THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Joint Standing Committee on Treaties

TREATIES TABLED ON 10 & 11 SEPTEMBER 1996

2nd Report

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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.

TREATIES TABLED ON 10 & 11 SEPTEMBER 1996

CONTENTS

SECOND REPORT: TREATIES TABLED ON 10 & 11 SEPTEMBER 1996

1.1 The Committee's First Report was tabled on 9 September 1996. It dealt with the 20 treaties tabled on 21 May 1996, and the five treaties tabled on 18 June 1996. This is the second report to deal with a group of non-controversial treaties.

1.2 On 10 September 1996, the following treaties were tabled in both Houses of the Parliament:

- Amendments to the Schedule, International Convention for the Regulation of Whaling, 1946.
- Protocol of 1988 relating to the International Convention on Load Lines of 5 April 1966.
- Protocol of 1988 relating to the International Convention for the Safety of Life at Sea of 1 November 1974.
- International Convention on Salvage of 28 April 1989.
- Agreement between the Government of Australia and the Government of Canada concerning the Protection of Defence Related Information Exchanged Between Them.

1.3 The "15 sitting day" period for these treaties elapses on Monday, 28 October 1996.

1.4 On 11 September 1996, the Air Services Agreement with Malta was tabled in both Houses, with the "15 sitting day " period for this treaty elapsing on Tuesday, 29 October 1996.

1.5 On 17 September 1996, the Committee held a public hearing on these treaties, taking evidence from the officials of the sponsoring Departments and agencies. Those officials who gave evidence at that hearing are listed at Appendix 1.

INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING, 1946

1.6 The International Whaling Commission (IWC) was established under the International Convention for the Regulation of Whaling, 1946. The initial purpose of the Convention was to regulate the conservation and utilisation of whale stocks, although more recently the Convention has been used to implement major conservation measures. Australia

is one of the 15 original signatories and was involved in whaling until the closure of the industry here in 1979.

1.7 Three types of whaling are permitted under the Convention: commercial whaling, aboriginal subsistence whaling and scientific whaling. Since 1982 a moratorium on commercial whaling has been declared each year at the IWC meeting. Only Norway has lodged an objection to the moratorium and is, therefore, not bound by the Convention. Certain aboriginal hunting is permissible where an identified continuing nutritional and cultural requirement exists. Such activity is largely undertaken by people in circumpolar regions such as Alaska, Greenland and the Russian Federation. States are permitted to issue permits for scientific research, although these are not as closely monitored under the Convention. It should be noted that Australian policy seeks a permanent international ban on commercial whaling. At its 1996 meeting, the Commission continued the international moratorium on commercial whaling for one further season.[1]

1.8 The proposed amendments to the Schedule are routine. They simply replace current dates for those of coming years on catch limits, which are set at zero for commercial catches. Acceptance of the amendments will maintain for Australia a zero catch limit for all whaling stocks (including, from Australia's perspective, dolphins and porpoises) and accept the continuation of certain Aboriginal subsistence catches in waters outside Australian jurisdiction.

1.9 The Australian delegation to the 1996 meeting of the IWC included officials and two non-government organisation representatives as advisers. The amendments have been submitted for notification to State/Territory Governments.

1.10 **The Committee notes the advice it has been given and supports the amendments to the Schedule to the International Convention for the Regulation of Whaling, 1946**.

Proposed tabling procedures for future amendments

1.11 Under the Convention, amendments to the Schedule become effective with respect to each Contracting Government 90 days following the date of notification from the Secretariat of the IWC, unless a contracting state lodges an objection, in which case the amendments do not come into effect for any of the Contracting Governments for an additional 90 days. In this instance, formal notification was given on 4 July 1996 and the amendments came into effect by default on 2 October 1996.

