
The Parliament of the Commonwealth of Australia

Report 121

Treaty tabled on 16 August 2011

Agreement between the Government of Australia and the Government of the United States of America Relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia, done at Washington on 16 July 2008

October 2011
Canberra

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Membership of the Committee

Chair	Mr Kelvin Thomson MP	
Deputy Chair	Senator Simon Birmingham <i>(from 12/9/11)</i>	
Members	Ms Sharon Bird MP	Senator the Hon Helen Coonan <i>(until 23/8/11)</i>
	Mr Jamie Briggs MP	Senator David Fawcett <i>(from 23/8/11)</i>
	Mr John Forrest MP	Senator Scott Ludlam
	Ms Sharon Grierson MP	Senator the Hon Lisa Singh
	Ms Kirsten Livermore MP	Senator Matthew Thistlethwaite
	Ms Melissa Parke MP	Senator Anne Urquhart
	Ms Michelle Rowland MP	
	The Hon Dr Sharman Stone MP	

Committee Secretariat

Secretary James Catchpole

Inquiry Secretary Kevin Bodel

Andrew Gaczol

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Michaela Whyte



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; and
- 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 recommendations

- 2 **Agreement between the Government of Australia and the Government of the United States of America Relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia, done at Washington on 16 July 2008**

Recommendation 1

The Committee supports *Agreement between the Government of Australia and the Government of the United States of America Relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia*, done at Washington on 16 July 2008 and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of a treaty action tabled on 16 August 2011.
- 1.2 The treaty in question is the *Agreement between the Government of Australia and the Government of the United States of America Relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia, done at Washington on 16 July 2008*.
- 1.3 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.4 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 be entailed.
- 1.5 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by 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.
- 1.6 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. This treaty did not require an RIS.

- 1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.8 Copies of each treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:

<www.aph.gov.au/house/committee/jsct>

Conduct of the Committee's review

- 1.9 The treaty action reviewed in this report was advertised on the Committee's website from the date of tabling. Submissions were invited by Friday 9 September 2011 with extensions available on request.
- 1.10 Invitations were made to all State Premiers, Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the treaty.
- 1.11 Submissions received and their authors are listed at Appendix A.
- 1.12 The Committee examined Government witnesses at a public hearing held in Canberra on 19 September 2011.
- 1.13 Transcripts of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling date, being:
- **16 August 2011**
- <<http://www.aph.gov.au/house/committee/jsct/16august2011/hearings.htm>>
- 1.14 A list of witnesses who appeared at the public hearings is at Appendix B.

Agreement between the Government of Australia and the Government of the United States of America Relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia, done at Washington on 16 July 2008

Introduction

- 2.1 On 5 July 2011, the *Agreement between the Government of Australia and the Government of the United States of America Relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia*, done at Washington on 16 July 2008, was tabled in the Commonwealth Parliament.
- 2.2 The proposed Agreement sets out the terms and conditions for the maintenance and operation of the Station by Australia, and grants the US access to and use of the Station, in accordance with the provisions of the proposed Agreement and technical arrangements agreed between Australia and the US.

Aim of the treaty

- 2.3 The proposed Agreement is intended to replace the *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America relating to the Establishment of the United States Naval Communications Station in Australia*, done at Canberra on 9 May 1963.
- 2.4 The 1963 Agreement, which was terminated on 8 May 1999, provided for the establishment, maintenance and operation by the United States (US) of a naval communication station in Australia.
- 2.5 The proposed Agreement will remain in force for an initial period of 25 years, and unless terminated, shall continue for subsequent periods of five years.

