

National Interest Analysis [2010] ATNIA 59

with attachment on consultation

RESOLUTION MEPC.186(59)

Adopted on 17 July 2009

**Amendments to the Annex of the Protocol of 1978 relating to
the International Convention for the Prevention of Pollution from Ships, 1973**

[2010] ATNIF 46

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force amendments to the amended *International Convention for the Prevention of Pollution from Ships* done at London on 2 November 1973 (MARPOL). These amendments include addition of a new chapter 8 to MARPOL Annex I (the proposed amendments).
2. Pursuant to Article 16(2)(g)(ii) of MARPOL, the proposed amendments will enter into force on 1 January 2011. In accordance with the amendment procedure set out in Article 16 of MARPOL, the amendments to Annex I were deemed to have been accepted on 1 July 2010, unless prior to that date, not less than one-third of the Parties or Parties with a combined fleet of no less than 50 per cent of the gross tonnage of the world's merchant fleet, communicated to the International Maritime Organization (IMO) their objection to the amendments. As at 1 July 2010, no objections were communicated to the IMO. As Australia is a Party to MARPOL and did not object to the amendments or state that Australia's express approval is necessary, the amendments will automatically enter into force for Australia on 1 January 2011 by virtue of Article 16 (2)(g)(ii) of MARPOL and in accordance with paragraph 3 of Resolution MEPC.186(59) (the Resolution).

Overview and national interest summary

3. MARPOL is one of the key international instruments addressing the problem of marine pollution from ships. MARPOL contains six technical annexes dealing respectively with oil, bulk noxious liquid substances, harmful substances in packaged form, sewage, garbage and air pollution. On 17 July 2009, the Marine Environment Protection Committee (MEPC) of the IMO adopted Resolution MEPC.186(59) to add a new Chapter 8 entitled 'Prevention of Pollution during Transfer of Oil Cargo between Oil Tankers at Sea' to Annex I (Prevention of Pollution by Oil).
4. The intention of the proposed amendments is to ensure that best practice techniques are employed to minimise the risk of oil pollution at sea during ship to ship (STS) transfers. Australia's implementing legislation would apply to any such transfers in Australia's territorial sea or exclusive economic zone, as well as to such transfers involving Australian flagged vessels wherever they may be located.
5. In particular, the proposed amendments to Annex I will require an approved STS operations plan, to be written in the working language of the ship, with operations notified and supervised by appropriately qualified persons. Records of each operation will need to be retained and available for inspection by any Party to MARPOL.

Reasons for Australia to take the proposed treaty action

6. Australia's acceptance of Resolution MEPC.186(59) is consistent with Australia's long-standing support for protection of the marine environment and Australia's active backing of, and participation in, IMO.

7. The proposed amendments are in accordance with Australia's general obligations as a Party to the *United Nations Convention on the Law of the Sea* (UNCLOS) 1982. This provides for nations to adopt generally accepted international rules and standards when implementing laws and regulations to prevent, reduce and control pollution of the marine environment from vessels (Article 211 of UNCLOS).

Obligations

8. The new MARPOL Chapter 8 of Annex I sets out requirements for applicable oil tankers when undertaking STS operations. Although the proposed amendments relate primarily to the operations of such oil tankers, it is the flag State's responsibility to ensure compliance with best practice procedures.

9. Regulation 40 sets out the types of operations that are exempt from the application of Chapter 8, which include operations necessary for the purpose of securing safety at sea, saving a life at sea or securing a particular pollution incident.

10. Regulation 41 sets out general requirements relating to STS operations plans. In particular, Parties are required to ensure that any oil tanker to which Chapter 8 applies is carrying a plan prescribing how to conduct STS operations. In accordance with Regulation 41(1), an STS operations plan must be finalised no later than the date of the first annual, intermediate or renewal survey of the ship, to be carried out no later than 1 January 2011.

11. The STS operations plan must take into account information contained in the best practice guidelines for STS operations.

12. Under Regulation 41(1), a Party is required to approve the STS operations plan carried on board oil tankers that are registered in that State.

