

**Joint Standing Committee on Treaties**

**29/02/2016**

**Treaties tabled on 1 and 3 December 2015 and 2 February 2016**

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**Committee met at 11:16**

**Agreement on Strengthening Implementation of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region**

**CHAIR ( Mr Hartsuyker ):** I now declare this public hearing open. The committee will take evidence on the agreement on strengthening the implementation of the **Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, Honiara, 2 November 2012**. I now welcome representatives from the Department of Agriculture and Water Resources, the Australian Fisheries Management Authority and **the Department of Foreign Affairs and Trade**. Witnesses may like to note that today's proceedings are being broadcast online and televised.

Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. At the conclusion of your evidence would you please ensure that Hansard has had the opportunity to clarify any matters with you. Also, if you nominate take any questions on notice, could you please ensure that your written response to questions reaches the committee secretariat within seven working days of your receipt of the transcript of today's proceedings. Would you like to make some introductory remarks?

Mr Thompson : Yes, I would. The agreement on strengthening implementation of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, known as the Niue treaty subsidiary agreement, was concluded by the parties to the Niue treaty on 2 November 2012. It was signed by former parliamentary secretary, **Richard Colbeck, on Australia's behalf on 2 July 2014**. The agreement entered into force on **30 July 2014**, and there are now **seven parties** to the agreement, and seven additional signatories who are in the process of ratification.

The agreement is a subsidiary agreement that sits beneath the Niue treaty, to which Australia is a party. The Niue treaty was intended to facilitate cooperation by parties **in conducting fisheries surveillance and enforcement in the Pacific**. However, although it established a framework, it did not provide mechanisms for those arrangements. The Western and Central Pacific region has the world's largest and most valuable tuna fishery. It is of huge economic importance to Pacific island states. In 2009, illegal,

unregulated and unreported **fishing losses in the region had an estimated value of between US\$750 million to US\$1.5 billion**, and regional fish stocks were seen to be under very serious threat. The agreement will strengthen the implementation and effectiveness of the Niue Treaty. It draws together disparate arrangements across the Pacific under a single framework for sharing resources and exchanging information. This will enable parties to enhance cooperative fisheries surveillance and law enforcement activities.

Australia has had significant involvement in the development of the agreement and has been a strong supporter of the agreement for a number of years. The agreement is strongly supported in the region. It establishes a legal framework for conducting a broad range of cooperative regional fisheries surveillance and law enforcement activities, including sea patrols, **aerial surveillance**, port inspections and investigations. It includes a mechanism for one party to request another party to exercise surveillance and enforcement functions on its behalf. It also includes a framework for the regional exchange of fisheries data and intelligence.

There are a number of reasons for Australia to ratify the agreement. Australia is a key maritime surveillance partner for Pacific island countries. **Australia is committed to supporting regional cooperation on maritime security and undertakes regular surveillance activities in the region.** This supports Pacific island countries to combat IUU fishing. IUU fishing depletes fish stocks through overfishing and is a serious threat to our region's food security. It also results in large financial losses to coastal states and can seriously damage marine environments and fish habitats. The agreement will improve the efficiency and effectiveness of Australia's current activities in the region. It will ensure that Australia's ongoing use of its surveillance and enforcement assets achieves maximum benefit. For example, Operation Kuru Kuru is an existing annual maritime surveillance operation in cooperation with other members of the forum fisheries agencies. It is undertaken to detect IUU fishing agency as well as broader transnational crime. The 2015 Kuru Kuru operation was the biggest enforcement operation yet. Over 10 days, more than 400 personnel led 112 vessel boardings, and it was considered a success. Undertaking these kinds of operations under the agreement's frameworks would clarify roles, responsibilities, authorities and conditions in such operations.

The information-sharing framework established by the agreement will improve Australia's awareness of security risks in the region. The agreement will also have broader benefits by clarifying roles, responsibilities and processes and by facilitating parties' agreement to cooperative activities. In this way, it will facilitate more effective and responsive regional approaches to maritime surveillance and enforcement.

The agreement may contribute to broader national security improvements. By clarifying the assistance required by, and available to, parties and enhancing access to information, more efficient and effective surveillance and enforcement activity can be directed towards the most pressing regional needs. For example, the central real-time information management system will allow parties who require assistance to see quickly and easily which assets and personnel would be available to assist with the operation and any associated conditions with seeking that assistance. This could facilitate more rapid responses to combating IUU fishing.

Early ratification will be an important step in demonstrating our continued commitment to the region and **Australia's leadership in the Pacific.** It may build momentum and encouragement to others to ratify. **Australia has already taken all the steps it needs in order to ratify and comply with the agreement.** The agreement poses two main obligations on Australia. Upon ratification, Australia will need to, firstly, provide certain notifications to the administrator, including, for example, notification of Australia's national authority and our relevant applicable laws, policies and procedures. The second step will be to provide certain fisheries data and intelligence, including, for example, fishing vessel licence lists and port inspection reports. Australia

already provides much of this data to the Western and Central Pacific Fisheries Commission.

