

National Interest Analysis [2015] ATNIA 20

with attachment on consultation

**Agreement on Strengthening Implementation of the Niue Treaty on Cooperation in
Fisheries Surveillance and Law Enforcement in the South Pacific Region**

(Honiara, 2 November 2012)

[2014] ATNIF 25

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement on Strengthening Implementation of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region

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Nature and timing of proposed treaty action

1. The proposed treaty action is for Australia to ratify the *Agreement on Strengthening Implementation of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region* ('Agreement'), pursuant to its **Article 28**. It is proposed that Australia ratify the Agreement as soon as possible.
2. The Agreement was concluded at the Eighth Meeting of the Parties to the *Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific* ('Niue Treaty') in Honiara on 2 November 2012. Australia signed the Agreement on 2 July 2014 in Tokelau. The Agreement entered into force on 30 July 2014 when the fourth Party ratified. Pursuant to **Article 29**, it will enter into force for Australia on the date the instrument of ratification is lodged with the Depositary.
3. The Agreement is a subsidiary Agreement beneath the Niue Treaty (as provided for in **Article II** (2) of that Treaty) to which Australia is Party. It is intended to strengthen the operation of the Niue Treaty. The Agreement does not replace or affect the obligations in the Niue Treaty.

Overview and national interest summary

4. The Agreement establishes a legal framework for conducting a broad range of cooperative regional fisheries surveillance and law enforcement activities, including sea patrols and aerial surveillance, port inspections and investigations. The Agreement includes a mechanism for one Party to request another to exercise surveillance and enforcement functions on its behalf. It also includes a framework for the regional exchange of fisheries data and intelligence.
5. The Agreement aims to enhance active participation in cooperative surveillance and enforcement activities in the Pacific by providing a framework for Parties to share resources and exchange information in order to: maximise the operational reach and effectiveness of fisheries monitoring, control and surveillance tools; to prevent, deter and eliminate illegal, unreported and unregulated fishing ('IUU fishing'); and to contribute to broader regional law enforcement efforts. The purpose of the Agreement is supporting the continuous improvement of the management and development of the fishery resources in the region, ensuring their sustainability, and maximising the social and economic benefits.

6. There are significant reasons for Australia to become a Party to the Agreement. It will strengthen Australia's ability to combat IUU fishing in the region, benefit Australia's broader security and development aims in the Pacific and demonstrate Australia's commitment to work with Pacific Island countries to maximise benefit to the region.

Reasons for Australia to take the proposed treaty action

7. Although the Niue Treaty was intended to facilitate cooperation between the Parties in conducting fisheries surveillance and enforcement in the Pacific region, it has been under-utilised. The Agreement will strengthen the implementation and effectiveness of the Niue Treaty through the legal framework it establishes for the Parties to share resources and exchange information to enhance active participation in cooperative fisheries surveillance and law enforcement activities.
8. Australia is a key maritime surveillance partner for Pacific Island countries. Australia remains committed to supporting regional cooperation on maritime security and undertakes regular surveillance activity in the region to support Pacific Island countries to combat IUU fishing. IUU fishing depletes fish stocks through overfishing and is a serious threat to our region's food security. It also results in large financial losses to coastal States and can seriously damage marine environments and fish habitats.
9. The Agreement will facilitate and improve the efficiency and effectiveness of Australia's current activities in the region and ensure that Australia's ongoing use of its surveillance and enforcement assets achieves maximum benefit. The information sharing framework established by the Agreement will improve Australia's awareness of security risks in the region.
10. The benefits of the information sharing and surveillance and enforcement mechanisms in the Agreement also have the potential to extend to assisting Australia in law enforcement activities beyond fisheries matters, such as transnational crime investigation and enforcement activities.
11. The Agreement will also have broader regional benefits. By clarifying roles, responsibilities and processes, and facilitating the Parties' agreement to various cooperative activities, the framework and mechanisms established by the Agreement will facilitate more effective and responsive regional approaches to maritime surveillance and enforcement. The Agreement may thereby contribute to improved broader regional security.
12. The framework under the Agreement will also clarify the assistance required by and available to Parties in the region and enhance regional access to information. This is likely to result in more efficient and effective surveillance and enforcement activity that can be directed towards the most pressing regional needs.
13. Pacific fisheries are a key source of economic opportunity and food security for many Pacific Island countries. By facilitating Australia's assistance with cooperative activities to protect the region's fishery resources, becoming Party to the Agreement will demonstrate Australia's commitment to its ongoing work with Pacific Island countries.

14. France and the United States are two of Australia's key surveillance partners in the Pacific. While France and the United States are not Parties to the Agreement, the Agreement encourages cooperation with non-Party surveillance and enforcement partners, on an individual or collective basis, including with respect to information sharing and the conduct of fisheries surveillance and law enforcement activities. There may be the potential to use the Agreement as a framework through which to cooperate with such surveillance and enforcement partners.
15. Australia has been heavily involved in the development of the Agreement. Australia funded a legal officer to act as Chair's Assistant during the drafting process, and currently funds a legal officer and Australian Fisheries Management Authority officers to work with the Forum Fisheries Agency (the Depository of the Agreement) to assist Pacific Island countries to implement the Agreement. Early ratification will be important in demonstrating continued Australian leadership in the Pacific region.

