The Parliament of the Commonwealth of Australia
Joint Standing Committee on Treaties

Report 150

Treaties tabled on 3 March, 5 March and 12 May 2015

Australia's withdrawal from the World Tourism Organization (WTO) Statutes (Mexico City, 27 September 1970)

Resolution A.1070(28) IMO Instrument Implementation Code (III Code) (London, 4 December 2013) and amendments to relevant IMO Conventions

Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17

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Resolution of Appointment

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

a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;

b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:

   (i) either House of the Parliament; or

   (ii) a Minister.

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.

List of abbreviations

AMSA	Australian Maritime Safety Authority
APEC	Asia-Pacific Economic Co-operation
DFAT	Department of Foreign Affairs and Trade
ExCo	Executive Council
GDP	Gross Domestic Product
IMO	Instrument Implementation Code
IOPI Act	International Organisations Privileges and Immunities Act
JSCOT	Joint Standing Committee on Treaties
NIA	National Interest Analysis
NIE	National Interest Exemption
OECD	Organisation for Economic Co-operation and Development
RIS	Regulation Impact Statement
SOLAS	Safety of Life at Sea
UN	United Nations
UNWTO	United Nations World Tourism Organization
WTO	World Tourism Organization

List of recommendations

2 World Tourism Organization Statutes

Recommendation 1

The Committee supports the withdrawal of Australia from the *World Tourism Organization (WTO) Statutes.*

3 International Maritime Organization Instrument Implementation Code

Recommendation 2

The Committee supports Resolution A.1070 (28) IMO Instruments Implementation Code, amendments to relevant IMO Conventions and amendments to the *International Convention for the Safety of Life at Sea* and recommends that binding treaty action be taken.

4 Protocol establishing prolongation of the treaty between Australia and the Kingdom of the Netherlands regarding Malaysia Airlines flight MH17

Recommendation 3

The Committee supports the *Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17* and recommends that binding treaty action be taken.

1

Introduction

Purpose of the report

1.1 This report contains the Joint Standing Committee on Treaties' review of the following treaty actions tabled on 3 March, 5 March and 12 May 2015:

- Australia's withdrawal from the *World Tourism Organization (WTO) Statutes* (Mexico City, 27 September 1970);
- Resolution A.1070(28) *IMO Instrument Implementation Code (III Code)* (London, 4 December 2013) and amendments to relevant IMO Conventions; and
- *Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17*.

1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in Parliament.

1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.

1.4 Prior to tabling, major treaty actions are subject to a National Interest Analysis (NIA), prepared by the Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.

1.5 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. An RIS was not required for any of the treaties under consideration in this report.

1.6 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.

1.7 A copy of the treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:

- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/3_March_2015;
- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/5_March_2015; and
- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/12_May_2015.

Conduct of the Committee's review

1.8 The treaty actions reviewed in this report were advertised on the Committee's website from the date of tabling. The Committee invited written submissions by 20 March 2015. The Committee did not invite written submissions for the third treaty as explained in Chapter 4 of this Report.

1.9 The Committee invited all State Premiers, Territory Chief Ministers and the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.

1.10 The Committee held a public hearing into two of the treaties in Canberra on Monday 11 May 2015. There was no public hearing held into the third treaty as explained in Chapter 4 of this Report.

1.11 The transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaties tabling date, being:

- 3 March and 5 March 2015.

1.12 A list of submissions received and their authors is at Appendix A.

1.13 A list of witnesses who appeared at the public hearing is at Appendix B.

2

World Tourism Organization Statutes

Introduction

2.1 This chapter examines the proposal for Australia to withdraw from the *World Tourism Organization (WTO) Statutes*.

2.2 Under **Article 35** of the WTO Statutes, Australia may withdraw from the World Tourism Organization (WTO) on the expiry of one year's notice in writing to the Depositary Government (currently Spain).[1]

Background

2.3 Australia became a Party to the WTO on 18 September 1979. It withdrew from the Agreement in 1990 and re-joined in 2004.[2]

2.4 The WTO came into operation in 1975 and became a special agency of the United Nations (UN) in 2003.[3] It became known as the UNWTO to distinguish it from the World Trade Organization. The UNWTO is responsible for the 'promotion of responsible, sustainable and universally accessible tourism'. It is the leading international organisation in the field

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1 National Interest Analysis [2015] ATNIA 4 with attachment on consultation *World Tourism Organization (WTO) Statutes*, done at Mexico City on 27 September 1970 [1979] ATS 15 (hereafter referred to as 'NIA'), para 1.

