

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000, done at London, 15 March 2000
[2003] ATNIF 9

Date of Tabling of Proposed Treaty Action

1. 17 June 2003

Nature and Timing of Proposed Treaty Action

2. The Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000 (the Protocol) is a Protocol to the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (OPRC Convention) [1995] ATS 12. Australia is a Party to the OPRC Convention, which entered into force internationally and for Australia on 13 May 1995.

3. The Protocol will enter into force 12 months after the date on which a minimum of fifteen States have either signed it or have deposited the requisite instruments of ratification, acceptance, approval or accession [Article 15]. As of 31 April 2003 [KPI] four States are Parties to the Protocol. The Government proposes to accede to the Protocol in accordance with Article 13, paragraph 1(c). Accession by Australia would assist in expediting the Protocol's entry into force. Recent high profile pollution incidents in European waters have resulted in increased activity globally towards adoption of the Protocol, and it is expected that the Protocol will enter into force in 2005.

Comment:

Overview and National Interest Summary

4. The purpose of the Protocol is to provide a global framework for international co-operation in combating major incidents or threats of marine pollution by hazardous and noxious substances other than oil, and to ensure that Parties have in place measures for dealing with pollution incidents. Accession to the Protocol will strengthen Australia's existing response arrangements under the National Marine Chemical Spill Contingency Plan (CHEMPLAN) by giving Australia access to overseas assistance in the event of an emergency involving pollution from hazardous and noxious substances other than oil.

Reasons for Australia to Take the Proposed Treaty Action

5. Australia was one of the first States to become a Party to the OPRC Convention, which provides a framework for assistance and planning for pollution incidents involving oil. The Protocol to the OPRC Convention extends the co-operation and planning obligations for oil pollution incidents to pollution incidents involving other hazardous and noxious substances (HNS).
6. Australia has implemented many of the provisions of the OPRC Convention through the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances (National Plan). As part of the National Plan, Australia has developed CHEMPLAN to implement the key obligation of the Protocol, being to establish a national system for preparedness and response to HNS incidents.
7. Accession to the Protocol would allow Australia to access international assistance in the case of a major chemical pollution incident once the Protocol enters into force. The Protocol also authorises the International Maritime Organization (IMO) to undertake a range of functions and activities in relation to HNS incidents. Prompt Australian accession to the Protocol would contribute to expediting its entry into force.
8. Australia has demonstrated leadership in many areas of marine environment protection, as successive governments have recognised the importance of embracing internationally consistent measures in the maritime industry. Accession to the Protocol is important because of Australia's reliance on the international maritime industry to underpin our international trade. Australia's accession to the Protocol would also enhance protection of Australia's marine environment from all types of ship sourced pollution.

Obligations

9. In acceding to the Protocol, Australia undertakes, either individually or jointly with other Parties, to take all appropriate measures in accordance with the Protocol to prepare for and respond to a HNS incident [Article 1, paragraph 1]. The Protocol does not apply to warships, naval auxiliary or other ships used only on government non-commercial service [Article 1, paragraph 3]. However, Parties are obliged to ensure that these vessels act consistently with the Protocol, without interfering with the operation of these vessels [Article 1, paragraph 3].
10. As a Party to the Protocol, Australia is required to:
 - ensure that ships entitled to fly its flag have on-board a pollution incident emergency plan and ensure masters or other persons in charge of such ships follow appropriate reporting procedures in the event of a HNS incident [Article 3, paragraph 1];
 - ensure that authorities and operators in charge of seaports and HNS handling facilities have in place pollution incident emergency plans for HNS [Article 3, paragraph 2];

- notify other countries of a pollution incident where those countries are likely to be affected by such a HNS incident [Article 3, paragraph 3];
- establish a national system for responding promptly and effectively to pollution incidents and ensure that current information about this system is provided to the IMO. The Protocol prescribes minimum requirements for such a system [Article 4];
- co-operate and provide advisory services, technical support and equipment for the purpose of responding to a HNS incident when the severity of the incident so justifies, upon the request of a Party affected or likely to be affected. This obligation is subject to Australia's capabilities and the availability of relevant resources [Article 5, paragraph 1]; and
- take necessary legal or administrative measures to facilitate the arrival, utilization and departure from, as well as the expeditious movement into, through, and out of its territory of personnel, cargoes, materials and equipment engaged in responding to a HNS incident [Article 5, paragraph 3].