The remainder of the activities in the agreement are voluntary. The agreement is flexible, and this flexibility is one of its key features. Ratifying the agreement does not oblige a party to engage in cooperative activities, but enables them to do so if they choose, and on the terms that they choose. It is intended to be applied as broadly or as narrowly as the parties would like it to. At the same time, however, it establishes a set of procedures and notifications so that these procedures do not have to be agreed every time an activity is undertaken. The framework allows parties to agree directly and in advance by providing necessary authorisation and information through notifications by a real-time information management system.

Becoming a party to the agreement would not have any direct cost implications for Australia. There would be no added cost to the Australian fishing industry or to state or territory governments. The agreement would be of significant benefit to Australia's broader security and development aims in the Pacific. It would make a range of activities we are already doing easier and more effective. It will also be of great benefit to the region by strengthening surveillance and enforcement, thereby reducing illegal, unreported and unregulated fishing. We are happy to take questions.

**CHAIR:** You said there were seven additional countries that were about to sign up or were in the process of signing up. Who would they be?

Mr Thompson : **Seven who have ratified are the Cook Islands, Nauru, Palau, Samoa, Tonga, Tuvalu and Vanuatu. The seven who are in the process of ratifying include Australia, the Federated States of Micronesia, New Zealand, Niue, PNG, Marshall Islands and the Solomon Islands.**

**CHAIR:** And with regard to Australia being obliged to provide information to the administrator, is that information provided on a regular basis or on an as-needs basis?

Mr Thompson : It is both. It is provided on a regular basis with things like vessel lists and port inspections. Sometimes we do a lot; sometimes we might not do a lot, but there is also capacity to provide more information as needs arise.

**Mr KELVIN THOMSON:** How do the Pacific Islands, in general, feel about the treaty and this whole issue? Are they nervous about **interference in sovereignty**, or have a signed up for sustainable fisheries and action against illegals?

Mr Thompson : The regions are signed up against illegal fishing. In some of these countries tuna **fisheries make up 50 per cent of the income**, and they are very concerned about illegal fishing in their waters and in the high seas surrounding their waters. They are very strongly supportive of combating illegal fishing. The agreement was developed over a two-year period in very close consultation with the Pacific Island countries, and they are strong supporters of that. In a sense, it was facilitated by the Pacific Islands Forum Fisheries Agency, a cooperative arrangement, established and supported by largely Australian and New Zealand money, for Pacific Island countries to come together to work on fisheries management. It has been endorsed by their officials and, in 2015, by Forum Fisheries Committee ministers.

There have been cooperative exercises in the past, in the Pacific, with patrol boat programs. Early, after the agreement was signed, there was a voluntary trial arrangement of how the treaty might work by Australians and Islanders sharing each other's boats and participating in these exercises. And they have always been very cooperative and very well done. They do not see it as an impingement on their sovereignty. As we said earlier, it is a voluntary agreement. People can participate in activities as far or as little as they feel they need to. It is not as if Australia or New Zealand, for example, could go straight into the territorial waters of another country and

enforce its law but, if both parties think there would be something advantageous in that, by agreement they may do things in each other's territorial seas or EEZs.

**Mr KELVIN THOMSON:** I think I heard you mention that Vanuatu was an original signatory to the treaty. Can you give us any information about their particular involvement in administering it?

Mr Thompson : They have the same status and role as anyone else in the Pacific. They are members of the forum fisheries agency. They share information. There are a relatively close neighbour for Australia. And it has a significant fishing operation—a number of international fishing operations hub, or port, though Vanuatu, and so their cooperation is quite important.

**Mr KELVIN THOMSON:** The forum fisheries agency is based in Honiara, in the Solomon Islands. I had the good fortune to go there a few years ago and have a look at what they are doing. **It was very interesting to see them tracking various vessels and deciding which ones are suspicious and warrant further investigation.** What is the decision-making process for the agency? How does it decide what its priorities are and what it is going to do?

Mr Thompson : The forum fishing agency holds regular meetings of officials from Pacific Island countries, and holds an annual meeting of senior officials and, then, a ministerial meeting. It is through that process that they develop an annual work plan and allocation of the resources that they receive from a range of sources—from Australian and New Zealand governments, from European governments, and from various fees and charges that make up a small part of their business. But it is an agreement by the forum fisheries ministerial committee on an annual basis which sets the work plan in place, which sets their priorities. Illegal fishing and improved fisheries management have always sat as a very high priority for the forum fisheries agency.

