

# Report 122

Treaties tabled on 23 August, 13 and 20 September and 13 October 2011

Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization (done at Vienna on 2 September 2010)

Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-Operation in the Peaceful Uses of Nuclear Energy

International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 14 April 2005)

Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006 Signed for Australia in Rome, 29 December 2006)

Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009)

Air Services Agreement between the Government of Australia and the Government of the Czech Republic (New York, 24 September 2010)

Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services (done at Canberra on 31 July 1995) (Hanoi, TBA 2011)

Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended (Canberra, TBA 2011)

Resolution MEPC.202(62): Amendments to the Annex of the Protocol of 1997 to amend the International Convention For The Prevention Of Pollution From Ships, 1973, as modified by the Protocol of 1978 relating thereto, adopted at London on 15 July 2011

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## Membership of the Committee

Chair Mr Kelvin Thomson MP

Deputy Chair Senator Simon Birmingham  
*(from 12/9/11)*

Members Ms Sharon Bird MP

Senator the Hon Helen Coonan  
*(until 23/8/11)*

Mr Jamie Briggs MP

Senator David Fawcett  
*(from 23/8/11)*

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

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Inquiry Secretary Kevin Bodel

Andrew Gaczol

Administrative Officers Heidi Lushtinetz

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 for the Establishment of the International Anti-Corruption Academy as an International Organization (done at Vienna on 2 September 2010)**

### Recommendation 1

The Committee supports *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization* (done at Vienna on 2 September 2010), and recommends that binding treaty action be taken.

- 3 Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-Operation in the Peaceful Uses of Nuclear Energy**

### Recommendation 2

The Committee supports *Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-Operation in the Peaceful Uses of Nuclear Energy* and recommends that binding treaty action be taken.

- 4 International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 14 April 2005)**

### Recommendation 3

The Committee supports *International Convention for the Suppression of Acts of Nuclear Terrorism* (New York, 14 April 2005) and recommends that binding treaty action be taken.

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- 5 Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006) and Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009)

Recommendation 4

The Committee supports *Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006)* and recommends that binding treaty action be taken.

Recommendation 5

The Committee supports *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009)* and recommends that binding treaty action be taken.

- 6 Air Services Agreement between the Government of Australia and the Government of the Czech Republic (New York, 24 September 2010) and Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services (done at Canberra on 31 July 1995) (Hanoi, TBA 2011)

Recommendation 6

The Committee supports *Air Services Agreement between the Government of Australia and the Government of the Czech Republic (New York, 24 September 2010)* and recommends that binding treaty action be taken.

Recommendation 7

The Committee supports *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services (done at Canberra on 31 July 1995) (Hanoi, TBA 2011)* and recommends that binding treaty action be taken.

**7 Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended (Canberra, TBA 2011)**

**Recommendation 8**

The Committee supports the *Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended (Canberra, TBA 2011)* 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 treaty actions tabled on 23 August, 13 September and 20 September 2011.
- 1.2 These treaty actions are proposed for ratification and are examined in the order of tabling:
  - **Tabled 23 August**
    - ⇒ *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization (done at Vienna on 2 September 2010)*
    - ⇒ *Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-Operation in the Peaceful Uses of Nuclear Energy*
    - ⇒ *International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 14 April 2005)*
  - **Tabled 13 September 2011**
    - ⇒ *Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006 Signed for Australia in Rome, 29 December 2006)*
    - ⇒ *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009)*

■ **Tabled 20 September 2011**

- ⇒ *Air Services Agreement between the Government of Australia and the Government of the Czech Republic (New York, 24 September 2010)*
- ⇒ *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services (done at Canberra on 31 July 1995) (Hanoi, TBA 2011)*
- ⇒ *Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended (Canberra, TBA 2011)*

- 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 The 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. The treaties examined in this report do 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:
- 1.1 <[www.aph.gov.au/house/committee/jsct](http://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 15 September 2011 for those treaties tabled on 23 August 2011, 14 October 2011 for those treaties tabled on 13 September and 20 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 the witnesses on each treaty at a public hearing held in Canberra on 31 October 2011.
- 1.13 Transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling dates, being:
- **31 October 2011**  
<<http://www.aph.gov.au/house/committee/jsct/31october2011/hearings.htm>>
- 1.14 A list of witnesses who appeared at the public hearings is at Appendix B.

## Minor treaty action

- 1.15 Minor treaty actions are generally technical amendments to existing treaties, which do not impact significantly on the national interest.
- 1.16 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.
- 1.17 One minor treaty action is considered in this Report: *Resolution MEPC.202(62): Amendments to the Annex of the Protocol of 1997 to amend the International Convention For The Prevention Of Pollution From Ships, 1973, as modified by the Protocol of 1978 relating thereto*, adopted at London on 15 July 2011.

1.18 This minor treaty action was tabled in Parliament on 13 October 2011.

1.19 The Committee's views on this treaty action are contained in Appendix C.



## Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization (done at Vienna on 2 September 2010)

### Introduction

- 2.1 On 23 August 2011, the *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization* (done at Vienna on 2 September 2010), was tabled in the Commonwealth Parliament.
- 2.2 The proposed Agreement is to establish the International Anti-Corruption Academy (the Academy) as a non-profit and self-sustaining organisation, based in Laxenburg, Austria. The Academy is a joint initiative of the United Nations (UN) Office on Drugs and Crime, the Republic of Austria and the European Anti-Fraud Office.
- 2.3 The Academy is intended to promote effective and efficient efforts to prevent and combat corruption by providing anti-corruption education, professional training and technical assistance. The Academy will also undertake academic research into corruption and foster international cooperation and networking opportunities in the fight against corruption.<sup>1</sup>

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<sup>1</sup> *National Interest Analysis [2011] ATNIA 18 with attachment on consultation Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization done at Vienna on 2 September 2010, [2010] ATNIF 54, (Hereafter referred to as 'NIA') paras. 3-4.*

## Australia's interest in the Agreement

- 2.4 Australia plays a significant role in global and regional efforts to combat corruption, including through its work as a Party to the *United Nations Convention against Corruption* (UNCAC) and the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and as a member of both the G20 and APEC Anti-Corruption Working Groups.<sup>2</sup>
- 2.5 Australia was actively involved in the development of the G20 Anti-Corruption Action Plan, which is directed at preventing and tackling corruption through establishing legal and policy frameworks that promote a clean business environment and assist developing countries in their efforts to combat corruption. As a member of the G20 Anti-Corruption Working Group, Australia actively contributes to the Group's activities through implementation of the Action Plan.<sup>3</sup>
- 2.6 As a member of the APEC Anti-Corruption Working Group, Australia has in recent years led a project to develop and implement a Code of Conduct for Business. The Code has been implemented in a number of countries (for example, Vietnam and Chile) and continues to attract interest<sup>4</sup>, and ratifying the Agreement would be a further opportunity for Australia to demonstrate our support for international efforts to combat corruption.<sup>5</sup>
- 2.7 Support for the Academy would reinforce Australia's commitment to international efforts against corruption.<sup>6</sup>
- 2.8 As a Party to the Agreement, Australia would be able to participate in mechanisms to guide and support the Academy's work as an important international organisation, including exercising a voting right at the meetings of the Assembly of Parties, and thus contributing to the Academy's overall policy direction and institutional arrangements.
- 2.9 Australian anti-corruption practitioners and field specialists would also be able to take advantage of the training and educational services the Academy offers, thereby increasing expertise and links at the working level with international counterparts.<sup>7</sup>

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2 NIA, para. 5.

3 NIA, para. 6.

4 NIA, para. 7.

5 NIA, para. 8.

6 NIA, para. 9.

7 NIA, para. 10.

## Obligations

- 2.10 **Article I** of the Agreement establishes the Academy as an international organisation, with full international legal personality, and provides that the Academy shall operate in accordance with the Agreement.<sup>8</sup>
- 2.11 **Article II** prescribes the Academy's purpose which is to promote effective and efficient prevention and combating of corruption by:
- providing education and professional training;
  - undertaking and facilitating research;
  - providing other relevant technical assistance; and
  - fostering international cooperation.<sup>9</sup>
- 2.12 **Article III** identifies the seat of the Academy in Laxenburg, Austria, although the Academy may establish facilities in other locations as required.<sup>10</sup>
- 2.13 **Article IV** defines the Academy's organisational structure consists of:
- an Assembly of Parties (comprising a representative from each Party to the Agreement);
  - a Board of Governors;
  - an International Senior Advisory Board;
  - an International Academic Advisory Board<sup>11</sup>; and
  - a Dean.<sup>12</sup>
- 2.14 **Articles V-IX** prescribes the role, appointment procedures and operating procedures of each organ.<sup>13</sup>
- 2.15 **Article X** stipulates that the Academy is to recruit and retain academic and administrative staff with the highest possible qualifications, and make appropriate arrangements for part-time or visiting academic staff. The

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8 NIA, para. 11.

9 NIA, para. 12.

10 NIA, para. 13.

11 At this time, there is one Australian representative on the International Academic Advisory Board – the Hon. Barry O'Keefe. Mr Gresham Street, Acting Director, Anti-Corruption Section, International Crime Cooperation Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, p. 2.

12 NIA, para. 14.

13 NIA, para. 14.

Academy is to encourage States, international organisations, universities and other institutions to consider supporting the Academy's staffing, including by secondment of staff.<sup>14</sup>

- 2.16 **Article XI** stipulates that the long-term goal is for the Academy to be self-sustainable and that the Academy will be financed through means such as voluntary contributions from Parties or from the private sector, tuition and other fees and other service revenue.<sup>15</sup>
- 2.17 **Article XII** stipulates that Parties are to keep each other informed of and consult on matters of interest concerning their cooperation under the Agreement, in accordance with each Party's applicable rules concerning disclosure of information and subject to any arrangements concluded for that purpose.<sup>16</sup>
- 2.18 **Article XIII** stipulates that the Academy may establish cooperative relationships with States, international organisations and public or private entities where they can contribute to the Academy's work.<sup>17</sup>
- 2.19 **Article XIV** stipulates that the Academy, the members of each of its organs, the staff and experts are to enjoy such privileges and immunities as agreed between the Academy and the Republic of Austria. The Academy may conclude agreements with other States to secure appropriate privileges and immunities.<sup>18</sup>
- 2.20 **Article XIX** Any disputes or questions affecting the Academy are to be settled by negotiation or another agreed mode of settlement, or failing that, referred to a tribunal of three arbitrators for final decision.<sup>19</sup>

## Ratification

- 2.21 The Academy's foundation and operation are not dependent on a majority or unanimous ratification of the treaty. The Departments of Foreign Affairs and Trade and Attorney-General's explained that sufficient signatures and support had already been garnered:

Currently, 53 member states are signatories. There are 10 ratifications [and] seven other countries... are close to ratification. [T]he agreement is very new and most countries have some kind of domestic process before they can ratify such an agreement. I

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14 NIA, para. 15.

15 NIA, para. 16.

16 NIA, para. 17.

17 NIA, para. 18.

18 NIA, para. 19.

19 NIA, para. 20.

think that in itself explains the disparity between the number of signatories and the number of ratifications.<sup>20</sup>

[T]he actual agreement entered into force generally on 8 March this year but... we are not aware of a minimum number of ratifications that are necessary for this to move forward. It has already been established as an organisation because it reached the sufficient number of signatories. That occurred on 8 March earlier this year.<sup>21</sup>

## Implementation

2.22 No changes to Australian legislation are required to give effect to the Agreement.<sup>22</sup>

## Costs

2.23 The Agreement does not impose any direct financial obligations on the Parties to the Agreement. Article XV of the Agreement provides that Parties to the Agreement shall not be responsible, individually or collectively, for any debts, liabilities or other obligations of the Academy. Australia may consider making financial or in-kind contributions to the Academy. According to the National Interest Analysis (NIA) any decision as to whether Australia will make a voluntary contribution to the Academy would be a matter for the Government to consider as part of the usual budget process.<sup>23</sup> Australia has made no financial contribution to the institution's establishment at this time.<sup>24</sup>

## Conclusion

2.24 The Committee supports international efforts to help end or curtail corruption and support for the Academy would reinforce Australia's commitment to that goal.

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20 Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, pp. 2-3.

21 Mr Gresham Street, Acting Director, Anti-Corruption Section, International Crime Cooperation Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, p. 3.

22 NIA, para 21.

23 NIA, para 22.

24 Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, p. 2.

- 2.25 The Committee notes that Australia plays a significant international role in combating corruption, and that, domestically, the Australian public has a commendably low tolerance for corruption in Australian institutions.
- 2.26 Clearly, an international anti-corruption academy would be in concord with Australia's international stance on corruption, and Australia's domestic distaste for corruption. Given this, the Committee agrees that binding treaty action be taken.

