

**AMENDMENTS TO THE INTERNATIONAL ORGANIZATION FOR
MIGRATION (IOM) CONSTITUTION,
DONE AT GENEVA ON 24 NOVEMBER 1998**

[2006] ATNIF 10

Documents tabled on 10 May 2006:

National Interest Analysis [2006] ATNIA 16

with attachment on consultation

Text of the proposed treaty action

Background information:

Current Status List

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. It is proposed that Australia accept a number of amendments to the Constitution of the International Organization for Migration (IOM). These amendments primarily affect the governance structure of the IOM.
2. Meeting as the IOM Council, IOM Member States including Australia, adopted the amendments by consensus in 1998. Article 30 of the Constitution currently requires two-thirds of Member States to accept these amendments for them to come into force. The constitutional amendments have not yet been accepted by the required two-thirds majority of States (78 of the 116 members). To date forty one States have accepted the constitutional amendments. These States include some key donors as well as some of our key interlocutors.

Overview and national interest summary

3. The IOM provides migration services at an international scale. The goal of the IOM is to ensure the orderly flow of migration movements throughout the world and to facilitate, under the most favourable conditions, the settlement and integration of the migrants into the economic and social structure of the country of reception. The IOM makes arrangements for and manages the orderly transfer of migrants and refugees in collaboration with Member States.
4. In order to achieve this goal, the IOM provides a wide range of migration services internationally. Australia continues to make use of the extensive, efficient and affordable range of services delivered by the IOM that enable better management of people movement and support Australia's immigration and refugee policy. Examples of collaboration between Australia and the IOM are:
 - the IOM Refugee Travel Loan Fund which is an interest-free loan program assisting proposors/migrants to meet travel costs of refugees to Australia under the Special Humanitarian Program; and
 - the Australian Government Funded Programme which is an agreement between the IOM and the Government of Australia whereby IOM is responsible for resettling refugees accepted under Australia's funded component of Humanitarian Program.
5. Improving the effectiveness and efficiency of the IOM's governance structure is, therefore, in line with Australia's migration interests.
6. Supporting the reforms to the IOM would also signal Australia's continuing commitment to the organization. Such support is increasingly important in light of the current debate about how the IOM fits into the global governance of migration. It is in Australia's interests to ensure the IOM remains the key migration body with an enhanced capacity to deliver effective migration services to States.

Reasons for Australia to take the proposed treaty action

7. Australia is a signatory to the IOM Constitution and makes significant contributions to support the organization's work. For the 2005 calendar year, Australia paid to the IOM 42,466,082 US dollars towards operational costs and 659,651 Swiss francs towards administrative costs.

8. The constitutional amendments would strengthen the IOM and the case that it is the pre-eminent body for international migration. The amendments generally reflect Australia's objectives of supporting ongoing reform and greater efficiency of the IOM. The amendments would:

- streamline the IOM's processes, further strengthening its responsiveness, entrepreneurial style and service efficiency (including by providing that the Director General and Deputy Director General can only be re-elected for one additional term (Article 18(1); and streamlining the procedure for minor changes to the Constitution of the IOM (Article 30(2));
- provide an incentive to settle outstanding contributions (by automatically suspending the voting rights of States with overdue fees of two years or more) and thereby reduce adverse effects on the IOM's ability to deliver services arising from non-paying current members (Article 4(1)). Australia has consistently made timely contributions to the IOM and there is no reason to suggest this practice will not continue;
- abolish the Executive Committee, freeing up administrative resources without affecting Australia's ability to influence IOM decision making. The Executive Committee does not have the power to make binding decisions and has not made any decisions since the establishment of the Sub-committee on Budget and Finance; and
- explicitly provide that new States must join in accordance with their own domestic constitutional processes (Article 2(b)). This is line with the practice in other international organizations.

9. The changes to the Constitution are simple and effective. To consent to be bound by the amended Constitution would be consistent with our long standing support of the activities of the IOM and our support of ongoing reforms to increase its efficiency.

10. In light of increasing debate about how the IOM fits into the global management of migration, ratifying the amendments at this time would be an important signal of Australia's support for the IOM.