1.12 On 19 August 1996, the Minister for the Environment, Senator the Hon Robert Hill, wrote to the Committee informing it of the proposed amendments. He indicated that the default mechanism in the Convention did not permit compliance with the Government's new procedures for parliamentary scrutiny of treaties, which prescribe that treaty actions should be tabled in Parliament for at least 15 sitting days.

1.13 On this occasion, the proposed amendments were lodged with the President of the Senate on 19 August and tabled in the House of Representatives on 10 September 1996.

[1] Transcript, 17 September 1996, p 22

While the Committee appreciates the Minister's intention to bring these amendments before the Parliament, the following procedures are considered to be appropriate, should this situation recur:

- The Minister should write to the Committee providing details of the proposed amendments, together with a copy of the National Interest Analysis within 10 working days from the date of notification by the Secretariat of the IWC.

- This material should then be tabled at the first opportunity in both Houses when Parliament sits, along with a brief explanatory note outlining the unusual arrangements.

1.14 The Committee considers that adopting these procedures would ensure timely consideration of future amendments to the Convention/Schedule, as well as ensuring the primacy of the proceedings of both Houses.

1988 PROTOCOLS: LOAD LINES CONVENTION AND CONVENTION FOR THE SAFETY OF LIFE AT SEA

1.15 The Protocol of 1988 relating to the International Convention on Load Lines of 5 April 1966 was done at London on 11 November 1988. The 1988 Protocol relating to the International Convention for the Safety of Life at Sea (SOLAS) of 1 November 1974 was also done at London on 11 November 1988. The Government is considering acceding to these Protocols.

1.16 **Load Lines Convention**. The main objective of the Load Lines Convention is to ensure the structural strength and stability of ships by establishing uniform principles and rules on the limits to which ships may be loaded. Australia acceded to this Convention on 29 July 1968 and it entered into force on 29 October 1968. It is put into effect by the *Navigation Act 1912*.

1.17 Both this Convention and the related SOLAS already provide for certificates of seaworthiness to be carried on board with the ship's documentation. These certificates are subject to scrutiny by Australian officials during Port State Control inspections. To date, certificates have been issued independently for these Conventions. The Load Lines Protocol aims to streamline the process by allowing compliance certificates for both Conventions to be issued together. Harmonisation of the certification requirements will simplify inspections and enable consistency of approach with other Flag States. Shipowners will benefit because of considerable savings through coordination of the survey requirements for their ships.

1.18 **SOLAS**. The SOLAS Convention is the latest of such Conventions which began in 1914, after the sinking of the *RMS Titanic* in April 1912. While this Convention covers a range of subjects, its main objectives are to specify minimum standards for the construction, equipment and operation of ships. Australia acceded to this Convention on 18 November 1983.

1.19 To date, there have been 25 signatures to these Conventions and they will enter into force 12 months after 50 per cent of world gross tonnage is represented through the signatures of Flag States, rather than owner flags.[2]

1.20 Both the Load Lines Convention and SOLAS require the survey of ships and the issue of a certificate showing that the requirements of the Conventions have been met. The 1988 Protocols refine the process of survey and certification in each Convention, and enable a simplified method of inspection and administration. They permit a system of ship surveys and certification harmonised between the two Conventions, including:

- a one year interval between surveys, based on an initial, annual intermediate, periodical and renewal surveys as appropriate;

- a scheme for providing the necessary flexibility for the execution of each survey, with the provision that the renewal survey may be completed within three months, and

- a maximum period of five years' validity for all certificates for all cargo ships.

1.21 Before harmonisation, SOLAS provided a three month gap for surveying in dry dock before the issue of certificates of compliance. Under the Load Lines Convention, acceptance of a survey led to the issue of a certificate, and two surveys could be required within a short period. Under the harmonised arrangements, both surveys can be carried out at the same time.[3]

1.22 Amendments to the *Navigation Act 1912* to give effect to the provisions of these Protocols, including the harmonisation of surveys and certification, were made by the *Transport Legislation Amendment 1995* which has not yet come into operation. Its prescriptive requirements will be brought into operation by Marine Orders.