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### **Recommendation 1**

**The Committee supports *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization* (done at Vienna on 2 September 2010), and recommends that binding treaty action be taken.**

# Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-Operation in the Peaceful Uses of Nuclear Energy

## Introduction

- 3.1 On 23 August 2011, the *Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-Operation in the Peaceful Uses of Nuclear Energy* was tabled in the Commonwealth Parliament.
- 3.2 The proposed Agreement replaces a number of existing agreements. Namely:
- *Agreement between the Government of Australia and the European Atomic Energy Community concerning Transfers of Nuclear Material from Australia to the European Atomic Energy Community done on 21 September 1981, (hereinafter referred to as “the 1982 Agreement”), which is due to expire on 15 January 2012;*
  - *Exchange of Notes constituting an Implementing Arrangement, concerning International Obligation Exchanges, to the Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) concerning Transfers of Nuclear Material done on 8 September 1993;*
  - *Exchange of Notes constituting an Implementing Arrangement, concerning Plutonium Transfers, to the Agreement between the Government of Australia*

*and the European Atomic Energy Community (Euratom) concerning Transfers of Nuclear Material done on 8 September 1993; and*

- *Exchange of Notes constituting an Implementing Arrangement between the Government of Australia and Euratom concerning Plutonium Transfers under the Agreement between the Government of Australia and Euratom concerning Transfers of Nuclear Material from Australia to Euratom, and accompanying Side Letter No. 2, of 21 September 1981, and the Implementing Arrangement concerning Plutonium Transfers of 8 September 1993.*<sup>1</sup>

3.3 Further, the provisions of any bilateral agreements between Australia and Member States of Euratom would be regarded as complementary to the proposed Agreement and would, where appropriate, be superseded.<sup>2</sup>

## **Background and Overview**

3.4 Euratom is an international organisation which establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment and material are not diverted from peaceful purposes to non-peaceful purposes. Euratom is legally distinct from the European Union (EU) but has the same membership.<sup>3</sup>

3.5 Euratom has a central place in Australia's network of nuclear co-operation agreements. All of the member states of the EU accept the jurisdiction of Euratom over their peaceful nuclear activities. All of the non-nuclear-weapon member states of the EU are signatories to a comprehensive safeguards agreement with the International Atomic Energy Agency (IAEA) and its associated Additional Protocol.<sup>4</sup>

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1 National Interest Analysis [2011] ATNIA 20 with attachment on consultation *Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-operation in the Peaceful Uses of Nuclear Energy*, (Date and place of signature to be confirmed), [2011] ATNIF 13, (Hereafter referred to 'NIA'), para 1.

2 NIA, para. 1.

3 NIA para. 8.

4 NIA, para. 9.



## Australia's interest in the Agreement

- 3.6 Nuclear co-operation agreements such as the proposed Agreement serve Australia's national interests by enhancing our commercial position as a supplier of uranium and by setting high international standards for its use through the application of strict conditions. All of Australia's bilateral nuclear agreements, including this proposed Agreement, provide stringent safeguards and security arrangements designed to ensure Australian uranium is used exclusively for peaceful purposes. By virtue of our extensive network of such agreements, Australia's strict conditions apply to a significant proportion of uranium in peaceful use worldwide, hence contributing to raising overall standards.<sup>5</sup>
- 3.7 The proposed Agreement would govern co-operation in peaceful uses of nuclear energy between the Parties, including reciprocal obligations on transfers and the use and application of non-proliferation safeguards on nuclear material, dual use materials, equipment and technology supplied by the Parties. The proposed Agreement is also consistent with Australia's other bilateral agreements and is Australia's first such agreement to include specific provisions on nuclear safety.<sup>6</sup>
- 3.8 The proposed Agreement's purpose is to provide a framework for co-operation between the Parties in the peaceful uses of nuclear energy on the basis of mutual benefit and reciprocity and without prejudice to the respective competences of each Party.<sup>7</sup>
- 3.9 In addition to maintaining strict safeguards and security arrangements concerning nuclear material and equipment already transferred under the 1982 Agreement, the Government considers that continued co-operation with Euratom under the proposed Agreement will provide clear economic benefits to Australia.<sup>8</sup>
- 3.10 The proposed Agreement will also strengthen the international legal framework supporting ongoing technical co-operation with Euratom by the Australian Nuclear Science and Technology Organisation.<sup>9</sup>
- 3.11 More broadly, the proposed Agreement adds to the strong joint commitment of Australia and the EU to nuclear non-proliferation and to nuclear security, as well as to renewed efforts on nuclear safety. The

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5 NIA, para. 4.

6 NIA, para. 6.

7 NIA, para. 7.

8 NIA, para. 8.

9 NIA, para. 10.

proposed Agreement refers explicitly to the IAEA Additional Protocol as part of the proposed Agreement's safeguards framework. This underscores the diplomatic efforts of both Australia and the EU to promote the IAEA Additional Protocol as part of the internationally recognised safeguards standard.<sup>10</sup>

3.12 The proposed Agreement includes all the essential elements of Australia's policy for the control of nuclear materials. The Australian Government regards these elements as integral elements of its broader policy against the proliferation of nuclear weapons. The maintenance of multilateral, regional and bilateral arrangements that operate to counter nuclear proliferation is a matter of high priority for Australia.<sup>11</sup>

3.13 The Department of Foreign Affairs and Trade highlighted the importance of the new agreement. Although superseding existing arrangements, it is more specific in terms of safety and the requirement for notification.

...it is the first of our agreements where we are proposing to put more specific language around nuclear safety into the agreement and the way that we read that with Euratom is by reference to a number of conventions – and there are four of these different conventions that relate to nuclear safety and nuclear incidents and the notification thereof – and the parties agree to the application of those key international conventions in their practices both in Australia and in the EU. We see this as a prudent and very appropriate step in light of the Fukushima incident earlier this year.<sup>12</sup>

## Obligations

3.14 **Article III** would confirm that nuclear material, non-nuclear material, equipment and technology subject to the proposed Agreement, together with all such items produced as a by-product, would be used for peaceful purposes and would not be used for any military purpose.<sup>13</sup>

- Article III also outlines the areas and forms of co-operation including the supply of nuclear material, non-nuclear material and equipment;

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10 NIA, para. 11.

11 NIA, paras. 13-14.

12 Dr Robert Floyd, Director-General, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade, *Committee Hansard*, 31 October 2011, p. 5.

13 NIA, para. 15.

technology transfer; nuclear safety and radiation protection; safeguards; nuclear research and development activities; organisation and establishment of joint ventures and bilateral working groups; and trade and commercial co-operation relating to the nuclear fuel cycle.<sup>14</sup>

- 3.15 **Article IV** would oblige the Parties to apply to all items (i.e. nuclear material, non-nuclear material or equipment) transferred between the Parties, regardless of whether it is transferred directly or through a third country.<sup>15</sup>
- 3.16 **Article V** would require the written consent of both Parties before enriching uranium to 20 per cent or greater in the isotope uranium-235 (U-235).<sup>16</sup> This would include the conditions under which the uranium enriched to 20 per cent or more may be used. This provision is included in all of Australia's safeguards agreements to provide additional controls on this proliferation-sensitive activity.
- 3.17 **Article VI** would oblige any transfer of nuclear material, non-nuclear material or equipment to be carried out in accordance with the relevant international commitments of Euratom, the Member States and Australia.<sup>17</sup> Article VI would also:
- require the Parties to assist each other in procurement of nuclear material, non-nuclear material or equipment undertake transfers under fair commercial conditions and not impede implementation of the principle of free movement in the EU's internal market; and
  - oblige the Parties to only permit retransfers of material in accordance with the framework of the Nuclear Suppliers Group and the Guidelines for Nuclear Transfers prepared by the IAEA.<sup>18</sup>
- 3.18 **Article VII** would oblige the Parties to place all nuclear material under their respective safeguards agreements with the IAEA. In the event that IAEA safeguards cease to apply in either Party's jurisdiction they would be required to arrange immediately for the application of alternative ('fallback') safeguards which conform to IAEA principles and procedures

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14 NIA, para. 15.

15 NIA, para. 16.

16 U-235 enriched to 20 per cent or more is known as highly enriched uranium. Highly enriched uranium is considered a special fissionable material and a direct use material. (NIA, para. 17.) The fissile uranium in nuclear weapons usually contains 85 per cent or more of uranium-235 known as weapon(s)-grade, though for a crude, inefficient weapon 20 per cent is sufficient (called weapon(s) -usable). The Energy Library, <<http://theenergylibrary.com/node/539>> accessed 28 September 2011.

17 NIA, para. 18.

18 NIA, para. 19.

to provide reassurance equivalent to that of the IAEA safeguards system.<sup>19</sup> Article VII would also oblige the Parties:

- to apply physical protection measures in accordance with international guidelines. Furthermore, nuclear safety and waste management will be subject to relevant international conventions;<sup>20</sup> and
- not to transfer nuclear material beyond their territorial jurisdiction unless they have received prior written consent from the other Party or the recipient is included in a pre-approved list of third countries.<sup>21</sup>

3.19 **Article VIII** would confirm the Parties' consent to the reprocessing of nuclear fuel containing nuclear material subject to the proposed Agreement, provided such reprocessing takes place in accordance with conditions mutually determined between the Parties.<sup>22</sup>

3.20 **Article X** would require the Parties to encourage and facilitate information exchange and to take all appropriate precautions to preserve the confidentiality of information received as a result of the proposed Agreement.<sup>23</sup>

3.21 **Article XII** would require the Parties to establish administrative arrangements to ensure the effective implementation of the provisions of the proposed Agreement.<sup>24</sup>

## Implementation

3.22 The legislative framework already in place in relation to nuclear transfers will be sufficient to provide for the terms of the proposed Agreement. However, it will be necessary to promulgate regulations pursuant to the *Nuclear Non-Proliferation (Safeguards) Act 1987* to add the proposed Agreement to the list of 'prescribed agreements' under that Act and to take similar action under the *Australian Radiation Protection and Nuclear Safety Act 1998*. No changes to the existing roles of the Commonwealth or

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19 NIA, para. 20.

20 NIA, para. 21.

21 NIA, para. 21.

22 NIA, para. 22.

23 NIA, para. 23.

24 NIA, para. 24.

the States and Territories will arise as a consequence of implementing the proposed Agreement.<sup>25</sup>

- 3.23 The Department of Foreign Affairs also stated that as this treaty is superseding existing agreements, other countries also have little or no requirement to alter their existing legislation.<sup>26</sup> Euratom have confirmed that the internal procedures provided for in the treaty have been completed.<sup>27</sup>

## Practical outcomes

- 3.24 Again, given that this treaty supersedes existing agreements, the practical impact on Australia is minimal. There is no increase in nuclear waste returning to Australia.<sup>28</sup> In addition, the treaty does not change the ultimate destination of unwanted nuclear material<sup>29</sup> and it also maintains Australia's current practice and policy.<sup>30</sup>

## Costs

- 3.25 The costs associated with the proposed Agreement would be limited to travel to Europe by Australian Safeguards and Non-proliferation Office (ASNO) officers to facilitate proper operation of the nuclear material accounting system. ASNO expects to be able to manage these costs within its departmental allocation by the Department of Foreign Affairs and Trade.<sup>31</sup>

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25 NIA, para. 25.

26 Dr Stephan Bayer, Director, Nuclear Security Section, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade, *Committee Hansard*, 31 October 2011, p. 8.

27 Australian Safeguards and Non-Proliferation Office, *Submission 4*, p. 1.

28 Dr Robert Floyd, Director-General, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade, *Committee Hansard*, 31 October 2011, p. 9.

29 Dr Stephan Bayer, Director, Nuclear Security Section, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade, *Committee Hansard*, 31 October 2011, p. 7.

30 Dr Robert Floyd, Director-General, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade, *Committee Hansard*, 31 October 2011, p. 7.

31 NIA, para. 26.

## Community Concerns

- 3.26 The Committee received a submission for the Australian Conservation Foundation (ACF), and the Gundjeihmi Aboriginal Corporation on the treaty.
- 3.27 The ACF outlined a number of concerns, particularly with regard to the fact that the treaty text was concluded before the March 2011 Fukushima incident. The ACF commented:

The continuing Fukushima nuclear emergency has led to a significant global reappraisal and review of the role and safety of nuclear energy – the lessons of which are not adequately reflected in the ‘business as usual’ approach that underpins much of this treaty and the accompanying National Interest Analysis.<sup>32</sup>

Following the Fukushima nuclear crisis the UN Secretary General initiated a comprehensive review of international nuclear safety, security and safeguards. It is deeply disappointing that a detailed assessment and operational impact analysis of this process has not been provided with the accompanying ATNIA or to assist in the Committee’s deliberations as much of this review has a relevance to the Australian uranium sector.<sup>33</sup>

- 3.28 Furthermore, the ACF also expressed the view that any distinction between the civil and military use of uranium was largely psychological and that once Australian uranium is exported, the receiving country can use that uranium as it see fit despite international commitments.

Successive Australian governments have attempted to maintain a distinction between civil and military end uses of Australian uranium exports, however this distinction is more psychological than real. No amount of safeguards can absolutely guarantee Australian uranium is used solely for peaceful purposes. According the former US Vice-President Al Gore, ‘in the eight years I served in the White House, every weapons proliferation issue we faced was linked with a civilian reactor program.’ Despite Government assurances that bilateral safeguard agreements ensure peaceful uses of Australian uranium in nuclear power reactors, the fact remains that by exporting uranium for use in

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32 Australian Conservation Foundation, *Submission 2*, p. 2.

