

## Four Minor Treaty Actions

### Introduction

- 5.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.
- 5.2 Minor treaty actions are presented to the Joint Standing Committee on Treaties with a one-page explanatory statement and are listed on the Committee's website. The Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

### Minor treaty actions

- 5.3 There are four minor treaty actions reviewed in this chapter. The Committee determined not to hold a formal inquiry into these treaty actions and agreed that binding treaty action may be taken for all four.

### 2012 Amendments to Annex I of the International Convention Against Doping in Sport of 19 October 2005

- 5.4 On 1 October 2012, the Director-General of The United Nations Educational, Scientific and Cultural Organization (UNESCO) notified States Parties of the intent to amend Annex I, pursuant to Article 34 of the Convention, to incorporate changes to the World Anti-Doping Agency (WADA) Prohibited List. Australia has not objected to these amendments. Accordingly, the proposed amendment will enter into force for Australia on 1 January 2013.
- 5.5 The proposed amendment of Annex I harmonises the regulation of prohibited substances and methods, in- and out-of-competition, across

certain sports globally. This provides certainty and consistency for Australian athletes, who are required to comply with WADA's Prohibited List.

- 5.6 If a discrepancy exists between the Australian Government's agreed Prohibited List (Annex I of the Convention) and WADA's Prohibited List, the Australian Sports Anti-Doping Authority would be restricted in its ability to implement its anti-doping regime in accordance with the requirements of the World Anti-Doping Code, which is overseen by WADA.

### Insulin

- 5.7 The Committee noted the changed status of insulin under the World Anti-Doping Agency's List of Prohibited Substances and Methods and was concerned about what impact the change may have on athletes who have diabetes.
- 5.8 Insulin's main action is to facilitate glucose uptake and hence build glycogen stores. It can be used by athletes to improve performance as it potentially provides more energy for muscles to use during exercise and helps with an athlete's recovery.
- 5.9 Insulin has been on the Prohibited List since the List was established in 2004. In reviewing the Prohibited List this year, WADA decided that, for technical reasons, insulin should be reclassified from S2 (Peptide Hormones, Growth Factors and Related Substances) to S4.5.a (Metabolic Modulators).
- 5.10 International anti-doping arrangements allow for athletes to seek a therapeutic use exemption when they have an illness or condition that requires them to take particular medications that fall under the Prohibited List. In Australia, the Australian Sports Drug Medical Advisory Committee (ASDMAC) is the body that gives approval for athletes to use prohibited substances for legitimate therapeutic purposes. This means that a diabetic can apply to ASDMAC for approval to use insulin for medicinal purposes without fear of being sanctioned for a doping offence. Accordingly, the change to the Prohibited List contained in Annex 1 has no impact on diabetic athletes.

### **Amendments, adopted at London on 24 May 2012, to the Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended (Resolution MSC.329(90))**

- 5.11 This proposed change will revise international regulations for the operation of ships, specifically the limits for seasonal zones that govern the draft, being how deep a ship can be loaded to.

- 5.12 The *International Convention on Load Lines, 1966* as modified by the *Protocol of 1988* (“Load Lines”) is administered by the International Maritime Organization (IMO), a specialised agency of the United Nations. The IMO committee with responsibility for Load Lines is the Maritime Safety Committee (MSC).
- 5.13 The proposed amendment to the 1988 Protocol amends Annex II of Load Lines in order to adjust the limits of the Southern Winter Seasonal Zone. Annex II defines zones, areas and seasonal periods relating to ships load drafts, taking account of the potential hazards present in different zones and different seasons.
- 5.14 The proposed amendment to the limits of the Southern Winter Seasonal Zone shifts the Zone southwards by 50 nautical miles off the southern tip of Africa. This will allow ships that are loaded to their “summer” draft (which is deeper than the “winter” draft, allowing ships to carry more cargo) to pass the southern tip of Africa while remaining further away from land, without entering the Southern Winter Seasonal Zone. The proposed amendment is intended to improve safety of shipping traffic off the South African coast and reduce the risk of a maritime incident by allowing ships to avoid a number of navigational hazards (including offshore oil and gas exploration) in this heavily-trafficked area. The amendment also simplifies the delimitation of the Southern Winter Seasonal Zone across the Pacific, between New Zealand and the American Continent, along the 33rd parallel.