2 NIA, para 3.

3 World Tourism Organization UNWTO, 'History', <http://www2.unwto.org/content/history-0>, accessed 14 April 2015.

of tourism and 'promotes tourism as a driver of economic growth, inclusive development and environmental sustainability'.[4]

2.5 The current membership of the UNWTO includes 156 countries, 6 Associate Members and over 400 Affiliate Members.[5]

2.6 Australian tourism industry organisations and associations consider the leadership and coordinating role of the UNWTO as extremely important to the ongoing development of the Australian tourism industry:

> The UNWTO is the only world forum providing the specialization and the research basis for the development of international efforts, policies and opportunities for the world wide development of tourism and the opportunity to undertake dialog with both source and competitor countries.[6]

2.7 The tourism industry is one of Australia's five super growth industries, contributing $91 billion ($42 billion directly, $48 billion indirectly) to Australia's GDP in 2012-13. The industry employed approximately 543 600 people directly and a further 385 400 indirectly during that period.[7]

Overview and national interest summary

2.8 According to the NIA, Australia's proposed withdrawal from the UNWTO has been prompted by renewed questions about the benefits of membership to Australia in recent years. The NIA claims the proposed withdrawal follows a comprehensive review in consultation with key industry stakeholders.[8]

2.9 The NIA identifies the following factors as a disincentive to Australia's continued membership of the UNWTO:

- the UNWTO has not given priority to Australian interests as would be expected given Australia's financial contribution;
- membership fees have increased ninety-two per cent in the decade since 2004.[9]

4 World Tourism Organization UNWTO, 'Who we are', <http://www2.unwto.org/content/who-we-are-0>, accessed 14 April 2015.

5 World Tourism Organization UNWTO, 'Who we are', <http://www2.unwto.org/content/who-we-are-0>, accessed 14 April 2015.

6 Mr John King OAM, *Submission 1*, p. 3.

7 Tourism Research Australia, 'State of the Industry 2014', pp. 1, 5 and 6. In its report *Position for prosperity? Catching the next wave,* Deloitte identified five super growth industries that are expected to add $250 billion to the Australian economy over the next 20 years: agribusiness, gas, tourism, international education and wealth management.

8 NIA, para 6.

9 NIA, para 6.

2.10 The NIA suggests that the cost of membership is high, the benefits of membership low and the return on Australia's investment minimal given the limited benefits to the Australian tourism industry and the Australian Government.[10]

2.11 The Committee queried if the broader implications of Australia's withdrawal from the UNWTO had been examined, particularly with regard to any detrimental effect on developing nations. The Department of Foreign Affairs and Trade (DFAT) assured the Committee that this aspect of the issue had been considered during the review of Australia's membership of the organisation in relation to Australian aid generally and specifically aid for trade:

> … we concluded and recommended to the government that there would be no development impact, at the same time we uncovered other opportunities that exist, particularly in services trades—aid for trade and the use of tourism as an accelerator of economic development.[11]

Reasons for Australia to take the proposed treaty action

2.12 The NIA maintains that, while the UNWTO has emphasised the importance of Australia's membership, it has not given priority to Australian interests, as evidenced by its work program. The NIA emphasises that Australia has regularly completed biennial surveys for the UNWTO indicating its tourism needs and priorities but these have not influenced the organisation's work program.[12]

2.13 The NIA concedes that Australia's tourism priorities do not align with those of the majority of UNWTO Members.[13] A significant proportion of the organisation's membership is from developing countries for which poverty alleviation, the United Nations Millennium Development Goals and sustainable development are core priorities. The NIA indicates that the UK, USA, New Zealand, Canada, Singapore, Ireland and Belgium have either not joined or withdrawn from their membership of the

10 NIA, para 7.

11 Mr Paul Wojciechowski, Assistant Secretary, Economic Advocacy and Analysis Branch, Trade, Investment and Economic Diplomacy Division, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, 11 May 2015, p.4.

12 NIA, para 9.

13 NIA, para 10.

UNWTO due to budgetary considerations and the organisation's priorities.[14]

2.14 Membership fees have increased ninety-two per cent in the decade since Australia re-joined the UNWTO: from €160 911 (approximately AU$263 537) in 2004 to €308 834 (approximately AU$448 649 subject to currency fluctuations) for 2015. The NIA states that the significant cost of membership has limited Australia's current engagement to attending key meetings and receiving UNWTO publications and statistical data and responding to Member surveys.[15]

2.15 On the other hand, industry groups argue strongly that the perceived lack of value for money of the Australian membership of the UNWTO has been caused by the 'disconnect between the Government's UNWTO representation and the industry itself'.[16] Industry claims that there has been 'almost no engagement with or involvement of the Australian tourism industry in the Government's representation role on UNWTO'.[17] As a consequence there has been little or no exchange of information between the industry and the UNWTO.[18]

