International treaty examination of the Protocol of Amendments to the Convention on the International Hydrographic Organization

Report of the Foreign Affairs, Defence and Trade Committee

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Recommendation
The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Protocol of Amendments to the Convention on the International Hydrographic Organization and recommends that the House take note of its report.

Introduction
New Zealand is a party to the Convention on the International Hydrographic Organization, which established the International Hydrographic Organization (IHO) as the recognised competent authority according to the United Nations regarding nautical charting and hydrography. The IHO coordinates the setting of standards for the production of hydrographic data and the provision of hydrographic services, and facilitates building the capacity of national hydrographic services. The standards set by the IHO are the hydrographic and nautical charting references used by the International Convention for the Safety of Life at Sea, which governs the conduct of the world’s maritime fleet.

The convention came into force in 1970 and the Protocol of Amendments to the Convention on the International Hydrographic Organization was adopted by the IHO in April 2005. The protocol addresses shortcomings found by a review of the convention and is focused mainly on improving the efficiency of the IHO and modernising its governance structure. It also makes it easier for new States to join the IHO.

The protocol requires two-thirds (48) of the member States to provide notifications of approval in order for it to enter into force for all parties. To date, 28 notifications of approval have been received, from countries including Australia, Canada, the United States of America, Germany, France, and the United Kingdom. The provisions of the protocol will enter into force three months after the Government of the Principality of Monaco receives the necessary notifications of approval.

The national interest analysis is appended to our report.

Tokelau
When New Zealand signed the convention in 1970, its signature did not extend to the Governments of Tokelau, the Cook Islands, or Niue. They will therefore not be included in New Zealand’s approval of the protocol.

We consider this exclusion to be an anomaly in the case of Tokelau, as it is a part of New Zealand.
Conclusion

We have considered the Protocol of Amendments to the Convention on the International Hydrographic Organization and believe that it will serve to improve the efficiency and accountability of the IHO.
Appendix A

Committee procedure
We met between 7 July and 11 August 2011 to consider the treaty. We called for public submissions on the treaty with a closing date of 29 July 2011. We heard evidence from the Ministry of Foreign Affairs and Trade, and Land Information New Zealand.

Committee members
John Hayes (Chairperson)
Jacqui Dean
Hon Pete Hodgson
Dr Paul Hutchison
Iain Lees-Galloway
Keith Locke
Todd McClay
Hon Maryan Street
Appendix B

New Zealand Approval of the Protocol of Amendments to the Convention on the International Hydrographic Organization

National interest analysis

Executive summary

1. New Zealand is a party to the Convention on the International Hydrographic Organization (the Convention), which established an inter-governmental organisation that seeks to contribute to making navigation easier and safer throughout the world.

2. The International Hydrographic Organization (IHO) is the recognised competent authority to the United Nations (UN) regarding nautical charting and hydrography. In particular, IHO standards are the relevant references for all nautical charting and hydrographic aspects of the International Convention for the Safety of Life at Sea (SOLAS), which governs the conduct of the world’s maritime fleet.

3. In April 2005, the Third Extraordinary Hydrographic Conference of the IHO1 adopted the Protocol of Amendments to the Convention on the International Hydrographic Organization (the Protocol of Amendments). Under Article XXI (3) of the Convention, the Protocol of Amendments requires notifications of approval by two-thirds of the Contracting Parties in order to enter into force for all Parties. Member States have been encouraged to approve the Protocol in order to bring it into force.

4. The Protocol of Amendments primarily affects the efficiency of the IHO and its internal business operations. It creates new structures and processes to improve corporate governance of the IHO. It also makes it easier for new states to join the IHO.

5. It is proposed that New Zealand should support the Protocol of Amendments because it is in this country’s interest that the IHO conducts itself in an efficient and effective manner and adopts modern business practices that are supported by the Convention. It is further proposed that New Zealand approve the Protocol of Amendments in order to facilitate its entry into force. However, provided that two-thirds of the membership approves the Protocol of Amendments, the Protocol of Amendments will automatically become binding on New Zealand regardless.

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**Nature and timing of proposed treaty action**

6. New Zealand will be able to notify its approval of the Protocol of Amendments to the Depositary of the Convention as soon as practicable after the successful completion of the Parliamentary treaty examination process.

