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**SENATE STANDING COMMITTEE ON
REGULATIONS AND ORDINANCES**



**REPORT ON SCRUTINY BY THE COMMITTEE OF
REGULATIONS IMPOSING UNITED NATIONS SANCTIONS**

NINETY-THIRD REPORT

DECEMBER 1992

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**SENATE STANDING COMMITTEE ON
REGULATIONS AND ORDINANCES**

MEMBERS OF THE COMMITTEE

Senator Stephen Loosley (Chairman)
Senator Bronwyn Bishop (Deputy Chairman)
Senator Mal Colston
Senator Bill O'Chee
Senator Kay Patterson
Senator Olive Zakharov

PRINCIPLES OF THE COMMITTEE

(Adopted 1932: Amended 1979)

The Committee scrutinises delegated legislation to ensure:

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- (d) that it does not contain matter more appropriate for parliamentary enactment.

INTRODUCTION

The 19 sets of regulations which effected the details of Australia's implementation of United Nations sanctions against Iraq, Kuwait, Libya and Yugoslavia are a classic example of the speed with which delegated legislation may be made and commenced and of the flexibility of its operation.

The regulations are also an example of the use of delegated legislation to implement obligations under general international law, in contrast to the more usual delegated legislation which provides the administrative or technical details of schemes and programs established by the parent Act.

Scrutiny of these regulations presented special challenges to the Standing Committee on Regulations and Ordinances. First, there was the importance of the subject matter, which may have made their provisions more suitable for parliamentary debate and enactment. Next, there were the effects of the sanctions on the personal rights of people to travel and earn a living, and to have the merits of adverse decisions by administrators reviewed by an independent body.

After considering these possible concerns, the Committee is pleased to report that the form and content of the regulations was appropriate and that they satisfied the high standards of the Committee in respect of personal rights and parliamentary propriety.

CHAPTER ONE

ISSUES FOR THE COMMITTEE

Between August 1990 and June 1992 the Standing Committee on Regulations and Ordinances scrutinised 19 sets of regulations which implemented the administrative details of United Nations total or partial sanctions against Iraq, Kuwait, Libya and Yugoslavia. The regulations, made under four separate parent Acts, imposed sanctions on Iraq and Kuwait in respect of imports and exports, migration and air navigation; on Libya in respect of exports and air navigation; and on Yugoslavia in respect of air navigation, imports and exports and migration. In addition, regulations in respect of foreign exchange were amended without expressly mentioning an individual country, but in such a way that sanctions could be imposed by administrative action on, firstly, Iraq and Kuwait and then, later, on Yugoslavia.

As with the other approximately 1,500 instruments of delegated legislation made each year, the Committee was anxious to ensure that the regulations complied with the highest technical legislative standards. To do this, the Committee applied its four principles, or terms of reference, to the 19 sets of regulations, each of which was, of course, tabled in the Senate and was subject to disallowance. These principles, now included in the Standing Orders, are that delegated legislation should be in accordance with the statute, should not trespass unduly on personal rights, should provide appropriate review of the merits of administrative decisions and should not contain matter more appropriate for parliamentary enactment. The four principles may be summarised by saying that the Committee protects personal rights and parliamentary propriety.

The regulations dealt with matters which could have affected personal rights. Thus, restrictions on migration and air navigation may breach a fundamental right to travel, while restrictions on exports, imports and foreign exchange transactions may adversely affect the right to earn a living. In addition, the scheme of each type of sanction was similar, being a general prohibition subject to exemption by the Minister, a delegate or an official. In such cases, it may be a breach of personal rights if appropriate external, independent review of the merits of adverse decisions is not provided.

The regulations could also have affected parliamentary propriety, in that the importance of their subject matter was such that it may have been more suitable for inclusion in a Bill which could have been debated in Parliament.

Also, the regulations were unusual in that the sanctions which they implemented were not established by the parent Act or any other Act. Rather, the sanctions were the consequence of United Nations Resolutions with which, the Committee understands, Australia is obliged to comply under international law. This made the

Committee's task more difficult. In addition, the Committee had to ensure that the sanctions were in accordance with the parent Acts.