2.16 The Queensland Tourism Industry Council suggest that, considering the economic benefit of the industry to Australia, the cost of membership is 'well worth the value of the international exposure and policy development which UNWTO membership gives Australia'.[19]

2.17 The Australian Government has refocused its multilateral tourism engagement towards the APEC Tourism Working Group and the OECD Tourism Committee. The NIA suggests that these provide a better return on Australia's investment, include Australia's key tourism markets (India and China) and assist Australia to achieve its policy priorities and economic diplomacy objectives. The NIA adds that membership of these bodies also supports Australia's efforts to build strong bilateral tourism relationships with key tourism markets.[20]

2.18 However, submitters to the inquiry suggest that neither the APEC nor OECD organisations provide a suitable alternative to membership of the UNWTO and contend that the two bodies have:

- no outcomes of relevance or value to the Australian tourism industry;

14 NIA, para 11.

15 NIA, para 12.

16 National Tourism Alliance, *Submission 2*, p. 2.

17 Mr King, *Submission 1*, p. 6.

18 Mr King, *Submission 1*, p. 5.

19 Queensland Tourism Industry Council, *Submission 3*, p. 3.

20 NIA, para 13.

- no research programs or capabilities of any relevance to the Australian tourism industry;
- no engagement, involvement or input with or by the Australian tourism industry;
- no benchmarking or relevant policy development, and made no efforts to eliminate trade impediments provided or successfully achieved for the Australian tourism industry; or
- no contribution to make or relevance to the achievement of the Tourism 2020 goals (the current Australian Government tourism policy).[21]

2.19 The Department of Foreign Affairs and Trade (DFAT) counter that Australia has a close relationship with APEC and that the APEC Tourism Working Group is actively promoting tourism in our region. In particular, DFAT argues that the Working Group's research program is aligned with the Government's current requirements:

> It does research into topics of interest to Australia and its members. It is an organisation which we find is quite responsive to being tasked to do the kinds of things we are interested in. For example, we would like to get up a major proposal in APEC which focuses on labour and skills and labour mobility. These topics are at the heart of what the government is trying to achieve in the tourism sector in Australia.[22]

2.20 In contrast to the focus of the UNWTO, DFAT see the OECD Tourism Committee as focused on the needs of the tourism industry in developed countries and therefore more likely to address the problems Australia's industry faces.[23]

2.21 The NIA points out that Australia's withdrawal from the UNWTO does not preclude the Government from engaging with the organisation. Additionally, affiliate membership of the UNWTO is open to any public or private organisation, non-government or government organisation, education institution or entity involved in tourism-related activities. This means that Affiliate Members can join the UNWTO individually regardless of whether their country of origin is a Full Member or not.[24]

2.22 The NIA offers assurance that Australia's withdrawal from the UNWTO will not reduce or eliminate access to its consultancies and project work for Australian Affiliate Members.[25] DFAT examined this issue and found

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21 Mr King, *Submission 1*, p. 7.

22 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 2.

23 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 2.

24 NIA, para 17.

25 NIA, para 19.

evidence that member countries were not necessarily favoured in the competition for contracts with the UNWTO:

> In fact, the UK picks up quite a number of consultancies with the UNWTO and it is not a member.[26]

Reasons for Australia not to withdraw from the UNWTO

2.23 Submitters to the inquiry argue that continued membership of the UNWTO is essential if the industry is to maintain a cutting edge in an increasingly competitive field. They emphasise the disadvantages posed by Australia's geographical remoteness and the importance of being part of international forums:

> Australia's location makes it physically remote from its major markets, its competitors and from trend drivers and information exchange forums.
>
> …
>
> It is therefore essential that to be both 'in tune' with and to influence, where possible, the trends and circumstances that shape the global tourism industry and its development, that Australia needs to work harder than most other countries to engage with the wider global industry and key forums.[27]

2.24 DFAT emphasised that affiliate membership was available to anyone, that it was relatively inexpensive and that it provided the same opportunities to engage with UNWTO as Australia's membership:

> If you feel in some way it enriches your engagements with the tourism industry, be it in terms of work you might get as a consultant or the value you might receive as an educational institutions, that is the way to go.[28]

2.25 DFAT also suggested that if an organisation's research interests aligned with the UNWTO's projects, affiliate membership would provide the means to advance those interests.[29]

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26 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 4.

27 Mr King, *Submission 1*, p. 6. See also National Tourism Alliance, *submission 2*, p. 1 and Queensland Tourism Industry Council, *Submission 3*, p. 3.

28 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 3.

29 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, pp. 3–4.