7. The new Protocol of Amendments will enter into force for all Member States three months after the Government of the Principality of Monaco receives notifications of approval by two-thirds of the Member States to the Convention (Article XXI(3)). This requires approval by 48 Member States. To date, 28 notifications of approval have been received by the Depositary, including Australia, Canada, the United States of America, the United Kingdom, France, Germany, Norway and Papua New Guinea.²

8. Regardless of whether New Zealand notifies its approval of the Protocol, the Protocol will enter into force for all Parties, including New Zealand, once the two-thirds requirement has been met.

9. As New Zealand’s definitive signature of the Convention did not extend to the Governments of Niue, the Cook Islands or Tokelau, they will not be included in New Zealand’s approval of the Protocol of Amendments.

**Reasons for New Zealand to approve the Protocol of Amendments**

10. The Convention came into force on 22 September 1970, and in essence seeks to set authoritative standards for the acquisition of hydrographic data and the provision of hydrographic services, including capacity-building of hydrographic services. The main obligation of Member States is to act as members of the IHO, which provides an intergovernmental basis for hydrographic co-operation.

11. The Third Extraordinary International Hydrographic Conference (Conference) in April 2005 considered the report of a review of the Convention, its instruments and the organisation in general. It concluded that the Convention had significant shortcomings, particularly in relation to a State’s ability to easily join the IHO. The Conference adopted the Protocol of Amendments on 14 April 2005, in order to address these concerns.

12. It is in New Zealand’s interest to approve the Protocol of Amendments as soon as practicable to facilitate its entry into force. As an IHO member, New Zealand will benefit from improved governance of the organisation. New Zealand’s maritime interests align with many major and like-minded IHO Parties which have already approved the Protocol of Amendments, and New Zealand’s support in this regard would be welcomed in the IHO.

² The full list of approvals is Australia, Brazil, Canada, Cuba, Cyprus, Democratic People’s Republic of Korea, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Japan, Republic of Korea, Latvia, Mexico, Monaco, Morocco, Netherlands, Norway, Pakistan, Papua New Guinea, Spain, Sweden, Tunisia, the UK and USA.
Advantages and disadvantages to New Zealand of the treaty entering into force

Institutions and governance arrangements of the IHO

13 The Protocol of Amendments revamps the governance structure of the IHO and these changes are expected to improve the governance of the IHO and streamline its decision-making processes. This will be advantageous to members because it will make the organisation more efficient and effective. The key changes are outlined below.

14 In particular, the Protocol of Amendments establishes an Assembly, Council, Secretariat and Secretary-General, and includes provision for the establishment of subsidiary organs as required. The Finance Committee’s role continues in a new format.

15 The Assembly replaces the Conference as the principal organ of the IHO, and will meet on a more regular basis. It is composed of all Parties and will meet more regularly than the Conference, holding a meeting every three years. Full plenary sessions of the Assembly will allow for all IHO members being present to discuss and agree on the future direction and strategy. When the IHO was formed meeting every five years was seen to be appropriate, but in recent times there has been a rapid increase in the development of technology and products. The regulatory requirements of the International Maritime Organization (IMO), along with the needs of the maritime community, require the IHO to be more agile and responsive to the challenges of a rapidly changing world.

16 The Council will be made up of one-fourth of the Member States on a rotational basis, with two-thirds of the Council taking their seats on a regional basis and the remainder on the basis of hydrographic interests. It is the Council’s role to prepare the overall strategy and work plan of the IHO for adoption by the Assembly, and to co-ordinate activities during the interim periods between Assembly meetings.

17 The Finance Committee will continue to be open to all Member States, and its function will be to review the financial statements, budget estimates and reports on administrative matters and make recommendations to the Assembly.

18 In regard to disadvantages, during negotiations of the Protocol of Amendments, some concerns were expressed about the potential impact of new voting and institutional arrangements on the participation of States with small tonnage fleets. This concern applied in particular to small Pacific Island countries. Nevertheless, Parties felt that the benefits in terms of operational efficiency and effectiveness outweighed these concerns. It is noteworthy that Papua New Guinea has already approved the Protocol of Amendments.

Membership of the IHO

19 Currently any State wishing to accede to the Convention must apply to the Government of the Principality of Monaco specifying the tonnage of its fleets and have its application approved by two-thirds of the Member States.

20 The Protocol of Amendments simplifies this process by allowing any state that is a member of the United Nations to join without requiring approval by two-thirds of Member States. States that are not members of the United Nations may also accede by having their applications approved by two-thirds of the Member States. It is anticipated
that these amendments will result in a number of additional states applying to join the IHO. This would be advantageous to New Zealand as more IHO members from the South-West Pacific would raise the profile of the region at the IHO.

