

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Joint Standing Committee on Treaties

**TREATIES TABLED ON  
15 & 29 OCTOBER 1996**

**4th Report**

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# TREATIES TABLED ON 15 & 29 OCTOBER 1996

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## **COMMITTEE MEMBERS**

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## **EXTRACT FROM RESOLUTION OF APPOINTMENT**

The Joint Standing Committee on Treaties was formed in the 38th Parliament on 17 June 1996. The Committee's Resolution of Appointment allows it to inquire into and report upon:

- (a) matters arising from treaties and related National Interest Analyses and proposed treaty actions 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
- (c) 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.



## RECOMMENDATION

**The Joint Standing Committee on Treaties recommends that Australia takes action in due course to propose that the Convention on Nuclear Safety be amended to include research reactors (Paragraph 1.20).**



## **CHAPTER 1**

### **TREATIES TABLED ON 15 OCTOBER 1996**

1.1 On 15 October 1996, the following treaties were tabled in both Houses of the Parliament:

- Convention on Nuclear Safety, done at Vienna on 20 September 1994.
- Films Co-Production Agreement between the Government of Australia and the Government of Italy, done at Rome on 28 June 1993.
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, done at Strasbourg on 8 November 1990.
- Exchange of Notes, done at Canberra on 28 July 1995, 3 October 1996 and 4 October 1996 constituting an Agreement between the Government of Australia and the Government of the Federal Republic of Germany to further amend the Agreement relating to Air Transport of 22 May 1957.
- Montreal Protocol No 4, done at Montreal on 25 September 1975, to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air, done at Warsaw on 12 October 1929, as amended by the Protocol done at The Hague on 28 September 1955.
- Agreement between Australia and the Government of the Republic of Peru on the Promotion and Protection of Investments, and Protocol, done at Lima on 7 December 1995.
- Agreement between the Government of Australia and the Government of the Republic of Chile on the Reciprocal Promotion and Protection of Investments, and Protocol, done at Canberra on 9 July 1996.

- Convention Establishing the Multilateral Investment Guarantee Agency, done at Seoul on 11 October 1985.
- Agreement between the Government of Australia and the People's Republic of China concerning the Maintenance of the Consulate-General of Australia in the Hong Kong Special Administrative Region of the People's Republic of China, done at New York on 26 September 1996.
- Agreement Recognizing the International Legal Personality of the International Rice Research Institute (IRRI), done at Manila on 19 May 1995.
- Exchange of Notes Constituting an Agreement between the Government of Australia and the Multinational Force and Observers (MFO) to further amend and extend the Agreement concerning Australian Participation in the MFO of 16 March 1982, as amended on 4 January 1993, done at Rome on 5 July and 2 October 1996.
- Agreement between the Government of Australia and the Government of New Zealand concerning Enhanced Involvement of the Royal New Zealand Air Force Skyhawk Aircraft in Australian Defence Force Air Defence Support Flying, done at Canberra on 9 October 1996.

1.2 On 28 October 1996, a public hearing was arranged to consider these 12 treaties, taking evidence from officials of the sponsoring departments and agencies. Those who gave evidence at that hearing are listed at Appendix 1. Submissions authorised for publication after that hearing are listed at Appendix 3.

1.3 The following documents were also tabled on 15 October 1996. They will be the subject of a separate report which will be tabled as early as practicable in 1997.

- Protocol on Blinding Laser Weapons (Protocol IV), done at Vienna on 13 October 1995, to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, of 10 October 1980.

- Amendment done at Geneva on 3 May 1996, to Protocol II on Prohibitions and Restrictions on the Use of Mines, Booby Traps and Other Devices, to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, of 10 October 1980.

1.4 Because an additional week of Parliamentary sittings was inserted into the program, the '15 sitting day' period for the 14 treaties, listed in paragraphs 1.1 and 1.3 above, elapses on Thursday, 21 November 1996. None of these treaties therefore meet the requirements of the new tabling arrangements, but those listed at paragraph 1.1 above are being tabled on the next day the House of Representatives is sitting. The Minister for Foreign Affairs was advised of the tabling arrangements for all these treaties as soon as the implications of the revised sitting pattern were known.

1.5 On Saturday, 19 October 1996, the tabling of these 14 treaties was advertised in the Public Notices section of *The Weekend Australian*, seeking submissions or comments by 25 October 1996. The short time for responses had to be imposed because of the '15 sitting day' rule and our wish to table this report as close to 21 November 1996 as possible. There was one request for some of the documents, but no submissions or comments were received.<sup>1</sup>

## CONVENTION ON NUCLEAR SAFETY

1.6 This Convention establishes an international framework for cooperation on, and regulation of, safety at nuclear civil power reactors. It represents an evolution of the international law of nuclear energy, giving established principles of nuclear safety the force of law, with the Contracting Parties binding themselves to important nuclear safety rules. It will help consolidate and reinforce international safety standards, and signifies the mutual acceptance by states accept that appropriate safety measures are being observed in the operation of major civil power reactors.<sup>2</sup>

1.7 About 30 countries have power reactors in operation, but not all have signed this Convention. To date, 65 nations have signed and 27 have ratified it, 17 of whom have nuclear power reactors. It came into force on 24 October

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<sup>1</sup> *The Weekend Australian*, 19/20 October 1996, p 62

<sup>2</sup> Transcript, 28 October 1996, pp.2-3

1996 when at least 22 nations had ratified the document. Australia signed it on 20 September 1994. Taiwanese authorities have also indicated their support for the arrangements in this Convention, but are not able to accede to it. However, the Democratic People's Republic of Korea (DPRK) which is a member of some of the relevant treaties in this area, including the Nuclear Non-Proliferation Treaty, has not signed this Convention.<sup>3</sup>

1.8 Prior to the nuclear accident at Chernobyl in the Ukraine in April 1986, nuclear safety was seen as an exclusively national prerogative and responsibility. Attitudes changed after that accident. This Convention recognises that while safety remains primarily a national matter, it also recognises the desirability of adopting an integrated, international approach.<sup>4</sup>

1.9 After that accident, two conventions were negotiated dealing with how the international community should respond in the event of a nuclear accident and Australia is a signatory to both documents. There is also a 1979 convention which deals with nuclear material while in international transport. During negotiations for the Convention which was the subject of this inquiry, it was agreed that its scope should be limited to civil nuclear power plants, with the understanding that negotiations should begin as soon as possible on an international instrument on the safety of radioactive waste management. These negotiations are proceeding.<sup>5</sup>

1.10 'Nuclear installations' are defined in Article 2(i) as land-based civil nuclear power plants. There are no such installations in Australia, as the reactor at the Australian Nuclear Science and Technology Organisation (ANSTO) at Lucas Heights in Sydney is a research reactor and is not covered by this Convention. During the negotiations, Australia did not push to get research reactors included in the Convention because, in the post-Chernobyl era, the emphasis was on power reactors and their ability to cause damage across boundaries. Once the Convention is in force, it would be possible to propose an amendment under Article 32 to extend its provisions to research facilities.<sup>6</sup>

1.11 The Convention has few direct implications for Australia for the foreseeable future, as we do not have, nor plan to have, a nuclear power reactor. In the context of increasing use of nuclear power for electricity generation, this Convention is seen as making an important contribution to reinforcing global

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<sup>3</sup> *ibid*, pp.4, 7, 13