Obligations

2.26 Under **Article 25** (Budget and Expenditure) of the WTO Statutes, Australia is obliged to financially contribute to the organisation. While there is no direct obligation to comply with the aims of the UNWTO, under the threat of suspension of membership placed by **Article 34** (Suspension of Membership) of the WTO Statures, Australia is obliged to not 'persist in a policy that is contrary to the fundamental aim'. The fundamental aim of the UNWTO is stated in **Article 3**(Aims) as the 'promotion and development of tourism with a view to contributing to economic development, international understanding, peace, prosperity, and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.[30]

2.27 Under **Article 32** (Legal Personality, Privileges and Immunities) of the WTO Statutes, Australia is required to provide the UNWTO with the privileges and immunities in the territory of Australia required for the exercise of its functions.[31]

2.28 Australia has given effect domestically to its obligations at international law under **Article 32** of the WTO Statutes, by including the UNWTO as an organisation that enjoys privileges and immunities under the *Specialized Agencies (Privileges and Immunities) Regulations 1986* (Specialised Agencies Regulations). The Specialised Agencies Regulations are enacted under the *International Organisations Privileges and Immunities Act (Cth)* (IOPI Act). The privileges and immunities available under the Regulations include inviolability of property assets and premises of the UNWTO, tax concessions, immunity from legal suit, and diplomatic privileges and immunities for the High Officer of the UNWTO.[32]

2.29 Once Australia's withdrawal from the UNWTO takes effect, Australia will no longer have an obligation under **Article 32** of the WTO Statutes in relation to privileges and immunities. It is the intention of the IOPI Act that regulations made under the Act are supported by an international instrument (in this instance the WTO Statutes).[33] Therefore, as a matter of Australian domestic law, the Specialised Agencies (Privileges and Immunities) Regulation 1986 will be amended after the instrument of withdrawal is lodged.[34]

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30 NIA, para 20.

31 NIA, para 21.

32 NIA, para 22.

33 NIA, para 23.

34 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 2.

2.30 Pursuant to **Article 35** (Withdrawal from Membership) of the WTO Statutes, Australia may withdraw from the UNWTO on the expiry of one year's notice in writing to the Depositary Government. Pursuant to amendments to the WTO Statutes adopted by the General Assembly in 1981, the Depositary Government changed from Switzerland to Spain. These amendments were effectively adopted by Australia when it re-joined the UNWTO in 2004 (although no separate treaty action was taken by Australia in respect of amendments to the WTO Statutes between 1979 and 1989). Notification in the form of an instrument of withdrawal will be lodged with the Spanish Government as Depository following the completion of tabling of Australia's proposed withdrawal from the UNWTO under the WTO Statutes, consideration by JSCOT, amendment of the Specialised Agencies Regulations and approval of the withdrawal by the Executive Council.[35]

2.31 Under a 2005 amendment to **Article 5** of the WTO Statutes (not formally adopted by Australia) States that have withdrawn from the UNWTO in accordance with the provisions of **Article 35** have the right to become Full Members of the organisation again, without the requirement of a vote, on formally declaring that they adopt the WTO Statutes and accept the obligations of membership.[36]

2.32 Should Australia wish to again re-join the UNWTO at some later date, any future treaty action would be subject to Australia's domestic treaty process, including tabling in both Houses of Parliament and consideration by JSCOT.[37]

Implementation

2.33 Following completion of Australian domestic requirements for withdrawal from the UNWTO and amendment of the Specialised Agencies Regulations, an Instrument of withdrawal will be lodged with the Spanish Government, as the Depositary of the WTO Statutes. In accordance with **Article 35** of the Statutes, Australia's withdrawal will take effect one year from the date of deposit. The Australian Government will honour its financial commitment to the UNWTO until this process is complete.[38]

35 NIA, para 24.
36 NIA, para 32.
37 NIA, para 33.
38 NIA, para 26.

Costs

2.34 According to the NIA, Australia is required to pay Member contributions to the UNWTO for 2015, totalling €308 834 (ie approximately AU$448 669). Under **Article 14** of the Annex to the WTO Statutes, for the period during which Australia remains a member, Australia will be required to pay a pro rata amount of the 2016 Member contribution for 2016 (€331 996 or approximately AU$482 297). The amount will depend on when the Depositary Government is notified of Australia's withdrawal from the UNWTO and when the twelve month notification period ends.[39]

2.35 On joining the UNWTO, a one-off payment of around five per cent of the initial annual membership fee, (ie €8 295 or approximately AU$12 050.30) was made by Australia to the UNWTO's Working Capital Fund. Under the Financial Regulations and Rules of the UNWTO made pursuant to **Articles 11** and **18** of the WTO Statutes, this payment will be refunded after satisfaction of any financial obligation of a Member to the Organisation. Should Australia choose to request a refund of this amount, it could be considered a cost-saving.[40]