33 Australian Conservation Foundation, *Submission 2*, p. 4.

nuclear power programs to nuclear weapons states, other uranium supplies are free to be used for nuclear weapons programs.<sup>34</sup>

- 3.29 The Gundjeihmi Aboriginal Corporation is an organisation established, managed and controlled by the Mirarr people to protect and advance their rights and interests.
- 3.30 Like the ACF, the Corporation made a submission to the inquiry expressing concern about the Fukushima incident. The Corporation is specifically concerned that the nuclear material involved in the Fukushima incident may have come from the Ranger and Jabiluka uranium mines, located on the traditional lands of the Mirarr people.
- 3.31 The Gundjeihmi Aboriginal Corporation also discussed the impact uranium mining was having on indigenous lands. The corporation was concerned that uranium mined at these mines was being used in power station that were unsafe, and could be diverted into nuclear weapons.

Today, Mirarr country encompasses the Ranger and Jabiluka Mineral Leases, the mining town of Jabiru and parts of Kakadu National Park. Uranium mining has been taking place on Mirarr land for three decades.... the European Union buys just under one third of Australia's uranium. Over the past three decades - the lifetime of the current treaty - roughly half of the uranium exported from Australia has come from Mirarr land: from the Ranger uranium mine.<sup>35</sup>

Mirarr have long held concerns... regarding the impacts of uranium once it is exported for use in nuclear power stations.<sup>36</sup>

- 3.32 The Mirarr people have in the past opposed uranium mining on their lands and the submission explained that they felt responsibility for the consequences of the use of uranium from their lands.

Mirarr acknowledge widely held concerns regarding the lack of enforceable safeguards to ensure uranium intended for nuclear power is not diverted to nuclear weapons. As Traditional Owners, Mirarr bear responsibility for the impacts of any product of their country.<sup>37</sup>

- 3.33 They concluded:

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34 Australian Conservation Foundation, *Submission 2*, p. 2. The quote from Vice President Al Gore is referenced to *Guardian Weekly*, 167 (25), 9-15 June 2006.

35 Gundjeihmi Aboriginal Corporation, *Submission 3*, p. 1.

36 Gundjeihmi Aboriginal Corporation, *Submission 3*, p. 1.

37 Gundjeihmi Aboriginal Corporation, *Submission 3*, p. 2.

Before extending the Treaty framework, Australia should seek a commitment from all Euratom members to conduct renewed safety studies on all existing reactors and undertaking to decommission those that have exceeded their safely functional lifespan.

The responsibility Traditional Owners have for the impacts of material from their country demands such safeguards.<sup>38</sup>

## Conclusion

- 3.34 The Committee notes the concerns of both the ACF and the Gundjeihmi Aboriginal Corporation. The full consequences of the Fukushima incident are yet to be ascertained and should further treaty amendments be required as a result of this incident, the Committee expects they will be introduced in due course.
- 3.35 While noting their concerns, the Committee is confident that the existing safeguards regarding nuclear fuel and nuclear weapons proliferation incorporated into the treaty are appropriate and adequate. Nonetheless, this should not preclude further amendments should they be considered necessary.
- 3.36 The Committee notes that this agreement supersedes existing treaties and hence there are no fundamental changes to existing outcomes and practices. What changes there are, strengthen safety requirements which the Committee supports. Furthermore, there are no changes required to Australian legislation and there are no expected additional costs. Given this, the Committee agrees that binding treaty action be taken.

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### Recommendation 2

**The Committee supports *Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-Operation in the Peaceful Uses of Nuclear Energy* and recommends that binding treaty action be taken.**

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38 Gundjeihmi Aboriginal Corporation, *Submission 3*, p. 3.



## International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 14 April 2005)

### Introduction

- 4.1 On 23 August 2011, the *International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 14 April 2005)* (the Convention) was tabled in the Commonwealth Parliament.
- 4.2 The proposed Convention establishes an international framework for criminalising conduct relating to nuclear material and other radioactive substances or devices.
- 4.3 States Parties are required to enact specific offences in domestic law, as well as offences relating to threats or attempts to commit such crimes or contributions to the commission of such crimes.
- 4.4 The Convention facilitates international cooperation in the prevention, investigation, prosecution and extradition of persons who commit a broad range of offences involving the use of nuclear material and other radioactive substances or devices.<sup>1</sup>
- 4.5 The Convention complements other United Nations (UN) counter-terrorism legal instruments, including the *International Convention for the Suppression of Terrorist Bombings*, the *International Convention for the*

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<sup>1</sup> National Interest Analysis [2011] ATNIA 21 with attachment on consultation *International Convention for the Suppression of Acts of Nuclear Terrorism* done at New York on 14 April 2005, [2005] ATNIF 20, (Hereafter referred to as 'NIA') para. 3.

*Suppression of the Financing of Terrorism (2002) and the Convention on the Physical Protection of Nuclear Material (1987).*<sup>2</sup>

- 4.6 The Convention recognises that acts of nuclear terrorism may result in grave consequences and pose a threat to international peace and security and provides a framework for international cooperation in the prevention, investigation, prosecution and extradition of persons who commit relevant offences involving nuclear material and other radioactive substances or devices.<sup>3</sup>
- 4.7 The Convention fills a gap in existing international legal regimes by recognising the potential for nuclear weapons, facilities and radioactive material to be used to conduct terrorist acts.

## Timing

- 4.8 Australia signed the Convention on 14 September 2005 and the Convention entered into force generally on 7 July 2007. Australia's ratification will occur as soon as practicable following completion of the domestic treaty implementation process.
- 4.9 The Convention will enter into force for Australia thirty days after the deposit by Australia of its instrument of ratification with the Secretary-General of the United Nations.

## Reservations

- 4.10 Australia does not propose to make any reservations with respect to the Convention.<sup>4</sup> The Department of Foreign Affairs and Trade advised that it would be usual for Australia to do so for a treaty of this kind.

I would have to say that in general it is a rare thing for us to ratify a convention and declare or reserve the position in relation to the International Court of Justice [ICJ]. I can only think of one instance offhand. In some ways the Australian government's general policy is not to reserve in relation to the jurisdiction of the ICJ unless there is a very specific national interest at stake. In none of the UN or related counterterrorism instruments have we done so.<sup>5</sup>

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2 NIA, para. 4.

3 NIA, para. 8.

4 NIA, paras. 1-2.

5 Mr Peter Guinn Scott, Director, Sanctions and Transnational Crime Section, Department of Foreign Affairs and Trade, *Committee Hansard*, 31 October 2011, p. 15.

## Reasons for Australia to take the proposed treaty action

- 4.11 Australia's ratification of the Convention will contribute to international efforts aimed at countering terrorism involving the use of radioactive material. It will ensure that persons who commit such acts can be brought to justice irrespective of the territory in which they are found and whether or not extradition agreements are in place. In addition, the enactment of implementing legislation will further strengthen Australia's strong counter-terrorism legislative framework.<sup>6</sup>
- 4.12 Ratifying the Convention would send a message to the international community demonstrating Australia's continued commitment to addressing the threat of terrorism. It will represent an important contribution to the second Nuclear Security Summit, which will take place in the Republic of Korea in March 2012. In addition, it will strengthen Australia's case in encouraging regional countries to ratify the 16 international counter-terrorism instruments.<sup>7</sup>

## Obligations

- 4.13 The key obligations placed on States Parties are to criminalise in their domestic legislation the offences set out in Article 2 and cooperate in the detection, prevention, suppression, investigation and punishment of breaches of these offences.<sup>8</sup>

## Nuclear terrorism offences

- 4.14 The Convention sets out offences prohibiting the following conduct:
- possessing radioactive material or making or possessing a device with the intent to cause death or serious bodily injury or substantial damage to property or to the environment;
  - using radioactive material or a device in a manner which releases or risks the release of radioactive material with the intent to cause death or serious bodily injury, substantial damage to property or to the

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6 NIA, para. 5.

7 NIA, para. 7.

8 NIA, para. 10.

environment, or to compel a natural or legal person, an international organisation or a State to do or refrain from doing an act;

- using or damaging a nuclear facility in a manner which releases or risks the release of radioactive material with the intent to cause death or serious bodily injury, substantial damage to property or to the environment, or to compel a natural or legal person, an international organisation or a State to do or refrain from doing an act;
- threatening to commit an offence under the Convention;
- demanding radioactive material, a device or a nuclear facility by threat;
- attempting to commit an offence under the Convention;
- participating as an accomplice in an offence under the Convention;
- organising or directing others to commit an offence under the Convention; and
- in any other way intentionally contributing to the commission of an offence under the Convention by a group of persons acting with a common purpose.<sup>9</sup>

4.15 States Parties are required to ensure that defences based on political, philosophical, ideological, racial, ethnic, religious or other similar considerations do not apply to criminal acts within the scope of the Convention. This ensures that offenders cannot rely on political or other similar motivations as a defence to these offences.<sup>10</sup>

4.16 The Convention does not apply to the activities of armed forces in armed conflict to the extent that international humanitarian law applies, nor does the Convention apply to activities of a State Party's military forces in the exercise of official duties inasmuch as they are governed by other rules of international law.<sup>11</sup>

## Preventive measures

4.17 States Parties are obliged to cooperate by taking all practicable measures to prevent and counter preparations in their respective territories for the commission of offences within or outside their territories.<sup>12</sup>

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9 NIA, para. 11.

10 NIA, para. 13.

11 NIA, para. 15.

12 NIA, para. 16.

- 4.18 States Parties must make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the International Atomic Energy Agency (IAEA).<sup>13</sup>

## **Investigation and prosecution**

- 4.19 The Convention provides for obligations to ensure the investigation and prosecution of any alleged offender. States Parties are obliged to investigate allegations that a person on their territory has committed a Convention offence and, if the outcome of the investigations so warrant, to take measures to ensure the person's presence for the purpose of prosecution or extradition.<sup>14</sup>
- 4.20 The State Party that actually prosecutes the alleged offender must communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who will transmit the information to the other States Parties.<sup>15</sup>

## **Judicial cooperation**

- 4.21 Convention offences are to be treated as extraditable offences between States Parties to the Convention. States Parties undertake to include the offences in the Convention as extraditable offences in every extradition treaty subsequently concluded by them. Where a State Party makes extradition conditional on the existence of an extradition treaty, it may, at its option, consider the Convention as a legal basis for extradition in relation to the Convention offences.<sup>16</sup>
- 4.22 The Convention also obliges States Parties to cooperate with each other in relation to investigations, extradition and mutual legal assistance concerning the Convention offences. The Convention offences shall not be regarded as political offences and the Convention prevents States Parties from refusing a request for mutual legal assistance or extradition solely on the ground that it concerns a political offence.

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13 NIA, para. 17.

14 NIA, para. 18.

15 NIA, para. 19.

16 NIA, para. 21.

- 4.23 The Convention nevertheless preserves the right of a State Party to refuse requests for mutual legal assistance or extradition if it has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.<sup>17</sup>

## **Seizing radioactive material or devices or nuclear facilities**

- 4.24 States Parties are obliged to take steps to render harmless radioactive material, devices or nuclear facilities seized following the commission of a Convention offence. States Parties are further obliged to ensure that any nuclear material is held in accordance with the applicable IAEA safeguards, physical protection recommendations and health and safety standards.<sup>18</sup>

## **Dispute settlement procedures**

- 4.25 Any dispute between two or more States Parties to the Convention that cannot be settled through negotiation shall, at the request of one of the States Parties involved in the dispute, be submitted to arbitration. If, within six months, States Parties cannot agree on the organisation of the arbitration, the dispute may be referred to the International Court of Justice.
- 4.26 States may declare their withdrawal from this dispute settlement provision at the time of signature or ratification. The other States Parties will consequently not be bound by Article 23 with respect to any State Party that has made such a reservation. Such a reservation may be withdrawn at any time by notification to the Secretary-General of the United Nations. Australia does not intend to make such a reservation.<sup>19</sup>

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17 NIA, para. 22.

18 NIA, para. 24.

19 NIA, para. 25.

## Implementation

4.27 States Parties are required to adopt such measures as may be necessary under domestic law to criminalise the prohibited conduct as stated in the Convention.

4.28 Because key aspects of the Convention are consistent with existing Australian law, only limited amendments to Commonwealth legislation are necessary for implementation.<sup>20</sup>

4.29 Those amendments strengthen provisions in already existing legislation. The Attorney-General's Department commented that:

For example... one covers 'with intention to cause death, serious injury to an individual, serious damage to property or to the environment'. So the environment being specifically mentioned would be an example of something which is not always evident in other legislation. It has got intention as the fault element, which means that can justify a much higher penalty. Some of the existing offences have lower penalties, such as around 10 years imprisonment, and then you go through: using or damaging a device in a manner which releases or risks the release of radioactive material with intention to cause death, serious bodily injury or substantial damage to property or the environment.<sup>21</sup>

It also covers radiological material and the other range of items that are specified in the convention. Our understanding is that it would cover more than a bomb and those kinds of things, as well as nuclear facilities – so attacking or damaging a nuclear facility; those kinds of things which are not necessarily covered off in other offence provisions at the moment.<sup>22</sup>

4.30 The amendments will be contained in the *Nuclear Non-Proliferation (Safeguards) Act 1987* (NNPS Act).<sup>23</sup>

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20 NIA, para. 9.