Obligations

16. The Agreement imposes minimal obligations on Australia upon ratification. The two obligations that will be imposed on Australia upon ratification of the Agreement are:
 - (a) First, to provide certain notifications to the Administrator (defined in **Article 1** as the Forum Fisheries Agency):
 - (i) Notification of Australia's 'National Authority' (**Article 5**);
 - (ii) Notification of applicable laws, policies and procedures for the conduct of cooperative surveillance and enforcement activities (**Article 8(2)(a)**);
 - (iii) Notification of assistance that may be made available for cooperative surveillance and enforcement activities (**Article 8(2)(b)**);
 - (iv) Notification as to whether Australia consents to hot pursuits being continued into its territorial sea, to which Parties this consent applies and any conditions attached (**Article 13(2)**);
 - (v) Notification of national laws, policies and procedures relating to the collection, management and use of evidence (**Article 15(2)**);
 - (vi) Notification of relevant baseline operating costs, terms for cost recovery and any costs over which Australia would wish to waive recovery for involvement of Australia's resources in cooperative surveillance and enforcement activity pursuant to the Agreement (**Article 17(1)**); and
 - (vii) Notification of national laws, policies and procedures with respect to the distribution of fines and monies recovered from operations under the Agreement (**Article 18(1)**).

- (b) Second, to provide to the Administrator the fisheries data and intelligence specified in **Article 19 (1)** and **Annex A** of the Agreement. This includes historic, current and ongoing fishing vessel licence lists, real time and historic observer data, boarding and port inspection reports, fishing vessel sightings data, catch and effort data, vessels and persons of interest for fisheries purposes, and public information on prosecutions, violations and settlements relating to fisheries. Australia already collects and provides much of this data in support of decisions of the Western and Central Pacific Fisheries Commission.
17. In addition, the Agreement provides the operational framework for voluntary bilateral and multilateral cooperative operations, but does not commit Parties to undertaking operations. Australia will assess, on a case by case basis, whether to participate in any voluntary operation under the Agreement. If Australia does decide to participate in any voluntary cooperative activities, it will need to do so in compliance with the requirements associated with participating in those activities (in **Part II (Articles 8 - 18)** of the Agreement). In addition to procedural, notification and reporting requirements, these provisions address matters such as cross-authorisation and cross-vesting arrangements between relevant States, immunities for participating personnel, follow-up actions such as investigations and enforcement, and allocation of costs and sharing of fines recovered.

Implementation

18. Legislative amendments will not be required in order for Australia to comply with the mandatory obligations in the Agreement. The Australian Fisheries Management Authority has the power to provide the information required under the Agreement to the Director-General of the Forum Fisheries Agency (as the Administrator of the Agreement) under the *Fisheries Administration Act 1991* (Cth).
19. In the longer term, if Australia decides to engage in voluntary cooperative surveillance and enforcement activities with other Parties pursuant to the Agreement, Australia will need to ensure such activities are consistent with our domestic laws, policies and practices.

Costs

20. Becoming a Party to the Agreement will not have any direct cost implications for Australia. Australia already contributes to the costs of the Forum Fisheries Agency through both membership dues and aid funding. The cost of any particular voluntary surveillance or enforcement operation conducted under the Agreement will be assessed on a case-by-case basis prior to a decision being taken to undertake that action. The additional responsibilities placed on Commonwealth government agencies as a result of obligations under the Agreement will be absorbed or offset by efficiencies or managed by shifting priorities within relevant agencies consistent with the broader strategic maritime focus on the Asia-Pacific region.
21. There are no regulatory costs expected to result from Australia becoming a Party to the Agreement, as Australia already collects much of the information required under the Agreement.

22. There will not be any added cost to the Australian fishing industry nor to State or Territory governments as a result of becoming a Party to the Agreement.

Future treaty action

23. **Article 27** (Amendment of the Agreement) provides that any Party may propose amendments to the Agreement at any time by providing a written proposal to the Administrator. Any amendments must be adopted by consensus at a meeting of the Parties to the Agreement. Any amendment would enter into force on receipt by the Depository of instruments of ratification, acceptance or approval by all the Parties or a later date as specified by the amendment. Any amendment would be subject to Australia's domestic treaty process.
24. **Article 26** (Amendment of the Annexes) provides that amendment to the Annexes of the Agreement will be adopted by consensus either by electronic means or at a meeting of the Parties, and will automatically enter into force 60 days from the date of adoption.
25. The Agreement does not specifically make provision for reservations or declarations; however it does not expressly prohibit reservations or declarations either. Australia does not intend to make any reservations or declarations to the Agreement.

Withdrawal or denunciation

26. As the Agreement does not provide expressly for termination, withdrawal or denunciation, the general rules set out in **Articles 54 and 56** of the *Vienna Convention on the Law of Treaties* ('VCLT') apply. Pursuant to **Article 54**, termination of a treaty or withdrawal by a Party may take place at any time with the consent of all other Parties. **Article 56** provides that unilateral denunciation or withdrawal is only possible if it is established that the Parties intended to admit the possibility of denunciation or withdrawal, or a right of denunciation or withdrawal may be implied by the nature of the treaty.
27. A decision to withdraw from the Agreement would be subject to Australia's domestic treaty making requirements.

Contact details

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Department of Agriculture

ATTACHMENT ON CONSULTATION

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CONSULTATION

28. Commonwealth government agencies were consulted throughout the negotiation of the text of the Agreement. The Minister for Foreign Affairs, the Attorney-General and the Minister for Defence each provided their approval prior to Australia's signature of the Agreement.
29. Significant consultation has also occurred across Commonwealth government agencies throughout the ratification process. An interdepartmental meeting was held prior to consideration by JSCOT.
30. It is not anticipated that the obligations in the Agreement will have any impact on Australian States and Territories. Nonetheless, the Agreement has been listed on the multilateral treaty schedule distributed to States and Territories in advance of the biannual Standing Committee on Treaties ('SCOT') meetings since March 2009. No queries have been raised by States and Territories and no requests for further advice have been received by the Department of Agriculture.
31. Consultation with industry was not considered necessary in this case, as the obligations in the Agreement will not impact upon the Australian fishing industry.