This Report will examine the 19 sets of regulations and set out the Committee's findings as a case study of delegated legislation used for its classic purpose of *providing the administrative details of broader policy established elsewhere.*

CHAPTER TWO

SANCTIONS AGAINST IRAQ AND KUWAIT

On 6 August 1990 the Australian government announced its commitment to implement United Nations Security Council Resolution No 661 (1990) of the same day. That Resolution imposed various sanctions on Iraq and on Kuwait, which had been invaded and occupied by Iraq on 2 August 1990.

The Commonwealth Parliament was not sitting on 6 August, and did not sit until Budget Day, 21 August 1990. However, the Australian government was able to implement the Resolution at once through delegated legislation, on 8 August the Governor-General making three sets of regulations to effect this intention.

The Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1990 No 264, prohibited the export from Australia of goods of any description to Iraq or Kuwait, of goods of Iraqi or Kuwaiti origin to any country, or of goods certified by the Minister as goods which the Minister had reasonable grounds for believing were ultimately intended for Iraq or Kuwait or were of Iraqi or Kuwaiti origin.

These absolute prohibitions on exports were subject to exemptions permitted by the Minister or an authorised person. If an authorised person proposed to refuse an application to export, then the application had to be referred to the Minister. Such permission could be subject to conditions or requirements, including time limits for compliance. The Minister could revoke a permission if a condition or requirement was not met. The reason for these exceptions was to accommodate special case situations for trade with both countries, such as an humanitarian exception noted in the United Nations Resolution.

The provision for reference of proposed adverse decisions to the Minister was included earlier in the Principal Regulations to implement an undertaking given to the Standing Committee on Regulations and Ordinances. The Committee had suggested that where decisions involving high government policy were made by public servants, and those decisions were not the subject of independent merits review, such decisions should not be made without review by the Minister as the representative of the Government.

The Customs (Prohibited Imports) Regulations (Amendment), Statutory Rules 1990 No 265, were drafted as a mirror image of the regulations prohibiting exports, the description of prohibited imports and the exceptions to them being the same.

The Banking (Foreign Exchange) Regulations (Amendment), Statutory Rules 1990 No 266, were shorter and less direct than the regulations dealing with export and import sanctions against Iraq and Kuwait. They simply provided that the

Treasurer, when giving directions under specified provisions of the Principal Regulations, must take into account Australia's relations with other countries and its obligations under international law. The Explanatory Statement which accompanied the regulations advised that the Reserve Bank of Australia, which administered the Principal Regulations on behalf of the government, had powers which could protect the assets of the legitimate government of Kuwait and restrict transfers of funds from residents of Australia to residents of Iraq and Kuwait. The present amendments would ensure that the powers of the Reserve Bank were used to meet Australia's obligations under the United Nations Resolution.

Later, on 30 August 1990, the Governor-General made the **Migration (Iraq and Kuwait)(United Nations Security Council Resolution No 661) Regulations, Statutory Rules 1990 No 281**. The purpose of these regulations was also to implement Resolution No 661 (1990). However, these regulations, unlike the three sets of regulations made earlier in the month, were Principal Regulations, while the other three were amending regulations incorporated into an existing administrative framework.

These regulations, aimed mainly at persons in Iraq and Kuwait seeking business visas, were intended to prevent activities by visitors to Australia which may be incompatible with the Resolution. The regulations, expressed to apply despite the Migration Regulations, provided that the Minister could not grant a visa or entry permit to a person if the Minister was satisfied that the person would be likely to engage in specified activities in Australia. These activities were the supply of any commodity or product to any person in Iraq or Kuwait or to any person, in Australia or overseas, for the purposes of any business conducted in or from Iraq or Kuwait.

The regulations excepted from these activities the supply of medical goods and assistance to the legitimate government of Kuwait. In addition, the Minister could permit persons other than Australian citizens or permanent residents to engage in such activities if this would not infringe Australia's obligations under international law. If the Minister was satisfied that a person, other than a permanent resident, had engaged in activities which the regulations were intended to prevent, then the Minister could cancel any visa or entry permit held by that person.

The **Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1990 No 333**, made on 11 October 1990, corrected technical drafting errors in the **Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1990 No 264**. Unlike all the other instruments made up to that date in respect of Resolution No 661 (1990), this set of regulations dealt with other matters unconnected with the Resolution.