**Mr KELVIN THOMSON:** In Australia we have had controversy from time to time over the issue of supertrawlers and what is referred to as industrial fishing by them. Has this been an issue for any of the Pacific Island countries or coastal states entering into agreements with supertrawlers?

Mr Thompson : Not much trawling for tuna goes on in the Pacific. It is mainly purse seining. The vessels for that are relatively large vessels as they are at sea for a long time. The potential for overfishing of the tuna of those islands has always been sensitive to them. In recent years they have moved to what they call a vessel-day scheme, which takes into account the size and catch capacity of the vessels. They allocate so many days based on the rough calculation of how many fish they might catch. Under the Western and Central Pacific Fisheries Commission, which covers most that area, they have recently moved to a vessel management scheme and a fisheries management plan, which is taking them a long way down the track towards quota management of those fisheries. Kerry might know, but the vessels that seem to fish in the Pacific are around the 50 to 70 metre type. They are purse seiners. They are quite large because they bring the fish on board, freeze it and then take it to canneries in Thailand, the Solomons or on other islands in the Pacific.

**Mr KELVIN THOMSON:** Are they making decisions in a collective way or simply on a country-by-country way?

Mr Thompson : In the forum fisheries agency it is collective for some of the fisheries, because they have an arrangement with United States. They make country-by-country-decisions with Taiwan, Korea, China or the EU. But where they are covered by the Western and Central Pacific Fisheries Commission, which is a regional fisheries management organisation covering the migratory stocks across that part of the Pacific, it is a collective decision which gets made at that annual meeting. That is why the move Australia has been pursuing in that commission has been towards fisheries management

based on getting a really good handle on stocks, catch rates and catches, and then trying to maintain the share of either growth in stocks or the pain of a drop in catches, if stocks look like being under threat, equitably between the countries, based roughly on their catch history.

Quite a number of Pacific Island countries, in a sense, lease their catch to a distant water fishing nation for significant amounts of money, because the capacity needed to own, operate and run a vessel is quite high. It is a capital-intensive operation, so it is efficient for them, after having agreed how much catch they might have, to lease that to someone else to catch it.

**Ms PRICE:** Can you give us some idea of what resources, financial or otherwise, Australia is obliged to contribute to the running of the agency?

Mr Thompson : The forum fisheries agency operates with membership fees from each of the participants, but the bulk of its income—I do not think I have the exact numbers with me—comes from a grant from the Department of Foreign Affairs and Trade and its New Zealand equivalent. A large part of their budget also comes from an aid budget from the EU, who also have an interest in sustainable fishing in the region. I could get back to you on the break-up of FFA's budget. It is not a secret. **It is of the order of tens of millions.**

**Ms PRICE:** I guess that is what we were looking for.

**Mr WHITELEY:** You made a comment before about attempts to make sure that we have a handle on fish stocks and so on. Is fair to say, as a participating part of the treaty to be, that we have a handle on our fish stocks?

Mr Thompson : Australia has a very good handle on the stocks in Australian waters, but the major fish stocks that are covered by the interests of the Pacific Island countries in this treaty are the migratory species, which are the various tunas—skipjack, bigeye, yellowfin—those sorts of ones. Just knowing about migratory species in Australia does not tell you how many there are elsewhere. Cooperatively, through the Western and Central Pacific Fisheries Commission, there is a scientific committee which takes data from everybody's fishing and uses data based on fishing effort or other scientific studies to get a pretty good handle on what the fish stocks are like. It regularly tracks increases, decreases or the stability of those fisheries. We think we have a pretty fair idea of it.

**Mr WHITELEY:** Is that pretty fair handle in that particular space consistent with the handle we have on other species—small pelagic fisheries? Do we believe we have a handle on our fish stocks across species generally?

Mr Thompson : We believe we have a very good handle across Australia on our fish stocks. Where we have international fish stocks, we take account of the international data and then apply our own assessment to see if it is consistent. We believe the data on international fish stocks are pretty reasonable. We want to go to the effort to try to get a better handle on what the catch rates are, who is catching what and what level of illegal fishing might occur because that gives you some predictive capacity in the future to know how many fish different boats might be catching and what age structure they are. That gives you a feel for building what might happen into models in the future. We have a pretty fair handle on it, particularly for the tunas but also, where necessary, for the smaller pelagics that might be there. Kerry might know more. I am not aware that small pelagics are heavily targeted in the central Pacific and internationally.

Ms Smith : No.

**Mr WHITELEY:** We have a handle on those stock levels within the Small Pelagic Fishery?

Mr Thompson : The Small Pelagic Fishery that we talk about—

**Mr WHITELEY:** It is not in here. I understand that.

Mr Thompson : is an Australian fishery operating in Australia.

**Mr WHITELEY:** I know, but while I have you here it would be remiss of me not to ask.

Mr Thompson : We believe we have quite good data on that. It has improved over the last year or two as we have done more research on the population—egg counts and those sorts of things.

