Our position is consistent with relevant UN resolutions on the issue, adopted over many years, starting with UN Security Council Resolutions 242 and 338. Senator Brandis' statement was about nomenclature, and was not a comment on the legal status of the Palestinian Territories.

Australia continues to be a strong supporter of a just and lasting two-state solution, with Israel and a Palestinian state existing side by side in peace and security, within internationally recognised borders. To this end, we are urging both sides to resume direct negotiations. We do not consider it helpful to engage in debates over legal issues, nor to prejudge any final status issues that are the subject of these negotiations.

Australia's longstanding commitment to contribute to the peace process in a practical way is reflected in the ongoing development assistance we provide to the Palestinian Territories. Since 2010-11, Australia has provided close to \$200 million in Palestinian aid. In 2014-15, Australia will provide approximately \$56.5 million in Palestinian aid – a three percent increase compared to 2013-14.

I look forward to continuing to work with you to strengthen Australia's relations with Morocco, as well as with all other Islamic and Arab countries.

Yours sincerely


Julie Bishop
16 JUN 2014

Appendix K

Australia won't describe east Jerusalem as 'occupied' – and is wrong to do so

Australia's new view is starkly at odds with the true status of east Jerusalem under international law – and to dismiss 'historical events' as unhelpful is astonishingly foolish



[Ben Saul](#)

theguardian.com, Wednesday 11 June 2014 10.29 AEST



Israeli forces stand guard in Jerusalem. 1

The attorney general and foreign minister have declared that Australia [will not describe](#) east Jerusalem as "occupied". The government says that the term is "pejorative", "judgmental", and neither "appropriate nor useful". It also says that it refers to "historical events" which are "unhelpful" in current peace negotiations. These views have been widely reported in the Middle East, and they also depart from previous Australian policy.

Australia's new view is starkly at odds with the true status of east Jerusalem under international law. It also corrodes the international rule of law and violates Australia's international law obligations.

The situation is governed firstly by international humanitarian law, namely the [Geneva conventions of 1949](#) and the [customary Hague regulations of 1907](#). Territory is considered "occupied" when, as a result of military conflict, a country exercises effective administrative control over foreign territory. Legally, this is a question of fact: does Israel control east Jerusalem or not? Undoubtedly, it has since the 1967 war.

The term "occupation" is therefore not pejorative or judgmental. It is an objective legal description of Israel's physical control of a place beyond Israel's borders at independence in

1948. This area east of the "green line" includes east Jerusalem and the West Bank. The legal term does not imply anything further about whether Israel's occupation is "legal" or "illegal", or good or bad. It simply refers to the fact of control.

In 2004, the International Court of Justice, in its [Israel wall advisory opinion](#) of 2004, confirmed that territory can be "occupied" even if there is an underlying dispute about sovereign ownership of that territory. In the 1967 war, Israel displaced prior Jordanian control over east Jerusalem. Jordan's claim was contested by Israel. Jordan later renounced its claim in favour of the Palestinian right of self-determination.



A 1968 photo from the UN relief and work 1

For the International Court, what mattered is that Israel had not established its own undisputed prior sovereign legal title over east Jerusalem. Because the territory did not legally belong to Israel, it was therefore still "occupied" pending resolution of the territorial dispute. Such resolution remains pending. The operative assumption is, however, that because of the Palestinian right of self-determination, the final status of east Jerusalem cannot be unilaterally decided by Israel.

Why does the legal terminology matter? Declaring that east Jerusalem will not be described as "occupied" implies that Australia rejects the application of international humanitarian law. The Geneva conventions apply in occupied territory to protect the local population from abuses by a foreign military power. They protect civilians' basic humanitarian needs and human rights, but also their rights to property and natural resources.

Australia's position therefore dangerously signals that Palestinians living in east Jerusalem no longer enjoy the protection of humanitarian law, but are subject only to Israel's wishes. Israeli settlements [have proliferated in east Jerusalem](#), severely disrupting the property, resource and human rights of Palestinians. Israel is committed to colonising it as part of Israel proper. In truth, it is not up for negotiation any longer.