<sup>4</sup> *ibid*, p 3

<sup>5</sup> *ibid*, pp.3, 12, 18

<sup>6</sup> *ibid*, pp.4, 6, 10-11

safety standards in our region. During negotiations, Australia sought to include other activities in the nuclear fuel cycle and, partly as a result of its activities, Paragraph (x) was included in the Preamble to the Convention. This recognises the usefulness of further technical work in connection with the safety of other parts of the cycle, and that it may facilitate the development of future instruments.<sup>7</sup>

1.12 The Convention requires Contracting Parties to comply with fundamental safety principles, based on principles elaborated by the International Atomic Energy Agency (IAEA). These include requirements for Contracting Parties to establish and maintain a legislative and regulatory framework to govern the safety of nuclear installations and to have regard for fundamental safety principles. An important feature of the Convention is the obligation of Parties to report at agreed intervals on the implementation of obligations under the Convention.<sup>8</sup>

1.13 That reporting system is linked to a system of international peer review which provides opportunities for Parties to scrutinise and analyse the activities of other Parties and satisfy themselves that the Convention's obligations are being met. This peer review process is regarded as very innovative and it will apply to a wide range of the operations of power plants.<sup>9</sup>

1.14 Australia has few obligations under the Convention. Those that are applicable are mainly derived from Article 16 (3) which requires Australia to take appropriate steps in so far as it is likely to be affected by a radiological emergency in its vicinity, and to make plans for dealing with such an emergency. The necessary measures would probably be taken by governments in Australia anyway, so that the Convention does not impose new demands.<sup>10</sup>

1.15 ANSTO is the designated contact point for an IAEA Convention on the notification, and assistance in the event, of a nuclear accident. The Australian Radiation Laboratory (ARL) is designated as a collaborating centre for radiation emergency assistance, and Emergency Management Australia would have a role in coordinating an Australian response with ANSTO and ARL.

1.16 The States and Territories were consulted about this Convention during 1994 and 1995. No objections were raised and no State/Territory legislation has been identified which may be inconsistent with the Convention.

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<sup>7</sup> *ibid*, pp.3, 6

<sup>8</sup> *ibid*, p 3

<sup>9</sup> *ibid*, pp.3-4, 9-10

<sup>10</sup> *ibid*, pp.4, 12

1.17 Under Article 32, the Convention can be amended as a result of a Diplomatic Conference at which amendments will be adopted with a two-thirds majority of all Contracting Parties.

1.18 Under Article 33, any Contracting Party may denounce the Convention in writing to the depositary, the IAEA. A denunciation will generally take effect one year after receipt of the notification.

1.19 **The Committee's Views.** All States and Territories were consulted about this Convention and all responded positively. In its *First Report*, the Committee made a recommendation about the inclusion in National Interest Analyses (NIAs) of additional information about consultation with the States and Territories, via the Treaties Council. Without wishing to make a recommendation on this subject, we believe it would be useful if, in future, NIAs provided information about the actual responses from the States and Territories about the texts of treaties proposed for accession.<sup>11</sup>

1.20 **The Committee recommends that Australia takes action in due course to propose that the Convention on Nuclear Safety be amended to include research reactors.**

1.21 **The Committee notes the advice that it has been given and supports accession to this Convention as proposed.**

## **FILMS CO-PRODUCTION AGREEMENT WITH ITALY**

1.22 The Films Co-production Agreement with Italy is the first cultural agreement to come before the Committee. The purpose of this Agreement is to foster cultural and technical development and exchange by facilitating international film co-productions with Italy.

1.23 Co-productions allow the pooling of financial resources from two countries, together with the sharing of production and creative expertise, which would otherwise not qualify for investment by the domestic resources of the countries concerned or attract other benefits that accrue to domestic films in their home markets. In effect, these agreements treat any production made

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<sup>11</sup> *ibid*, pp.14-16, 18; *First Report*, pp.3-4

under them as national productions, and producers and the film itself are recipients of any national benefits which accrue.<sup>12</sup>

1.24 In Australian terms, this is important because it unlocks valuable benefits in terms of financing and also as a qualifying Australian film for the purposes of the Australian Broadcasting Authority's standards for Australian content. In 1994, the total budgeted cost of co-productions was \$A164.7 million, of which Australia had contributed \$A58.5 million and the overseas investment \$A106.1 million. Co-productions also enhance market potential for the films concerned.<sup>13</sup>

1.25 Australia currently has five instruments by which co-productions are undertaken. Two existing agreements are of treaty status (with the United Kingdom and with Canada). Agreements of less than treaty status exist with New Zealand and France. Australia does not have a similar agreement with the United States. The industry has no need for the creative or financial benefits flowing from an agreements with the US because it possesses or can acquire whatever amount it needs from either its own resources directly or international commercial arrangements. It should be noted that co-production agreements developed as a competitive response to the size and power of the US industry and its dominance of overseas markets.<sup>14</sup>

1.26 By the end of this year some 30 productions will have been completed under the official co-production program. The majority are feature films, followed by television mini-series.

1.27 Co-production agreements are based on a model which was developed by the Department of Communications and the Arts in conjunction with the Attorney-General's Department, the Department of Foreign Affairs and Trade and the Department of Immigration and Ethnic Affairs. Consultation took place with the States and Territories and peak industry bodies and trade unions, including the Australian Screen Directors' Association, the Screen Producers' Association of Australia, the Australian Writers' Guild and the Media Entertainment and Arts Alliance.<sup>15</sup>

1.28 The Agreement specifies that it remains in force for an initial period of three years and shall remain in force by tacit acceptance unless written notice is

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<sup>12</sup> Transcript, 28 October 1996, p 20

<sup>13</sup> *ibid*, p 21

<sup>14</sup> *ibid*, p 27

<sup>15</sup> Submissions, p 6

given by Australia or Italy at least six months prior to the end of a three year period.

1.29 The Committee carefully addressed Article 5 which states that each of the contracting parties shall permit the nationals of the other country and citizens of the country of any third co-producer to enter and remain in Australia for the purpose of making a co-production, subject to the requirement that they comply with the laws relating to entry and residence. The provisions of this Agreement only cover European Union citizens or residents. Our concern, however, relates to the potential for designated groups to circumvent immigration procedures to gain entry to Australia under false pretences.<sup>16</sup>

**1.30 The Committee notes the information provided and supports ratification of the Agreement as proposed.**

## **CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME**

1.31 This Convention, which is open to Council of Europe member States and other States by invitation, seeks to deprive criminals and those who profit from criminal activity of the benefits of their illegal activities. It provides for Parties to give effect to other Parties' confiscation orders and to assist in identifying, tracing, freezing and seizing property to prevent its disposal. Any repatriation of proceeds is paid to government, not to individuals.<sup>17</sup>

1.32 Australia has been active in the international community promoting mechanisms to combat organised crime and money laundering, and to ensure that search, seizure and confiscation are not confined to drug-related crimes but extend to the proceeds of any serious criminal activity as in the case of this Convention. Although a Council of Europe Convention, Australia has been invited to become a Party because of our role in its elaboration. The United States and Canada are also Parties.<sup>18</sup>

1.33 The Convention will enable Commonwealth, State and Territory law enforcement agencies to obtain assistance from other parties to the Convention in locating, restraining and confiscating in the other country the profits of criminal activity that took place in Australia.

