

Report 98

Treaties tabled on 26 November 2008 and 4 December 2008

Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information, New York, 26 September 2007

Amendment, Adopted 17 November 2008, to Annex I of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005

Amendment, Adopted 17 November 2008, to Annex II of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005

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Membership of the Committee

Chair	Mr Kelvin Thomson MP	
Deputy Chair	Senator Julian McGauran	
Members	Mr Jamie Briggs MP	Senator Simon Birmingham
	Mr John Forrest MP	Senator Michaelia Cash
	Ms Jill Hall MP	Senator Don Farrell
	Mrs Julia Irwin MP (from 5/2/09)	Senator Scott Ludlam
	Ms Belinda Neal MP	Senator Louise Pratt
	Ms Melissa Parke MP	Senator Dana Wortley
	Mr Luke Simpkins MP	
	Mr Chris Trevor MP (until 5/2/09)	
	Ms Maria Vamvakinou MP	

Committee Secretariat

Secretary	Jerome Brown
Inquiry Secretaries	Sonya Fladun Julia Searle
Research Officer	Geoff Wells
Administrative Officers	Heidi Lushtinetz (from 19/1/09) Dorota Cooley



Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and

such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

ACAP	Agreement on the Conservation of Albatrosses and Petrels
DSA	Defence Security Authority
NATO	North Atlantic Treaty Organisation
NIA	National Interest Analysis
UNESCO	United Nations Educational, Scientific and Cultural Organisation



List of recommendations

2 Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information

Recommendation 1

The Committee supports the *Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information* and recommends that binding treaty action be taken.

Introduction

Purpose of the Report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of three treaty actions tabled in Parliament on 26 November and 4 December 2008. These treaty actions are:
- *Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information (New York, 26 September 2007)*¹
 - *Amendment, Adopted 17 November 2008, to Annex I of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport (19 October 2005)*
 - *Amendment, Adopted 17 November 2008, to Annex II of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport (19 October 2005)*².
- 1.2 The report also considers another proposed treaty action, an amendment to *Annex 1 of the Agreement on the Conservation of Albatrosses and Petrels*, referred to the Committee by the Minister for the Environment, Heritage and the Arts on 19 January 2009.

1 Australia, House of Representatives 2008, *Votes and Proceedings*, No. 64, p. 740; Australia, Senate 2008, *Journal*, No. 47, p. 1297.

2 Australia, House of Representatives 2008, *Votes and Proceedings*, No. 69, p. 793; Australia, Senate 2009, *Journal*, No. 53, p. 1480.

- 1.3 The Report refers frequently to the National Interest Analysis (NIA) prepared for each proposed treaty action. This document is prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty. Copies of each NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/26november2008/tor.htm

www.aph.gov.au/house/committee/jsct/4december2008/tor.htm

- 1.4 Copies of each treaty action and NIA may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's Review

- 1.5 The reviews contained in this report were advertised in the national press and on the Committee's website.³ Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Officers of parliaments and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.
- 1.6 The Committee also received evidence at a public hearing on 23 February 2009 in Canberra. A list of witnesses who appeared before the public hearing is at Appendix B. Transcripts of evidence from public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/26november2008/hearings.htm

3 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 4 February 2009. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information

Introduction

- 2.1 The proposed treaty action is an *Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information*. The Agreement will replace an existing non-binding Exchange of Letters dated 1 April 2005, fulfilling NATO requirements that international instruments be binding under international law.¹
- 2.2 The proposed Agreement sets mandatory standards and procedures for exchanging classified information between the Government of Australia and NATO.²

Obligations

- 2.3 The primary obligation placed on the Parties is to protect each other's classified information in the same manner as it protects its own classified material.³

1 National Interest Analysis (NIA), paras 1 & 2.

2 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 2.