1.23 The issue of the safety of ships in Australian waters has been of concern to the Parliament for some time. The House of Representatives Standing Committee on Transport, Communications and Infrastructure examined the issue in three reports: **Ships of Shame, Inquiry into Ship Safety** (1992), **Review Inquiry into Ship Standards and Safety: Progress Report** (1994) and **Ships of Shame, Inquiry into Ship Safety: A Sequel** (1995).[4]

1.24 The Australian Maritime Safety Authority (AMSA) informed the Committee that the provisions of Article I 3 of the Load Lines Convention applies to signatories and non-signatories alike. The Australian Act includes enforcement provisions for such things as maintenance of equipment and ships can be detained in our ports for breaches of requirements. At any time there could be as many as ten ships so detained, with a total of 186 ships detained this year. At the date of the hearing, only one vessel was detained.[5]

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[2] ibid, p 15

[3] ibid, p 10

[4] ibid, pp.10, 11, 15

[5] ibid, pp.11, 12

1.25 AMSA said that a Memorandum of Understanding (MOU) brought ship survey information together and Australia has access to this central repository of data.[6]

1.26 SOLAS includes a provision for mandatory reporting which raises the issue of national sovereignty, and a series of regional agreements have been negotiated to deal effectively with this matter. Thus, there are agreements in Asia-Pacific and Latin America, as well as the Paris Memorandum for Europe. AMSA works with appropriate authorities in the Asia-Pacific area to harmonise inspections under the Conventions.[7]

1.27 In the past, inspections had tended to concentrate on tankers and bulk carriers. While carriers were being scrapped at all-time high levels, it was also a fact that replacements are being built at an even faster rate. While surveying may not have always been effective in the past, from early 1996 it has been a requirement that survey files have to be carried on board . Thus, results of past surveys will be available for the five-yearly surveys in future. AMSA said that such things as amendments to the Convention/Protocols, the MOUs and the increased involvement of the maritime insurance industry were improving the safety of ships at sea.[8]

1.28 AMSA pointed out that qualifications for sea-going officers are covered in another International Convention, reflected in the *Navigation Act 1912*, and that crewing levels on all ships are controlled by manning certificates.[9]

1.29 Australia will not incur any additional costs by acceding to these Protocols. Information on these Protocols has been provided to the States/Territories through the Standing Committee on Treaties Schedule of Treaty Action. In addition, there were briefings of and specific consultations with Australian shipowners during the negotiation process for the adoption of these Protocols. The Australian shipping industry supports accession to both Protocols and the early introduction of the harmonised system of survey and certification.

1.30 During its consideration, there was some Committee discussion of the provisions for denouncing, or withdrawing from, these Protocols. Provisions for denouncing them are contained in Article VII 1 in each case: any time after the expiry of five years after the Protocol enters into force for the Party to the document. A denunciation will then take effect one further year after it is lodged. AMSA advised that the five year time is related to the life of certificates granted to ships under the harmonised arrangements between these Protocols.[10]

1.31 National Interest Analyses (NIAs) prepared for consideration with treaties contain a range of information, and denunciation provisions have generally been included. This should continue, especially if there are unusual or stringent provisions for denunciation in any treaty. The Committee also believes, without making a formal recommendation on these matters, that it would be of assistance if NIAs included specific mention of the ability to make reservations in the treaties being assessed.

