

## **Treaty with France concerning cooperation in maritime areas in the Southern Ocean**

- 2.1 The *Treaty between the Government of Australia and the Government of the French Republic on cooperation in the maritime areas adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands (Canberra, 24 November 2003)* (the Treaty) will create a framework to enhance cooperative surveillance of fishing vessels, and encourage scientific research on marine living resources in the 'Area of Cooperation' in the Southern Ocean.
- 2.2 The Area of Cooperation will include the neighbouring territorial seas and exclusive economic zones (EEZs) surrounding the Australian territory of Heard Island and the McDonald Islands, and those of the French territories of Kerguelen Islands, Crozet Islands, Saint-Paul Island and Amsterdam Island.<sup>1</sup>
- 2.3 The National Interest Analysis (NIA) states that illegal fishing in the Southern Ocean has increased in the last decade.<sup>2</sup> The Committee is particularly aware that the Patagonian toothfish has been targeted by foreign fishing vessels in Australia's EEZ around Heard and the McDonald Islands.<sup>3</sup>
- 2.4 As Dr Greg French from the Department of Foreign Affairs and Trade (DFAT) stated, Australia and France share an interest in protecting

---

1 National Interest Analysis (NIA), para. 5.

2 NIA, para. 8.

3 *Transcript of Evidence*, 26 July 2004, p. 6 and NIA, para. 8.

the fisheries resources within the Area of Cooperation.<sup>4</sup> As the NIA identifies, cooperation between states that share similar concerns about illegal, unreported and unregulated (IUU) fishing is one of the most effective ways to address the problem, particularly in remote areas which experience harsh weather conditions.<sup>5</sup> Hence, the Treaty will help combat IUU fishing activity within the Area of Cooperation, which continues to be a serious threat to the maritime environment, and the sustainability of fish stocks that are legitimately harvested by Australian fishing operators.<sup>6</sup>

- 2.5 The Committee understands that Australia is a party to treaties with similar objectives, such as that with Papua New Guinea and the Convention on the Conservation of Antarctic Marine Living Resources.<sup>7</sup>

## Obligations

- 2.6 The Treaty provides for
- cooperative surveillance of fishing vessels within the Area of Cooperation
  - the exchange of information on the location, movements and other details such as licensing of fishing vessels within the Area of Cooperation
  - assistance, such as logistical support, for the 'hot pursuit' of vessels as requested by the pursuing state
  - cooperative scientific research on marine living resources
  - further agreements for cooperative surveillance and enforcement missions.<sup>8</sup>
- 2.7 Concerning hot pursuits, Dr French identified the Treaty to be of particular importance. Specifically, Article 4 enables a hot pursuit to continue through the territorial sea of the other Party, provided that the other Party has been informed. Dr French advised
- under the law of the sea convention, if a vessel enters into the territorial sea of a third country while conducting hot pursuit, that hot pursuit must be broken off unless the consent of the

---

4 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 2.

5 NIA, para. 9.

6 NIA, para. 7.

7 NIA, para. 10.

8 NIA, paras 6 and 10-16.

coastal state is received. So this treaty actually provides for an automatic mechanism for such consent to be received to ensure that hot pursuit may be maintained.<sup>9</sup>

- 2.8 According to the NIA, this provision closes off ‘an avenue for the pursued vessel to break the continuity of the hot pursuit and preventing the legitimate apprehension by the pursuing Party’.<sup>10</sup>

## **Discrepancy between the English and French treaty texts**

- 2.9 The Committee was informed that a discrepancy was ‘discovered’ between the official treaty texts produced by Australia and France.<sup>11</sup>

- 2.10 Dr French advised the Committee that the French version included the words ‘and/or any other means’ in the definition of ‘cooperative surveillance missions’, for example

“Cooperative surveillance” means ... within the area defined in paragraph 1(a) above – by French surveillance vessels and/or aircraft and/or any other means.<sup>12</sup>

- 2.11 The Committee understands that the addition would extend the definition to include newly developed technologies. Dr French stated that this

was the original intention of both sides—that in looking at all possible means of conducting cooperative surveillance we will be looking not just at the so-called classical means of surveillance by vessels or aircraft but also at the emerging technologies, including remote sensing through satellites, as well as pilotless aerial vehicles. So this additional wording was certainly foreseen by both sides but, through a technical slip, was missed out in one of the language versions.<sup>13</sup>

---

9 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 3.

10 NIA, para. 14.

11 Dr Greg French, *Transcript of Evidence*, 26 July 2004, pp. 3-4.

12 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 4 and 5.

13 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 3.