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<sup>16</sup> *ibid*, p 5

<sup>17</sup> Transcript, 28 October 1996, p 62

<sup>18</sup> *ibid*, p 56

1.34 Applications for assistance are made through a central authority: in Australia, the Commonwealth Attorney-General's Department. Before an application can be made under the Convention, a conviction must be secured in the requesting state. In this context, the Committee was advised that, in a case such as the Skase matter, as no conviction has been recorded in an Australian court, Australia would be unable to make any request for seizure of assets.<sup>19</sup>

1.35 In Australia, a court order would need to be obtained by a requesting authority to initiate proceedings leading to the seizure or forfeiture of assets. The Attorney-General's Department would advise State or Territory authorities on the form of request to be made to the appropriate authority in the other country. The request would then be transmitted via diplomatic channels to the central authority in the requested country. In some instances, a separate court order may need to be raised or it may be sufficient for the foreign court to ratify the Australian order.<sup>20</sup>

1.36 There are some exceptions to the obligation to assist. Co-operation may be refused if the action sought would be contrary to the legal principles of the legal system of the requested party, if the offence to which the request relates is a political or fiscal offence, or if execution of the request is likely to prejudice the sovereignty, security, or other essential interests of the requested party. The Attorney-General's Department advised that a 'fiscal offence' involves 'defrauding of the revenue' of a country and does not include commercial fraud of individuals, companies or other parties. The definition of a political offence is drawn from the European Convention on Extradition and would not include, for example, the taking or attempted taking of the life of a head of state, hijacking, crimes against humanity, such as genocide, and war crimes.<sup>21</sup>

1.37 The Committee sought assurances that third party rights will be protected. Article 5 states that:

Each party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected...shall have effective legal remedies in order to preserve their rights.

and Article 22 that:

Recognition [of an application] may be refused if third parties did not have adequate opportunity to assert their rights.

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<sup>19</sup> ibid., p 55

<sup>20</sup> ibid., p 63

<sup>21</sup> ibid., p 56

1.38 In practice, if Australia were asked to repatriate the proceeds of criminal activity, we would need to be satisfied that the third party had an appropriate mechanism in the country in which the order was given to make their claim. It would be open to Australia to refuse assistance pursuant to the Convention if we considered such redress was not available. It is expected, however, that all litigation take place in the domicile that sought the restraining order and that re-litigation not take place in another country. In Australia's case, third party rights are protected under Commonwealth, State and Territory proceeds of crime legislation.<sup>22</sup>

1.39 Australia already has a comprehensive anti-money laundering regime at the Federal level. The legislative basis for ratification will be provided by the *Proceeds of Crime Act 1987*, the *Financial Transactions Report Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987*. States and Territories also have their own Proceeds of Crime acts which are consistent with federal legislation. It is intended that the Convention be implemented by regulations, to be made by the Governor-General under the *Mutual Assistance in Criminal Matters Act 1987*, which will be tabled in Parliament and subject to disallowance. The Committee intends to write to the Senate Standing Committee on Regulations and Ordinances, drawing its attention to this Report.<sup>23</sup>

1.40 The States and Territories have been consulted on the proposed ratification by way of ministerial correspondence and discussions at meetings of the Standing Committee of Attorney-Generals. At the time of the public hearing on this treaty, only the Government of Queensland had not formally responded to the Commonwealth to indicate its support. The Committee was advised that Queensland has no objection to ratification, and that the reason for the outstanding response relates to machinery of government processes associated with the new Government in that State.<sup>24</sup>

1.41 A Party may at any time denounce the Convention by notifying the Secretary-General of the Council of Europe. Denunciation becomes effective three months from the date of notification.

**1.42 As a general principle, the Committee supports Australian involvement with other countries, particularly in the Asia Pacific Region,**

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<sup>22</sup> *ibid.*, pp.58-59, 57

<sup>23</sup> *ibid.*, p 54

<sup>24</sup> *ibid.*, pp.53, 61

**in the expansion of international efforts against serious organised crime. It notes the information provided and supports ratification of the Convention as proposed.**

## **AIR TRANSPORT AGREEMENT WITH THE FEDERAL REPUBLIC OF GERMANY**

1.43 The 1957 Air Transport Agreement provides for the airlines of Australia and the Federal Republic of Germany (FRG) to operate passenger and freight services between the two countries. Any number of designated airlines of each country are allowed to operate passenger and cargo services between the two countries. It also imposes reciprocal obligations on a range of matters relating to international transport of passengers and cargo.

1.44 The amendments to this Agreement allow both Parties to operate an additional entry gateway into the territory of the other. The FRG may choose a destination other than Darwin, Melbourne, Sydney and Perth. Australia may choose a destination other than Dusseldorf or Cologne, FrankfurtM, Hamburg and Munich.

1.45 These changes arose out of the post-1990 unification of Germany and are designed to give Australian access to airports previously in East Germany.<sup>25</sup>

1.46 The States and Territories were consulted and their views formed part of the negotiating position. National and State/Territory tourism authorities and government departments were also consulted. QANTAS and Ansett representatives were included in the negotiating delegation.<sup>26</sup>

**1.47 The Committee notes the information provided and supports ratification of these amendments to the Agreement with the FRG as proposed.**

## **MONTREAL PROTOCOL 4 FOR INTERNATIONAL CARRIAGE BY AIR**

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<sup>25</sup> *ibid*, p 30

<sup>26</sup> *ibid*, p 31

1.48 The Warsaw Convention of 1929 provided rules on air carrier liability to users of international air transport in case of death or personal injury, and loss or damage to cargo. The four Montreal Protocols were drawn up in 1975 to improve and modernise that Convention, and Protocol 4 is an amendment to the rules covering international air cargo.

1.49 It provides for the use of electronic interchange of waybills, a change which should provide potentially substantial productivity benefits for the air cargo industry internationally. The Protocol is bringing the international setting in line with what is already happening domestically: the infrastructure across Australia for inter-state and intra-state travel is in place to use the electronic documentation highlighted in this Protocol.<sup>27</sup>

1.50 This Protocol also replaces the Convention's Gold Standard, the outdated Poincare franc which is no longer used internationally, with special drawing rights which is an internationally accepted currency conversion. This removes uncertainty about converting the Convention's liability limits into national currencies, and could result in insurers of international air cargo requiring less of a risk premium and charging lower rates. This would benefit Australian carriers, exporters and importers.<sup>28</sup>

1.51 The necessary legislation, Part IIIC of the *Civil Aviation (Carriers' Liability) Act 1959*, is already in place to support implementation of the Protocol if it is ratified.

1.52 There has been ongoing consultation between the Government and industry groups about ratifying this Protocol. It has widespread support and the International Air Transport Association, of which QANTAS and Ansett are members, supports that step.