**Mr WHITELEY:** Is that across all the species within the Small Pelagic Fishery?

Mr Thompson : Yes, it is across all the species.

**Mr WHITELEY:** The egg counts are pretty well up to date?

Mr Thompson : They are as up to date as we expect them to be. We have implemented two or three surveys. It is immeasurably better than it was some years ago. We are still implementing relatively conservative total allowable catches.

**Mr WHITELEY:** If you work out where I come from, you will work out why I am asking the questions. In relation to the fish management plans and the strategies at play with Australian fishery, where do we sit amongst other nations around the world in the way in which we manage our fishery?

Mr Thompson : In terms of the scientific basis for our fisheries, the regulatory framework around our fisheries, the data that we have on our fisheries and our enforcement capacity, we are in the top one or two. A number of commentators, including environmental NGOs and the FAO—they never like running league lists—say that Australia, New Zealand and parts of the United States, because they have a lot more state based fisheries, would be the top two or three.

**Senator FAWCETT:** In terms of this agreement, over and above what KK15 achieved, will it give us more capability or is it purely putting the kind of arrangements that were agreed on an annual basis into perpetuity?

Mr Thompson : This is about the arrangements. It does not come with any funding. What it does is take the Niue treaty and say, 'Let's organise in advance some of the protocols and put the framework in so that countries can do the protocols.' At the present time, some of those things are done annually, but some of them are done exercise by exercise or incident by incident, which is quite time-consuming. This means they are delayed, and it also takes resources, so this is the framework for it. Some of the activities that are undertaken—our joint operations et cetera—are covered by AFMA's normal day-to-day business, which it does with Pacific Island countries or France. They are also covered by funding that we have received from the Department of Foreign Affairs and Trade for a grant to enhance fisheries management in the Pacific. **Defence also have their own funding and resources for specific activities, including the Pacific patrol boat program and those sorts of things.** They are all complementary. This is the legal framework. The operations—

**Senator FAWCETT:** My question is not about funding; my question is about the fact that, in terms of ability to share information and coordinate things, it does not actually enhance what we are doing with KK15. It just puts those frameworks or those agreements in place on a permanent basis—is that correct?

Mr Thompson : I am not sure what is in KK15, but it does put in place a whole lot of arrangements—



**Senator FAWCETT:** That is your last major exercise you just talked about.

Mr Thompson : I know—but in terms of all the detail of the information we have collected.

Ms Smith : I can probably provide a little bit more information. Currently, AFMA assists all the regional operations led by the forum fisheries agency. There are four dedicated operations a year. We have dedicated officers in the command centre—the coordination centre—and we also have officers that participate on board some of the Pacific Island patrols. Currently—just as an example from your question—the officers participate as assistants only. They have no standing on the vessel other than as an assistant. Under this arrangement, there is the potential for us to work alongside some of the Pacific Island officers on an equal footing, supporting them with their enforcement in their own zones.

**Senator FAWCETT:** The thrust of my question is, to date, **despite QUADS putting in assets for these annual exercises, we have seen an investment in a civilian charter to do some surveillance. Despite that acquiring of information, many of the patrol boats, which are your only intercept asset, are often used for interisland transfers, or crews are not up to speed in being able to go and prosecute, so the number of intercepts and boardings, over the last decade, has been remarkably low. Do you anticipate that having this agreement in place, whereby we do not have to negotiate individual incidents or individual exercises, will encourage an increased utilisation of the Pacific Patrol Boats as that primary intercept and boarding asset?**

Ms Smith : I understand. The Niue Treaty subsidiary agreement gives effect in the first annex to a range of data and information that is to be shared. It is anticipated that that range of information will be able to be analysed, and trend- and intelligence-driven risk based operations will be able to be derived from the information. Obviously, that is something that will build over time, as information comes in under that particular centralised database. That information will be used to inform future operations and to guide surveillance and activities in the Pacific.

**Senator FAWCETT:** In addition to setting the framework that allows the transfer of information, the participation, is there any sense of putting a target or an expectation about the degree of utilisation that the Pacific Island nations will make of that information to **increase the utilisation of their patrol boats?**

Ms Smith : It is probably difficult to say at this point. As we have seen, we have seven countries that are currently party to the agreement. They are undertaking cooperative patrols, currently, to trial and to test their internal domestic systems. We have been involved, to limited degrees, with some of those activities. I think our experience thus far is that the interest and the cooperation happening in the Pacific is increasing, mainly through building up of networks and sharing information. That collaboration at an officer-to-officer level is where we have seen the greatest successes.

**CHAIR:** There being no further questions from members, thank you for attending to give evidence today. If the committee has any further questions, the secretariat may seek further comment from you at a later date.

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