Background

The Station

- 2.6 The Harold E Holt Naval Communication Station at Exmouth in Western Australia was commissioned in 1967 and became a joint facility in 1974. The Station provides Very Low Frequency (VLF) communications for US and Australian submarines. Since 1999, Australia has operated the Station, but the US has retained full access. The proposed Agreement provides that the Station is managed in accordance with Australia's policy of full knowledge and concurrence.¹
- 2.7 The Station has four communications channels, of which the US has access to three. Australia uses the remaining channel for communication with Royal Australian Navy submarines. The Station covers the Indian Ocean and areas north of that location.²
- 2.8 Australia has no other VLF transmission facilities, and the Station operates as part of the global network of VLF stations, most of which are operated by the US. Together, this global network provides seamless signal access

1 *National Interests Analysis (NIA) [2011] ATNIA 11, Agreement between the Government of Australia and the Government of the United States of America Relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia, [2008] ATNIF 10, paras. 3–5.*

2 Mr Chris Birrer, Assistant Secretary, Major Powers and Global Interests, International Policy Division, Department of Defence, *Committee Hansard*, 19 September 2011, p. 2.

for submarines across the world's oceans, including Australian submarines.³

- 2.9 Operational costs are shared on the basis of access. As the US uses 75 per cent of the Station's operational capacity, it covers 75 per cent of its operational costs.⁴

Very Low Frequency Communications

- 2.10 VLF (3 kHz - 30 kHz) radio transmissions can penetrate several meters below seawater and are useful for submarine communications when the submarine cannot surface, but can come close to the surface. The transmissions can be affected by salinity gradients in the ocean, but these usually do not present problems for near-surface submarines. There are natural sources of VLF radiation, but in general, the transmissions are not strongly influenced by changes in environmental conditions. VLF transmissions are therefore useful for reliable global submarine communications.
- 2.11 The transmission antennas need to be large, so it is primarily used for one-way communications from shore-based command centres to surface ships and submarines. It can also be used to broadcast to several satellites at once, which can in turn relay messages to the surface. The US Navy's VLF systems serve as a back-up for global communication use during hostilities when nuclear explosions may disrupt higher frequencies or satellites are destroyed by enemy actions. VLF is also used for aircraft and vessel navigation beacons and for transmitting standard frequencies and time signals.⁵
- 2.12 Despite the age of the Station (44 years), the VLF technology is still state-of-the-art and will remain an important communications method for future submarines as it can be used covertly. Notwithstanding the development of newer communications methods, such as satellite communication, VLF will continue to remain an important method

3 Mr Daryl Mouser, Director, Radio Frequency Systems Program Office, Communications Branch, Electronic Systems Division, Department of Defence, *Committee Hansard*, 19 September 2011, p. 2.

4 Mr Daryl Mouser, Director, Radio Frequency Systems Program Office, Communications Branch, Electronic Systems Division, Department of Defence, *Committee Hansard*, 19 September 2011, p. 4.

5 'Submarine Communication' Global Security.org, <<http://www.globalsecurity.org/military/systems/ship/sub-comm.htm>>, accessed 24 August 2011.

through which both the US and Australian navies communicate with their submarines.⁶

Full Knowledge and Concurrence

- 2.13 Full knowledge and concurrence refers to Australia's right to know what activities foreign governments conduct in, through or from Australian territory or national assets. 'Full knowledge' equates to Australia having a full and detailed understanding of any capability or activity with a presence on Australian territory or making use of Australian assets. 'Concurrence' does not mean Australia approves every activity or tasking; rather, Australia will approve the presence of a capability or function in Australia in support of its mutually agreed goals, based on Australia's full understanding of that capability and the uses to which it can be put.⁷

Australia's interest in accepting the measures

- 2.14 The proposed Agreement provides for continued access and use of the Station by the US and, consequently, the means through which VLF communication for US and Australian submarines may be maintained. According to the Department of Defence, continuing US access to the Station will help support the maintenance of a strong and adaptable US presence in the Asia-Pacific region and is an important indication of the continuing commitment of the US Government to regional cooperation.
- 2.15 The Station's capacity for communicating with submerged submarines in the Indian Ocean is unique in our region. The Department of Defence argued that hosting the facility was an important element in enabling Australian use of other VLF transmitters to communicate with Australian submarines in the Pacific and Arctic Oceans.⁸

6 Mr Daryl Mouser, Director, Radio Frequency Systems Program Office, Communications Branch, Electronic Systems Division, Department of Defence, *Committee Hansard*, 19 September 2011, p. 1.