**1.53 The Committee notes the advice it has received and supports ratification of these amendments to Montreal Protocol 4 as proposed.**

## **PROTECTION OF INVESTMENTS AGREEMENT WITH PERU**

1.54 This Agreement and its Protocol were signed in Lima on 7 December 1995, and will come into force 30 days after the Parties have notified each other that their constitutional requirements have been met (Article 16). The Protocol

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<sup>27</sup> *ibid*, p 30

<sup>28</sup> *ibid*, p 30

to the Agreement provides that Peru will not discriminate between Australians and Peruvians.<sup>29</sup>

1.55 The basis for the negotiation of this Agreement was Australia's 'model' text for Investment Promotion and Protection Agreements (IPPAs), approved by Cabinet, which it closely follows. It is intended to encourage and facilitate bilateral investment in Australia and Peru through a clear statement of the reciprocal obligations and commitments for the promotion and protection of investments. The important protection provided by such Agreements is that prompt, adequate and effective compensation has to be paid if an investment is expropriated. They also provide for the repatriation of profits or capital from investments.<sup>30</sup>

1.56 The driving force of our commercial relationship with Peru is investment in the mining industry, and there are a number of Australian companies applying their expertise in South American countries, including Peru. Australian investment is in the order of \$A50 million. There is little, if any, reciprocal Peruvian investment in Australia at this time.<sup>31</sup>

1.57 Australia currently has no formal trade agreements with Peru, nor is there a double taxation agreement with that country. Among the Agreement's more significant provisions are Article 3 which, by promoting and protecting investments, would provide further impetus to Australian investors to develop opportunities in Peru. Through the IPPA, Most Favoured Nation treatment would be applied to investments (Article 4), so that there is no discrimination against Australian investors. The Parties are also required to make public and readily accessible their laws which affect investments (Article 6).<sup>32</sup>

1.58 Compliance with the Agreement will entail few foreseeable direct financial costs for Australia. Costs could be incurred in settling disputes about investments, and this matter is dealt with in Articles 12 to 14.

1.59 Once in force, Article 16.2 provides that this Agreement will remain in force for 15 years, and may be terminated by one Party giving the other one year's notice. Article 16.3 provides that it will continue to be effective for a further 15 year period, ensuring added security for investors. To provide a minimum period of security for investments, the Agreement does not include express withdrawal or denunciation provisions within the initial 15 year period.

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<sup>29</sup> *ibid*, p 33

<sup>30</sup> *ibid*, p 32

<sup>31</sup> *ibid*, p 33

<sup>32</sup> *ibid*, pp.33, 34

1.60 The text of the Agreement was provided to the States and Territories via the Standing Committee on Treaties (SCOT).

1.61 **The Committee's Views.** As Peru has no double taxation agreements in place, bilateral trade and investment with Australia might, with this Agreement, be stimulated by the introduction of such a facility. The entering into force of this Agreement might be an appropriate time to initiate discussions about this subject, which will be further considered in the context of the IPPA with Chile below.

1.62 **The Committee notes the advice it has been given and supports entry of this Agreement into force as proposed.**

## **PROTECTION OF INVESTMENTS AGREEMENT WITH CHILE**

1.63 This Agreement and its Protocol were signed in Canberra on 9 July 1996, and will come into force 30 days after the Parties have notified each other that their constitutional requirements have been met (Article 12). Like that with Peru considered above, it is derived from the text of the 'model' Australian agreement for IPPAs and there are many similarities in both overall approach and actual content.

1.64 The Protocol to this Agreement defines 'effective control', which may be less than 50 per cent of the shares of a company. This may be effective control and would allow for the protection of Australian investments under the Agreement.<sup>33</sup>

1.65 Chile is Australia's most important foreign investment destination in Latin America and our second biggest export market in the region. The majority of that investment is large-scale mining exploration and development, although investment in the Chilean services sector has also become important. About 30 Australian companies have offices in Santiago, and about \$A1.3 billion is invested in Chile. There is little evidence of Chilean investment in Australia at this time.<sup>34</sup>

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<sup>33</sup> *ibid*, p 33

<sup>34</sup> *ibid*, p 33

1.66 Chile does not have any double taxation agreements, but may be proceeding towards establishing that facility.<sup>35</sup>

1.67 The text of the Agreement was provided the States and Territories via SCOT.

1.68 Once in force, under Article 12.2, either Party may terminate the Agreement at any time after it has been in operation for 15 years by giving one year's notice in writing to the other Party. Under Article 12.3, the Agreement continues to be effective for a further 15 years from the date of termination, providing security for investors. The Agreement does not contain denunciation provisions for the initial 15 year period because the intention is to provide investors with a minimum period of security for their investments.

**1.69 The Committee's Views.** The IPPA with Chile, and that with Peru, is consistent with a number of the recommendations of the Senate Standing Committee on Foreign Affairs, Defence and Trade's June 1992 report *Australia and Latin America*. Its first recommendation was 'that greater effort be made by the Australian Government to establish stronger links with the countries of Latin America across a wide range of economic, cultural and academic activities'.<sup>36</sup>

1.70 In Recommendation twenty three, the Senate Committee recommended that, as a result of its identification of Latin America as a potentially significant trading and investment partner, appropriate steps should be taken to ensure double taxation agreements 'are concluded with the major Latin American countries within the next three years'.<sup>37</sup>

1.71 With a view to extending the bilateral trade and investment relationship with Australia, Chile should be encouraged to consider the introduction of double taxation agreements. In conjunction with this Agreement, further Australian investment there would only be encouraged and Chilean investment in this country might be stimulated. The entry into force of this Agreement could provide an opportunity for the commencement of discussions on this subject.

**1.72 The Committee notes the advice it has been given and supports entry of this Agreement into force as proposed.**

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<sup>35</sup> *ibid*, p 33

<sup>36</sup> *Australia and Latin America*, pp.42-43

<sup>37</sup> *ibid*, pp.211-212

## MULTILATERAL INVESTMENT GUARANTEE AGENCY

1.73 The Convention establishing the Multilateral Investment Guarantee Agency (MIGA) entered into force generally in 1988, and Australia signed it on 30 September 1996. There were then 137 members and 18 countries which had signed but not ratified the Convention.

1.74 The first recommendation made by the Joint Standing Committee on Foreign Affairs, Defence and Trade in its 1993 report, *Australia, the World Bank and the International Monetary Fund*, was that Australia should join MIGA.<sup>38</sup>

1.75 MIGA is part of the World Bank Group, and its purpose is to encourage foreign investment in developing countries by providing:

- insurance against the risk of currency transfer, expropriation, and war and civil disturbance, and
- advisory services to developing member countries on ways to encourage such investment.

1.76 Membership of MIGA will complement the political risk insurance facilities of the Export Finance and Insurance Corporation (EFIC), and could allow EFIC to reduce its own exposure to high risk countries by being both a co-insurer and re-insurer. Australia will also benefit in identifying investment opportunities marketed by developing member countries.<sup>39</sup>

1.77 MIGA has advised it has already received several preliminary applications for coverage of prospective Australian investments in developing countries. Apart from these likely commercial benefits to Australian business, membership of MIGA will support the role it plays in promoting international economic development through facilitating private sector investment in these countries.

1.78 The obligations of membership are mainly financial: Australia will subscribe to the 1713 shares allocated to it, and will be required to contribute

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<sup>38</sup> Transcript, 28 October 1996, p 37; *Australia, the World Bank and the International Monetary Fund*, pp.2-3, 6, particularly Recommendation 1, paragraph 1.18

<sup>39</sup> Transcript, 28 October 1996, p 36

10 per cent of \$US18.534 million in cash, with a further 10 per cent covered by a promissory note and the balance at call.<sup>40</sup>

1.79 There was no formal consultation with the States/Territories about this Convention, but there has been growing interest from business that Australia become a member of MIGA.