Backdropped by a view of Ramat Shlomo, a 1

Annexation is not in the interest of the Palestinian people. Most of the settlements violate article 49 of the Geneva conventions, and constitute war crimes under international criminal court statute. Settlements are also war crimes under Australian domestic law implementing that statute.

Under article 1 of the Geneva conventions, Australia has an obligation to "respect and ensure respect for" international humanitarian law, including where other countries occupy territory. Australia thus has a duty to urge Israel to comply with humanitarian law, not to aid Israel to deny that the occupation exists.

A second area of international law is also relevant. Since 1945, under the United Nations charter, every country is prohibited from acquiring sovereign legal title to foreign territory by military force. This is obvious in cases of aggressive invasion. But the principle applies equally to wars of self-defence, as in 1967 when Israel repelled Arab attacks. While territory may be defensively *occupied*, it cannot be unilaterally *appropriated* as the country's own sovereign territory.

Israel has openly purported to annex east Jerusalem as its own. This claim has not been recognised by any other country and is manifestly illegal. Australia's refusal to call the occupation for what it is necessarily endorses Israeli's illegal acquisition of territory by force. It undermines the cardinal principle of the post-1945 world order, namely that the powerful cannot simply take what they want by force. It violates Australia's further duty, identified by the International Court, not to recognise this illegal situation. It also violates Australia's obligation to respect the right of self-determination of Palestinians.

Calling east Jerusalem "occupied" simply recognises the near-universal legal status quo, namely that it is not sovereign Israeli territory. By contrast, it is precisely judgmental and pejorative to shatter the global legal consensus by implying that east Jerusalem is *not* occupied and belongs to Israel.

To dismiss "historical events" as unhelpful in resolving the dispute is astonishingly ignorant, and foolish. Disputes arise precisely because of history. No fair resolution is possible without

confronting them. Palestinians cannot simply be asked to forget what happened to their homeland, taken by Israel, and blissfully negotiate an ahistorical future.

It is true that international law also provides for negotiations between Israel and Palestine to resolve a range of disputed issues, including east Jerusalem. But, as in any dispute, negotiations do not exist in a legal vacuum. They are bound on all sides by intransgressible legal principles. To suggest that negotiations should take place in a lawless space is to accept that the stronger party should roll the weak and get what it wants.

George Brandis and Julie Bishop should know better. Australians expect better. Previous polling shows that most Australians want the Israel/Palestine dispute to be resolved according to international law and human rights. We should stand for international justice and the rule of law – and not barrack for the unforgiving law of the jungle.

Appendix L

Diving into quicksand: George Brandis and the Jerusalem question

June 16, 2014

Opinion

William Maley



Tourists visit the holy site known to Jews as the Temple Mount, and to Muslims as Haram al-Sharif, or Noble Sanctuary, in Jerusalem.

Of all the political issues in the modern Middle East, the status of Jerusalem, a city of fundamental religious significance to three major faiths, is probably the most sensitive. This has been the case for decades. In the late 1940s, it was so obviously explosive that the partition plan for Palestine contained in United Nations General Assembly resolution 181(II) of November 29, 1947, proposed that Jerusalem should be a "corpus separatum" under its own "Special International Regime".

After Israel's purported declaration of Jerusalem in 1980 as the "complete and united" capital of Israel, the United Nations Security Council in resolution 478 of August 20, 1980, censured "in the strongest terms the enactment by Israel of the 'basic law' on Jerusalem and the refusal to comply with relevant Security Council resolutions"; affirmed that the enactment constituted "a violation of international law"; determined that "all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem are null and void and must be rescinded forthwith"; affirmed that Israel's action constituted "a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East"; decided "not to recognise the 'basic law' and such other actions by Israel that, as a result of this law, seek to

alter the character and status of Jerusalem"; and called upon "All Member States" to accept this decision.