### **Amendments, adopted at London on 24 May 2012, to the International Convention for the Safety of Life at Sea, 1974, as amended (Resolution MSC.325(90))**

- 5.15 The *International Convention for the Safety of Life at Sea, 1974* (1983), as modified by the *Protocol of 1988* (2000), known as SOLAS, is administered by the IMO. The IMO committee with responsibility for SOLAS is also the MSC.
- 5.16 The Treaties Committee was presented with a series of minor amendments outlined below:
- At the MSC’s 82nd session in 2006, the MSC adopted IMO Resolution MSC.216(82), which included amendments to SOLAS Chapters II-1 and II-2 regarding the construction of passenger ships built after 1 July 2010.
    - ⇒ The amendments required that for applicable vessels, after a fire or flooding casualty, basic services could be provided to all persons on board and that certain systems remain operational for a safe return to port.

- ⇒ The proposed amendment to SOLAS Chapter II-1, further amends the requirements of MSC.216(82) to assist a passenger ship to return to port after a flooding casualty. The proposed amendment will require applicable ships to have an on-board stability computer or shore-based support to provide the ship's Master with appropriate operational information.
- At its 90<sup>th</sup> session, the MSC adopted draft amendments to:
  - ⇒ Chapter III of SOLAS under IMO Resolution MSC.325(90). Chapter III concerns life-saving appliances and arrangements on ships.
    - ⇒ The proposed amendment changes the requirements of SOLAS Regulation III/20 to allow for the operational testing of free-fall lifeboat release systems to be performed either by free-fall launching or by simulated launching. Where simulated launching of a free-fall lifeboat is to be carried out it is to be in accordance with guidelines developed by the IMO.
  - ⇒ Chapter V of SOLAS under IMO Resolution MSC.325(90). The amended SOLAS Regulation V/14 requires Administrations to take into account guidance adopted by the IMO when determining safe manning levels.<sup>1</sup>
    - ⇒ This is not expected to affect minimum safe manning levels on Australian ships, as the guidance provides only general principles that the Australian Maritime Safety Authority (AMSA) must take into account when determining minimum safe manning levels; it does not specify the required crew numbers for any particular vessel type.
  - ⇒ Chapter VI of SOLAS under IMO Resolution MSC.325(90). Chapter VI concerns the carriage of cargoes on ships.
    - ⇒ The proposed amendment to SOLAS Chapter VI, contained in paragraph 4 of IMO Resolution MSC.325(90), creates a new regulation that prohibits the blending of liquid bulk cargoes on board ships and prohibits production processes on board ships where a deliberate chemical reaction takes place. The proposed amendment prohibits processes where two or more liquid cargoes are blended to achieve a cargo with a new product designation. It exempts the blending of

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1 This guidance is contained in IMO resolution A.1047(27) Principles of minimum safe manning, which supersedes earlier Resolutions A.890(21) and A.955(23).

- products and production processes that are used in the search and exploitation of seabed mineral resources.
- ⇒ This amendment is intended to prohibit some dangerous and potentially illegal practices that have been occurring in some parts of the world. Tankers are not chemical plants or refineries and therefore are not equipped to safely carry out blending operations. Blending practices are not currently prohibited under Australian law, but the Australian Maritime Safety Authority (AMSA) could take steps to ban the practice in a Marine Order once the proposed amendment enters into force. In practice, AMSA is not aware of these practices occurring in Australian waters. Consequently, AMSA does not expect the proposed amendment to have any effect on the commercial operations of any Australian companies.
  - ⇒ Chapter VII of SOLAS under IMO Resolution MSC.325(90). Chapter VII of SOLAS concerns the carriage of dangerous goods on ships.
    - ⇒ The proposed amendment changes regulations to ensure that transport information relating to the carriage of dangerous goods in packaged form, including container/ vehicle packing certificates, is in accordance with the International Maritime Dangerous Goods Code (IMDG Code).
    - ⇒ It also provides that transport information relating to the carriage of dangerous goods in packaged form is to be made available to the person or organisation designated by the port State authority on departure and arrival. Australia's *Navigation Act* currently requires the shipper of dangerous goods to give notice of intention to ship the goods to the prescribed person. The proposed SOLAS amendment will standardise the form of these reports internationally. While minor changes may be required to Australian forms and procedures to conform with the proposed amendment, these are not expected to impose any additional cost or compliance burden on vessel operators.
  - ⇒ Chapter XI-1 of SOLAS under IMO Resolution MSC.325(90). Chapter XI-1 concerns special measures to enhance maritime safety, including enhanced survey programmes for certain types of ships.
    - ⇒ The proposed amendment to SOLAS Chapter XI-1, contained in paragraph 6 of IMO resolution MSC.325(90), amends regulations to bring into force the *International Code*