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[6] ibid, pp.13-14

[7] ibid, p 14

[8] ibid, pp.15-17 (passim)

[9] ibid, pp. 17-18

[10] ibid, pp.18-19, 21

1.32 **The Committee notes the advice it has been given on the 1988 Protocols to the International Convention on Load Lines of 5 April 1996, and the International Convention for the Safety of Life at Sea of 1 November 1974, and supports accession to these Protocols.**

INTERNATIONAL CONVENTION ON SALVAGE

1.33 The text of the International Convention on Salvage of 28 April 1989 was tabled in both Houses on 18 October 1995. This Convention entered into force generally on 14 July 1996, when more than the required 15 States had consented to be bound by it. Australia proposes to accede on 20 December 1996 and, under Article 29, the Convention would therefore come into force for this country on 20 December 1997.[11]

1.34 Lloyd's of London supports the Convention and its principles are already reflected in Lloyd's Open Forum, a standard form of salvage agreement between the owner of a ship and a salvager.[12]

1.35 This Convention updates and improves on the provisions of a 1910 Convention, which share the objective of achieving uniform international rules of salvage operations. Australia acceded to the 1910 Convention in 1930 and it was implemented by the *Navigation Act 1912*. Part VII of that Act was amended by the *Transport Legislation Amendment Act 1995* to incorporate the terms and principles of the Convention. It understood that the Government intends to commence the operation of this legislation as soon as possible after accession to the Convention.

1.36 Substantial developments, particularly in the need to protect the environment, and in international shipping, demonstrated the need to review the 1910 Convention. That Convention gave a right to remuneration only if there was a beneficial result, the 'no cure, no pay' principle.

1.37 The 1989 Convention introduced a new concept by providing financial incentives to protect the environment in the course of salvaging vessels and crew. Due care is also to be exercised to prevent or minimise environmental damage. It aims to ensure there are sufficient incentives for investment in modern salvage technology, to provide salvage services, to improve the efficiency of salvage operations and to encourage the protection of the marine environment.

1.38 Rewards are arbitrated so that from 30 per cent, up to 100 per cent, of salvage expenses can be recovered form the owner of a ship. Fixing of rewards takes account of preventing and minimising environmental damage in salvage operations, and also provides for special compensation for the skill and efforts of those who unsuccessfully attempt to salvage a vessel and its cargo when these threaten the environment. Special compensation is

[11] ibid, p 10

[12] ibid, pp.10, 20

limited to cases in coastal or inland waters or adjacent areas by the definition of environmental damage in the Convention.[13]

1.39 There are no direct financial costs to Australia of complying with the Convention, but it extends the circumstances under which the owner of a vessel or other property may be liable to pay compensation: the major extension is liability for special compensation.

1.40 Accession to this Convention will therefore affect Australians as owners of ships or other property endangered by a marine accident in our coastal wasters or adjacent areas where there is a threat to the environment. State/Territory Governments and Australian industry were regularly consulted during negotiations about this Convention and were supportive of the Commonwealth position. No representations or objections were received from those Governments about this Convention at the 14 May 1996 meeting of the Standing Committee on Treaties.

1.41 Under Article 31, the Convention may be denounced by any State Party at any time from one year after the date on which it enters into force for that State. Denunciation takes effect one year after receipt of the instrument of denunciation.

1.42 The Committee notes the advice it has been given about the International Convention on Salvage of 28 April 1989, and supports Australia's accession as proposed.

AGREEMENT BETWEEN THE GOVERNMENTS OF AUSTRALIA AND CANADA CONCERNING DEFENCE RELATED INFORMATION

1.43 The Agreement between the Government of Australia and the Government of Canada concerning the Protection of Defence Related information Exchanged Between Them is a stand-alone document between the two Governments, replacing an informal agreement. It is being negotiated before signature and is likely to be signed in November 1996, when it will enter into force.[14]

1.44 The title of the Agreement reflects its aim: to serve as the formal basis for the protection of classified, defence-related information exchanged between the Governments and their defence industries. It also formalises the special relationship between Australia and Canada, formerly reflected in commitments to protect information exchanged and is similar to a number of other agreements with other countries. Many practices laid down in the Agreement are already in use.[15]

1.45 The Agreement obliges each Government to protect material received from the other as if it were its own. Neither party can disclose, release or provide information to a third country without the consent of the originating country. It specifies marking of classified information, handling, transmission and storage procedures, and security screening for those

[13] ibid, p 20

[14] ibid, pp.28, 29

[15] ibid, p 28

with access to material exchanged. It therefore sets out equivalent levels of protection in each country.[16]

1.46 Officials from the Department of Defence advised that the flow of information under the previous informal agreement was about equal, given such things as purchases of each other's equipment. This Agreement also represents the extension of the protection of material to the defence industries of both countries.[17]

1.47 Information on this Agreement has been provided to the States/Territories through the Standing Committee on Treaties' Schedule of Treaty Action. No additional costs will be involved in this Agreement and no additional protocols are contemplated.