11. Australia would like the IOM to remain the pre-eminent body for international migration because:

- although there are a number of international bodies involved with migration related issues, no other agency matches the IOM's world wide presence and breadth of services;
- IOM now has 116 members and 220 field offices world wide. This gives IOM a global reach to deliver practical assistance on the entire spectrum on migration issues;
- it possesses strengths valued by Australia which include:
 - responsiveness to the needs of States as key stakeholders
 - a focus on strategic policy issues and promotion of managed migration
 - provision of a wide range of efficient and affordable services to States that make management of some issues much easier
 - an entrepreneurial style that provides an example for other international organizations.

12. Over recent years there has been discussion of the possibility of a new United Nations (UN) body for migration. Australia does not support such proposals because:

- the management of migration will not be improved by an international treaty with binding obligations for signatories;
- it is not possible to build an international framework if there is no relatively consistent national infrastructure to support its development;
- there is a risk of promotion of division between sending and receiving States, which could result in no advance on issues, and instead the possibility of a retreat.

13. Australia endorses the UN to pursue the recommendations of the Global Commission on International Migration (GCIM) by building on the Geneva Migration Group, rather than developing any new institution.

Obligations

14. Australia's principal obligation under the Constitution is to pay annual financial contributions (see Article 25). As a contributing Member State, Australia has the right to participate in decisions about the direction and activities of the IOM (see Article 6).

15. The constitutional amendments do not impose any additional obligations on Australia. They do, however, provide for an automatic sanction where a State fails to pay its financial contributions for a period of two years or more. The amendment to Article 4(1) has the effect that States in arrears by two or more years will automatically lose their voting rights, rather than this requiring a (politically contentious) two-thirds majority vote of Council. The loss of voting rights occurs one year after Council has been informed that a particular member is in arrears. Voting rights can be reinstated by a simple majority vote of the Council if it is satisfied that the failure to pay is due to conditions beyond the control of the Member State. Note that the IOM Council is composed of one representative of each Member State (see Article 7).

16. The remaining constitutional amendments are improvements in governance that would strengthen the IOM and the case that it is the key global body for migration. None of these amendments substantively change the basic obligation of IOM Member States to abide by the provisions of the IOM Constitution.

Implementation

17. The amendments to the IOM Constitution do not impose additional obligations on Australia to those that currently exist. No implementation action is therefore required.

18. Obligations under the Constitution are not required to be met by migration legislation, therefore no changes to the Migration Regulations or any primary legislation is required. No new legislation is required.

Costs

19. The amendments to the IOM Constitution do not impose extra costs on the Australian Government, States or Territories. They do not change Australia's obligation to make financial contributions for the administration of the IOM or affect contributions that the Australian Government may decide to make to the operational expenditure of the IOM (see Article 25).

Regulation Impact Statement

20. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

21. Article 30 of the Constitution of the IOM deals with amendments to the Constitution. Article 30(1) provides that any texts of proposed amendments to the Constitution shall be communicated by the Director General to Governments of Member States at least three months in advance of their consideration by the Council of the IOM.

22. The amendment to Article 30(2) of the Constitution of the IOM modifies the process for adopting and accepting amendments. Under the new Article 30(2), only "fundamental changes" need to be adopted by two-thirds of the members of the Council and accepted by two-thirds of the Member States in accordance with their respective constitutional processes in order to come into force. Non-fundamental changes will come into force when adopted by a two-thirds majority of the Council, and formal acceptance by States will no longer be necessary. Whether an amendment involves a fundamental change is itself a decision that can be taken by a two-thirds majority of the Council.

23. This involves a number of changes from the amendment procedure currently in place, under which there is no distinction between fundamental and non-fundamental changes and adoption by two-thirds of the members of the Council, and acceptance by two-thirds of the Member States, is required for all amendments.

24. In addition, under the current amendment procedure, amendments involving new obligations for Member States do not come into force in respect of a particular Member State until that State has accepted the amendments. Under the new amendment procedure, amendments involving new obligations for Member States will come into force for all Member States when adopted by two-thirds of the members of the Council and accepted by two-thirds of the Member States. This means that in the future, fundamental amendments to the IOM Constitution may come into force for Australia without Australia's formal acceptance.

25. Article 31 provides that any dispute concerning the interpretation or application of the Constitution which is not settled by negotiation or by a two-thirds majority vote of the Council shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the Member States concerned agree on another mode of settlement within a reasonable period of time.