21 Mr Geoff McDonald, First Assistant Secretary, National Security Law and Policy Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, p. 13.

22 Mrs Karen Horsfall, Principal Legal Officer, Security Law Branch, National Security Law and Policy Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, p. 14.

23 NIA, para. 26. This is the lead in paragraph of what is quite an extensive section in the NIA.

## Specific provisions

- 4.31 Amendments to Australia's extradition laws may be required to ensure that obligations under Article 15 of the Convention are implemented, to ensure that Convention offences are not considered 'political offences' for the purposes of the *Extradition Act 1998*.<sup>24</sup> This amendment is intended to enable judicial cooperation on activities such as extradition that is in line with the obligations of the Convention.
- 4.32 In relation to the seizing of radioactive material, devices, or nuclear facilities, the following paragraph was inserted into section 5(1) of the *Australian Nuclear Science and Technology Organisation Act 1987* in 2002 to reflect the functions of the *Australian Nuclear Science and Technology Organisation* under the Convention:

*to condition, manage and store radioactive materials and radioactive waste at the request of:*

- (i) *a law enforcement agency; or*
- (ii) *a Commonwealth, State or Territory agency responsible for the management of emergencies or disasters; including, but not limited to, radioactive materials or radioactive waste involved in, or arising out of, a radiological incident or a radiological emergency.*<sup>25</sup>

## Concerns over the treaty's timing

- 4.33 The Committee noted the time disparity between the treaty's signing in September 2005 and the tabling in the Parliament – a difference of six years. The Attorney-General's Department reported that:

There are already offences that cover much of what is required in this area, in particular our general terrorism offences. It is a question of working out the practical priorities on the legislative program...<sup>26</sup>

When compared to other issues that we are dealing with – I will give you another example: we have got the cybercrime convention, or cybercrime act, which we are putting through parliament. It is in front of this one – it is not a long way in front, it is about six

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24 NIA, para. 37.

25 NIA, para. 38.

26 Mr Geoff McDonald, First Assistant Secretary, National Security Law and Policy Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, p. 11.



months in front – because it is addressing a more widespread issue. It is just a fact of the way things are.<sup>27</sup>

- 4.34 Given the importance of terrorism generally and the concerns of nuclear terrorism, the Committee is surprised that this delay has occurred and that the necessary treaty actions hadn't occurred earlier.

## Conclusion

- 4.35 The issue of international terrorism has, of course, had a high profile over the past decade since the terrorist attacks on the United States on September 11, 2001. The idea that terrorists could get access to either nuclear weapons or nuclear material is one of grave concern to the international community and Australia supports all international efforts to ensure that this outcome does not occur.
- 4.36 This treaty will establish an international framework for criminalising certain conduct relating to nuclear material and other radioactive substances or devices. Although Australian legislation largely covers the treaty requirements, the treaty's provisions will strengthen our already existing legislation.
- 4.37 Given the importance of the issue, and the few extra burdens the treaty places on Australia, the Committee fully supports that binding treaty action be taken.

### Recommendation 3

**The Committee supports *International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 14 April 2005)* and recommends that binding treaty action be taken.**

<sup>27</sup> Mr Geoff McDonald, First Assistant Secretary, National Security Law and Policy Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, pp. 13-14.



Southern Indian Ocean Fisheries Agreement  
(Rome, 29 December 2006)  
and  
Convention on the Conservation and  
Management of High Seas Fishery  
Resources in the South Pacific Ocean  
(Auckland, 14 November 2009)

## **Background and Overview**

- 5.1 The *Southern Indian Ocean Fisheries Agreement* (the Indian Ocean Agreement) and the *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean* (the Pacific Ocean Convention) are considered together here because they are related treaties and have common objectives and obligations.
- 5.2 Australia is already bound by a number of treaties relating to international fisheries, including:
- the *United Nations Convention on the Law of the Sea*;
  - the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UNFSA); and

- the *Convention on the Conservation of Antarctic Marine Living Resources*.<sup>1</sup>

## High seas fisheries

- 5.3 Both the Indian Ocean Agreement and the Pacific Ocean Convention establish a mechanism for signatories to manage and conserve non highly migratory fisheries resources in the high seas of each ocean.<sup>2</sup>
- 5.4 The high seas are defined as those areas of the ocean that do not fall within the 200km exclusive economic zones of nations. As a consequence, high seas fisheries are not subject to regulations that apply within a country's exclusive economic zone.<sup>3</sup> This is called the 'freedom of the high seas'.<sup>4</sup>
- 5.5 High seas fisheries are characterised by the use of distant water fishing fleets. Distant water fishing fleets remain at sea for extended periods of time far from their port of origin. These fleets are mobile and opportunistic, targeting fish species according to market demand and information on available stocks. The activities of distant water fishing fleets are largely unmonitored.<sup>5</sup>
- 5.6 Because no national laws can apply on the high seas, the only mechanism for imposing regulation on a high seas fishery is by treaty. A number of treaties already exist to regulate fishing on the high seas. Most notable for Australia are:
- the *Convention for the Conservation of Southern Bluefin Tuna*;
  - the *Agreement for the Establishment of the Indian Ocean Tuna Commission*;
  - the *International Convention for the Regulation of Whaling*; and

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1 National Interest Analysis [2011] ATNIA 23, *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean* (Auckland, 14 November 2009) [2010] ATNIF 5, (hereafter referred to as the Pacific Ocean Convention NIA), para. 9.

2 National Interest Analysis [2011] ATNIA 24, *Southern Indian Ocean Fisheries Agreement* (Rome, 29 December 2006) [2006] ATNIF 31, (hereafter referred to as the Indian Ocean Agreement NIA), para. 4.

3 Bureau of Rural Sciences, *Glossary of Fisheries Terms*, <<http://www.daff.gov.au/brs/fisheries-marine/info/glossary>>, viewed on 17 October 2011.

4 The freedom of the high seas is codified in Article 87 of the United Nations Convention on the Law of the Sea.

5 Bureau of Rural Sciences, *Distant Water Fishing Fleets*, <<http://www.daff.gov.au/brs/fisheries-marine/info/distant-fleets>>, viewed on 17 October 2011.

- the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*.<sup>6</sup>

## Australian high seas fishing fleet

- 5.7 Australian flagged vessels fishing in either area are required to have a high seas permit. High seas permits requirements were strengthened in 2006 to require more detailed information on the method of fishing to be used, the species targeted and the proposed area of operation. Permits now also require observers to be present on all fishing trips. In addition, the areas that can be fished under the high seas permits have been restricted to areas previously fished.<sup>7</sup>
- 5.8 At the time of writing, there are only eight high seas fishing permits valid in Australia,<sup>8</sup> implying that Australian participation in these fisheries is not significant at present. Representatives of the Department of Agriculture, Fisheries and Forestry advised the Committee that, prior to the strengthening of the licensing requirements, there had been up to 30 Australian high seas fishing licences.<sup>9</sup>

## Non highly migratory species

- 5.9 On the high seas, the treaties listed above principally apply to the category of highly migratory species. A list of highly migratory species is contained in Annex I of the *United Nations Convention on the Law of the Sea*. Highly migratory species include species of tuna, mackerel, pomfrets

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6 Department of Foreign Affairs and Trade, *Australian Treaties Database*, <<http://www.dfat.gov.au/treaties/index.html>>, viewed on 2 November 2011.

7 Bureau of Rural Sciences, *Fishery Status Reports 2009, 2010*, p. 376.

8 Australian Fisheries Management Authority, *Fishing and Carrier Permits Register, High Seas Register*, <<http://www.afma.gov.au/resource-centre/publications-and-forms/fisheries/public-registers/>> Viewed on 17 October 2011

9 Ms Anna Willock, Director, International Fisheries, Sustainable Resource Management, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 31 October 2011, p. 21

(fanfish), marlins, sailfish, swordfish, sauries (needle fish), dolphin, oceanic sharks, and cetaceans (whales).<sup>10</sup>

- 5.10 The other fish species that inhabit the high seas are classified in the *United Nations Convention on the Law of the Sea* as sedentary species. This Convention specifically excludes from its application sedentary species that inhabit the high seas.<sup>11</sup> Sedentary species are defined as:

...organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.<sup>12</sup>

- 5.11 The Indian Ocean Agreement and the Pacific Ocean Convention apply to non highly migratory fisheries resources, a slightly different definition to that used in the *United Nations Convention on the Law of the Sea*. Nevertheless, the Indian Ocean Agreement and the Pacific Ocean Convention define non highly migratory species in relation the definitions used in the *United Nations Convention on the Law of the Sea*, specifically, non highly migratory species are defined as:

...resources of fish, molluscs, crustaceans and other sedentary species within the Area, but excluding:

- (i) sedentary species subject to the fishery jurisdiction of coastal States pursuant to Article 77(4) of the 1982 Convention; and
- (ii) highly migratory species listed in Annex I of the 1982 Convention.<sup>13</sup>

- 5.12 The current fishing method within the Indian Ocean Agreement area is trawl fishing<sup>14</sup> using a large net dragged behind a boat.<sup>15</sup>

- 5.13 In the Pacific Ocean Convention area, fishing generally involves targeting pelagic or demersal species (that is, species that inhabit the bottom of the ocean, or surface waters, respectively). Methods used include long lines
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10 United Nations, *United Nations Convention on the Law of the Sea*, Annex I, <[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf)>, viewed on 2 November 2011.

11 United Nations, *United Nations Convention on the Law of the Sea*, Article 68, <[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf)>, viewed on 2 November 2011.

12 United Nations, *United Nations Convention on the Law of the Sea*, Article 77, <[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf)>, viewed on 2 November 2011.

13 *Southern Indian Ocean Fisheries Agreement* (Rome, 29 December 2006) [2006] ATNIF 31, Article 1.

14 Bureau of Rural Sciences, *Fishery Status Reports 2009, 2010*, p. 375.

15 Bureau of Rural Sciences, *Glossary of Fisheries Terms*, <<http://www.daff.gov.au/brs/fisheries-marine/info/glossary>>, viewed on 17 October 2011.

(fishing lines containing many hooks along their length), gill nets, or trawling.<sup>16</sup>

## Origin of the treaties

- 5.14 Australia has an interest in both the Indian Ocean and Pacific Ocean fisheries, and the Australian fishing industry has been active in these fisheries for some decades. The National Interest Analysis (NIA) for the Pacific Ocean Convention claims that accession to these Agreements will allow the Australian fishing industry continued access to these fisheries.<sup>17</sup>
- 5.15 Negotiations for the Indian Ocean Agreement began as a result of the experiences gained by Australia and a number of other states bordering the southern Indian Ocean as a result of the poor management of the Orange Roughy<sup>18</sup> stock in the region. Overfishing caused serious depletion of the stock, severe environmental damage, and the collapse of the fishery, with related social and economic costs for the fishing community.<sup>19</sup>
- 5.16 Australia commenced corresponding negotiations with New Zealand and Chile with a view to developing a similar arrangement in the Pacific Ocean.<sup>20</sup>

## The precautionary approach and the ecosystem based approach

- 5.17 Both treaties promote the objective of long term conservation and sustainable use of fisheries resources. According to the NIAs, The treaties use the 'precautionary approach' and the 'ecosystem based approach' to meet this objective.<sup>21</sup>
- 5.18 The precautionary approach assumes that:

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16 Bureau of Rural Sciences, *Glossary of Fisheries Terms*, <<http://www.daff.gov.au/brs/fisheries-marine/info/glossary>>, viewed on 17 October 2011.

17 Pacific Ocean Convention, NIA, para. 6.

18 Orange Roughy is a deep sea, cold water species that grows to about 50cm in length and can live for up to 140 years.

19 Indian Ocean Agreement, NIA, para. 7.

20 Pacific Ocean Convention, NIA, para. 10.

21 Indian Ocean Agreement, NIA, para. 4.

...where there are threats of serious irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.<sup>22</sup>

5.19 The ecosystems approach to fisheries management was developed by the Food and Agriculture Organisation of the United Nations (FAO) in the mid 1990s as a mechanism for reconciling the ecological needs of a fishery with the requirement to provide food and employment to those who work the fishery.<sup>23</sup>

5.20 The FAO technical definition of the ecosystem approach is as follows:

An ecosystem approach to fisheries strives to balance diverse societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries.<sup>24</sup>

5.21 The ecosystem approach addresses the need to cater both for human as well as ecosystem well being.<sup>25</sup> The ecosystem based approach is already incorporated into a number of international fisheries treaties, including:

- the 1995 United Nations Agreement on Straddling and Highly Migratory Fish Stocks;
- the 1995 Code of Conduct for Responsible Fisheries;
- the Convention on Biological Diversity;
- the Jakarta Mandate on Marine and Coastal Biological Diversity; and
- the 2001 Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem.<sup>26</sup>

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22 Bureau of Rural Sciences, *Glossary of Fisheries Terms*, <<http://www.daff.gov.au/brs/fisheries-marine/info/glossary>>, viewed on 17 October 2011.