On 25 September 1990 the United Nations Security Council adopted Resolution No 670 (1990), which imposed air navigation sanctions on Iraq and Kuwait. These sanctions were implemented by the **Air Navigation Regulations (Amendment), Statutory Rules 1990 No 432**, made on 17 December 1990. These regulations inserted a new Part into the Principal Regulations. They provided that an Australian aircraft carrying cargo must not, without the approval of the Secretary,

travel to or from Iraq or Kuwait. In addition, no foreign aircraft carrying cargo and whose destination was Iraq or Kuwait could take off from Australia without the approval of the Secretary; and an aircraft that had come from, or whose destination was, Iraq or Kuwait must not fly over, or land in, Australia without the approval of the Secretary.

The regulations also provided that the Secretary could only approve flights carrying either food in specified humanitarian circumstances, medical supplies or supplies for the United Nations Iran-Iraq Military Observer Group (UNIIMOG). Any such flight was subject to conditions requiring it to land at a designated airfield outside Iraq or Kuwait to permit inspection to ensure that its cargo did not breach any United Nations Resolutions, that the flight was approved by the United Nations, or that the flight was for UNIIMOG purposes. If an application was made to the Secretary to approve a flight the Secretary was required to give the applicant a copy of an English translation of Security Council Resolutions Nos 661 (1990), 666 (1990) and 670 (1990).

The Explanatory Statement which accompanied these regulations was the first to discuss review of the merits of decisions made in the course of implementing United Nations sanctions against Iraq and Kuwait. Such review was considered inappropriate because the decisions were for the purpose of fulfilling Australia's international obligations and because of the effect on Australia's relations with other countries.

The Migration (Iraq and Kuwait)(United Nations Security Council Resolution No.661) Regulations, which were Principal Regulations, did not provide for review of the merits of decisions. The amendments of the Banking (Foreign Exchange) Regulations, the Customs (Prohibited Exports) Regulations and the Customs (Prohibited Imports) Regulations which implemented Resolution No 661, also did not provide expressly for merits review. However, as noted earlier, both the Customs (Prohibited Exports) Regulations and the Customs (Prohibited Imports) Regulations provide that specified matters, including those made in respect of certain applications relating to sanctions against Iraq and Kuwait, must be referred to the Minister for decision. The Banking (Foreign Exchange) Regulations do not provide for review of the merits of decisions. The reasons why these amendments did not provide for review are presumably not only those relating to international obligations and international relations, but also because the existing structure of the Principal Regulations into which they were incorporated did not include such provision.

The Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1991 No 24, made on 27 February 1991, amended Australia's export sanctions against Iraq and Kuwait in force since 8 August 1990. The purpose of the amendments was to remove any doubt that exports by the legitimate government of Kuwait were not caught by the Australian sanctions. The Explanatory Statement advised that the reason for this was that the legitimate government of Kuwait was purchasing supplies and equipment for the reconstruction of the country following its expected liberation. These goods were being stockpiled in third countries pending the return

of the legitimate government.

The new regulations first defined "sanctions resolutions" as Resolutions No 661 (1990) and No 666 (1990). They then omitted the main provision of the previous export sanctions regulations and substituted fresh provisions. Under those new provisions the export from Australia to Iraq or Kuwait of any goods, or of Iraqi or Kuwaiti goods to any country, was prohibited without the permission of the Minister or an authorised person. Permission could not be given if the export would be inconsistent with the sanctions resolutions. The export from Australia to any country of any goods the ultimate intended destination of which was Iraq or Kuwait was prohibited if inconsistent with the sanctions resolutions.

Following the liberation of Kuwait and the adoption of Security Council Resolution No 686 (1991) of 2 March 1991, the Australian government acted to repeal all sanctions measures taken against Kuwait in the context of Resolution No 661 (1990). However, consistent with the relevant United Nations Resolutions, sanctions against Iraq would remain.

The first delegated legislation to effect this intention was the **Migration (Iraq - United Nations Security Council Resolution No 661) Regulations, Statutory Rules 1991 No 37**, made on 21 March 1991. These regulations repealed the **Migration (Iraq and Kuwait)(United Nations Security Council Resolution No 661) Regulations**, retaining all existing provisions but omitting references to Kuwait. As reflected in the new title, the regulations therefore continued sanctions on Iraq.

A different drafting technique was used to achieve the same object in the **Air Navigation Regulations (Amendment), Statutory Rules 1991 No 74**, made on 18 April 1991. These regulations were also intended to implement Resolution No 686 (1991) by removing all sanctions against Kuwait, although this was in respect of sanctions imposed by Resolution No 670 (1990) rather than No 661 (1990). In this case the relevant regulations were not repealed and remade but rather all references to Kuwait were simply removed. Thus, the substantive part of the new regulations was just five provisions, each being to omit "or Kuwait" from the Principal Regulations.