1.48 Under Article 16, this Agreement may be amended or reviewed at any time by a written request of the Parties. It may be terminated at any time by mutual consent in writing, or by either Party giving the other written notice which will take effect six months after that notice.

1.49 The Committee notes the information it was given about the Agreement between the Government of Australia and the Government of Canada concerning the Protection of Defence Related information Exchanged Between Them, and supports the signature of that Agreement.

AIR SERVICES AGREEMENT WITH MALTA

1.50 The Air Services Agreement with Malta approximates to a 'standard' air services agreement. It will enter into force following an exchange of notes, and this exchange is expected to occur after the Agreement has been tabled in the Parliament for 15 sitting days, ie not before 29 October 1996. If signed, it will become one of about 50 such agreements Australia has with a range of nations.[18]

1.51 This Agreement provides for the designated Australian and Maltese airlines to operate direct passenger and freight services between the two countries, via India and/or Singapore. It also contains provisions for Australian carriers to open offices, sell tickets and repatriate funds, subject to Maltese law.

1.52 Both countries are obliged to ensure that fares charged are established at reasonable levels, and are submitted to aeronautical authorities for approval. Air Malta has a good safety record and any aircraft it might lease for the purposes of this Agreement would be subject to meeting Australian standards. It is unlikely to operate from Australia before 1998 as negotiations with India and Singapore, for on-rights and additional passengers and carriage of freight, have yet to be completed.[19]

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[16] ibid, p 30

[17] ibid, pp. 28-29

[18] ibid, pp. 3, 4

[19] ibid, p 7

1.53 Officials of the Department of Transport and Regional Development (DOTRD) advised that there are about 140 or 150 passenger movements between Australia and Malta per week. Sydney and Melbourne would be the Australian gateways, reflecting Maltese interests in this country.[20]

1.54 This Agreement involved negotiations with the States/Territories and wide consultation. Ansett Airlines and QANTAS were involved in these negotiations as technical advisers on such issues as demand, capacities and route structures.[21]

1.55 Under Article 20, either Contracting Party can give the other written notice through diplomatic channels of a decision to terminate this Agreement. It will end one year after the date of receipt of the notice by the other Contracting Party.

1.56 **The Committee notes the information it has received about the Air Services Agreement with Malta and supports signature as proposed.**

GENERAL

1.57 In this report and its First Report, the Committee has met its remit from the Parliament of 15 sitting days to consider all 31 treaties tabled to date. That has been possible only as the result of the unexceptional nature of most of these treaties, and the commitment of Committee members to meet a heavy work load in a new area of Parliamentary inquiry which satisfies public need and community involvement.

1.58 The Committee also hopes to table a report of its public inquiry into the important Subsidiary Agreement Between the Government of Australia and the Government of Japan Concerning Japanese Tuna Long-Line Fishing, 1996, in November 1996.

W L Taylor MP
Chairman

[20] ibid, pp. 6, 5

[21] ibid, p 5

APPENDIX 1

WITNESSES WHO GAVE EVIDENCE AT THE PUBLIC HEARING ON 17 SEPTEMBER 1996

Attorney-General's Department

Mr W F Campbell
Acting Principal Law Counsel

Department of Foreign Affairs and Trade

Mr I Biggs
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Malta Desk Officer, West Europe Section

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Mr A J W Francombe
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Mr N J R Kelso
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Mr G Anderson
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