23 Food and Agriculture Organisation of the United Nations, *The ecosystem approach to fisheries management*, <<http://www.fao.org/fishery/topic/13261/en>>, viewed on 17 October 2011.

24 Food and Agriculture Organisation of the United Nations, *The ecosystem approach to fisheries management*, <<http://www.fao.org/fishery/topic/13261/en>>, viewed on 17 October 2011.

25 Food and Agriculture Organisation of the United Nations, *The ecosystem approach to fisheries management*, <<http://www.fao.org/fishery/topic/13261/en>>, viewed on 17 October 2011.

26 Food and Agriculture Organisation of the United Nations, *The ecosystem approach to fisheries management*, <<http://www.fao.org/fishery/topic/13261/en>>, viewed on 17 October 2011.



## Area covered

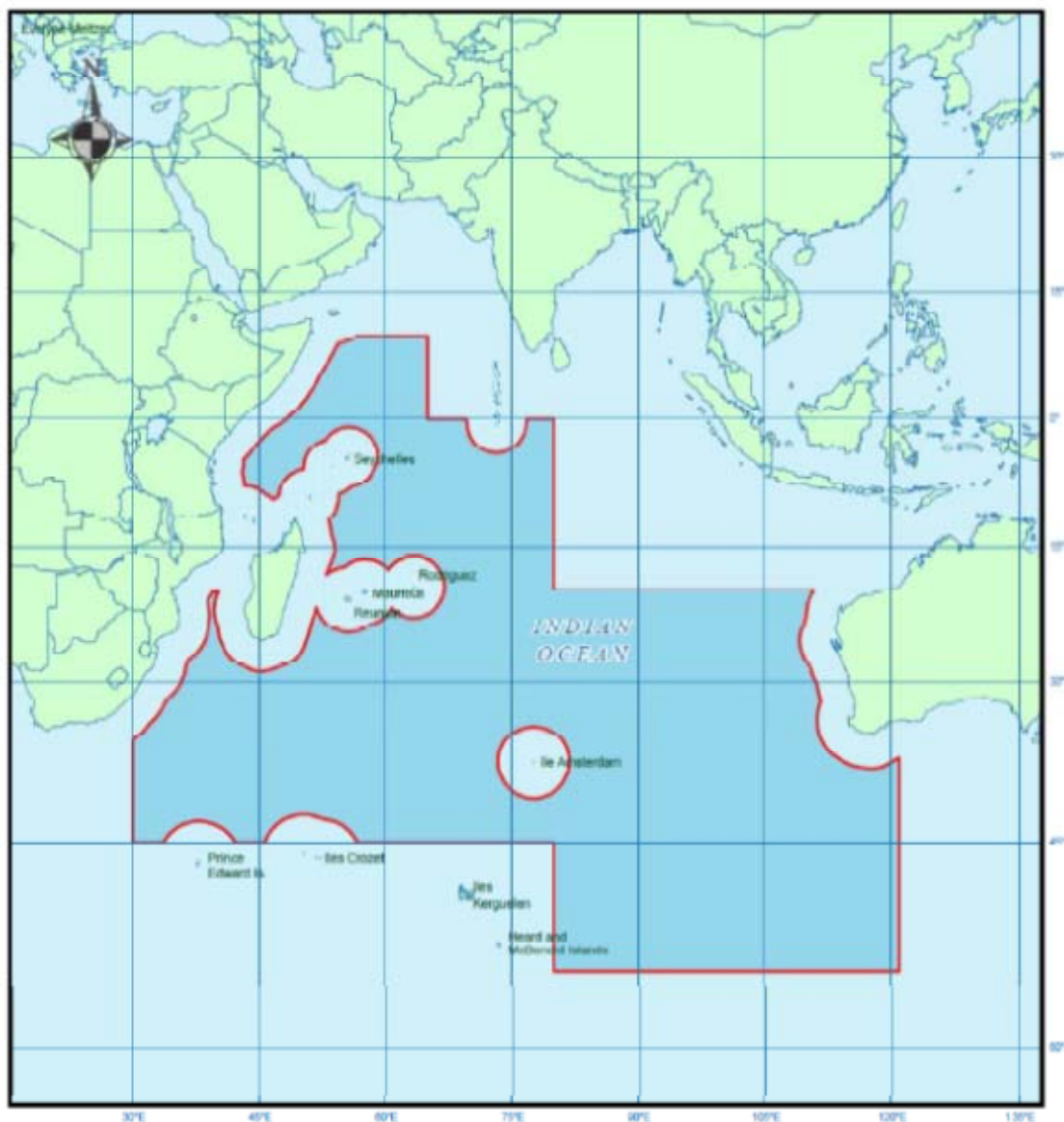
- 5.22 The area covered by the Indian Ocean Agreement is bounded by the eastern border of the Exclusive Economic Zones of African states as far north as Somalia, just short of the Gulf of Aden. The boundary then extends across the Indian Ocean, passing through the equator, to the Australian Exclusive Economic Zone off South Headland in Western Australia.
- 5.23 The boundary then follows the Australian coast to a point half way between Albany and Esperance in Western Australia. From here the boundary extends directly south for 2,000km.
- 5.24 From this point, the boundary runs west and north, skirting the Australian Exclusive Economic Zone around Heard Island, the French Exclusive Economic Zone around Kerguelen and the Crozet Islands, and the South African Exclusive Economic Zone around Marion Island, until it meets the east coast of South Africa off Durban.<sup>27</sup>

A map of the area covered by the Indian Ocean Agreement is at Figure 1.

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27 Indian Ocean Agreement, Article 3.

Figure 1 Area covered by the Indian Ocean Agreement



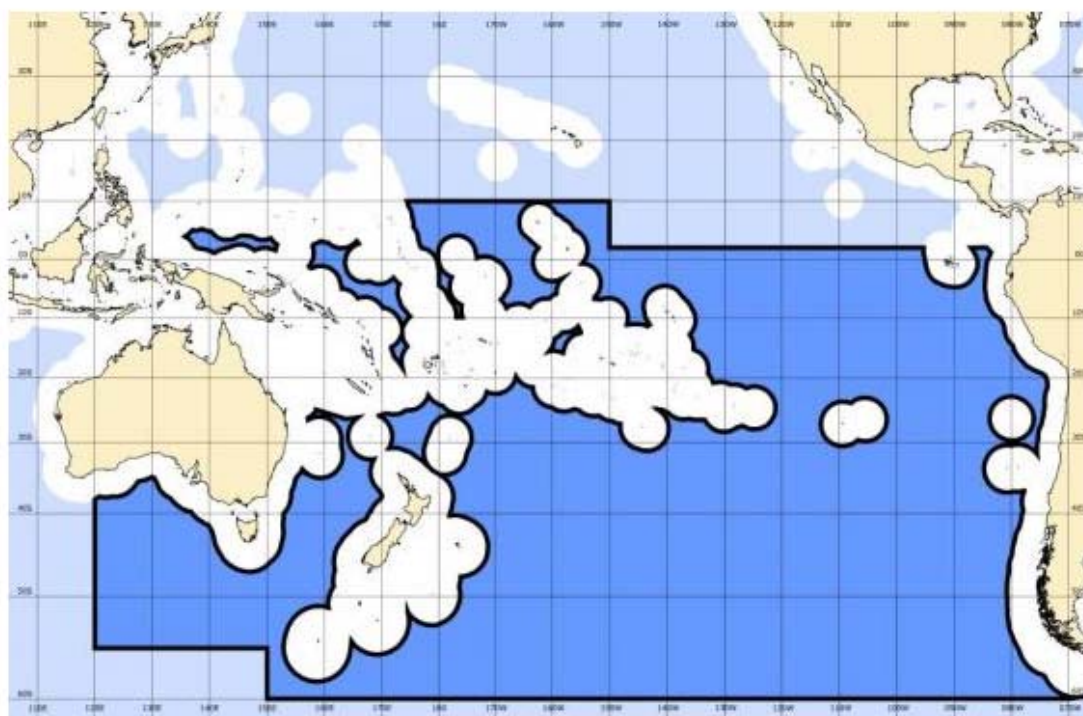
Source *Southern Indian Ocean Fisheries Agreement* (Rome, 29 December 2006) [2006] ATNIF 31, Additional information.

- 5.25 The Pacific Ocean Convention is bounded in the southwest by the Indian Ocean Agreement boundary. From there, the boundary follows the Australian Exclusive Economic Zone east and north, and then east and north of the Papua New Guinean Exclusive Economic Zone.
- 5.26 The boundary turns east across the Pacific to the Exclusive Economic Zone off South America near the border of Ecuador and Colombia. It continues south off the South American west coast until the boundary is several hundred kilometres south of Tierra Del Fuego. Finally, the boundary runs

west across the Pacific to meet the boundary of the Indian Ocean Agreement area south of Australia.<sup>28</sup>

5.27 A map of the area covered by the Pacific Ocean Convention is at Figure 2.

Figure 2 Area covered by the Pacific Ocean Convention



Source *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean* (Auckland, 14 November 2009) [2010] ATNIF 5, Background Information.

## Obligations

5.28 Meetings of the parties to the Indian Ocean Agreement and the Pacific Ocean Convention can make legally binding decisions on the following matters:

- measures to ensure the long term sustainability of the fisheries resources;
- measures to promote cooperation in research and management of fisheries resources;

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28 Pacific Ocean Convention, Article 3.

- the adoption of generally recommended international minimum standards for fishing;
  - rules for monitoring and controlling fishing activities; and
  - measures to eliminate illegal fishing.<sup>29</sup>
- 5.29 Parties to either Agreement will also be required to collect and exchange scientific information on the number of vessels authorised to fish in the treaty area and their fishing activities.<sup>30</sup> In addition, parties will be required to make a statement at each meeting on any sanctions imposed for violations of conservation and management measures.<sup>31</sup>
- 5.30 Australia will be obliged to take measures to ensure that Australian flagged vessels comply with the agreements and do not conduct unauthorised fishing in the treaty areas. Australian flagged vessels will also be required to carry satellite monitoring systems to check on compliance with treaty requirements.<sup>32</sup>
- 5.31 Where an Australian flagged vessel is detected undertaking illegal fishing, it will be Australia's responsibility to take action in response, and report that action to the parties to the relevant treaty.<sup>33</sup>
- 5.32 As a port state, Australia will be required to ensure that vessels flagged in other states that use Australian ports comply with the requirements of each treaty.<sup>34</sup>
- 5.33 The National Interest Analyses note that, in many cases, the obligations imposed on Australia by the Indian Ocean Agreement and the Pacific Ocean Convention do not represent a significant increase in the obligations already imposed on Australian fishing vessels and fishing management authorities.<sup>35</sup>

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29 Indian Ocean Agreement, NIA, para. 13.  
30 Pacific Ocean Convention, NIA, para. 15.  
31 Indian Ocean Agreement, NIA, para. 14.  
32 Pacific Ocean Convention, NIA, para. 17.  
33 Indian Ocean Agreement, NIA, para. 17.  
34 Indian Ocean Agreement, NIA, para. 19.  
35 Pacific Ocean Convention, NIA, para. 21.

## Benefits for Australia

- 5.34 As a party to both the Indian Ocean Agreement and the Pacific Ocean Convention, Australia will be able to participate in the management of fisheries resources in the areas and secure a share of the resources for the Australian fishing industry.<sup>36</sup>
- 5.35 According to the NIAs, Australia was an active participant in the negotiations, and is expected to be amongst the first to ratify the treaties. Early ratification will enable Australia to participate in the first meetings of the parties, at which important rules and procedures will be adopted.<sup>37</sup>
- 5.36 Parties to each treaty can meet to adopt allocations of total allowable catches for each party, and implement other conservation and management measures deemed necessary.<sup>38</sup>
- 5.37 A number of the fish stocks covered by the Indian Ocean Agreement and the Pacific Ocean Convention occur within Australia's Exclusive Economic Zone. These treaties will enable Australia to seek management strategies for these fish stocks that are compatible with Australia's domestic fisheries interests.<sup>39</sup>
- 5.38 The NIAs advise that, at the meetings, Australia will adopt the position that each treaty should be compatible with the already high standard adopted by the Australian domestic industry.<sup>40</sup>
- 5.39 Representatives of the Department of Agriculture, Fisheries and Forestry did concede that the conservation measures adopted in relation to each treaty would only apply to those states signatory to the treaties. States that are not signatories to the treaties can continue unregulated fishing in these areas.
- 5.40 The enforcement measures available to the signatory states are largely limited to:
- their powers as port states, should unregulated vessels use ports in treaty states; and
  - the imposition of retail barriers to prevent the sale of fish covered by the treaties from an unregulated source.<sup>41</sup>

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36 Indian Ocean Agreement, NIA, para. 5.