In 2004, the International Court of Justice in its advisory opinion on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" authoritatively affirmed in paragraph 78 that the territories occupied by Israel in 1967, "including East Jerusalem", remained "occupied territories".

Most recently, United Nations General Assembly resolution 68/16 of November 26, 2013, reiterated the assembly's determination "that any actions taken by Israel, the occupying Power, to impose its laws, jurisdiction and administration on the Holy City of Jerusalem are illegal and therefore null and void and have no validity whatsoever".

Into this sensitive world Attorney-General Senator George Brandis has now chosen to blunder, irresistibly reminding one of the famous description of a former US secretary of state John Foster Dulles as the only bull who brought his own china shop with him. In early June, apparently with a view to making sure that there were no reds under his bed, he made the bizarre claim that the term "occupied Palestinian territories" was "used by a lot of communists", and in a Senate estimates hearing, he chose to describe references to "occupied East Jerusalem" as "neither appropriate nor useful", preferring the term "disputed".

Unsurprisingly, the spaghetti hit the fan almost immediately. The Abbott Government was reportedly faced with a protest from 18 envoys from Middle East and Muslim countries querying the new language. The only significant figure to welcome the Senator's language was Israeli Prime Minister Netanyahu – not surprisingly, since the shift in terminology was one that Israel had long been seeking to promote.

During the Senate estimates hearing, Senator Brandis stated "I do not profess to be a specialist in public international law", and it is unlikely that many specialists will step forward to challenge his self-assessment. One might have thought that the Senator would have learned some caution after the International Court of Justice humiliated him on March 3, 2014, by issuing provisional measures against Australia at the request of Timor-Leste after Senator Brandis had unwisely authorised an ASIO raid on the office of Timor-Leste's Australia-based lawyer. But apparently not. His views on the legal appropriateness of the term "occupied" have already been torn into tiny shreds by Professor Ben Saul of Sydney University, and are unlikely to win much support.

It is, however, the political dimensions of this case that are the most intriguing. While the Abbott government has leaned towards Israel more than any of its predecessors, Prime Minister Abbott himself engaged in some remarkable contortions to avoid the suggestion that any such tilt was intended over Jerusalem, arguing that "there has been no change in policy— simply a terminological clarification". Of course, where Jerusalem is concerned, any abandonment of the terminology of occupation will be universally and accurately viewed as a change of policy, something Mr Abbott surely knows. Yet several factors might explain his caution. One possibility, reported by journalist Mark Kenny, is that Senator Brandis was "freelancing" when he first decided to set out his views, and that they were not approved by either Cabinet or the Prime Minister. And it is inconceivable that professional diplomats in the Department of Foreign Affairs and Trade would have advised the government to change its language in this way. A more serious problem for the Prime Minister, however, is the

position of The Nationals. Deputy Prime Minister Warren Truss and Agriculture Minister Barnaby Joyce must be beside themselves at the Senator's behaviour, since it gives rise to the risk of a boycott by Arab and Muslim states of Australia's agriculture and farm export industries.

We may never know exactly what prompted the Senator's rush of blood, but one possibility is that it arose from another policy he has been pursuing, namely the repeal of section 18C of the Racial Discrimination Act. It is no secret that this policy, seemingly designed to appease a right-wing journalist, has been very poorly received by members of the Jewish community who were understandably alarmed by the Senator's ill-considered defence of the right to be a bigot. Perhaps the Senator was attempting nothing more than to win back the support of a pressure group he had managed very effectively to alienate. But if so, he would have done better to reflect on what the wider ramifications of his statements might be. And perhaps it is time for Prime Minister Abbott to think about whether in his own interest he might be able to find another Attorney-General, with smaller bookcases but more common sense.

Professor William Maley is director of the Asia-Pacific College of Diplomacy at the Australian National University.

An occupation with semantics won't crack the Mid-East puzzle

By Greg Sheridan | Foreign Editor

THE AUSTRALIAN

WHEN Attorney-General George Brandis told Senate estimates the Australian government would not under any circumstances refer to East Jerusalem as occupied East Jerusalem, he was not changing government policy.