11. In acceding to the Protocol, Australia agrees to co-operate in relation to research and development activities [Article 6] and the provision of technical assistance [Article 7]. Australia also agrees to work towards concluding bilateral or multilateral agreements for preparedness for and response to pollution incidents [Article 8].

Implementation

12. The obligations under the Protocol are met by existing legislation and policies which are described below.

13. Article 3, paragraph 1: the obligation to ensure that ships have an on-board pollution incident emergency plan is implemented by subordinate legislation, Marine Orders Part 93 that applies to ships of 150 gross tonnage and above certified to carry noxious liquid substances in bulk. This legislation came into effect on 1 January 2003.

14. Article 3, paragraph 2: the obligation to ensure that seaports and HNS handling facilities have pollution incident emergency plans in place has been implemented through various Commonwealth, State and local council regulations. While these vary between jurisdictions, the requirements may include: 'High Risk Facility' requirements under the *Environmental Protection and Biodiversity Conservation Act 1999*; Port Authority requirements based on leasing obligations; State planning laws; local council requirements; State emergency legislation; and fire brigade legislation.

15. Article 3, paragraph 3: the obligation to inform other countries whose interests are likely to be affected by a HNS spill is contained in internal Australian Maritime Safety Authority (AMSA) procedures.

16. Article 4: the obligation to establish a national system for responding promptly and effectively to pollution incidents has been effected through the development of CHEMPLAN. As required by Article 4, CHEMPLAN provides for:

- the designation of a competent authority that is responsible for preparedness and response to pollution incidents (CHEMPLAN section 2.7);
- national operational contact point/s (CHEMPLAN Appendix 2);
- an authority capable of acting on behalf of Australia in giving and receiving assistance (CHEMPLAN section 2.9.9);
- pre-positioned equipment for responding to pollution incidents and programmes for its use (CHEMPLAN section 2.10);
- exercises and training for pollution incident response (CHEMPLAN sections 2.16.1 and 2.16.2);
- communication capabilities for responding to an incident (CHEMPLAN 2.12); and
- detailed plans and mechanisms for coordinating response and mobilising necessary resources (CHEMPLAN section 2.1, 2.7).

17. The requirement under Article 4, paragraph 3 to provide the IMO with up-to-date details of relevant emergency contacts and available response equipment will be met administratively and facilitated by AMSA.

18. Article 5: the requirement to co-operate with other Parties in responding to a major HNS incident is given effect by several bilateral and multilateral arrangements and provisions in CHEMPLAN dealing with overseas assistance (see CHEMPLAN section 2.9.9). The obligation under Article 5, paragraph 3 for Parties to ensure rapid arrival and departure of response equipment and personnel in emergency situations is met by existing arrangements between AMSA and the Australian Customs Service relating to importation of pollution response resources. Arrangements also exist with the Department of Immigration and Multicultural and Indigenous Affairs concerning the emergency issue of visas to experts or emergency response personnel.

19. Article 8: in relation to the undertaking to co-operate to reach bilateral and multilateral agreements, Australia currently has Memoranda of Understanding in oil spill response with New Zealand, Papua New Guinea, Indonesia and New Caledonia. AMSA will review these arrangements as necessary with a view to including chemical spills. Australia is a member of the Pacific Islands Regional Marine Spill Contingency Plan, which already applies to chemical spills.

Costs

20. As the Protocol will be implemented by existing arrangements, notably under the CHEMPLAN, there are no significant costs associated with Australia's accession to the Protocol. A review of arrangements under CHEMPLAN identified the need for additional resources to be allocated to training in chemical spill response techniques. Some additional costs have therefore already been incurred in this area, however, all such costs are met under the National Plan funding arrangements, derived from a levy on commercial ships visiting Australian ports.

21. There are also minor administrative costs for AMSA in that ships' emergency plans will require examination by marine surveyors when conducting shipboard inspections (under the port State control program) to ensure that the ships carry current plans.

22. The cost to ship operators of implementing an on-board emergency plan for HNS pollution incidents is expected to be comparable to the current costs of implementing Oil Pollution Emergency Plans, ie in the range of a one-off cost of \$US3,000-5,000 per vessel, with costs of around \$US500 if updating is necessary.

23. The Protocol sets out a framework for reimbursing costs of providing assistance to respond to major incidents [Article 5, paragraph 1 and Annex]. A Party requesting assistance is to bear the costs incurred by another Party in providing such assistance, although it is recognised that in most cases such costs will be ultimately borne by the polluter. Special consideration is provided for developing countries.

Consultation

24. Consultations have been undertaken with both government and industry stakeholders. The details of these consultations are included in the consultation annexure.