1.80 As provided in Article 51, after three years' membership, any member may withdraw from MIGA in writing, and the withdrawal will become effective 90 days following receipt of the notice. A state ceasing to be a member remains liable for its obligations, and MIGA will make an arrangement with that state about claims and obligations.

1.81 The Convention provides (Article 52) for the suspension of membership for failure to fulfil obligations. At Article 59, there is provision for amendments to be made.

**1.82 The Committee notes the information it has received and supports accession to the Convention as proposed.**

## **MAINTENANCE OF AUSTRALIAN REPRESENTATION IN HONG KONG POST 1 JULY 1997**

1.83 This Agreement ensures the continuity of Australia's consular representation in Hong Kong after 1 July 1997 which was provided for under the terms of the 1984 Sino-British Joint Declaration on the Question of Hong Kong. The Committee notes the importance of Australia's consular representation in Hong Kong, in view of our strong commercial interests and the fact that over 30,000 Australians live there.<sup>41</sup>

1.84 The Committee was informed that, after 1 July 1997, the reporting chain for the Consulate-General would be through the Australian Embassy in Beijing.<sup>42</sup>

1.85 Commonwealth departments and agencies with representation in the Consulate-General were consulted in the preparation of this Agreement.

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<sup>40</sup> *ibid.*, p 36

<sup>41</sup> *ibid.*, p 42

<sup>42</sup> *ibid.*, p 43

1.86 This Agreement does not include any provisions to amend or withdraw from it.

**1.87 The Committee notes the information it has been given and supports implementation of the Agreement as proposed.**

## **INTERNATIONAL RECOGNITION OF IRRI**

1.88 The International Rice Research Institute (IRRI) was established in the Philippines as a domestic, non-profit corporation by the Ford and Rockefeller Foundations in 1959. Its role is to conduct research on all aspects of rice production, related production system management, distribution and utilisation, and to conduct associated activities such as research education, training, development and extension programs. Since May 1996, the Director General of IRRI has been an Australian scientist, Dr George Rothschild.<sup>43</sup>

1.89 The population of Asia is increasing by 50 million people per year, most of whom eat or will eat rice. By 2025 Asia has to produce 70 per cent more rice than it does today to feed its expanding population. To date it has just kept pace and, on present projections, by 2025 there will only be 35 per cent more rice produced than today. More productive ways of growing rice will need to be found.<sup>44</sup>

1.90 IRRI was granted international status in the Philippines in 1979 which enables it to enjoy all the immunities and privileges of international organisations, but this is not recognised beyond that country. It had to work in collaboration with about 45 countries by entering into bilateral agreements. To enable it to operate more efficiently as an institution with international status, a multilateral Agreement, which includes IRRI's Charter, was signed in 1995 and 15 countries then signed this document which recognises and enables IRRI to operate as an international organisation. Australia signed it subject to ratification on 29 March 1996.<sup>45</sup>

1.91 The Committee was informed that it is important for Asia and Australia that IRRI continues to operate effectively. Recognising it as an international

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<sup>43</sup> *ibid.*, p 39

<sup>44</sup> *ibid.*, p 38

<sup>45</sup> *ibid.*, p 39

organisation with international sources of funding, international operations and the international character of its board will help in this goal.<sup>46</sup>

1.92 IRRI has received regular support from Australia via the Overseas Development Assistance (ODA) program because of its relevance to aid objectives, and because of the value of the information it provides to Australian organisations.<sup>47</sup>

1.93 As the international repository of expertise and knowledge about rice, IRRI will play a crucial role in enabling Asian countries to grow more rice. If Australia did not become a party to this Agreement, we may have less access to such things as IRRI's germplasm bank. This includes seeds of as many types of rice as possible in the world, as many as 80,000 varieties. Ratifying the Agreement will ensure that existing collaboration with the Australian industry continues smoothly.<sup>48</sup>

1.94 The Agreement does not impose any form of financial contribution or support to IRRI, although Parties may make them if they wish.<sup>49</sup>

1.95 This Agreement makes no change to the existing roles of the Commonwealth or the States and Territories, and information on it was provided to the States and Territories.

1.96 Although there was no consultation with the Australian industry during the drafting of the NIA, at the Committee's request, the Australian Centre for International Agricultural Research sought and received confirmation from the National Farmers' Federation and the Ricegrowers' Association of Australia that these bodies support ratification of the Agreement.<sup>50</sup>

1.97 Under Article VI, any Party may propose amendments to this Agreement and they shall take effect on the approval of a majority of the Parties, including the Philippines.

1.98 Article VII allows any Party to may voluntarily withdraw from the Agreement by giving written notice, and that withdrawal will become effective one year after notice is received.

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<sup>46</sup> *ibid.* p 40

<sup>47</sup> *ibid.* p 39

<sup>48</sup> *ibid.* pp.40, 41

<sup>49</sup> *ibid.* p 40

<sup>50</sup> Submissions, pp.1-3

**1.99 The Committee's Views.** The Committee is concerned that the Australian rice industry was not consulted during the preparation of the NIA for this Agreement. Implicit in the reforms to the treaty-making process is wide and thorough consultation, during the NIA process if not before, with bodies likely to be affected by treaties. In its supervisory role of the process, the Department of Foreign Affairs and Trade needs to devote greater attention to consultation with such bodies.

**1.100 The Committee notes the information it has received about the Agreement and supports ratification as proposed.**

## **AUSTRALIAN PARTICIPATION IN THE MFO**

1.101 The Multinational Force and Observers (MFO) is an independent, (ie. non-United Nations) peacekeeping mission created as a result of the 1978 Camp David Accords and the 1979 Treaty of Peace between Israel and Egypt. Since 1982, various nations have contributed military and civilian personnel to serve in Egypt's Sinai Peninsula. The ten States currently participating are Australia, Canada, Colombia, Fiji, France, Hungary, Italy, New Zealand, the United States and Uruguay. Norway, while not a member, provides a few staff officers. The UK withdrew its contingent in 1992 and was replaced by Australia. We currently contribute 28 personnel to the MFO Headquarters, including the force commander, Major-General Ferguson.<sup>51</sup>

1.102 The MFO's mandate is to supervise the provisions of the peace treaty in accordance with the Camp David Accords. Its mission is to observe, verify and report, and it operates a series of checkpoints, reconnaissance patrols and observation posts along the international boundary. Periodic verifications are carried out automatically at least twice a month, or after receipt of a request from either party.

1.103 Australia has contributed a small contingent of Australian Defence Force (ADF) personnel to the MFO since January 1993. It first participated from 1982 to 1986, and this post-1993 second stage was dealt with in an exchange of Notes amending the 1982 exchange of letters. This exchange constitutes a legally binding instrument, and an interim arrangement of less than treaty status

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<sup>51</sup> Transcript, 28 October 1996, p 45

has been entered into until such time as the amending Agreement enters into force. The amending Agreement therefore provides that the Australian contingent will be deployed for a period of three years from 4 January 1995.<sup>52</sup>

1.104 The Committee was advised that the MFO is considered to be a model agreement with potential to be applied in other areas, such as the Golan Heights. The MFO experience could also be applied usefully to less mature peacekeeping operations throughout the world, such as in Rwanda. The Agreement is held in high regard by the Governments of Israel and Egypt and more generally as an effective non-UN operation.<sup>53</sup>

1.105 The Parliament has taken a keen interest in Australia's involvement in international peacekeeping operations. The Committee notes the valuable work of the Joint Standing Committee on Foreign Affairs, Defence and Trade which tabled a report entitled *Australia's Participation in Peacekeeping* in December 1994, and the report of the Senate Standing Committee on Foreign Affairs, Defence and Trade: *United Nations Peacekeeping and Australia* of May 1991.