- 2.4 Article 1 provides that Parties will ensure that classified information will be protected by each Party to agreed common standards, will not be used for purposes outside the framework and will not be disclosed to third parties without the consent of the originator.⁴ If either party fails to comply with this obligation, both Australia and NATO would be able to undertake investigations. The findings of these investigations would then be presented, risk-assessed and the implications of the breach considered.⁵
- 2.5 Article 2 provides that Australia will ensure that all persons of its nationality who require access to information exchanged between the two parties are appropriately cleared before they are granted access to the information. NATO has no requirement to conduct security clearances as all NATO personnel are security cleared to the appropriate level prior to commencing employment with NATO.⁶
- 2.6 Article 4 provides that a proposed implementing arrangement between the Parties will detail the standards of security protection for information exchanged between the Parties and the liaison between the NATO Office of Security and the Defence Security Authority (DSA).⁷
- 2.7 Under Article 5, both Parties are obliged to establish to their satisfaction that the recipient Party is prepared to protect appropriately all classified information received.⁸

Reasons for Australia to take treaty action

- 2.8 The Australian Government currently exchanges a significant amount of classified information with NATO. The proposed Agreement provides for the continued exchange of classified information between the two Parties by ensuring that the information is protected by legally binding obligations.⁹

3 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 2; NIA, para 11.

4 NIA, para 12.

5 Ms Sandra Ragg, *Transcript of Evidence*, 23 February 2009, p. 2.

6 NIA, para 13.

7 NIA, para 15.

8 NIA, para 16.

9 NIA, para 10.

- 2.9 Representatives from the Department of Defence informed the Committee that the benefits to Australia will be twofold. First, the Agreement will facilitate the sharing of classified information in current on-going Australia-NATO operations, primarily in Afghanistan where the Australian military is contributing to the NATO-led International Security Assistance Force. Second, the Agreement will allow for a deeper strategic dialogue between Australia and NATO and increased cooperation on long-term common interests and issues.¹⁰
- 2.10 Any information previously exchanged under the Exchange of Letters of 1 April 2005 will continue to be protected in accordance with the proposed Agreement.¹¹
- 2.11 The proposed Agreement is substantially similar to nine other security of information agreements that Australia has entered into with other countries.¹²

Implementation

- 2.12 No changes to domestic laws or policy are required to put into operation the proposed Agreement which can be implemented through the Commonwealth Protective Security Laws and Regulations. The Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.¹³
- 2.13 A representative from the Department of Defence informed the Committee that both NATO and Australia have examined each other's security standards and are satisfied that the Agreement can be implemented under their current legislative and security classification systems. The Committee was assured that the Agreement would not affect the operations of parliament, particularly the operations of the Joint Committee on Intelligence and Security.¹⁴

10 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 1; Mr Peter West, *Transcript of Evidence*, 23 February 2009, p. 3.

11 NIA, para 6.

12 NIA, para 7. These countries are the US, Sweden, South Africa, Singapore, New Zealand, Germany, France, Canada and Denmark.

13 NIA, para 23.

14 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 2 & p. 4.

- 2.14 The security authorities responsible for implementing the Agreement are the DSA, Australian Department of Defence, and the NATO Office of Security.¹⁵
- 2.15 The implementing arrangements for the Agreement are currently under negotiation and expected to be concluded by June 2009. Australia's implementing arrangements will be consistent with the protective arrangements described in the Australian Government's Protective Security Manual and the Department of Defence's Defence Security Manual.¹⁶

Costs

- 2.16 There are no anticipated costs to the Australian Government in the implementation of the proposed Agreement.¹⁷

Future Treaty Action

- 2.17 Although the proposed Agreement does not provide for the negotiation of any future legally binding instruments, it could be amended by agreement between the Parties.¹⁸
- 2.18 The proposed Agreement also does not identify any specific provisions on withdrawal or denunciation, but could be terminated at any time, after consultation and with the written consent of the Parties.¹⁹
- 2.19 If the proposed Agreement is terminated, the responsibilities and obligations of the Parties in relation to the protection, disclosure and use of classified information already exchanged shall continue to apply, irrespective of the termination.²⁰

15 NIA, para 24.

16 Ms Sandra Ragg, *Transcript of Evidence*, 23 February 2009, p. 5.

17 NIA, para 17.

18 NIA, para 20.

19 NIA, para 21.

20 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 2; NIA, para 22.