Withdrawal or denunciation

26. Under Article 3 of the Constitution of the IOM, Australia may give notice of withdrawal from the Organization with effect from the end of a financial year. Such notice must be in writing and must reach the Director General of the Organization at least four months before the end of the financial year. The financial obligations of Australia to the Organization shall include the entire financial year in which notice is given.

27. Any decision to withdraw from the Agreement would be subject to Australia's domestic treaty making process.

28. Under Article 33, the Council may, by a three-quarters majority vote of its members, decide to dissolve the IOM.

Contact details

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Refugee, Humanitarian and International Division
Department of Immigration and Multicultural Affairs.

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CONSULTATION

1. As the amendments only concern the internal operations of the IOM, consultation with State and Territory governments was not necessary.
2. Federally, the Department of Foreign Affairs and Trade, the Attorney-General's Department and the Department of Prime Minister and Cabinet were consulted as part of the process of accepting the amendments, and they supported the amendments.
3. The Office of Regulation Review (Productivity Commission) was consulted and confirmed that a Regulation Impact Statement is not required.

CURRENT STATUS LIST

IOM Member States (116) as of December 2005

- Afghanistan
- Albania
- Algeria
- Angola
- Argentina
- Armenia
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bangladesh
- Belarus
- Belgium
- Belize
- Benin
- Bolivia
- Bosnia and Herzegovina
- Brazil
- Bulgaria
- Burkina Faso
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Chile
- Colombia
- Congo
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cyprus
- Czech Republic
- Democratic Republic of the Congo
- Denmark
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Estonia
- Finland
- France
- Gabon
- Gambia
- Georgia
- Germany
- Ghana
- Greece
- Guatemala
- Guinea
- Guinea-Bissau
- Haiti
- Honduras
- Hungary
- Iran, Islamic Republic of
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Jordan
- Kazakhstan
- Kenya
- Kyrgyzstan
- Latvia
- Liberia
- Libyan Arab Jamahiriya
- Lithuania
- Luxembourg
- Madagascar
- Mali
- Malta
- Mauritania
- Mexico
- Morocco
- Netherlands
- New Zealand
- Nicaragua
- Niger (the)
- Nigeria
- Norway
- Pakistan
- Panama
- Paraguay
- Peru
- Philippines
- Poland
- Portugal
- Republic of Korea
- Republic of Moldova
- Romania
- Rwanda
- Senegal
- Serbia and Montenegro
- Sierra Leone
- Slovakia
- Slovenia
- South Africa
- Sri Lanka
- Sudan
- Sweden
- Switzerland
- Tajikistan
- Thailand
- Togo
- Tunisia
- Turkey
- Uganda
- Ukraine
- United Kingdom of Great Britain and Northern Ireland
- United Republic of Tanzania
- United States of America
- Uruguay
- Venezuela
- Yemen
- Zambia
- Zimbabwe

Acceptance of the amendments to the IOM Constitution by IOM Member States (41)

State	Notification of acceptance received on:
1. Slovak Republic	8 February 1999
2. Denmark	16 April 1999
3. Finland	23 April 1999
4. Korea, Republic of	26 May 1999
5. Czech Republic	2 June 1999
6. Bulgaria	20 July 1999
7. Tunisia	17 January 2000
8. Thailand	26 January 2000
9. Greece	10 March 2000
10. Croatia	3 May 2000
11. Hungary	19 May 2000
12. Japan	23 May 2000
13. Algeria	8 August 2000
14. Norway	28 August 2000
15. Tanzania	26 October 2000
16. Romania	4 April 2001
17. Latvia	8 October 2001
18. Sierre Leone	12 October 2001
19. Lithuania	19 March 2002
20. France	20 March 2002
21. Azerbaijan	18 June 2002
22. Mali	13 September 2002
23. Mauritania	13 June 2003
24. New Zealand	13 June 2003
25. United States of America	1 July 2003
26. Malta	3 May 2004
27. Afghanistan	4 June 2004
28. Libya	4 June 2004
29. Bahamas	30 November 2004
30. Estonia	30 November 2004
31. Brazil	30 November 2004
32. Turkey	30 November 2004
33. Netherlands	16 December 2004
34. Jamaica	9 June 2005
35. Bosnia and Herzegovina	10 June 2005
36. Morocco	29 November 2005
37. Cameroon	29 November 2005
38. Ghana	29 November 2005
39. Belarus	29 November 2005
40. Togo	1 February 2006
41. Slovenia	10 February 2006