Each of two other sets of regulations made on 18 April 1991, the **Customs (Prohibited Imports) Regulations (Amendment), Statutory Rules 1991 No 76** and the **Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1991 No 77**, removed all sanctions and related measures over trade with Kuwait imposed under Resolution No 661 (1990). The drafting techniques for both sets of regulations was the same as that for the amendment of the **Air Navigation Regulations**. The only substantive provisions of the new regulations merely omitted references to Kuwait.

The making of these regulations on 21 March 1991 and 18 April 1991 removed all Australian legislative sanctions against Kuwait. It was not necessary to amend the **Banking (Foreign Exchange) Regulations** because the earlier amendment of those regulations, although made expressly to implement Resolution No 661 (1990), was

drafted to have continuing universal effect. However, export and import, foreign exchange, air navigation and migration sanctions in accordance with United Nations Resolutions remained in place against Iraq.

The Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1991 No 118, made on 30 May 1991, provided more flexibility in the administration of legislative sanctions on exports to Iraq. This followed adoption by the Security Council on 2 April 1991 of Resolution No 687 (1991), which permitted commercial sales of materials and supplies, including food, for essential civilian needs.

The new regulations generally prohibited the export of goods whose immediate or final destination was Iraq, or goods that originated, wholly or in part, in Iraq. However, the Minister for Foreign Affairs and Trade could permit the export of these goods if he or she was satisfied that this would not infringe Australia's international obligations. The Minister could impose conditions on such export and could revoke or modify permission to export if a condition was breached or if continuance of the exports would infringe international obligations. The Minister could delegate his or her powers under the regulations to any person.

These amendments included a drafting technique similar to that used in the amendments to the **Banking (Foreign Exchange) Regulations**, which removed the necessity to amend the Principal Regulations if the terms of the relevant resolution were changed.

The Migration (Iraq-United Nations Security Council Resolutions) Regulations, Statutory Rules 1991 No 222, continued the series of Principal Regulations made expressly to implement United Nations resolutions. The form and structure of these regulations was the same as the two earlier instruments in the series. Like those earlier sets of regulations, the present Principal Regulations repealed and remade the previous set in the same way as it had repealed and remade the original regulations. Again, like those two earlier sets, the regulations were expressed to operate in spite of the **Migration Regulations**. The regulations were identical in wording to the previous set, apart from the change in the title, which recognised that the regulations implemented Resolution No 687 (1991) as well as Resolution No 661 (1990), and a short paragraph of nine words which had the effect of removing the prohibition on visas or entry permits to persons involved in the supply of goods to Iraq, where supply related solely to foodstuffs. The drafting technique used in these regulations meant that it was not necessary to amend their provisions as long as any United Nations migration sanctions remained in force, even if their conditions were changed from time to time.

The Customs (Prohibited Imports) Regulations (Amendment), Statutory Rules 1991 No 248 made on 2 August 1991, were intended, among other things, to ensure consistency of controls over all trade with Iraq. These regulations made similar changes to those made on 30 May 1991 to the **Customs (Prohibited Exports) Regulations**. In particular, their form of drafting removed the need to make new regulations for each new resolution.

The Air Navigation Regulations (Amendment), Statutory Rules 1992 No 104, as well as imposing sanctions on Libya (see Chapter 3), amended the existing provisions for sanctions on Iraq. As with the regulations implementing sanctions in export and imports, those implementing sanctions on air navigation had previously set out the details of Security Council resolutions, with consequent amendments each time a new resolution was adopted. However, the present regulations included what was now the standard provision that in deciding whether to approve flights the Secretary must take into account Australia's relations with other countries and its obligations under international law. This removed the necessity for continual amendments.

At the time of this Report, United Nations sanctions against Iraq, implemented in Australia's case by regulations making or amending five different Principal Regulations, remained in effect. However, these Principal Regulations all now include provisions drafted so that amendment will not be necessary even if the United Nations changes the terms of the sanctions.

CHAPTER THREE

SANCTIONS AGAINST LIBYA

United Nations Security Council Resolution No 748 (1992) of 31 March 1992 provided for limited trade and air navigation sanctions against Libya. The Australian government implemented these sanctions by two sets of regulations made on 16 April 1992.

The Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1992 No 103, among other things, prohibited the export to Libya of goods specified in a new Schedule, without the written permission of the Minister for Foreign Affairs and Trade or an authorised person. An authorised person was defined as an officer of the Department of Foreign Affairs and Trade authorised in writing by the Minister. When deciding whether to give permission, the Minister or an authorised person was required to take into account Australia's relations with other countries and its obligations under international law. Permission could be with conditions, including quantity, time and circumstances of export. The prohibited goods in the Schedule included paramilitary equipment, aircraft and aircraft components.

The Principal Regulations did not provide for independent review of the merits of any adverse decision. However, they did provide that where an authorised person proposed to refuse applications to export, he or she must refer the matter to the Minister. The present regulations included such a mandatory reference to the Minister.

These regulations were similar in drafting and structure to those implementing export sanctions against Iraq and Kuwait. That is, the sanctions were included in the existing Principal Regulations. Thus, the Explanatory Statement advised that the export of other goods included in the resolution was already controlled by existing provisions in the Principal Regulations.

The Air Navigation Regulations (Amendment), Statutory Rules 1992 No 104, as well as amending air navigation sanctions against Iraq, prohibited Australian aircraft from travelling to or from Libya without the approval of the Secretary. An aircraft which left Libya, or which was destined for Libya, was prohibited from landing in or flying over Australian territory without the approval of the Secretary. When deciding whether to grant approval, the Secretary was required to take into account Australia's relations with other countries and its obligations under international law. This latter provision, like other similar provisions in the different sets of regulations imposing sanctions on Iraq and Libya, meant that it was not necessary to amend the regulations if further Security Council resolutions changed the conditions of the sanctions.

Like the regulations imposing export sanctions on Libya, Iraq and Kuwait, and like the air navigation sanctions on Iraq and Kuwait, the air navigation sanctions against Libya consolidated new requirements into the existing administrative structure of the Principal Regulations. This was in contrast to migration sanctions against Iraq and Kuwait, where several sets of new Principal Regulations were made. The Explanatory Statement advised that no provision was made for review of the merits of decisions because the amendments were made to fulfil Australia's international obligations and because of the effect on Australia's relations with other countries.

At the date of this Report, the regulations imposing United Nations sanctions on Libya remained in effect.

CHAPTER FOUR

SANCTIONS AGAINST YUGOSLAVIA

The United Nations Security Council adopted Resolution No 757 (1992) on 30 May 1992. That resolution imposed sanctions on the Federal Republic of Yugoslavia (Serbia and Macedonia). Within days regulations were made implementing the sanctions.

The **Air Navigation Regulations (Amendment), Statutory Rules 1992 No 153**, were made on 2 June 1992 and were gazetted and commenced on that day. The regulations prohibited Australian aircraft from flying to or from Yugoslavia without the approval of the Secretary. They also prohibited aircraft which left or were bound for Yugoslavia, from landing in or flying over Australian territory, without the approval of the Secretary. In deciding whether to give approval the Secretary was required to take into account Australia's relations with other countries and its obligations under international law.

The regulations also provided that any agreement under which air services of Yugoslavia may operate into Australia ceased to have effect after the adoption of Resolution No 757 (1992).

As with the corresponding regulations on air navigation sanctions against Iraq and Libya, the requirement for the Secretary to take into account Australia's international relations and obligations removed the need to amend the *Principal Regulations* if the Security Council adopted further such resolutions.

The Explanatory Statement advised that the ending of relevant air services agreements made inoperative the international air licence granted to the designated carrier of the former Socialist Federal Republic of Yugoslavia, the airline "JAL". The Explanatory Statement also advised that review of the merits of decisions was not appropriate because they related to our international obligations and relations.

The **Customs (Prohibited Imports) Regulations (Amendment), Statutory Rules 1992 No 154**, and **Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1992 No 155**, were both made on 2 June 1992 and gazetted and commenced on that date.

The amendments of the **Customs (Prohibited Imports) Regulations** prohibited the importation of any goods from Yugoslavia or of goods from any country of Yugoslav origin, except with the permission of the Minister for Foreign Affairs and Trade, who must be satisfied that the importation would not infringe Australia's international obligations. Permission could be given on conditions relating to times, quantities and circumstances of importation. The Minister could revoke or modify

permission if satisfied that a condition was breached or that continuation of the permission would infringe Australia's international obligations. The Minister's powers could be delegated to an authorised person, although if an authorised person proposed to refuse permission, the matter had to be referred to the Minister.