Consultation

- 2.20 The Department of Defence consulted with Commonwealth Government departments to confirm that the proposed Agreement meets the requirements of all departments and agencies that deal with national security classified information.²¹
- 2.21 The States and Territories were advised about the proposed Agreement through the Commonwealth-State Standing Committee on Treaties' Schedule of Treaty Actions. No State or Territory comment has been received to date. The proposed Agreement does not require State or Territory action for its domestic implementation.²²

Conclusion and recommendation

- 2.22 The Committee recognises the value of the proposed Agreement in ensuring that classified information exchanged between the Government of Australia and NATO is kept secure by a legally binding framework. The Committee also recognises that the proposed Agreement positively strengthens the cooperative relationship between Australia and NATO. The Committee therefore supports binding treaty action being taken.

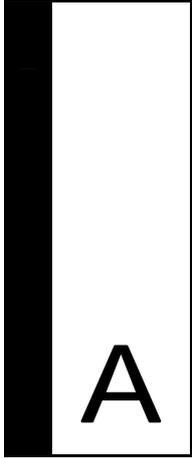
Recommendation 1

The Committee supports the Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information and recommends that binding treaty action be taken.

Kelvin Thomson MP
Chair

21 NIA, para 25.

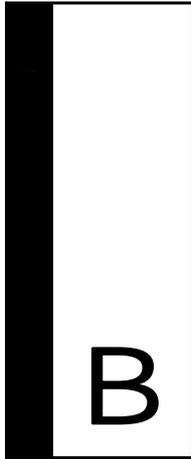
22 NIA, para 26.



Appendix A - Submissions

Treaty tabled 26 November 2008

1. Australian Patriot Movement



Appendix B - Witnesses

Monday, 23 February 2009 – Canberra

Attorney-General's Department

Ms Sarah McCosker, Senior Legal Officer, Office of International Law

Department of Defence

*Ms Sandra Ragg, Assistant Secretary, Security Policy and Plans,
Defence Security Authority*

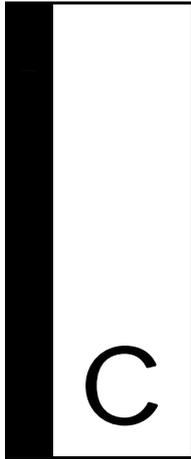
Mr Frank Roberts, Head, Defence Security Authority

*Mr Peter West, Assistant Secretary, Americas, North and South Asia
and Europe*

*Mr John Wishart, Director, International Government Agreements
and Arrangements, Defence Legal*

Department of Foreign Affairs and Trade

Mr David Mason, Director, Treaties Secretariat



Appendix C – Minor Treaty Actions

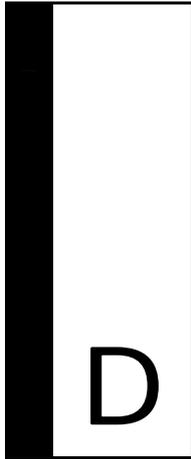
Minor treaty actions are identifiably minor treaties (mainly minor/technical amendments to existing treaties) which do not impact significantly on the national interest. Minor treaty actions are tabled with a one-page explanatory statement. The Treaties Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

The following minor treaty actions were considered by the Treaties Committee on the date indicated. The Committee determined not to hold a formal inquiry and agreed that binding treaty action may be taken.

Treaties tabled on 4 December 2008

Considered by the Committee on 3 February 2009

- Amendment, Adopted 17 November 2008, to Annex I of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005
- Amendment, Adopted 17 November 2008, to Annex II of the UNESCO International Convention Against Doping in Sport of 19 October 2005



Appendix D – Minor treaty action referred prior to tabling

Proposal to amend Annex 1 of the Agreement on the Conservation of Albatrosses and Petrels

On 19 January 2009 the Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett AM MP, advised the Committee of a proposed minor treaty action prior to it being tabled in the Parliament.

The Minister indicated that the Australian and British Governments intend to jointly propose a minor amendment to the *Agreement on the Conservation of Albatrosses and Petrels* (ACAP) at the Meeting of the Parties to the Agreement, to be held in April 2009. Assuming that the amendment is adopted, the tacit consent provisions of ACAP provide that the amendment will automatically enter into force 90 days after adoption. This means that the amendment will, in all likelihood, come into force before the Committee has had an opportunity to conduct its review.

At its meeting on 24 February 2009 the Committee considered the referral from the Minister and endorsed the Government's proposed course of action, noting that it was keen to learn of the outcome when the treaty action is tabled with its explanatory statement at the first opportunity following the April Meeting of the Parties to the Agreement.