2.36 The NIA states that there are no foreseeable costs, or cost savings, to business or industry.[41] In addition it states that regulatory costs associated with this proposed treaty action, including administrative, substantive compliance and delay costs are limited to the cost of UNWTO fees during the one year withdrawal notification period under **Article 35** of the WTO Statutes.[42]

2.37 DFAT emphasised that savings made in the past from similar exercises have been redirected towards tourism promotion. For example, Tourism Australia had contributed half of the membership fee up till the 2013–14 financial year (approximately $215 000). However, since then that funding has been put directly into marketing:

> [Tourism Australia] promote Australia as a tourism destination around the world. The global tourism market is becoming more and more competitive, not less so, and we just feel that is a much better use of those funds for us—certainly investing in our key markets and promoting our great country.[43]

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39 NIA, para 27.

40 NIA, para 28.

41 NIA, para 29.

42 NIA, para 30.

43 Mr Tim Mahony, Executive General Manager, Corporate Affairs, Government and Industry, Tourism Australia, *Committee Hansard*, 11 May 2015, p. 5.

Conclusion

2.38 The Committee recognizes the important work of the UNWTO and its focus on promoting responsible, sustainable tourism particularly in developing countries.

2.39 The Committee acknowledges the concerns expressed by submitters to the inquiry regarding Australia's withdrawal from the UNWTO but the evidence suggests that affiliate membership is available to organisations and institutions and will provide equal access to the benefits of the UNWTO.

2.40 The Committee is aware that the decision can be reversed, as it has been in the past, if institutions or national priorities change.

2.41 The Committee supports the withdrawal of Australia from the UNWTO.

Recommendation 1

2.42 **The Committee supports the withdrawal of Australia from the *World Tourism Organization (WTO) Statutes.***

3

International Maritime Organization Instrument Implementation Code

Introduction

3.1 This chapter considers the *International Maritime Organization (IMO) Instruments Implementation Code* (III Code) and consequent amendments to the following six IMO Conventions:

- International Convention on Load Lines, 1996;
- International Convention on Tonnage Measurement of Ships, 1969 [1982] ATS 15;
- Convention on the International Regulations for Preventing Collisions at Sea 1972 [1980] ATS 5;
- International Convention for the Safety of Life at Sea, 1974 [1983] ATS 22, as amended (SOLAS);
- International Convention on Standards of Training, Certification and Watch-keeping of Seafarers, 1978 [1984] ATS 7; and
- Protocol of 1988 relating to the International Convention on Load Lines, 1966 [2000] ATS 2, as amended.[1]

3.2 The amendments were effected by way of seven resolutions adopted by the IMO Assembly in December 2013 and May 2014 and tabled in the Parliament on 5 March 2015.

3.3 Additionally, further amendments were adopted for the International Convention for the Safety of Life at Sea (SOLAS), specifically regarding

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1 National Interest Analysis [2015] ATNIA 5 with attachment on consultation Resolution A.1070 (28) *IMO Instrument Implementation Code* (III Code) [and consequent Amendments to six IMO Conventions], done at London on 4 December 2013 and 22 May 2014 ATNIF 8 (hereafter referred to as 'NIA'), paragraphs 1 and 2.

compliance with steering gear requirements and fire safety and management.[2]

3.4 The amendments to the International Convention for the Safety of Life at Sea, the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers and the Protocol relating to the International Convention on Load Lines will all be deemed to be accepted on 1 July 2015, unless, prior to that date, more than one third of the relevant contracting Parties, have notified their objections to the amendments. Subject to this condition being satisfied, the amendments will enter into force on 1 January 2016.[3]

3.5 Likewise, the amendment to the Convention on the International Regulations for Preventing Collisions at Sea will enter into force on 1 January 2016, unless by 1 July 2015 more than one third of Contracting Parties have notified their objection to the amendment.[4]

3.6 The Foreign Minister, the Hon Julie Bishop MP, wrote to the Joint Standing Committee on Treaties (JSCOT) on 4 March 2015, informing the Committee of the 'deemed acceptance' provisions and requesting JSCOT to expedite its consideration of the treaties.

Overview and national interest summary

3.7 The National Interest Analysis (NIA) states that the objective of the III Code is to provide a mandatory Audit Scheme for assessing Member States' performance in meeting their obligations and responsibilities as flag, port and coastal States under the relevant IMO Conventions and to offer assistance, where required, for Member States to meet their obligations fully and effectively.[5]

3.8 According to the NIA, acceptance of the III Code through incorporation into the relevant IMO Conventions is intended to provide audit and assistance functions for all IMO Member States. The NIA argues that by standardising auditing procedures, the III Code will enable IMO Member States to evaluate their compliance with its international obligations. Additionally, the III Code should enable the IMO to better assess its performance as the international maritime standard setting organisation.