1.106 Information on the amending Agreement has been provided to the States and Territories.

1.107 The amending Agreement will expire on 4 January 1998, unless the MFO and Australia both determine to extend the deployment period. It also provides for the withdrawal of the contingent earlier if Egypt and Israel agree to terminate the MFO's mandate, or if the security of the contingent cannot be assured. No withdrawal will be undertaken without prior consultation between Australia and the MFO.

**1.108 The Committee notes the information it has been provided about the amending Agreement and supports accession as proposed.**

## **RNZAF AIRCRAFT IN ADF AIR DEFENCE SUPPORT FLYING**

1.109 This Agreement provides for one squadron of Royal New Zealand Air Force (RNZAF) Skyhawk aircraft to be stationed temporarily in Australia, and for another's assistance, to provide training support for ships of the Royal Australian Navy (RAN) for five years from 1 July 1996. There are separate sections in the Agreement for each of these squadrons. It also enables the

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<sup>52</sup> *ibid*, pp.46-47

<sup>53</sup> *ibid*, pp.44-45

RNZAF to provide its pilots with conversion training for these aircraft, and to have access to maritime strike operations training in a mixed threat environment with Australian Defence Force (ADF) facilities.

1.110 No 2 Squadron RNZAF will provide 1070 hours of flying support per year to the Naval Air Station at Nowra, and the ADF will provide a range of facilities, including air field services, single and married quarters, medical and dental care and education, for New Zealand personnel and their families. This does not represent much change from the original Agreement. In the proposed, enhanced document, No 75 Squadron RNZAF will provide 270 flying hours per year for the RAN from its NZ base when in transit to/from other military exercises and operational requirements.<sup>54</sup>

1.111 The Agreement includes the number of personnel and aircraft to be exchanged, and specifies that RNZAF personnel will be subject to applicable Australian laws on Australian territory but remain under RNZAF command and disciplinary provisions at all times.

1.112 It is an extension, and to some extent an enhancement, of a 1990 Agreement with New Zealand dealing with the involvement of Skyhawk aircraft in ADF Air Support Flying. An Exchange of Notes under that Agreement was included in the treaties tabled on 21 May 1996 but not specifically commented upon in the Committee's *First Report*.<sup>55</sup>

1.113 The Skyhawk aircraft has fighter characteristics and is able to provide training support to the RAN in ways the Macchi, Learjet and F/A-18 (Hornet) aircraft are not. Information was provided that, if Australia F/A-18s were used to provide this training, the cost to the ADF would be \$7500 per hour, as opposed to about \$1820 per hour using the NZ aircraft.<sup>56</sup>

1.114 The NIA states that the cost of maintaining the RNZAF detachment must be weighed against the total cost to the ADF of maintaining a squadron of Skyhawks. This was estimated at \$A52.8 million for the period 1991 to 1996, against the \$A14.8 million actual cost to the RAN in the same period. The Agreement will result in a net annual payment to New Zealand of about \$A2 million for the services provided by the RNZAF.<sup>57</sup>

**1.115 The Committee notes the information provided about the Agreement and supports entry into force as proposed.**

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<sup>54</sup> *ibid*, pp.48, 50-51

<sup>55</sup> *ibid*, pp.44, 48

<sup>56</sup> *ibid*, p 51

<sup>57</sup> *ibid*, pp.48-49

## **CHAPTER 2**

### **TREATIES TABLED ON 29 OCTOBER 1996**

2.1 On 29 October 1996, the following treaties were tabled in both Houses of the Parliament:

- Agreement between the Government of Australia and the Government of the Republic of Singapore for the Reciprocal Protection of Material Transmitted between the Australian Department of Defence and the Singapore Ministry of Defence, done at Canberra on 15 October 1996.
- Agreement between the Government of Australia and the Government of Macau concerning Air Services.
- Amendments, done at London on 23 November 1995, to the International Convention on Load Lines of 5 April 1966.
- Amendment, done at Copenhagen on 31 August 1995, of the Agreement relating to the International Telecommunications Satellite Organisation INTELSAT of 20 August 1971, to Implement Multiple Signatory Arrangements.
- Amendment, done at Washington on 16 April 1966, of the Operating Agreement relating to the International Telecommunications Satellite Organisation INTELSAT of 20 August 1971, to Implement Multiple Signatory Arrangements.

2.2 The '15 sitting day' period for these treaties does not elapse until 5 December 1996.

2.3 On 5 November 1996, the Committee held a public hearing on these five treaties, taking evidence from the sponsoring departments and agencies. Those officials who gave evidence are listed at Appendix 2.

## **AGREEMENT BETWEEN THE GOVERNMENTS OF AUSTRALIA AND SINGAPORE CONCERNING DEFENCE-RELATED MATERIAL**

2.4 This Agreement is similar to other cooperative bilateral treaties to protect the transmittal of defence-related materials, and reflects the high degree of cooperation in defence matters between Australia and Singapore. A similar agreement with Canada was considered in the Committee's Second Report.<sup>1</sup>

2.5 There are two purposes of the Agreement. It sets out security procedures and practices for the protection of classified information transmitted between defence organisations in Singapore and Australia. It accords classified information exchanged between the parties a standard of physical and legal protection no less stringent than that which the provider of the material would give to its own classified information of a corresponding level.

2.6 It also lays down security procedures and practices for general visits by personnel from the respective defence establishments, or defence-related industries, while also covering visits of security personnel reviewing security issues.

2.7 The exchange program covered by this Agreement is well developed and proving successful for both parties. While the majority of exchanges were from Singapore to Australia for exercise here, this was largely because of geographical limitations on the types of those activities which could be undertaken in Singapore.<sup>2</sup>

2.8 It is anticipated that the Agreement will enter into force in December 1996, subject to the written notification of both parties. Article 17 of the Agreement allows the parties to review it at any time, while Article 16 provides that it may be terminated at any time by mutual agreement in writing or by either party giving written notice of its intention to terminate.