He certainly was not changing Coalition government policy. He was changing policy as it evolved when Bob Carr was foreign minister, but this was not longstanding Australian foreign policy.

The Abbott government, on election, reverted back to the longstanding Australian government practice of seeking neutral language to describe territory in East Jerusalem and parts of the West Bank which are disputed between Israel and the Palestinians.

Foreign Minister Julie Bishop in several statements and interviews had made it clear that the government did not regard all Israeli settlements in the West Bank as illegal. Most importantly, she also did not state that the settlements were legal either.

The truth is they concern disputed territory, the status of which will have to be resolved in negotiations. This is what the relevant UN resolutions provide for, although UN resolutions themselves are not by their nature binding international law of and in themselves.

Brandis was right in international law. More importantly, he demonstrated significant political courage on a vexed and extremely complex issue.

The situation at law is that Israel acquired control over the Sinai desert, the Gaza Strip, the West Bank and East Jerusalem in defensive wars to prevent the surrounding Arab states' ambition of annihilating Israel from taking place.

Israel gave back the Sinai to Egypt in exchange for peace. It unilaterally withdrew from the Gaza Strip. Under the Oslo accords it does not control day-to-day life in most of the West Bank, such as its capital, Ramallah.

East Jerusalem is a special case. Israel formally annexed East Jerusalem in 1980. This annexation was rejected by the UN Security Council. But rejection of Israel's annexation does not automatically make East Jerusalem occupied territory.

Everyone who has any acquaintance with the Middle East knows that any eventual peace agreement between Israel and the Palestinians will involve territorial swaps. Israel will keep much or all of East Jerusalem and several key, strategic Israeli settlement blocs. This might take up somewhere between 3 per cent and 6 per cent of the West Bank territory. The Palestinians would be compensated with an equivalent slice of land from Israel proper.

Part of the confusion in this case arises from the two different meanings of the word occupied. In a general sense, Israel occupies the territory that Israel controls, just as Australia occupies the territory that Australia controls.

But in international law, occupied territory normally means the territory of one sovereign nation which is occupied by another sovereign nation.

Before 1967 Jordan controlled East Jerusalem, which it had no right to do. Incidentally it denied Jewish access to the Western Wall, commonly called the Wailing Wall, Judaism's most holy religious site. However, Jordan today makes no claim at all for sovereignty over East Jerusalem or the West Bank.

If you claim that every Israeli settlement is illegal, and that everything beyond the 1967 borders is a settlement, then you have to claim that the Jewish presence at the Wailing Wall is illegal, and the Jewish quarter of the Old City of Jerusalem is illegal.

That is an absurd claim and no one believes that in any settlement Israel could ever leave those areas.

It is much more accurate, and much more helpful, to describe East Jerusalem and the disputed parts of the West Bank as disputed territories.

In all other territorial disputes, this is commonly done. In the South China Sea, no one describes the islands which China has taken control of, but which the Vietnamese and Filipinos passionately believe belong to them, as occupied territories. They are always called disputed islands.

Similarly it is not normal parlance to describe India's presence in Kashmir as an occupied territory. It is, even if you're pro-Pakistani, routinely rendered as disputed. Ditto the Turkish controlled area of northern Cyprus. Only Israel is singled out for linguistic discrimination.

But very specifically, pre the Carr incumbency in the foreign affairs portfolio, it was extremely rare for Australian ministers ever to refer to the occupied territories. It may have happened once or twice. I cannot recall a Coalition government minister ever using the term.

In my life I can never recall any government minister using the term occupied East Jerusalem.

But as the passionate campaigns against Israel have gathered pace and momentum, people have been swept up by this unhelpful, inaccurate and distorting terminology.

Brandis, with a lawyer's love of precision in language and fortified by extensive and detailed discussions with Bishop and her senior officials, has cleared up the ambiguity and resisted a destructive tide.