2 NIA, para 4.
3 NIA, para 5.
4 NIA, para 6.
5 NIA, para 9.

The III Code is expected to deliver improved maritime safety and environmental outcomes in Australian and international waters.[6]

Reasons for Australia to take the proposed treaty action

3.9 The NIA maintains that Australia is a long-standing supporter of the institutionalisation of the Audit Scheme. The III Code was preceded by a Voluntary IMO Member State Audit Scheme and it was agreed that the Scheme should eventually be mandatory. The NIA states that Australia was audited under the Voluntary Scheme in 2008.[7]

3.10 The preamble to the III Code affirms that States are responsible 'to have in place an adequate and effective system to exercise control over ships entitled to fly their flag, and to ensure that they comply with relevant international rules and regulations in respect of maritime safety, security and protection of the marine environment'.[8]

3.11 The III Code is designed to assist States in the implementation of the IMO instruments.[9] To accomplish this objective, the Code recommends that States:

- develop an overall strategy to ensure that its international obligations and responsibilities as a flag, port and coastal State are met;
- establish a methodology to monitor and assess that the strategy ensures effective implementation and enforcement of relevant international mandatory instruments; and
- continuously review the strategy to achieve, maintain and improve the overall organizational performance and capability as a flag, port and coastal State.[10]

3.12 According to the NIA, the III Code should ensure that IMO Member States adhere to their international obligations, increasing maritime safety and security and improving the protection of the marine environment. As well, the III Code provides an opportunity for the IMO to identify capacity building needs and offer technical assistance to Members States, where required.[11]

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6 NIA, para 10.

7 NIA, para 11.

8 Preamble, *Resolution A.1070 (28), IMO Instruments Implementation Code (III Code)*, adopted on 4 December 2013 (III Code).

9 III Code, Part 1, 1.

10 III Coad, Part 1, 3.

11 NIA, para 12.

3.13 With regard to the amendments to SOLAS, the NIA suggests that the amendments provide clarity to the Australian shipping industry on regulatory standards, present best practice in vessel fire safety and management and also ensure international regulatory consistency and promote smooth international trade.[12]

Obligations

3.14 Resolution A.1070 specifies that the IMO Assembly adopts the III Code as set out in the Annex to the Resolution.[13]

3.15 Each of the IMO Resolutions currently before the Committee (A.1083, A.1084, A.1085, MSC.366, MSC.373 and MSC.375) makes three amendments to the relevant IMO Convention. The amendments listed in each Resolution are identical and can be summarised as follows:

- Amendment 1: creates new definitions for terms of relevance to the III Code including Audit, Audit Scheme, Code for Implementation and Audit Standard;
- Amendment 2: specifies that Contracting Governments shall use the provisions of the Code for Implementation in the execution of their obligations and responsibilities contained in the respective convention; and
- Amendment 3: specifies that every Contracting Government shall be subject to periodic audits by the IMO, and that the administration of the Audit Scheme will be the responsibility of the Secretary-General of the IMO and conducted in accordance with the guidelines contained in Resolution A.1067 (28). Amendment 3 also specifies that every Contracting Government shall be responsible for facilitating the conduct of the audit and responding to the findings, based on the guidelines contained in that Resolution.[14]

3.16 Resolution A.1067 (28) (not tabled) creates procedural guidelines outlining how the auditing will be undertaken. The purpose of this document is also to describe the objectives, principles, scope, responsibilities and capacity-building aspect of the IMO Member State Audit Scheme and to ensure that auditing procedures are undertaken in an internationally consistent manner.[15]

12 NIA, para 13.
13 NIA, para 14.
14 NIA, para 15.
15 NIA, para 16.

3.17 The amendments to SOLAS presented in Resolution MSC.365 make minor amendments to a number of existing technical standards relating to fire safety in ships and verification of compliance with existing standards. These standards will apply to passenger and cargo ships, tankers, oil tankers and gas carriers.[16]

Implementation

3.18 According to the NIA, no legislative amendment is required to implement the III Code. It would be the responsibility of the Australian Government, as a Party to the relevant IMO Conventions, to facilitate the conduct of a mandatory audit and address the findings.[17]

3.19 The NIA also states that no legislative amendment is required to give effect to the amendments to SOLAS presented in Resolution MSC.365. The NIA offers assurance that existing Marine Orders administered by the Australian Maritime Safety Authority (AMSA) are currently capable of capturing the requirements of these amendments.[18]