The amendments of the **Customs (Prohibited Exports) Regulations** prohibited the exportation of goods to Yugoslavia without the permission of the Minister for Foreign Affairs and Trade, or a member of the Department of Foreign Affairs and Trade authorised by the Minister. However, this provision did not apply to foodstuffs of a kind notified by the Committee of the United Nations established under Security Council Resolution No 724 (1991). Permission could be given on conditions relating to times, quantities and circumstances of exportation. The regulations included the standard form provision about the Minister taking into account Australia's international relations and obligations. If an authorised person proposed to refuse permission, the matter had to be referred to the Minister.

The Explanatory Statements for these two instruments were almost identical, advising that the *sanctions regime* they established was similar to that for Iraq. They were also similar to the export sanctions imposed on Libya.

Finally, the **Migration (Yugoslavia (Serbia and Montenegro) - United Nations Security Council Resolutions) Regulations, Statutory Rules 1992 No 157**, were made on 5 June 1992 and were gazetted and commenced on that date. The regulations, which were expressed to apply in spite of the **Migration Regulations**, prohibited the Minister from granting a visa or an entry permit to a person who was likely to become involved with the sale of goods to Yugoslavia or who would represent Yugoslavia at scientific, cultural or sporting events. The prohibition did not apply to the sale of medical goods. Also, the Minister could exempt Australian citizens or permanent residents from the prohibitions if satisfied that this would not infringe Australia's obligations under international law. In addition, the Minister could cancel the visa or entry permit of persons, apart from permanent residents, who became involved with the prohibited activities.

These regulations, like those imposing migration sanctions on Iraq and Kuwait, were made as Principal Regulations. This was in contrast to all other sanctions, which were imposed by amendment of existing Principal Regulations.

The regulations imposing air navigation, import and export, and migration sanctions against Yugoslavia remained in effect at the date of this Report.

CHAPTER FIVE

CONCLUSIONS

An examination of the delegated legislation made to implement United Nations sanctions against Iraq, Kuwait, Libya and Yugoslavia illustrates some aspects of laws made by the executive.

One of the four principles under which the Committee operates, and which are now included in the Standing Orders, is that delegated legislation does not contain matter more appropriate for parliamentary enactment. This principle is invoked by the Committee less often than its other three principles. Nevertheless, from time to time the Committee raises with Ministers whether particular provisions which are so sensitive in their application to individuals, or which contain matters of important policy, should be provided for in a Bill which, of course, would be subject to all the rigours of passage through Parliament. At first glance the present regulations would seem to be a case where the matters dealt with should be included in an Act. After all, the various instruments imposed total or partial export and import, foreign exchange, air navigation and migration sanctions on three countries, Iraq, Kuwait and Libya, with whom Australia maintained diplomatic relations and which were fellow members of the United Nations. However, the Committee was satisfied that the subject matter of the delegated legislation was appropriate. The reason for this was the advice in Explanatory Statements that Australia had an international legal obligation to comply with Security Council resolutions. The Committee accepted this advice. Therefore, the question of parliamentary enactment did not arise. The various instruments merely filled out the details of existing legal duties. As such, this is the classic use of delegated legislation and thus was unexceptional.

Another of the principles of the Committee is that delegated legislation must not trespass unduly on personal rights and liberties. This principle, along with a principle requiring instruments to provide for appropriate merits review of decisions by public officials, protects the personal rights of individuals against unfair delegated legislation. The present legislation illustrates the attitude of the Committee to the protection of individual rights. In accordance with these principles, the Committee wished to ensure that no provisions operated harshly and that, if appropriate, there was independent review of adverse decisions by the Minister or officials. In the present case, export, import, foreign exchange and air navigation sanctions were incorporated into the existing administrative structure. The Committee had previously examined many amendments of the **Customs (Prohibited Exports) Regulations**, the **Customs (Prohibited Imports) Regulations** and the **Air Navigation Regulations**. In these earlier cases, the Committee was satisfied with the answers which it received from Ministers about review provisions in the Principal Regulations. Indeed, several review provisions had been included at the suggestion