7 NIA, para. 10.

8 NIA, paras. 6-7.

Key obligations

- 2.16 Article 1 of the proposed Agreement provides that Australia will maintain and operate the Station.
- 2.17 Article 2 provides that Australia will grant to the United States all necessary rights of access to and use of the Station throughout the duration of the proposed Agreement.
- 2.18 Articles 3 and 4 set out certain conditions relating to access to and use of the Station.
- paragraph 1 of Article 3 of the proposed Agreement provides that the two Governments will consult from time to time on matters connected with the Station and its use; and
 - paragraph 2 of Article 3 provides that, unless Australia's express consent is obtained, the Station will not be used for purposes other than defence communication.
- 2.19 Article 4 lists three conditions governing access to and use of the Station. These are:
- that the communication services of the Station must be available to both Australian and US armed forces;
 - that the cooperating agencies of the two Governments must mutually determine technical arrangements for the use of the Station; and
 - that the US use of the Station must accord with Australia's policy of full knowledge and concurrence.⁹

Costs

- 2.20 There are no specific new costs for the Treaty, though some of its articles require consideration of maintenance and replacement cost for buildings, plant and equipment at the base.
- 2.21 Article 9 of the proposed Agreement provides that the cost of operation, maintenance, alteration and repair of the Station will be shared by the two Governments. Technical arrangements for cost sharing will be negotiated between the cooperating agencies as required.

⁹ NIA, paras. 8-10.

- 2.22 Article 11 requires Australia to compensate the US for any residual value of the buildings and equipment constructed or improved by the US at the Station since 1963 and not removed at the termination of the proposed Agreement. A proposed Deed of Transfer for Property remains unresolved due to differences regarding residual value, site environment risks and hazards, and other associated costs. The Department of Defence advised that discussions over the proposed Deed of Transfer for Property are continuing.¹⁰
- 2.23 The Committee understands that the environmental risks and hazards are well understood and are being managed.¹¹

Nuclear proliferation and disarmament issues

- 2.24 The Committee notes that the Station is used to communicate with all types of US Navy submarines, including nuclear armed ballistic missile submarines,¹² and that there is some concern in Australia about that aspect of the Station's operations. The Australian Anti-Basis Campaign Coalition argued:

North West Cape will be used for naval communications, especially communications with submarines. Submarines are offensive attack weapons platforms... In seeking to have North West Cape operational as a US naval base again, Australia is supporting US plans to bring its nuclear powered and armed submarines into the Indian Ocean, creating a significant threat perception among regional powers.¹³

Committee's inquiry into nuclear non-proliferation and disarmament

- 2.25 The Committee conducted an extensive inquiry into the issue of nuclear non-proliferation and disarmament in 2009, the results of which were published in *Report 106*.¹⁴

10 NIA, paras 25–26.

11 Mr Daryl Mouser, Director, Radio Frequency Systems Program Office, Communications Branch, Electronic Systems Division, Department of Defence, *Committee Hansard*, 19 September 2011, p. 4.

12 Mr Chris Birrer, Assistant Secretary, Major Powers and Global Interests, International Policy Division, Department of Defence, *Committee Hansard*, 19 September 2011, p. 5.

13 Australian Anti-Basis Campaign Coalition, *Submission 1*, p. 3.

14 *Report 106: Nuclear Non-Proliferation and Disarmament*, Joint Standing Committee on Treaties, 2009.

- 2.26 In that report, the Committee advocated a series of measures be adopted by the Government to progress nuclear non-proliferation and disarmament. Of particular interest in relation to the proposed Agreement currently under consideration are the Committee's views on a Nuclear Weapons Convention and the development of Nuclear Weapons Free Zones.
- 2.27 In relation to the development of a Nuclear Weapons Convention, the Committee argued that:
- ...the Committee considers that Australia should make it clear to the international community that it pursues all nuclear non-proliferation and disarmament measures with a view to the eventual negotiation and entry-into-force of a universally adhered to treaty that achieves the complete abolition of nuclear weapons.¹⁵
- 2.28 Nuclear Weapons Free Zones are multilateral treaties enabled by Article VII of the *Treaty on the Non-Proliferation of Nuclear Weapons*. A number of Nuclear Weapons Free Zones have been negotiated worldwide. In the Asia Pacific, three Nuclear Weapon Free Zones have been agreed:
- the *South Pacific Nuclear Free Zone*;
 - the *South East Asian Nuclear Weapon Free Zone*;¹⁶ and
 - the *Antarctic Treaty*.¹⁷
- 2.29 Australia is a signatory to the *South Pacific Nuclear Free Zone* and the *Antarctic Treaty*, but is not party to the *South East Asian Nuclear Weapon Free Zone*. The US is signatory only to the *Antarctic Treaty*.¹⁸
- 2.30 The Committee strongly supported the use of Nuclear Weapons Free Zone treaties as a method of furthering the cause of nuclear non-proliferation. In particular, the Committee recommended (Recommendation11):
- ...that Australia play a leading role in advocating for full recognition of a southern hemisphere nuclear weapons free zone...¹⁹