37 Indian Ocean Agreement, NIA, para. 5.

38 Indian Ocean Agreement, NIA, para. 4.

39 Indian Ocean Agreement, NIA, para. 5.

40 Pacific Ocean Convention, NIA, para. 6.

- 5.41 By the Department's own admission, such measures are not likely to have a significant effect on unregulated fishing. Nevertheless, it is the Department's view that the treaties will introduce some conservation measures and scientific research that would not otherwise exist, and that such measures are at least better than the current completely unregulated situation.<sup>42</sup>
- 5.42 According to the NIAs, if Australia does not ratify either of the treaties, the operation of the UNFSA will oblige Australian fishing vessels to comply with the measures adopted by the signatories to the treaties or lose their right to fish either the southern Indian Ocean fishery or the South Pacific Ocean fishery.<sup>43</sup>
- 5.43 Despite the low level of participation by Australian vessels in high seas fishing, there appears to be general support in the Australian fishing industry for the treaties. The Department of Agriculture, Fisheries and Forestry reported that public consultation for the Indian Ocean Agreement prompted the formation of a Southern Indian Ocean Deepwater Fishers' Association (SIODFA).<sup>44</sup>
- 5.44 SIODFA has members in Australia, New Zealand, Mauritius, South Africa and Namibia, and has imposed a voluntary ban on benthic fishing in the Indian Ocean Agreement area pending the implementation of the Indian Ocean Agreement.<sup>45</sup>
- 5.45 The Committee believes there are a number of reasons to ratify these treaties. Crucially, the treaties have the support of the fishing industry, and may result in the widespread adoption of Australian fisheries management standards. This alone is likely to make the Australian fishing industry more competitive.
- 5.46 In addition, while no-one expects that these treaties will comprehensively protect non highly migratory species in the high seas, the treaties will result in a considerable improvement in the quantity and quality of scientific data on these species. Good scientific data on fisheries has in the past resulted in the wider adoption of protective measures.

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41 Ms Anna Willock, Director, International Fisheries, Sustainable Resource Management, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 31 October 2011, p. 18.

42 Ms Anna Willock, Director, International Fisheries, Sustainable Resource Management, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 31 October 2011, p. 18

43 Indian Ocean Agreement, NIA, para. 10.

44 Indian Ocean Agreement, NIA, Attachment on Consultation, para. 46.

45 Southern Indian Ocean Deepwater Fishers' Association, Media Release July 2006, *Fishing Companies Announce World's First Voluntary Closures to High Seas Deep Water Trawling*, <<http://img.scoop.co.nz/media/pdfs/0607/SIODFAQA.pdf>> Viewed on 25 September 2011.

5.47 On these grounds, the Committee supports ratification of both treaties.

#### **Recommendation 4**

**The Committee supports *Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006)* and recommends that binding treaty action be taken.**

#### **Recommendation 5**

**The Committee supports *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009)* and recommends that binding treaty action be taken.**





Air Services Agreement between the Government of Australia and the Government of the Czech Republic (New York, 24 September 2010)

and

Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services (done at Canberra on 31 July 1995) (Hanoi, TBA 2011)

## **Introduction**

- 6.1 On 20 September 2011, the *Air Services Agreement between the Government of Australia and the Government of the Czech Republic* (New York, 24 September 2010) and the *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services* (done at Canberra on 31 July 1995) (Hanoi, TBA 2011) were tabled in the Commonwealth Parliament.

## Background

- 6.2 Air services agreements are bilateral treaties concerning the establishment of civilian air services between the treaty partners.
- 6.3 The Department of Infrastructure and Transport described that, as a general rule, Australia maintains a model air services text which was developed in consultation with all relevant stakeholders. The model air services text is used as a template when negotiating agreements.
- 6.4 The treaty-level air services agreements are supplemented by arrangements of less than treaty status which settle more detailed commercial entitlements that determine the scope of each airline's operations under the air services agreements.<sup>1</sup>
- 6.5 The agreements considered here include a full treaty and an exchange of notes amending a treaty. They have been treated separately in this chapter.

## Air Services Agreement between the Government of Australia and the Government of the Czech Republic

- 6.6 The *Air Services Agreement between the Government of Australia and the Government of the Czech Republic* (the proposed Agreement) will establish for the first time a treaty level air services relationship between Australia and the Czech Republic. It will allow the airlines of Australia and the Czech Republic to develop international air services between the two countries.
- 6.7 The proposed Agreement was preceded by similar provisions in the form of a Memorandum of Understanding (MOU). The MOU applies the provisions of the proposed Agreement on a non-legally binding basis until the proposed Agreement enters into force.<sup>2</sup> MOUs are confidential and are not subject to public or parliamentary consideration.

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1 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, p. 23.

2 National Interest Analysis [2011] ATNIA 26 with attachment on consultation Air Services Agreement between the Government of Australia and the Government of the Czech Republic done at New York on 24 September 2010, [2010] ATNIF 43,. (Hereafter referred to as 'NIA'), paras. 1-5.

## Reasons for Australia to take the proposed treaty action

- 6.8 The proposed Agreement will enable Australian and Czech carriers to provide services for the public and for air freight between any point in Australia and any point in the Czech Republic, based on capacity levels decided from time to time by the aeronautical authorities of the Contracting Parties.
- 6.9 Australian travellers and Australian businesses, particularly in the tourism and export industries, will benefit from the proposed Agreement through the opening of services between the two Parties.<sup>3</sup>

## Obligations

- 6.10 Australia and the Czech Republic are both Parties to the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, and this Agreement was made in accordance with and pursuant to that Convention.
- 6.11 The proposed Agreement obliges Australia and the Czech Republic to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on specified routes.
- 6.12 The proposed Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of each Contracting Party and to sell fares to the public.
- 6.13 **Article 2** allows each Contracting Party to designate any number of airlines to operate the agreed services. Either Contracting Party may refuse, revoke, suspend or limit authorisation of an airline's operations if the airline fails to meet, or operate in accordance with, the conditions prescribed in the proposed Agreement.
- 6.14 Article 2 is consistent with the *Agreement between the Government of Australia and the European Community on Certain Aspects of Air Services*, signed 29 April 2008, which recognises airlines of individual Member States of the European Union (the EU) as air carriers of the EU for the purposes of airline designation.

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3 NIA, paras. 7-8.

- 6.15 **Article 3** requires the Parties to grant to the designated airlines of the other Party the right to fly across its territory without landing and to make stops in its territory for non-traffic purposes. Article 3 also provides the right for designated airlines to operate on the routes specified in the Route Schedule.
- 6.16 **Article 4** confirms that each Party's domestic laws, regulations and rules relating to the operation and navigation of aircraft as well as aviation security, immigration and customs to the passengers, crew, baggage, cargo and mail apply to the airlines when they are entering, within or leaving the territory of that Party. In applying their laws, the Parties are prevented from giving preference to their own or any other airline.
- 6.17 **Article 5** requires that the Parties recognise certificates of airworthiness, competency and licences issued by the other Party, provided the standards conform to those established by the International Civil Aviation Organization (ICAO). Each Party can take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary.
- 6.18 **Article 6** requires both Parties to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. The Parties shall assist each other in the event of an incident or threat of an incident.
- 6.19 **Article 7** requires each Party to encourage their charging authorities to ensure that the charges imposed on airlines for the use of aviation facilities are reasonable and non-discriminatory.
- 6.20 **Article 8** provides that a Party may request, from the other Party's designated airlines, statistics relating to the agreed services.
- 6.21 **Article 9** lists the equipment and stores used in the operation of the agreed services that the Parties are required, in accordance with international practice, to exempt from import restrictions, customs duties, indirect taxes and similar fees and charges. Parties may require certain equipment and supplies to be kept under the supervision or control of appropriate authorities until re-exported or otherwise disposed of.
- 6.22 **Article 10** allows the designated airlines to set their own fares without government intervention. Article 10 confirms that fares for air transportation wholly within the European Union are subject to European Union law.

- 6.23 **Article 11** requires both Parties ensure that there is a fair and equal opportunity for the designated airlines of both Parties to operate the agreed services.
- 6.24 **Article 12** provides a framework that allows airlines of one Party to conduct business in the territory of the other Party.
- 6.25 The framework includes provisions allowing airlines to:
- establish offices;
  - bring in and maintain staff;
  - sell air transport services to the public;
  - convert and move currency freely; and
  - use the services and personnel of any organisation, company or airline operating in the territory of the other Party to conduct its business.
- 6.26 **Article 13** provides a framework that allows airlines to provide services by means of cooperative marketing arrangements such as code sharing.
- 6.27 **Article 14** requires the airlines of each Party to have the right to perform their own ground handling, or choose from available ground handling providers and to offer their services as a ground handling agent to other airlines. This Article also provides that allocation of time slots to airlines at national airports of each Party be transparent, neutral and non-discriminatory.
- 6.28 **Article 15** provides that airlines of each Party shall be permitted to utilise leased aircraft, or leased aircraft and crew, to provide their services, provided they meet the applicable operating and safety standards and requirements of the Parties.
- 6.29 **Article 16** provides that the designated airlines of each Party can utilise surface transport to connect with their international air services, within the territory of the Parties or third countries, provided that passengers and shippers of cargo are informed of who will provide the transport involved.
- 6.30 **Article 17** confirms that each Party's competition laws apply to the operation of airlines within their respective jurisdictions and that the aeronautical authorities of either Party may request consultations with the other Party if the Party considers that its airlines are being subjected to discrimination or unfair competitive practices.
- 6.31 **Article 18** provides that each Party may at any time request consultations on the implementation, interpretation, application or amendment of the proposed Agreement.

- 6.32 **Article 20** provides for dispute resolution, with the exception of disputes concerning the application of national competition laws, between the aeronautical authorities of the Parties. If they fail to resolve any dispute by negotiation there is provision for compulsory settlement through arbitration.
- 6.33 **The Annex** contains a route schedule which specifies the routes that may be operated by designated airlines.<sup>4</sup>

## Implementation

- 6.34 The proposed Agreement is to be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendment to these Acts or any other legislation is required for the implementation of the proposed Agreement.<sup>5</sup>
- 6.35 Current Australian air access to the Czech Republic is done through the code-share arrangements QANTAS has with its UK partner, British Airways, that flies to Prague. Czech Airlines code-share with Etihad services between Abu Dhabi and both Sydney and Melbourne.<sup>6</sup>

## Costs

- 6.36 No direct financial costs to the Australian Government are anticipated in the implementation of the proposed Agreement. There are no financial implications for State or Territory Governments.<sup>7</sup>

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4 NIA, paras. 9-29.

5 NIA, para. 30.

6 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, p. 24.

7 NIA, para. 31.

## **Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services**

- 6.37 The *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services* (the proposed Amendment) will bring into force an amendment to the *Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services*, originally signed on 31 July 1995.
- 6.38 The proposed Amendment introduces a new Route Annex that will replace the existing Route Annex to the Agreement. The new Route Annex has been given interim effect through a Memorandum of Understanding (MOU) signed in October 2003. The Government of the Socialist Republic of Vietnam sent its diplomatic note on 29 June 2011. The proposed Amendment will enter into force on the date of Australia's note in reply.<sup>8</sup>

### **Overview and national interest summary**

- 6.39 The Route Annex to the Agreement determines the origin and destination points in each country that each Party's airlines are permitted to fly from and to, in addition to their intermediate (en-route) stops and destinations beyond the other country. The proposed Amendment provides for a more liberal Route Annex that allows airlines to serve any points in the other country and any intermediate and beyond points.<sup>9</sup>

### **Reasons for Australia to take the proposed treaty action**

- 6.40 The proposed Amendment provides for increased commercial opportunities for Australian airlines, subject to any traffic rights decided between the aeronautical authorities. While the current Route Annex allows for two destination points in each country, one intermediate destination point, and one beyond destination point, the proposed Amendment would allow designated airlines to serve any destination

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8 National Interest Analysis [2011] ATNIA 22 with attachment on consultation *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services* (done at Canberra on 31 July 1995), Hanoi, TBA 2011, [2011] ATNIF 16. (Hereafter referred to as 'NIA'), paras 1-4.

9 NIA, paras 5-6.

points in the other country and any intermediate and beyond destination points.<sup>10</sup>

## Obligations

- 6.41 The Agreement obliges Australia and Vietnam to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on the specified routes included in the Agreement. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation, and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Contracting Party and to sell fares to the public.
- 6.42 The Route Annex specifies the routes that may be operated by designated airlines. Parties may operate services on these routes in accordance with traffic rights and capacity entitlements settled in an associated MOU.<sup>11</sup>

## Implementation

- 6.43 The Agreement is implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts are required for the implementation of the proposed Amendment.<sup>12</sup>
- 6.44 At present, Vietnam Airlines and Jetstar operate services between both countries. Vietnam Airlines runs seven services a week to both Sydney and Melbourne and Jetstar operate four services a week to Ho Chi Minh City from Darwin. Most travellers – 80 per cent – are visitors to Australia.<sup>13</sup>

## Costs

- 6.45 No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement or the proposed Amendment. There are no financial implications for State or Territory Governments and

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10 NIA, para 7.