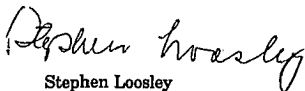
of the Committee. These safeguards applied to the present discretions and the Committee was similarly satisfied that review rights were adequate. The Explanatory Statement with the amendments of the **Air Navigation Regulations** expressly advised that merits review was not provided because the purpose of the amendments was to fulfil Australia's international obligations and because of the effect on Australia's relations with other countries. The **Banking (Foreign Exchange) Regulations** did not provide for merits review of adverse decisions and the present amendment did not include any new discretions. Rather, it limited an existing discretion by requiring the Treasurer to take a criterion into account. The **Migration (Iraq and Kuwait) (United Nations Security Council Resolution No 661) Regulations**, the two Principal Regulations which replaced them, and the **Migration (Yugoslavia (Serbia and Montenegro) - United Nations Security Council Resolutions) Regulations** did not provide for merits review. However, all powers under these three sets of regulations had to be exercised personally by the Minister. Delegation was not possible. In these circumstances, the Committee usually does not press for further merits review. None of the provisions in any of the delegated legislation appeared to operate harshly.

The regulations illustrate the speed and flexibility with which delegated legislation can be made. These are among its main advantages. The present regulations implemented the details of the United Nations sanctions faster than would normally be the case if done by Act. Also, amendment of the legislation was quicker than by Act. For instance, the initial three sets of regulations imposing sanctions on Iraq and Kuwait were made on 8 August 1990, only two days after Resolution No 661 (1990). The initial three sets of regulations imposing sanctions on Yugoslavia were made on 2 June 1992, following Resolution No 757 (1992) of 30 May 1992.

The flexibility of regulations is illustrated by the frequency of amendments to implement changes in United Nations requirements and by the eventual adoption of a drafting formula to accommodate those changes without the necessity to amend.

The regulations also illustrate the role of proper Explanatory Statements. From time to time the Committee has been critical of the quality of Explanatory Statements, which should indicate the provisions of the parent Act under which an instrument is made, explain its background and the intended effect, and include "plain English" notes on individual provisions. The Explanatory Statements which accompanied the present sets of regulations were generally of good quality. For instance, among other things, the Explanatory Statements advised of the existence and requirements of Security Council resolutions, arrangements under which provisions of the regulations were administered, review provisions, special safeguards, exemptions and the relationship of provisions affecting Iraq with those affecting Yugoslavia. This advice assisted the Committee and the Parliament.

In summary, the regulations implementing Australia's response to United Nations sanctions against Iraq, Kuwait, Libya and Yugoslavia were an example of appropriate use of delegated legislation. They dealt with matters of great international and domestic importance, yet did not breach the Committee's principles of parliamentary propriety or personal rights.

A handwritten signature in cursive script that reads "Stephen Loosley".

Stephen Loosley
Chairman

APPENDIX

Delegated legislation which imposed Australian sanctions on Iraq, Kuwait, Libya and Yugoslavia

- Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1990 No 264
Customs (Prohibited Imports) Regulations (Amendment), Statutory Rules 1990 No 265
Banking (Foreign Exchange) Regulations (Amendment), Statutory Rules 1990 No 266
Migration (Iraq and Kuwait) (United Nations Security Council Resolution No 661) Regulations, Statutory Rules 1990 No 281
Air Navigation Regulations (Amendment), Statutory Rules 1990 No 432
- Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1991 No 24
Migration (Iraq - United Nations Security Council Resolution No 661) Regulations, Statutory Rules 1991 No 37
Air Navigation Regulations (Amendment), Statutory Rules 1991 No 74
Customs (Prohibited Imports) Regulations (Amendment), Statutory Rules 1991 No 76
Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1991 No 77
Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1991 No 118
Migration (Iraq - United Nations Security Council Resolutions) Regulations, Statutory Rules 1991 No 222
Customs (Prohibited Imports) Regulations (Amendment), Statutory Rules 1991 No 248
- Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1992 No 103
Air Navigation Regulations (Amendment), Statutory Rules 1992 No 104
Air Navigation Regulations (Amendment), Statutory Rules 1992 No 153
Customs (Prohibited Imports) Regulations (Amendment), Statutory Rules 1992 No 154
Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1992 No 155
Migration (Yugoslavia (Serbia and Montenegro) - United Nations Security Council Resolutions) Regulations, Statutory Rules 1992 No 157