Costs

3.20 The NIA maintains that implementation of the relevant IMO Resolutions is expected to have negligible administrative impact, with compliance costs likely to remain unchanged.[19]

3.21 The NIA states that the amendments presented in Resolution MSC.365 are likely to result in minor cost increases for the Australian shipping industry. Part of constructing any ship includes the installation of fire protection equipment and systems that meet the international standards. The NIA argues that amendments presented in MSC.365 are minor adjustments to those standards and will therefore result in minor costs.[20]

3.22 AMSA does not expect departments to require further resources to comply with the Resolutions. AMSA indicated that the voluntary audit carried out in 2008 had been complied with within current resource limits.[21] The

16 NIA, para 17.

17 NIA, para 18.

18 NIA, para 19.

19 NIA, para 21.

20 NIA, para 22.

21 Mr Brad Groves, General Manager, Navigation Safety and International Division, Australian Maritime Safety Authority (AMSA), *Committee Hansard*, 11 May 2015, p. 7.

Department of Infrastructure and Regional Development said that there was sufficient provision under existing arrangements to meet the requirements.[22]

Conclusion

3.23 The Committee supports Australia's ratification of the IMO Instruments Implementation Code and the amendments to other IMO Conventions required to give the III Code effect and recommends that binding treaty action be taken.

Recommendation 2

3.24 **The Committee supports Resolution A.1070 (28) IMO Instruments Implementation Code, amendments to relevant IMO Conventions and amendments to the *International Convention for the Safety of Life at Sea* and recommends that binding treaty action be taken.**

22 Mr Andrew McDonald, Director, Maritime Economic Regulation Section, Maritime and Shipping Branch, Surface Transport Policy Division, Department of Infrastructure and Regional Development, *Committee Hansard*, 11 May 2015, p. 7.

4

Protocol establishing prolongation of the treaty between Australia and the Kingdom of the Netherlands regarding Malaysia Airlines flight MH17

Introduction

4.1 This chapter considers the *Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17* (Protocol) which was tabled in the Parliament on 12 May 2015.

4.2 The Joint Standing Committee on Treaties (JSCOT) examined the original *Treaty between Australia and the Kingdom of the Netherlands on the presence of Australian personnel in the Netherlands for the purpose of responding to the downing of Malaysia Airlines Flight MH17* (Treaty) in October 2014 and tabled its report into the inquiry in February 2015.[1] The Treaty is due to expire on 1 August 2015 and the Protocol proposes to extend the Treaty until 1 August 2016.[2]

4.3 The Treaty was not tabled in Parliament for the usual 20 days before binding treaty action was taken. Instead, under the National Interest

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1 Joint Standing Committee on Treaties (JSCOT), *Report 146: Treaty tabled on 30 September 2014*, February 2015.

2 National Interest Analysis [2015] ATNIA 6, with attachment on consultation *Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17* [2015] ATNIF 13 (hereinafter referred to as 'NIA'), para 2.

Exemption (NIE), the Treaty entered into force on the date it was signed by both Australia and the Netherlands, 1 August 2014.[3]

4.4 The Protocol only extends the term of the Treaty. It does not amend any other provisions.[4]

4.5 The NIA states that Australia is seeking approval from the Executive Council (ExCo) for the Protocol to enter into force upon signature as provided for in **Article 2** of the Protocol. Signature will occur once Australia and the Netherlands have completed their domestic requirements for entry into force (expected by 1 August 2015).[5]

Overview and national interest summary

4.6 In response to the downing of Malaysia Airlines Flight MH17, significant numbers of Australian personnel were deployed to the Netherlands under the Treaty to provide assistance in relation to tasks such as the identification of victims and the investigation of the cause of the incident.[6]

4.7 The Treaty defines the rights, obligations and arrangements between Australia and the Netherlands necessary to facilitate Australia's deployment to, and operations in, the Netherlands. It ensures that all deployed personnel are accorded appropriate protections.[7]

4.8 The NIA states that due to Dutch domestic requirements, the duration of the Treaty was limited to twelve months. As the criminal investigation into the downing of flight MH17 is ongoing, and personnel from the Australian Federal Police and the Department of Defence are likely to remain in the Netherlands beyond 1 August 2015, the Protocol to prolong the Treaty is required to ensure their ongoing protection.[8]

Obligations

4.9 The Protocol extends the Treaty for a further twelve months (**Article 1**). As a result, both Australia and the Netherlands will remain bound by the

3 NIA, para 3.

4 NIA, para 4.

5 NIA, para 5.

6 NIA, para 6. For further details see JSCOT, *Report 146: Treaty tabled on 30 September 2014*, pp 4–5.

7 NIA, para 7.

8 NIA, para10.

provisions in the Treaty for the extended period unless terminated earlier. The Protocol will enter into force on the date of last signature (**Article 2**).[9]

Implementation

4.10 The term of the Treaty will automatically be extended on signature of the Protocol. No legislation is required to implement Australia's obligations under the Protocol.[10]

Conclusion

4.11 The Committee conducted an inquiry into the original Treaty in October 2014, calling for submissions and holding a public hearing.