**2.9 The Committee notes the information provided about the Agreement and supports signature as proposed.**

## **AIR SERVICES AGREEMENT WITH MACAU**

2.10 This Agreement is based on a standard draft air services agreement format. It provides the potential for the airlines of Australia and Macau to

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<sup>1</sup> Transcript, 5 November 1996, p 7; *Treaties tabled on 10 & 11 September 1996: 2nd Report*, pp.7-8

<sup>2</sup> Transcript, 5 November 1996, p 4

operate direct passenger and freight services between the two countries, as well as providing for Australian carriers to open offices, sell tickets and transfer funds from business operations. A similar agreement with Malta was considered in the Committee's Second Report.<sup>3</sup>

2.11 This Agreement was concluded with the approval of the Sino-Portuguese Joint Liaison Group, and is likely therefore to remain in place after the proposed handover of the Macau to the People's Republic of China (PRC) in 1999.<sup>4</sup>

2.12 About 7000 passengers a year travel between Macau and Australia. There are, however, approximately 220,000 passenger movements per year to the PRC and approximately 650,000 passengers through Hong Kong each year. Access to Macau would provide an alternative airport, should pressure on other airports in Hong Kong and Southern China become too great, as well as allowing Australian carriers greater flexibility in scheduling and wider flight plan options in the Asia-Pacific area, and on to Europe.<sup>5</sup>

2.13 In negotiating air service agreements, consideration is given to access via major and minor Australian gateways. However, the Australian landing point (or points) offered to the other party is subject to an assessment of the relative equivalence of gateways being offered by the other party. There are advantages to Australia if consideration is given to the use of gateways other than Sydney. Evidence was given that entry ports other than Sydney have been offered in recent air services agreements, but that it is the value placed on the destination by the potential partner which determines the outcome.<sup>6</sup>

2.14 There is no expectation that Macau's national carrier would operate into Australia for some considerable time. QANTAS and Ansett were involved in the negotiations for the Agreement and are keeping a watching brief on the commercial situation.<sup>7</sup>

2.15 Under Article 19, the Parties can agree to its amendment, and under Article 20 either Contracting Party may give advice in writing to the other of its decision to terminate the Agreement. Notice is to be communicated simultaneously to the International Civil Aviation Office. Termination would take place one year after receipt of that notice by the other Contracting Party.

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<sup>3</sup> *ibid*, p 7, 2nd Report, *op cit*, pp.8-9

<sup>4</sup> Transcript, 5 November 1996, p 8

<sup>5</sup> *ibid*, pp.7, 11

<sup>6</sup> *ibid*, pp.9-10

<sup>7</sup> *ibid*, pp.10, 12

**2.16 The Committee's Views.** While the disinclination of foreign carriers to use Australian entry points other than Sydney is understandable for commercial reasons, the Committee believes that access should be offered through alternative gateways in future air service agreement negotiations.

**2.17 The Committee notes the information provided and supports entry of the Agreement into force as proposed.**

## **AMENDMENTS TO THE INTERNATIONAL CONVENTION ON LOAD LINES**

**2.18** The 1966 Load Lines Convention establishes an international regime whereby the structural strength and integrity of a ship is established. This is done through uniform principles and rules on the limits to which ships on international voyages may be loaded, within certain zones and during certain times of the year. In its Second Report, the Committee considered Protocols to this Convention and to the related Convention for the Safety of Life at Sea (SOLAS).<sup>8</sup>

**2.19** The two proposed amendments to the International Convention on Load Lines would alter the chartered southern boundary of the Seasonal Tropical Zone by 30 nautical miles south to include the port of Gladstone. This will allow ships at the port of Gladstone to load to the Tropical Load Line instead of the Summer Load Line. There are no additional obligations and, if adopted, they will enter into force 12 months after the date they are accepted by two-thirds of the Contracting Governments.<sup>9</sup>

**2.20** Implementation of the amendments would have significant benefits to the port of Gladstone, allowing an approximately 2 per cent increase in cargo per vessel, principally bauxite and aluminium. Statistics from 1995/96 showed some 600 vessel movements through the port, amounting to some 25.6 million tonnes of cargo with an approximate value of \$A2.3 billion, such an increase in loadings would have major economic benefits to Australia, and to Gladstone in particular.<sup>10</sup>

**2.21** Each zone, outlined in the Convention, has distinct weather characteristics and, in the tropical zone, the weather is milder than in some

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<sup>8</sup> 2nd Report, *op cit*, pp.3-6

<sup>9</sup> Transcript, 28 October 1996, p 13

<sup>10</sup> *ibid*, pp.13, 14

other zones and craft are allowed to load to a deeper draft. The Committee was assured that the increase in cargo carried would not affect strength, stability or water tightness because those vessels affected are already able to load cargo to this level.<sup>11</sup>

2.22 The original request for these changes was made by the port of Gladstone and consultations were held with those involved, including the Queensland maritime and port authorities and its Transport Department. The Australian Shipowners' Association and the Australian Chamber of Shipping were also consulted. Information on these amendments was provided to the States and Territories through the Standing Committee on Treaties (SCOT) process.

2.23 Australia may denounce these amendments to the Convention at any time by notifying that intention in writing to the International Maritime Organisation. Such a denunciation would take effect one year after notification to that body.

**2.24 The Committee notes the information it has been given on the amendments to the Convention and supports their ratification.**

## **AMENDMENTS TO THE INTELSAT AGREEMENT AND OPERATING AGREEMENT**

2.25 INTELSAT operates as a cooperative of 139 governments to ensure global telecommunications on a non-discriminatory basis for the benefit of all countries. In the face of increasing competition in the telecommunications sector, INTELSAT must restructure itself and become more efficient and flexible in its operations. As with most other Parties to this Treaty, Australia no longer exists in an environment where there is only one carrier.<sup>12</sup>

2.26 The INTELSAT Agreement was originally drafted to ensure that each country could designate only one Signatory to the second level instrument, the Operating Agreement, ensuring that all international traffic through INTELSAT would enter/exit each country through its designated telecommunications entity.<sup>13</sup>

2.27 Amendments introducing multiple Signatories provide each country with a choice to designate as many Signatories as it wishes, without imposing

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<sup>11</sup> *ibid*, pp.14, 16

<sup>12</sup> *ibid*, pp.20, 19

<sup>13</sup> *ibid*, p 19

additional obligations. They aim to give governments more flexibility in their relationship with INTELSAT and, in Australia's case, would facilitate more than one Signatory gaining direct operational, financial and technical access to INTELSAT. They would also allow the Australian Government the choice of appointing extra Signatories apart from the current Signatory, Telstra. While the Australian Government has not yet designated additional Signatories, it may consider their designation as part of the proposed telecommunications review in July 1997.

2.28 These amendments do not change the basic operation of either Agreement so that, for example, each Party will still only be allowed one governorship.

2.29 The proposed Amendments dated 31 August 1995 relate to Articles I and II, VIII, IX and XVI of the Agreement, and respectively:

- permit the designation of more than Signatory by a Party;
- provide that all designated Signatories at a meeting of Signatories will be considered jointly as a single Signatory;
- provide that only one governor will represent the Signatories appointed by a Party, and
- alter the text for withdrawal from singular to plural, where appropriate.

2.30 The 16 April 1996 Amendments proposed for the Operating Agreement are to Articles 6 (h), an additional paragraph (i), 14(a), 15 (a), (b), and 22 (d) (ii), and:

- permit recommendation of altered share investment obligations and allow designated entities to hold investment shares in INTELSAT;
- applications for approval of earth stations and space segment capacity may be made by designated entities;
- permit designated entities four differing levels of direct access as authorised by a Signatory or Party, and
- provides that all Signatories designated by a Party will be considered as a single entity for treaty amendment approval.

2.31 There is regular and consistent consultation with those in the telecommunications industry with an interest in INTELSAT. Information on the proposed Amendments was provided to the States and Territories through the SCOT.<sup>14</sup>

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<sup>14</sup> *ibid*, p 20

2.32 Withdrawal provisions are covered in both Agreements, whereby withdrawal means the simultaneous withdrawal of all Signatories designated by that Party. Liabilities or contractual agreements entered into prior to withdrawal will be considered in the context of the withdrawal.