15 *Report 106: Nuclear Non-Proliferation and Disarmament*, Joint Standing Committee on Treaties, 2009, p. 123.

16 *Report 106: Nuclear Non-Proliferation and Disarmament*, Joint Standing Committee on Treaties, 2009, p. 136.

17 *Report 106: Nuclear Non-Proliferation and Disarmament*, Joint Standing Committee on Treaties, 2009, p. 133.

18 *Report 106: Nuclear Non-Proliferation and Disarmament*, Joint Standing Committee on Treaties, 2009, pp. 133 and 136.

- 2.31 This recommendation was supported by the Australian Government.
- 2.32 Australia's hosting of the North West Cape submarine communications base, which communicates with US nuclear armed submarines in the Indian Ocean and South Asia is not inconsistent with Australia's commitments under the *South Pacific Nuclear Free Zone* treaty and the *Antarctic Treaty*.
- 2.33 However, it is the Committee's view that the proposed Agreement may pose a conflicting obligation if, at some point in its 25 year life span, a treaty establishing a southern hemisphere nuclear free zone were to be established.

Conclusion

- 2.34 The Committee recognises that Australia's defence relationship with the United States will remain important to Australia's defence strategy in the future. The continued cooperation over the use of the Harold E. Holt Naval Communication Station represents a tangible expression of that defence relationship.
- 2.35 The Committee also recognises that the Harold E. Holt Naval Communication Station is part of an integrated network of communications stations and that the Australian Navy is reliant upon VLF transmitters provided by other bases operated by the United States in other countries to communicate with Australian submarines operating beyond the Indian Ocean range of this Station. The Committee accepts this is a genuine area of mutual cooperation in defence activities that assists in meeting the operational requirements of Australia's defence forces.
- 2.36 Notwithstanding continued negotiations on residual value, site environment risks and hazards, and other associated costs, the financial costs to Australia are reasonable and manageable – particularly as the US cover 75 per cent of the Station's operational budget.
- 2.37 While noting the potential for the proposed Agreement to pose a conflicting obligation if, at some point in its 25 year life span, a treaty establishing a southern hemisphere nuclear free zone were to be established, the Committee does not believe that this hypothetical scenario warrants the rejection of the proposed Agreement and the potential

19 *Report 106: Nuclear Non-Proliferation and Disarmament*, Joint Standing Committee on Treaties, 2009, p. 140.

negative effects to Australian naval communications that may arise as a result of such a rejection.

- 2.38 However, the Committee draws the Government's attention to the possible conflict between the proposed Agreement and any future agreement establishing a southern hemisphere nuclear free zone. While supporting the proposed Agreement the Committee also urges the Government to specifically address how such a possible conflict may be reconciled without in any way diminishing the Australian Government's efforts to promote disarmament and the abolition of nuclear weapons.

Recommendation 1

The Committee supports *Agreement between the Government of Australia and the Government of the United States of America Relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia, done at Washington on 16 July 2008* and recommends that binding treaty action be taken.

Senator Simon Birmingham

Acting Chair



Dissenting Report—Australian Greens

The North West Cape naval communication base attracted controversy and protest during the Cold War due to the role it played as a command control and communications centre for US nuclear submarine warfare against the Soviet Union.

Because North West Cape continues to facilitate, enable and support nuclear armed submarines, offensive attack weapons platforms, thereby legitimizing the retention and deployment of nuclear weapons, the Australian Greens do not believe this treaty should be adopted in its current form.