11 NIA, paras 8-10.

12 NIA, para. 11.

13 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, pp. 23-24.



the proposed Amendment reduces the regulatory burden on business and industry.<sup>14</sup>

## Conclusion

- 6.46 In relation to the Czech agreement, while the Committee notes that there is no detailed economic modelling on the Czech/Australian air market, the Department of Infrastructure and Transport stated that there have been a range of studies that highlight the benefits of opening up the market.<sup>15</sup> The Committee agrees that opening up the code share provisions should open up the market and assist in growing the air travel market between the two countries and with it the tourism sector.
- 6.47 Accordingly, the Committee support the treaty and recommends that binding treaty action be taken.
- 6.48 As with the above agreement with the Czech Republic, the Committee agrees that opening up the number of destinations available to Australian and Vietnamese carriers will reduce barriers to the expansion of services and assist in growing the air travel market between the two countries and with it the tourism sector.<sup>16</sup>
- 6.49 Accordingly, the Committee support the treaty and recommends that binding treaty action be taken.

### Recommendation 6

**The Committee supports *Air Services Agreement between the Government of Australia and the Government of the Czech Republic (New York, 24 September 2010)* and recommends that binding treaty action be taken.**

14 NIA, para. 12.

15 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, pp. 23-24.

16 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, pp. 23-24.

### **Recommendation 7**

**The Committee supports *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services (done at Canberra on 31 July 1995) (Hanoi, TBA 2011)* and recommends that binding treaty action be taken.**

# Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended (Canberra, TBA 2011)

## Introduction

- 7.1 On 20 September 2011, the *Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended* (Canberra, TBA 2011) was tabled in the Commonwealth Parliament.

## Background

- 7.2 The United States (US) and Australia celebrated the 50<sup>th</sup> anniversary of space vehicle tracking treaty-level cooperation in 2010. Operational-level cooperation on space-related activities began in 1957 with the establishment of facilities at Woomera in South Australia, to track US satellites. This was broadened to include additional scientific facilities set

up by the US National Aeronautics and Space Administration (NASA) in 1960. Since then, the space vehicle tracking and communication relationship between Australia and the US has been the subject of a succession of agreements and exchanges of notes between the two countries.<sup>1</sup>

## NASA's Deep Space Network

- 7.3 NASA's scientific investigations of the solar system are accomplished primarily through the use of robotic spacecraft. The Deep Space Network (DSN) provides a two-way communications link for the guidance and control of spacecraft and the relay of data and images.
- 7.4 The DSN consists of three complexes strategically located around the world: at Goldstone in California, near Madrid in Spain, and at the Canberra Deep Space Communication Centre (CDSCC) located at Tidbinbilla in the Australian Capital Territory.<sup>2</sup> NASA also maintains Tracking and Data Relay Satellite Ranging System Facilities at Alice Springs in the Northern Territory and at Dongara in Western Australia.<sup>3</sup>
- 7.5 The CDSCC tracks many robotic spacecraft, including:
- Voyagers 1 and 2;
  - the twin Mars Rovers;
  - the Cassini probe to Saturn; and
  - the Hubble Space Telescope.<sup>4</sup>
- 7.6 All activities conducted in Australia under the Agreement are managed to ensure that they are consistent with Australian interests. CSIRO manages the facilities on behalf of NASA, with operational and maintenance activities contracted out to Australian industry.<sup>5</sup>

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1 National Interest Analysis [2011] ATNIA 25 with attachment on consultation *Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities* of 29 May 1980, as amended (Canberra, TBA 2011), [2011] ATNIF 17, (Hereafter referred to as 'NIA'), paras 3-5.

2 See the Canberra Deep Space Communication Centre website at <<http://www.cdsc.nasa.gov/>> accessed 14 October 2011.

3 NIA, para. 9.

4 See 'Tracking Schedule', <<http://www.cdsc.nasa.gov/Pages/trackingtoday.html>>, accessed 14 October 2011.

5 NIA, para. 10.

7.7 Approximately 120 engineers, technicians, operators and support staff are presently employed at the CDSCC. NASA funds the total cost of the facilities, including the salaries and administrative costs of Australian Government personnel involved in the management of activities under the Agreement.<sup>6</sup>

## Overview of the Agreement

7.8 Australia and the US first concluded an *Exchange of Notes constituting an Agreement relating to Space Vehicle Tracking and Communications* in 1960. This agreement was superseded by a similar agreement concluded in 1970 which was in turn replaced in 1980 by the current Agreement. Since 1980, the Agreement has been reviewed and amended every 10 years.<sup>7</sup>

7.9 Thus, the proposed treaty action is to extend, through an exchange of notes, the 1980 Agreement – the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America concerning Space Vehicle Tracking and Communication Facilities* – which is due to expire on 26 February 2012.

7.10 The proposed extension will enter into force from that date, once Australia has advised the US that all domestic requirements for entry into force have been met.<sup>8</sup> The proposed extension provides for the continuation of the Agreement until 26 February 2014, or until a further agreement between the Australian and US Governments enters into force, whichever is earlier.<sup>9</sup>

7.11 The Agreement consists of a base document and multiple subsequent Exchanges of Notes. In 2009, it was agreed by both Parties to conclude a new agreement to consolidate the provisions contained in previous Exchanges of Notes into one document. Both Parties also agreed to extend the Agreement for two years until 2012 to allow the new agreement to be developed.<sup>1011</sup>

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6 NIA, para. 11.

7 NIA, para. 3.

8 NIA, paras. 1-2.

9 NIA, paras. 9-12.

10 NIA, para. 7.

11 The previous iteration of this Exchange of Notes was reviewed by the Committee in 2010 and was covered in two reports: *Report 109: Review into treaty tabled on 2 February 2010*, <<http://www.aph.gov.au/house/committee/jsct/2february2010/report.htm>> accessed 14 October 2011 and in Chapter 5 of *Report 110: Review into treaties tabled on 18, 25 (2) and 26*

- 7.12 Unfortunately, due to extended consultation processes on the draft of the new agreement in the US, the new agreement will not be finalised before the 26 February 2012. Hence, both Parties have agreed to extend the Agreement for a further two year period until the new agreement can be brought into force.<sup>12</sup>
- 7.13 This exchange of notes has been an Australian initiative as the US agencies are as yet unable to provide a finalised amended treaty.<sup>13</sup>

### **National interest summary, and the reasons for Australia to take the proposed treaty action**

- 7.14 The proposed extension confirms Australia's long-standing relationship with NASA and provides for continuing cooperation in space vehicle tracking and communication support.<sup>14</sup>
- 7.15 NASA has spent in excess of A\$740 million on space-related activities in Australia since 1960. Australia has derived significant scientific and economic benefits from activities conducted under the Agreement, especially through collaboration between Australian and NASA scientists.
- 7.16 In addition, the arrangement has provided direct employment for several hundred Australian engineering, scientific, technical and administrative staff, and indirectly provided a pool of trained personnel for high-end engineering, scientific and technical roles. Outreach activities at the CDSCC attract approximately seventy thousand visitors per year.<sup>15</sup>
- 7.17 While a large part of the A\$740 million spend was in the 1960s and early 1970s there are currently two new antennas being built at CDSCC and there is again significant investment – most likely for another five years –

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*November 2009 and 2 (2) February 2010*

<<http://www.aph.gov.au/house/committee/jsct/25november2009/report1.htm>> accessed 14 October 2011.

12 NIA, para 8.

13 Mr Mike Lawson, Division Head, Manufacturing Division, Department of Innovation, Science and Research, *Committee Hansard*, 31 October 2011, p. 28.

14 NIA, paras 9-12.

15 NIA, para 4.

while the new antennas are under construction.<sup>16</sup> A third antenna is also under active consideration.<sup>17</sup>

7.18 In terms of training, Australian personnel receive overseas training on top of their base training qualification that is conducted here in Australia:

Their base training qualification is done in Australia; they get a qualification as engineers or senior technical trades people across a wide range of skills. Then on a fairly regular basis exchanges and trips over to the US or to our other station in Spain occur. It has been relatively restricted over the last year or two simply because of budget pressures on NASA to pay for travel, but our engineering and technical staff work at the other stations on a regular basis and JPL [Jet Propulsion Laboratory] and NASA experts come over on a regular basis to conduct in-house training. The initial training is done within Australia and through the Australian system, but the follow-on training and the experiential training that comes and moves on from there is generally conducted either here under tutelage from NASA/JPL experts – plus our own, obviously – or over in the US and Spain.<sup>18</sup>

7.19 The proposed extension will ensure the continuation of benefits flowing from the establishment, operation and maintenance of NASA facilities in Australia under the Agreement.<sup>19</sup>

## Further benefits

7.20 Australia also receives all the data from NASA's civilian space program:

NASA's policy with all of the data from its civilian space program, which is what we are engaged in, is that it all be made available to the public, pretty much, and it becomes available very quickly. In fact, you can often get the results and signals back – from mission supports that we are undertaking – almost as quickly by jumping on the internet and going to the NASA website as we get the images and signals at Tidbinbilla. So access to that data is readily

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16 Mr Desmond McNicholas, Acting Director, Canberra Deep Space Communication Complex and NASA Operations, CSIRO Astronomy and Space Science, *Committee Hansard*, 31 October 2011, p. 29.

17 NIA, para. 5.

18 Mr Desmond McNicholas, Acting Director, Canberra Deep Space Communication Complex and NASA Operations, CSIRO Astronomy and Space Science, *Committee Hansard*, 31 October 2011, p. 32.

19 NIA, para. 5.

available. And, of course, at a technical level, we have very good exchange arrangements in place for data from the point of view of our engineering and technical staff. So, I think as a general statement, yes, we do have access to all of that data. In addition, the antennas are all capable of doing radio astronomy work as well, and radio astronomers in Australia get very low cost access directly to the use of the antennas and the data when they are not being used to track spacecraft...<sup>20</sup> [T]he Bureau of Meteorology and Geoscience Australia are users of the data that is made available.<sup>21</sup>

## Obligations

- 7.21 The proposed extension continues existing arrangements under the current Agreement for exchange of scientific data, facilitation of the entry and exit of US personnel through immigration barriers, and duty-free import of personal and household effects of US personnel.
- 7.22 Taxation of US personnel continues to be governed by the *Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*.<sup>22</sup>
- 7.23 The Agreement explicitly provides for further (non-treaty) arrangements between NASA and the CSIRO, as the cooperating agencies, in respect of the establishment and operation of facilities. These arrangements encompass financing, constructing and installing new facilities, and disposing of or removing infrastructure and remediation work (where a facility is surplus to requirements).

## Implementation

- 7.24 No changes are required to existing legislation to implement the proposed extension. Exemptions from duties and taxes as set out in Article 9 of the

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20 Mr Desmond McNicholas, Acting Director, Canberra Deep Space Communication Complex and NASA Operations, CSIRO Astronomy and Space Science, *Committee Hansard*, 31 October 2011, p. 30.

21 Mr Mike Lawson, Division Head, Manufacturing Division, Department of Innovation, Science and Research, *Committee Hansard*, 31 October 2011, p. 30.

22 NIA, para. 15.



Agreement are covered by existing legislation, as described in paragraph 19 below. No further implementation measures are required.<sup>23</sup>

## Costs

- 7.25 No additional costs are anticipated as a consequence of this treaty action. NASA funds the total cost of the establishment, operation and maintenance of space vehicle tracking and communication facilities in Australia through its contractual arrangements with CSIRO.
- 7.26 NASA is also responsible for remediation work in relation to its facilities. Any additional activities or the set-up of new infrastructure under the Agreement as further amended would not impose any costs on the Commonwealth or the respective State and Territory Governments.
- 7.27 However, under the Agreement, the Australian Government is obliged to grant NASA an exemption from or refund of duties, taxes and like charges, including GST, on imports to Australia of goods for use in connection with the Agreement.<sup>24</sup>
- 7.28 The Agreement also requires Australia to give a refund of Commonwealth indirect taxes (including GST) for goods and services purchased in Australia. The proposed extension does not change this obligation.<sup>25</sup>

## Conclusion

- 7.29 The exploration of space, while led by larger countries such as the United States, is an international endeavour. On occasion, it can unite all of humanity in common purpose and achievement – the first moon landing by Apollo 11 in July 1969 is the most obvious example. The scientific information gathered is also of benefit to all people.
- 7.30 This agreement is a tangible expression of international cooperation in this field, and Australia also gets practical benefits from this arrangement including overseas training for our personnel and investment in facilities here in Australia.

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23 NIA, para. 17.

24 NIA, para. 16.

25 NIA, paras .18-20.

- 7.31 This exchange of notes will continue a productive and successful relationship that has lasted over 50 years and the Committee recommends that binding treaty action be taken.