4.12 The Committee recognises the need to maintain without interruption the legal framework required to allow Australian personnel to continue and complete their work in the Netherlands as soon as possible.

4.13 The Committee supports the Protocol and recommends that binding treaty action be taken.

Recommendation 3

4.14 **The Committee supports the *Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17* and recommends that binding treaty action be taken.**

9 NIA, para 11. For details of the Treaty see JSCOT, *Report 146: Treaty tabled on 30 September 2014*, pp 5–7.

10 NIA, para 19.

Mr Wyatt Roy MP
Chair
5 June 2015

Dissenting Report—The Hon Kelvin Thomson MP (Deputy Chair), The Hon Melissa Parke MP, Senator Sue Lines, Mr Tim Watts MP, Senator the Hon Joe Ludwig and Senator Glenn Sterle.

As members of the Joint Standing Committee on Treaties (JSCOT), we dissent from the majority view of JSCOT and do not support the proposal to withdraw Australia from the United Nations World Tourism Organisation (UNWTO).

Summary Overview

Australia has been a member of the United Nations World Tourism Organisation (UNWTO) since 2004, joining 156 member countries to promote responsible, sustainable, and universally accessible tourism.

The UNWTO values tourism as a driver of economic growth, working to assist member countries to increases competitiveness and promote sustainable tourism development.

UNWTO membership provides Australia's tourism industry, which employs nearly one million Australians, with the ability to gain essential industry-related knowledge through access to valuable world tourism data, and allows Australia the opportunity to develop its international reputation, standing, and influence within the sector through participation in key international tourism meetings.

Specific Areas of Concern

Australia's $107 billion tourism sector has experienced significant budgetary cuts to the domestic tourism market with cuts to grants and marketing by the Australian Government, in addition to losing dedicated executive supervision and representation through the removal of a specific Minister for Tourism, and the

abolition of the Survey of Tourist Accommodation (STA), the Tourism Industry Regional Fund (TIRF), and the quality accreditation framework (T-QUAL).

Withdrawing from one of the world's biggest international tourism fora could further damage Australia's competitiveness in our key markets, limit access to research and statistics, undermine Australia's aid and development agenda in the Asia Pacific and weaken Australia's international reputation, causing another serious blow to an industry that Australia relies on as a driver for economic growth and employment, particularly over the next 20 years.

It must also be noted that the National Tourism Alliance, the Australian Tourism Export Council, and the Queensland Tourism Industry Council, all key industry stakeholders, are opposed to the decision to withdraw Australia from the UNWTO, and that no stakeholder was willing to publicly support the withdrawal during the Department of Foreign Affairs and Trade consultation.

Withdrawing Australia from the UNWTO would not be in Australia's national interest; the better approach would be for Australia to continue to be active and prominent on the international stage by remaining a member of the UNWTO and advocating for reform to better engage industry with the international organisation. The benefit of this approach would be that Australia continues to uphold its growing international reputation, as well as assisting our tourism industry to remain globally competitive through the development of the high-quality and sustainable Australian tourism product that is at the heart of our distinctive offer.

The Hon Kelvin Thomson MP
(Deputy Chair)

The Hon Melissa Parke MP

Senator Sue Lines

Mr Tim Watts MP

Senator the Hon Joe Ludwig

Senator Glenn Sterle

A

Appendix A - Submissions

Treaty tabled on 3 March 2015

1 Mr John King OAM
2 National Tourism Alliance
3 Queensland Tourism Industry Council

B

Appendix B - Witnesses

Monday, 11 May 2015—Canberra

Australian Maritime Safety Authority

Mr Brad Groves, General Manager, Navigation Safety and International Division

Department of Foreign Affairs and Trade

Mr Paul Wojciechowski, Assistant Secretary, Economic Advocacy and Analysis Branch, Trade, Investment and Economic Diplomacy Division

Department of Infrastructure and Regional Development

Mr Andrew McDonald, Director, Maritime Economic Regulation Section, Maritime and Shipping Branch, Surface Transport Policy Division

Tourism Australia

Mr Tim Mahony, Executive General Manager, Corporate Affairs, Government and Industry