The Committee has seriously engaged with the question of nuclear weapons in its inquiry and report, noting that the proposed 25 year Agreement may pose a conflicting obligation should nuclear disarmament diplomacy advance within this time frame. However, it has failed to recognise that allowing nuclear weapon states to continue business as usual deters any action towards disarmament.

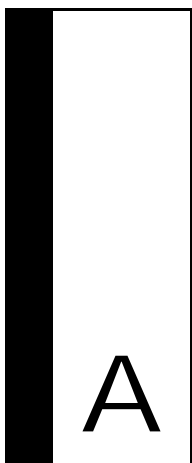
Significant impediments to the commencement and conclusion of disarmament negotiations are the belief systems that nuclear weapons provide political power and military security. So long as Australia continues lend weight and credence to the idea that nuclear weapons bring security by participating in the US nuclear weapons umbrella and allowing bases on our soil to facilitate the nuclear weapons apparatus, not only is the coherence of our disarmament message and efforts compromised, we are also missing an opportunity to demonstrate that giving a reduced role to nuclear weapons is practically achievable, and need not result in damaged alliances.

Indeed, working together on disarmament and thereby liberating massive fiscal, human and technical resources for investment in human development and sustainability would strengthen the US-Australia alliance as the international community leaves behind nuclear weapon and the dangerous and outdated security paradigms they have come to symbolise.

North West Cape continues to be of concern to environmentalists due to concerns over the possible ecological impact of very low frequency communications given it is located directly adjacent to Ningaloo Reef, Western Australia's precious marine sanctuary.

The Australian Greens note that the National Interest Analysis states that there are a number of issues remaining unresolved regarding the residual worth of assets and environmental issues that include diesel and asbestos contamination. The Committee has brushed these issues aside as reasonable and manageable; however they appear to have not been reasonably managed over the last 10 years and should be conclusively resolved before committing Australia to a 25 year agreement.

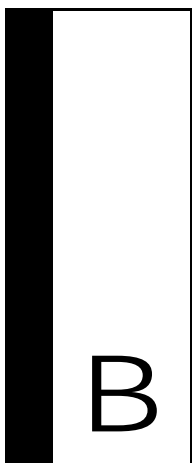
Senator Scott Ludlam



Appendix A — Submissions

Treaties tabled on 16 August 2011

- 1.1 Australian Patriot Movement
- 3 Australian Anti-Bases Campaign Coalition



Appendix B — Witnesses

Monday, 19 September 2011 - Canberra

Department of Defence

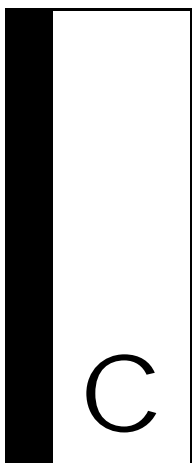
Mr Chris Birrer, Assistant Secretary, Major Powers and Global Interests,
International Policy Division

Mr Kerry Hempenstall, Senior Legal Officer, Directorate of International
Government Agreements and Arrangements, Defence Legal

Mr Daryl Mouser, Director Radio Frequency Systems Program Office,
Communications Branch, Electronic Systems Division

Department of Foreign Affairs and Trade

Mr David Mason, Executive Director, Treaties Secretariat, International
Legal Branch



Appendix C — Minor treaty actions

Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.

Minor treaty actions are tabled with a one-page explanatory statement. The Joint Standing Committee on Treaties has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

The following minor treaty action was considered by the Committee during the consideration of this Report. In this case the Committee determined not to hold a formal inquiry and agreed that binding treaty action may be taken.

Minor treaty actions tabled on 20 September 2011

- *International Convention for the Regulation of Whaling, 1946*
Notification of Amendments to the Schedule As amended by the International Whaling Commission at the 63rd Annual Meeting Jersey, Channel Islands, July 2011

This minor treaty action relates to the ban on commercial whaling contained in this Convention. The ban on commercial whaling is routinely extended by twelve months at each meeting of the Commission through an amendment to Schedule A of the Convention.

The Committee has in the past treated these extensions as minor treaty actions as they do not change the extant situation in relation to commercial whaling.

In this instance, the Committee has agreed to continue to deal with the amendment as a minor treaty action.