**2.33 The Committee notes the information it has received about the proposed amendments to the Agreements and supports their ratification.**



## CHAPTER 3

### GENERAL OBSERVATIONS

2.1 Since it was formed in May 1996, the Committee has tabled four reports. One of these, the 3rd, related to two treaties on tuna. The other three have been more general, dealing with the groups of treaties which have been tabled in the Parliament from time to time.

2.2 At the time of tabling this report, there are two inquiries the Committee intends to complete as early as practicable in 1997: into the UN Convention to Combat Desertification, and into Protocol IV and the amended Protocol II to the Inhumane Weapons Convention.

2.3 In the three general reports referred to above, a total of 50 treaties were considered and specific comments were made on 28 of them. In the 2nd Report and in this one, comments are made on all the treaties listed which was not the case in the *First Report*.<sup>1</sup>

2.4 In Chapter 1 of that report, we set out our approach to our task. In particular:

The Committee will not examine all tabled treaties in detail. Some treaties or 'executive agreements', such as extradition agreements or double taxation agreements, will not warrant separate scrutiny on each occasion. Nonetheless, the Committee reserves the right to examine the operation of such agreements in general terms, should it so desire.<sup>2</sup>

2.5 The Committee sees a need to be able to undertake three types of inquiries:

- those needed to deal with the non-controversial treaties tabled regularly in the Parliament, the subjects of our first two reports;

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<sup>1</sup> The Subsidiary Agreement between the Government of Australia and the Government of Japan concerning Long-line Tuna Fishing was the subject of brief comments in the *First Report*, at pp.14-15, and with the Agreement for the Establishment of the Indian Ocean Tuna Commission, the subject of the 3rd Report: *Two International Agreements on Tuna*.

<sup>2</sup> *First Report*, paragraph 1.20, p 4

- large subjects such as that undertaken on the two tuna agreements, the subject of our 3rd report, and
- shorter investigations into subjects such as the Protocols to the Inhumane Weapons Convention, some of which may not adhere to the '15 sitting day' rule.

2.6 It is pleasing that we have been able to comment on such a number and range of treaties so early in the Committee's life. This is consistent with the Committee's Resolution of Appointment. However, it is now clear that certain types of treaties, such as air services agreements or protection of defence-related material, are beginning to recur in successive groups of tabled documents. Most have few variations from their 'model' documents, and it is expected that this trend will be reflected in a number of categories in future.

2.7 The Committee believes that the revised processes for treaty-making are working well, with one exception: consultation with the States and Territories. Although no specific action was taken, in both the first and second reports we had concerns about the quantity and quality of some of the consultation which seemed to have taken place with the States and Territories in the processes which led to the tabling of treaties and the accompanying National Interest Analyses (NIAs). We will be writing to the State Premiers and Chief Ministers of the Territories, drawing to their attention the existence and role of this Committee and advising them of our concern to ensure their views are included in the treaty-making process.

2.8 The process of Parliamentary scrutiny of treaties was established, in part, to ensure that the views of the States and Territories were registered because of their legal responsibilities for some matters about which the Commonwealth Government enters into binding international obligations for Australia. At paragraph 1.19 above, we made it clear that NIAs should in future include information on the actual responses received from the States and Territories about the texts of the treaties proposed for accession. This follows a recommendation on consultation in the *First Report*.

2.9 At paragraph 1.99 above, we expressed concern that the Australian rice growing industry was not consulted in the preparation of the NIA for the recognition of the International Rice Research Institute (IRRI) as an international organisation.

2.10 Because of these general and specific concerns, the coordinating role of the Department of Foreign Affairs and Trade in consulting with all interested parties on the treaties which come before the Committee will receive particular attention in future.

2.11 1996 has been a busy and successful inaugural year for the Committee: four reports have been tabled since September 1996. The workload necessary to inquire and report as required by the Resolution of Appointment has placed considerable pressure on Committee members and Secretariat staff alike. All are to be congratulated for their efforts.

2.12 Once again, I express the Committee's thanks to all Ministers and Departmental staff who have assisted us in our important work.

W L Taylor MP  
Chairman



## **APPENDIX 1**

### **WITNESSES AT THE PUBLIC HEARING ON 28 OCTOBER 1996**

#### **Attorney-General's Department**

Mr W F Campbell, Acting Principal International Counsel  
Mr M B Jennings, International Branch  
Mr C W Meaney, Assistant Secretary, International Branch

#### **Department of Foreign Affairs and Trade**

Mr I D G Biggs, Executive Director, Treaties Secretariat  
Mr L D H Brodrick, Nuclear Non-Proliferation Policy Section  
Ms M M Durnan, Nuclear Safeguards Section  
Dr P Howarth, Nuclear Non-Proliferation Policy Section  
Mr L R Luck, Assistant Secretary, Nuclear Policy Branch  
Ms L R Neal, International Economics and Finance Section  
Ms M Pergaminelis, Hong Kong, Macau and Taiwan Section  
Mr R D Ryan, Canada, Latin America and Caribbean Section  
Mr M J Scully, Trade, Environment and Nuclear Law Unit

#### **Department of Health and Community Services**

Mr T B Mountford-Smith, Plant Assessment Section, Nuclear Safety Bureau

#### **Department of Communications and the Arts**

Mr D Allan, Film Industry Section  
Mr M Coley, Acting Assistant Secretary, Film Branch  
Mr T Read, Director and Acting Chief Executive, Film Development, Australian Film Commission

## **Department of Transport and Regional Development**

Mr R Gough, International Relations Branch  
Mr G N McColl, Aviation Policy Branch  
Mr T Wheelens, Assistant Secretary, International Relations Branch

## **Department of the Treasury**

Mr N R Ray, Assistant Secretary, International Finance and Development Branch

## **Australian Centre for International Agricultural Research**

Mr A Barden, Corporate Affairs Manager  
Mr N B Lee, Communications Coordinator  
Ms K Taylor, Contracts and Agreements

## **Department of Defence**

Mr S P K Brown, Assistant Secretary, Legal Services  
Captain L G Cordner RAN, Naval Current Policy and Plans  
Mr R J Moskwa, Naval Resource Evaluation and Costing  
Captain R W Sharp RAN, Joint Logistic Operations and Plans

## **APPENDIX 2**

### **WITNESSES AT THE PUBLIC HEARING ON 5 NOVEMBER 1996**

#### **Department of Defence**

Mr S P K Brown, Assistant Secretary, Legal Services  
Ms S Hewett, Industrial Security Policy  
Mr G E Philip, Assistant Secretary, Security

#### **Department of Transport and Regional Development**

Mr R Hutchison, Policy Officer  
Mr C Samuel, International Relations  
Mr T Wheelens, Assistant Secretary, International Relations

#### **Australian Maritime Safety Authority**

Dr N R Ada, Liaison Section  
Mr L V Emmett, Principal Naval Architect

#### **Department of Communications and the Arts**

Mr J M Hutchison  
Mr R Thwaites, Assistant Secretary, Telecommunications,  
Trade and Development



## **APPENDIX 3**

### **SUBMISSIONS AUTHORISED FOR PUBLICATION**

| <b>Submission<br/>Number</b> | <b>Organisation/Individual</b>                            |
|------------------------------|-----------------------------------------------------------|
| 1.                           | Australian Centre for International Agricultural Research |
| 2.                           | Department of Communications and the Arts                 |
| 3.                           | Department of Defence                                     |
| 4.                           | Department of Foreign Affairs and Trade                   |