### **Recommendation 8**

**The Committee supports the *Exchange of Notes constituting an Agreement to amend the Agreement between the Government of the United States of America and the Government of Australia concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended (Canberra, TBA 2011)* and recommends that binding treaty action be taken.**

**Senator Simon Birmingham**

**Acting Chair**



## Dissenting Report—Australian Greens

### Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-Operation in the Peaceful Uses of Nuclear Energy

The Australian Greens welcome the Committee's recognition that, "The full consequences of the Fukushima incident are yet to be ascertained and should further treaty amendments be required as a result of the incident, the Committee expects they will be introduced in due course."

The Greens believe it highly likely that such amendments to this Agreement will be appropriate, particularly given that key European powers like Germany are pulling out of the nuclear fuel chain altogether, which will call into question the membership of Euratom itself.

The Australian Greens do not believe the Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Cooperation in the Peaceful Uses of Nuclear Energy should proceed on three grounds.

First, there are fundamental flaws in the nuclear safeguards system upon which this treaty rests.

Second, the proposed treaty – supposedly the first agreement to include specific provisions on nuclear safety – does so by simply mentioning four preexisting operational treaties. Actual nuclear safety, as the events at the Fukushima Daiichi plant illustrate, will require a great deal more than cross-referencing.

Third, claims that nuclear commerce provides clear economic benefits to Australia are highly questionable.

Before each of these substantive issues is addressed, it should be noted that the majority report on this Agreement is inadequate. The Practical Outcomes (para.3.24) are not explained or addressed, the reader only learns the practical impact is “minimal”. Such details should be provided. The quoting of submissions and then merely noting concern is not substantive engagement with stakeholders. Such treatment insults the effort of expert participants who give their time, on the assumption that the parliament offers genuine democratic scrutiny of treaties.

## **Safeguards – an “illusion of protection”**

Article VII of the Australia-Euratom Agreement emphasises conformance with IAEA principles and procedures that provide reassurances equivalent to that of the IAEA safeguards system.

The 1977 Fox Report is the foundation for current policy on uranium mining in Australia. After analysing the safeguards system, the actual control Australia has over uranium that has left our shores, and the highly portable nature of radioactive substances, the Fox Report admitted that safeguards offer only “the illusion of protection.”

Safeguards rely on a state disclosing information. They rely on a state giving access to facilities. Safeguards are directed primarily to declared facilities. Special inspections undertaken to resolve ambiguities usually require the consent of the inspected state.

States have the right to reject particular inspectors designated for their country by the IAEA. Safeguards do not apply to material in mining or ore processing activities. Inspection schedules are normally set for the convenience of the operator. International control of nuclear material destined for non-explosive military purposes is not required for IAEA safeguards adopted for the NPT. A dangerous loophole has thus been created where uranium used for the propulsion of submarines can be enriched to the same grade as that used in nuclear weapons.

Currently the safeguards system comprises of:

- **Record keeping** of nuclear materials entering and leaving nuclear facilities, known as materials accounting exercises or audited paperwork;
- **Inspections** – defined schedule routine inspections, which under the Additional Protocol include inspections with only 2 hours notice;
- **Seals** - when visiting nuclear facilities, inspectors place seals on certain storage bins of waste and other materials to contain the materials.

Inspectors comes back and check that the seals are still in place from time to time;

- **Cameras** can be placed to monitor facilities; and
- **Environmental sampling** takes place, of air and swipes of dust in nuclear facilities, which can detect the presence of bomb grade fuel.

The IAEA safeguards system must be capable of detecting a “significant quantity” of missing plutonium or highly enriched uranium, in order to give a “timely warning”.

A “timely warning” is set at seven days, and a “significant quantity” of plutonium is defined as 8 kilograms, and of highly enriched uranium 15 kilograms, even though it is recognised that the amount estimated to make an effective nuclear explosion today is four kilograms.

We know from decades of experience that commercial-scale bulk handling facilities (like enrichment or reprocessing plants) simply cannot provide “timely warning” of a diversion of a “significant quantity”.

The IAEA guidelines call for a detection probability rate of 90% to 95% and a false-alarm probability rate of less than 5%. These are extremely ambitious targets. Reading the reports of the IAEA reveals that safeguards almost never meet the technical objectives of the IAEA, with the Agency having patchy access to facilities and difficult relationships with some governments, often having to make repeated calls over a period of years, for basic improvements and disclosure of information.

## **Nuclear Safety**

Fukushima has revealed nuclear safety standards as severely wanting and cannot be dismissed by being ‘noted’. While the full scope of the radioactive shadow cast by Fukushima is not understood, the assurance of “more specific language around nuclear safety” is woefully and dangerously inadequate.

The public hearing into this Agreement between Euratom and Australia extracted information the Greens have sought since the triple disaster of earthquake, tsunami and nuclear meltdown began on 11 March 2011. The time it took for this information to appear suggests the need for raised standards in nuclear safety information disclosure. At the Committee’s hearing on 31 October, 7 months after Fukushima was first hit, the parliament finally had confirmation that,

"Australian obligated nuclear material was at the Fukushima Daiichi site and in each of the reactors - maybe five out of six, or it could have been all of them; almost all of them. As a percentage,

we have the details of that amount that came through our reconciliation visit with Japan."

Australian uranium produced the tellurium found in a 100 km radius around Fukushima. Australian uranium showed up 24 hours after the earth quake and tsunami crisis, 12 March 2011. It wasn't until 1 June 2011- months later, 81 days later that the world learned that Japanese authorities had suppressed the detection of tellurium 6km from Fukushima.

Why is tellurium significant? Its presence indicates that the temperature of the fuel rods was over 1000 degrees, fission and a meltdown had started. Meltdown was the word least liked by TEPCO, governments and their Ambassadors, but that is exactly what occurred.

Failing to disclose this information robbed people of the right to protect themselves from radiation. The shambles of nuclear safety standards revealed by this and many subsequent decisions make the mere invocation of 4 treaties an insulting and inadequate antidote to the state of nuclear safety exposed by Fukushima. The enduring intense contamination on the farmland, the loss of livelihoods of this and future generations, the wasteland of abandoned pets and kitchens that can only be entered in space suits, are all evidence of a failure in nuclear safety. The four treaties need to be implemented and resourced, not just listed.

## **Nuclear Commerce**

The National Interest Analysis declares without reservation or qualification that the nuclear commerce implied by this agreement provides clear economic benefits to Australia. That is a questionable assertion.

**Nuclear commerce is unreliable due to technology and weather events:** While the patched and leaking reactor at Lucas Heights at ANSTO may generate some lucrative contracts for nuclear medicine, the reactor is very often out of action and revenue is lost. The operators of the Ranger Uranium mine in Kakadu are in financial dire straits after a very severe wet season compromised the structural integrity of tailings dams shutting down the entire operation for over 6 months.

**Potential jobs and revenue are exaggerated:** Uranium accounts for just one-third of 1% of Australia's export revenue and an even smaller contribution to employment in Australia - much less than 0.1%. Australia's cheese exports are equivalent our uranium exports. Unlike dairy farming, uranium mining jobs carry an enormous public health and environmental burden that is of abiding concern and unacceptable to many Australians.

**Subsidies, insurance and theft:** The nuclear industry has enjoyed colossal government largess, loan guarantees, direct subsidies, immunity from insurance liability and enormous research and development funding. In Australia the Commonwealth provides insurance for the nuclear facilities at ANSTO and provides subsidies and incentives for the mining industry.

An example that illustrates this point is the massive Commonwealth subsidy to the world's largest mining company through the diesel fuel rebate for BHP Billiton which will receive for the Olympic Dam development an annual rebate of up to \$85 million at an average diesel use of 480 million litres a year at full production levels, for a total subsidy to BHP Billiton of over \$3.2 billion for the proposed use of approximately 17 900 million litres of diesel from the start of open pit construction throughout Olympic Dam mining operations up to 2050. Not only is this a long term perverse disincentive to adopt other cleaner options, it is an unacceptable cost to the public purse.

After 10 years of drought many question the enormous quantities of water used by uranium mines, depleting the water table, including the Great Artesian Basin. BHP, the biggest mining company in the world pays nothing for up to 42 million litres per day from the Great Artesian Basin which is deemed theft by the local Aboriginal Traditional Owners.

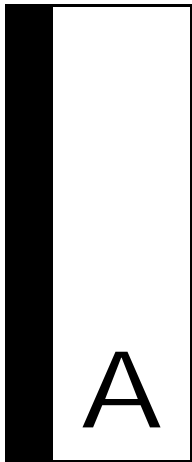
**What price contamination?** While tourist dollars may be easy to count, it's much hard to calculate the value of Kakadu National Park or to assess the risk posed by uranium mining to this ancient, proud and beautiful internationally renowned tourist destination. In 2009 a government-appointed scientist confirmed the Ranger uranium mine in Kakadu National Park was leaking 100,000 litres of contaminated water into the ground beneath the park on a daily basis," he said. "There have been more than 150 leaks, spills, and license breaches at the mine since it opened in 1981. That poses an unacceptable environmental cost with potential health consequences for the Aboriginal people living in the area and downstream.

Now is not the time to consolidate and extend nuclear cooperation agreements. Now is the time to pause and reflect on the merits and risks of nuclear power and consider more sustainable options.

**Senator Scott Ludlam**







## Appendix A - Submissions

### Treaties tabled on 23 August 2011

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement
- 1.2 Australian Patriot Movement
- 2 Australian Conservation Foundation
- 3 Gundjeihmi Aboriginal Corporations
- 4 Australian Safeguards and Non-Proliferation Office
- 5 Department of Foreign Affairs and Trade
- 6 Attorney-General's Department

### Treaties tabled on 13 September 2011

- 1 Australian Patriot Movement

### Treaties tabled on 20 September 2011

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement
- 2 Department of Infrastructure and Transport





## Appendix B — Witnesses

**Monday, 31 October 2011 - Canberra**

**Attorney-General's Department**

Mrs Karen Horsfall, Principal Legal Officer, Security Law Branch,  
National Security Law and Policy Division

Ms Maggie Jackson, First Assistant Secretary, International Crime  
Cooperation Division

Mr Geoff McDonald, First Assistant Secretary, National Security Law and  
Policy Division

Mr Gresham Street, Acting Director, Anti-Corruption Section

Mr Damien van der Toorn, Principal Legal Officer, International Security  
Section, International Law, Trade and Security Branch, International Law  
and Human Rights Division

**Australian Nuclear Science and Technology Organisation**

Mr Steven McIntosh, Senior Policy Adviser

**Australian Safeguards and Non-Proliferation Office**

Dr Robert Floyd, Director General

Dr Stephan Bayer, Director, Nuclear Security Section

**Commonwealth Scientific and Industrial Research Organisation (CSIRO)**

Mr Desmond McNicholas, Acting Director, Canberra Deep Space  
Communication Complex and NASA Operations, CSIRO Astronomy and  
Space Science

**Department of Agriculture, Fisheries and Forestry**

Mr Gordon Neil, General Manager, Fisheries Branch, Sustainable Resource Management

Ms Anna Willock, Director, International Fisheries, Sustainable Resource Management

**Department of Foreign Affairs and Trade**

Ms Rebecca Lewis, Legal Specialist, International Law Section, International Legal Branch, International Organisation and Legal Division

Ms Elizabeth Toohey, Executive Officer, Treaties Secretariat, Legal Branch

**Department of Infrastructure and Transport**

Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division

Mr Samuel Lucas, Director Air Services Negotiations, Aviation Industry Policy Branch, Aviation and Airports Division

Mr Edouard Pokalioukhine, Adviser, Air Services Negotiations, Aviation Industry Policy Branch, Aviation and Airports Division

Mr Gilon Smith, Assistant Director, Air Services Negotiations, Aviation Industry Policy Branch, Aviation and Airports Division

**Department of Innovation, Industry, Science and Research**

Mr Mike Lawson, Division Head, Manufacturing Division



## 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 in Parliament 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 actions were considered by the Committee on the date indicated. The Committee determined not to hold a formal inquiry into this treaty action and agreed that binding treaty action may be taken.

### Minor treaty actions tabled on 13 October 2010

Considered by the Committee:

- *Resolution MEPC.202(62): Amendments to the Annex of the Protocol of 1997 to amend the International Convention For The Prevention Of Pollution From Ships, 1973, as modified by the Protocol of 1978 relating thereto, adopted at London on 15 July 2011.*

This minor treaty action will amend international regulations for the prevention of air pollution from ships, by declaring an area surrounding the islands of the Commonwealth of Puerto Rico and the United States Virgin Islands to be an emission control area (ECA).

Ships operating in an ECA are required to take measures to reduce emissions of sulphur oxides, nitrogen oxides and particulate matter.

The explanatory statement advises that the declaration of the new ECA is expected to have no impact on Australia. It is highly unlikely that any Australian ship will travel through the new ECA or that any ship will travel through the new ECA as part of a voyage to or from Australia.

Based on the advice contained in the explanatory statement, the Committee has agreed to deal with the amendment as a minor treaty action.