*on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code).*

- ⇒ The 2011 ESP Code, as adopted by IMO resolution A.1049(27), will replace the existing IMO *Guidelines on the enhanced programme of inspections during Surveys of Bulk Carriers and Oil Tankers*, contained in IMO resolution A.744(18). Unlike the earlier Guidelines, compliance with the ESP Code will be mandatory for all IMO Members.
- ⇒ Australia's Marine Order 18 already requires oil tankers and bulk carriers to be surveyed in accordance with the *Guidelines on the enhanced programme of inspections during Surveys of Bulk Carriers and Oil Tankers*. This Order will be updated to refer to the 2011 ESP Code. The differences between the Guidelines and the 2011 ESP Code are minimal, meaning that any changes to the survey requirements resulting from the adoption of the 2011 ESP Code will be minor in nature. Given that the Australian Maritime Safety Authority (AMSA) already requires compliance with the Guidelines, the change to a mandatory Code will not affect AMSA's regulatory functions. Like the earlier Guidelines, the 2011 ESP Code applies to all oil tankers and bulk carriers regardless of hull type.

### **Amendment, adopted on 1 October 1999, to Article XIV.A of the Statute of the International Atomic Energy Agency (IAEA) (Resolution GC(43)/RES/8)**

- 5.17 The proposed minor treaty action amends the *Statute of the International Atomic Energy Agency (1957)* to allow the International Atomic Energy Agency (IAEA) to adopt biennial, as opposed to annual, budgeting. The practice of biennial budgeting to support biennial programming is applied throughout the United Nations system and has proved to be more effective than annual budgeting.
- 5.18 Australia contributes financially to other UN organisations which already utilise biennial budgeting; therefore the required domestic legislation is already in place to implement the proposed amendment. The proposed amendment does not affect Australia's contributions to the IAEA and therefore poses no additional financial burden on Australia. Australia's financial contributions to the IAEA would continue to be provided annually.
- 5.19 Article XIV.A of the IAEA Statute currently requires the IAEA Board of Governors (BoG) to submit budget estimates to the IAEA General

Conference annually for approval. The proposed amendment would allow the BoG to present a full program and budget document for approval every two years.

- 5.20 Given that the IAEA has been operating under a two-year programming system for some time, the proposed amendment would better align the budget cycle with the activity cycle. It would result in greater flexibility and efficiency in IAEA program delivery while not diminishing transparency and accountability standards. The current practice of adopting annual budgets draws considerable resources, both from the Secretariat and Member States, which could be utilised elsewhere.
- 5.21 Australia has long supported the activities of the IAEA and highly values the programs the Agency implements. The IAEA is an effective instrument to combat the proliferation of nuclear weapons and provides best practice standards for nuclear safety, security and research.
- 5.22 The low number of Member States which have accepted the proposed amendment to date is indicative of the low priority previously afforded to it by Member States, owing to the essentially administrative nature of the proposed amendment and, in some cases, the complex domestic processes required to amend a treaty. No Member State has raised any substantive concerns with the proposed amendment. The IAEA Secretariat has been making a renewed push to remind Member States of the importance of the amendment to efficient IAEA budget planning. With this in mind, and given Australia's prominence as a designated member of the BoG, it would be timely for Australia to take the proposed action.

**Senator Thistlethwaite**

**Chair**