13. Regulation 42 requires oil tankers to notify the relevant Party of certain specified details of STS operations at least 48 hours before commencing STS operations in the territorial sea or exclusive economic zone of that Party.

Implementation

14. The proposed amendments will be implemented into Australian law by amendment to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Costs

15. The new requirements will not result in any extra costs or savings for the Government, business or individuals. The requirements set out in the proposed amendments are a codification of existing practices.

Regulation Impact Statement

16. The Office of Best Practice Regulation provided advice on 15 January 2010 that it considers the impacts of the proposed amendments to Annex I will be low, that no further analysis is required and that the preparation of a Regulation Impact Statement or quantification of compliance costs is not required.

Future treaty action

17. Future amendments to Annex I or other Annexes to MARPOL will be in accordance with the amendment procedures set out in Article 16 of MARPOL. This includes amendment by a ‘tacit acceptance’ procedure, where the amendments enter into force on a specified date unless an agreed number of Parties object by an agreed date. Amendments are usually adopted by either IMO’s Marine Environment Protection Committee (MEPC) or by a Conference of Parties to MARPOL. Any such amendments would be subject to the Australian domestic treaty-making process including tabling in Parliament and consideration by the Joint Standing Committee on Treaties (JSCOT).

Withdrawal or denunciation

18. MARPOL and any of its Optional Annexes may be denounced by any Parties to the Convention at any time after the expiry of five years from the date on which the Convention or such Annex enters into force for that Party. Annex I is not included in the list of ‘optional annexes’ in Article 14, therefore the acceptance of Annex I is obligatory for all contracting Parties to MARPOL.

19. Denunciation of the proposed amendments to Annex I, after they have entered into force, could be achieved only by the denunciation of the whole of MARPOL. Denunciation would be effected by the deposit of an instrument of denunciation with the Secretary-General of IMO, in accordance with Article 18 of MARPOL. The denunciation would take effect twelve months, or any longer period as specified in the notification of denunciation, after the receipt of the notification by the Secretary-General. Denunciation would be subject to Australia’s domestic treaty-making process, including tabling and consideration by the JSCOT.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

20. Consultation during the development of the proposed amendments to Annex I of the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973* (MARPOL) was undertaken with the National Plan Management Committee. This group is responsible for overseeing Australia's *National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances* and included all States, the Northern Territory, the Australian Institute of Petroleum, Australian Shipowners Association, Plastics and Chemical Industries Association, Ports Australia and Department of Infrastructure and Transport. The Petroleum section of the Department of Resources, Energy and Tourism was also consulted during the development of the proposed amendments. The text initially proposed to International Maritime Organization (IMO) was circulated to these stakeholders and comment invited. Maritime Safety Queensland was consulted specifically on application to smaller vessels (the concern being the large fleet of fishing vessels regularly conducting diesel fuel transfers in the Great Barrier Reef). The Royal Australian Navy was consulted on the notification provisions in Regulation 42 with regard to the security of warships.

21. Based on the issues raised by stakeholders during consultation, Australia submitted a paper to the IMO Bulk Liquids and Gases Subcommittee (10th Session) presenting views on several issues including: jurisdiction under *United Nations Convention on the Law of the Sea* (UNCLOS); application to smaller vessels, bunkers, liquefied petroleum gas tankers and offshore oil and gas industry platforms; and technical aspects. In particular, Australia argued that the regulations should not apply to Floating Production Storage and Offloading Facilities/Floating Storage Units (FPSOs/FSUs) because these vessels regularly and routinely undertake ship to ship transfer in accordance with best practice. At this meeting it was also suggested that a lower limit be put on the size of vessel to which the regulations would apply and/or the grade of oil involved. Where necessary throughout the development of the text over several IMO meetings and intersessional correspondence, Australia adopted positions consistent with these views.

22. The final text adopted only applies to oil tankers that have a gross tonnage of 150 or more transferring oil cargoes. It includes an exemption for operations where one of the vessels is a warship and operations involving FPSOs and FSUs. Limiting the application of the proposed amendments addresses the concerns raised by non-government stakeholders during consultation. States and the Northern Territory did not raise any concerns about the proposed amendments.