**Legal obligations which would be imposed on New Zealand by approving the Protocol of Amendments; reservations; and dispute settlement mechanisms**

21 New Zealand’s obligations under the Convention – essentially to act as a member of the IHO – will continue once the Protocol enters into force.

22 The Protocol of Amendments to the Convention addresses the internal workings and governance of the IHO. It will not create any additional obligations for New Zealand. As New Zealand is already a party to the Convention it will not be affected by the new membership process.

23 There is no ability to make reservations to the Convention, and the Protocol of Amendments does not alter this position.

24 Article XVII of the Convention provides that any dispute concerning the interpretation or application of the Convention shall, if not settled by negotiation or the Directing Committee, be referred to an arbitrator designated by the President of the International Court of Justice. The Protocol of Amendments retains the substance of this dispute-resolution mechanism, but replaces “Directing Committee” with “Secretary-General of the Organisation,” consistent with the broader changes to the institutional structure of the IHO.

**Measures which the Government could or should adopt to implement the treaty action**

25 The Protocol of Amendments will not require changes to legislation or the domestic policy of the New Zealand Government.

26 As provided in the original Convention, the Protocol of Amendments provides for the IHO to enjoy privileges and immunities subject to agreement with the Member State concerned. Should New Zealand grant the IHO such privileges and immunities, regulations would be required under the Diplomatic Privileges and Immunities Act 1968.

27 New Zealand is represented at the IHO by Land Information New Zealand (LINZ), the government agency responsible for producing official hydrographic information. There will be no significant changes in the way LINZ engages with the IHO. Attendance at the more regular three-yearly Assembly meetings should not be affected. For more than a decade, the IHO has convened an Extraordinary Hydrographic Conference between the five-yearly conferences and New Zealand has attended all conferences to date.

**Economic, social, cultural and environmental costs and effects of the treaty action**

28 The implementation of the Protocol of Amendments is not expected to have any economic, social, cultural or environmental effects in New Zealand.
Costs

29 The Protocol of Amendments will not impose additional costs on New Zealand. However, New Zealand will gain additional value for the current financial subscription paid to the IHO as a result of improved governance. Additionally, any consequent improvements in internationally accepted nautical charting products will benefit maritime trade and defence activity in New Zealand’s area of maritime interest. The treaty action will not require any new domestic agencies or management arrangements to be put into place.

Consultation

30 The following government departments were consulted: Ministry of Foreign Affairs and Trade, Maritime New Zealand, New Zealand Defence Force, and Ministry of Transport. All the consulted departments supported New Zealand becoming a Party to the Protocol of Amendments. No sections of the public were identified as having specific interests in the implementation of this Protocol.

Future protocols and/or amendments to the Convention

31 Neither the Protocol of Amendments nor the Convention itself contain provisions regulating future protocols.

32 Article XXI of the Convention continues to govern the procedure for amendments to the Convention. Amendments may be proposed by any Contracting Party (Member State) to the Convention and must be approved by the Conference of the Parties. Once the Protocol of Amendments enters into force, the amended Article XXI also provides that proposed amendments must be notified to the Secretary-General of the IHO Secretariat (as voted by the Member States) at least six months before the next session of the Assembly.

33 Once amendments have been approved by the Conference (to be replaced by the Assembly), they will be adopted by a two-thirds majority of the Member States present and voting. Amendments will enter into force for all Member States three months after the Government of the Principality of Monaco receives notifications of approval by two-thirds of the Member States.

34 While future amendments to the Convention will constitute separate treaty actions and be subject to New Zealand’s treaty-making processes, all such amendments will become binding on all Parties, including New Zealand, once approved by two-thirds of the Parties. It is therefore in New Zealand’s interest to be actively involved in considering any proposed amendments before they are approved by the Conference (and in the future, the Assembly).

Withdrawal or denunciation

35 Once the Protocol of Amendments has entered into force, there will be no opportunity for Parties to withdraw from the Protocol itself. However, in accordance with Article XXII of the Convention, New Zealand may still denounce the Convention as amended by giving at least one year’s written notice, in a notification addressed to the Government of the Principality of Monaco. The denunciation would take effect on 1 January of the year following the expiration of the notice and would involve the
“abandonment” by New Zealand of all rights and benefits of membership in the IHO. Denunciation by New Zealand would be subject to New Zealand’s treaty-making process.