2.12 Furthermore, Dr French informed that

As is normal under international law, a rectification does not require a separate treaty action because it is merely reflecting the agreement of both parties at the end of negotiations.<sup>14</sup>

2.13 The NIA states that 'France has agreed to the rectification of the two official texts of the Treaty (French, English) so as to reflect the intentions of the parties at the of (sic) negotiation'.<sup>15</sup> In contrast, the Committee received evidence at the public hearing indicating that DFAT

expect confirmation [very shortly] from the French side that the text will be acceptable to the French as well as to us. We have sent a note to France to that effect and are expecting a note in reply shortly.<sup>16</sup>

2.14 Dr French advised the Committee that DFAT expected to receive confirmation of the rectification prior to the Treaties Committee tabling its advice to the Parliament on the proposed treaty action.<sup>17</sup>

## Implementation and costs

2.15 The NIA states that the Treaty will be implemented within existing laws and policies relating to IUU fishing activity and that no new legislation will be required.<sup>18</sup>

2.16 The NIA further states that minor additional costs will result from the implementation of the Treaty.<sup>19</sup> DFAT provided the Committee with one example of such costs, that being through the periodic consultations examining the implementation of the Treaty.<sup>20</sup> The Committee understands that these costs would not be significant. Dr French advised that the consultation process and associated costs would also arise without the Treaty as 'Australia would expect to consult with France on IUU fishing issues in the normal course of events'.<sup>21</sup>

---

14 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 3.

15 NIA, para. 19.

16 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 3.

17 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 6.

18 NIA, para. 17.

19 NIA, para. 20.

20 NIA, para. 20 and *Transcript of Evidence*, 26 July 2004, p. 6.

21 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 3.

- 2.17 In addition, Dr French considered that the Treaty will create a more focused framework and forward strategy for more effectively utilising the cooperation and the consultation which does already exist between Australia and France.<sup>22</sup>

## Enforcement of the Treaty

- 2.18 The Committee considered the issues surrounding the enforcement of the Treaty and the associated costs to Australia.

- 2.19 The Committee was informed of the regular surveillance missions in the Area of Cooperation

Basically two kinds of operations are conducted. One is through civilian patrol with a leased vessel...

In addition to that, for a number of years the Royal Australian Navy has been in a position to provide enforcement capacity through Anzac class frigates, in particular, and FFG frigates to engage in apprehension when we have a reasonable idea that illegal vessels are in the area.<sup>23</sup>

- 2.20 Dr French noted that there had been a number of successful apprehensions over the last few years, and that

In future it is intended that the civilian patrol vessels will be capable of undertaking apprehensions. A decision to that end has been made, and additional resources are being devoted to those surveillance and enforcement activities.<sup>24</sup>

- 2.21 Concerning the Treaty, the Committee heard that

Pooling surveillance resources in itself should increase the likelihood of being able to enforce or apprehend and so already we would expect that it should increase efficiency and the likelihood of engaging in successful apprehensions.<sup>25</sup>

---

22 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 3.

23 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 5.

24 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 5. See also Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 7.

25 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 7.

- 2.22 Dr French advised that 'significant recouping of the costs is possible' through the auction and sale of fish stored in the hold of the IUU fishing vessels that have been intercepted.<sup>26</sup> Further

As I understand it, the net cost of the operation should not be very high at all when we take into account the recouping of costs through sale of the catch.<sup>27</sup>

- 2.23 The Committee was interested in the occurrence of the sighting of IUU fishing vessels that have not resulted in a hot pursuit. Dr French stated

In general, there are instances where Australia and/or France have been aware of illegal fishing activities where it has not been possible, because of the lack of suitable vessels on hand at the time, to undertake an apprehension.<sup>28</sup>

## Entry into force

- 2.24 Pursuant to article 9, the Treaty will enter into force on the date on which the Parties have notified each other in writing or through diplomatic channels, once their domestic procedures have been completed.

## Consultation

- 2.25 The Committee understands that the Department of Agriculture, Fisheries and Forestry consulted with all Australian fishing industry Management Advisory Committees, the Australian Seafood Industry Council and NGOs represented in the Commission for the Conservation of Antarctic Marine Living Resources Consultative Forum.<sup>29</sup> The Committee acknowledges the widespread support for the proposed Treaty resulting from the consultation process.<sup>30</sup>

---

26 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 4.

27 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 4.

28 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 4.

29 NIA - Consultations Annex, p. 1.

30 NIA - Consultations Annex, pp. 1-2.

## Future treaty action

2.26 Annex III of the Treaty enables Parties to conclude further agreements on cooperative surveillance and enforcement operations. The Committee was advised that

Australia and France are now negotiating a related treaty that would extend bilateral cooperation in the area of operation to include cooperative law enforcement operations as a second stage. So the initial stage encompassed within this treaty is cooperative surveillance operations. It is certainly foreseen that in the future we will have an additional agreement covering actual enforcement operations where Australian vessels could conduct enforcement operations against illegal vessels within the French zone, and French vessels within the Australian zone.<sup>31</sup>

2.27 The Committee understands that Australia has developed a text for the new treaty and is currently in consultation with France 'with a view to concluding the agreement'.<sup>32</sup>

## Conclusion and recommendation

2.28 The Committee believes that the Treaty is an important mechanism for cooperative surveillance of fishing vessels to address IUU fishing activities in the 'Area of Cooperation' in the Southern Ocean. The Committee also supports the furthering of scientific research on valuable marine living resources.

### Recommendation 1

**The Committee supports the *Treaty between the Government of Australia and the Government of the French Republic on cooperation in the maritime areas adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands (Canberra, 24 November 2003)* and recommends that binding treaty action be taken.**

31 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 4.

32 Dr Greg French, *Transcript of Evidence*, 26 July 2004, p. 7.