

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CHARTER OF THE UNITED NATIONS AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Foreign Affairs, Senator the Hon Gareth Evans,
QC)

CHARTER OF THE UNITED NATIONS AMENDMENT BILL 1993

GENERAL OUTLINE

The Charter of the United Nations Amendment Bill 1993 amends the *Charter of the United Nations Act 1945*. The Bill's primary purpose is to allow the Governor-General in Council to make regulations implementing Australia's obligations under the United Nations Charter. It also provides for the imposition of fines for breach of the regulations and allows the Attorney-General to seek injunctions to restrain such a breach.

2. Australia, as a member of the United Nations, is required by Article 25 of the Charter to implement Security Council decisions. In Australia's case, this has generally meant an obligation to abide by sanctions imposed by the Security Council against states which are determined to have breached or threaten to breach international peace and security. In recent times, such sanctions have been imposed against Iraq, Libya and Yugoslavia (Serbia and Montenegro).

3. Resolutions imposing such sanctions generally decide that "states shall prevent" trade and other specified transactions with the offending state. Australia's obligations under such resolutions have previously been implemented by way of the making of regulations under the *Customs Act 1901*, the *Air Navigation Act 1920*, the *Banking Act 1959* and the *Migration Act 1958* and by way of appropriate directions issued by the Treasurer to the Governor of the Reserve Bank. Those measures, whilst largely effective, have not prohibited all activities in breach of United Nations sanctions.

4. The Security Council adopted Resolution 820 on 17 April 1993. The Resolution provides for the imposition of strict new sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro). Advice from the Attorney-General's Department indicates that Australia lacks a legislative basis by which it could ensure compliance with the obligations imposed by the Resolution in a number of important respects. A failure to comply with the Resolution would place Australia in breach of its international obligations.

5. The legislation will amend the *Charter of the United Nations Act 1945* to enable the Governor-General in Council to make such regulations for and in relation to giving effect to decisions adopted by the Security Council pursuant to Chapter VII of the Charter. The legislation will be based on the external affairs power of the Commonwealth. It is not intended that the legislation will replace existing regulations: rather, it will enable the Governor-General in Council to make regulations dealing with situations which fall outside the present regulatory framework.

6. The legislation will not have the effect of taking away from the Government the power to decide whether the imposition of sanctions against a particular foreign state is in Australia's national interests. It would only be after the making of regulations under the legislation, which would be subject to the normal provisions regarding disallowance in the Parliament, that sanctions would be implemented. It would be open to persons aggrieved by a decision to make particular regulations to claim that their making was neither necessary nor convenient for applying measures adopted by the Security Council.

7. The Senate Standing Committee on Regulations and Ordinances agreed in its Ninety-third Report of December 1992 (Scrutiny of Regulations Imposing United Nations Sanctions) that it was appropriate that Australia's obligations under Security Council resolutions be implemented by way of regulation. The reasons for their conclusion were the need for speed and flexibility in the implementation of the sanctions and the fact that the regulations merely filled out the details of Australia's existing international legal obligation to comply with the sanctions.

Financial Impact Statement

8. The Bill does not involve any expenditure by the Government.

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short title etc

9. This clause provides the mode of citation of the Act and defines the "Principal Act".

Clause 2: Commencement

10. Clause 2 provides for the Act to commence on the day on which it receives the Royal Assent.

Clause 3: Title

11. Clause 3 amends the long title of the Principal Act in order to reflect more accurately the purpose of the Act as amended by the Bill.

Clause 4: Repeal of preamble

12. As the preamble to the Act will not now fully reflect the purpose of the Act as amended, it has been repealed.

Clause 5: Insertion of heading

13. The insertion of the heading will allow for the easier perusal of the Act as amended.

Clause 6: Substantive amendments

14. Clause 6 makes the substantive amendments to the Act. They involve the repeal of the existing section 3 of the Act and its replacement by a number of new sections. Those new sections will be:

Section 3: Extension to external Territories

- This section will ensure that regulations implementing Australia's obligations under the Charter can be enforced in Australia's external territories.

Section 4: Act binds the Crown

- This section makes it clear that the Crown is bound by any regulations made pursuant to the Act.

Section 5: Approval of Charter

- This section substantively reproduces the old Section 3 of the Act.

Section 6: Regulations may apply sanctions

This section allows the Governor-General in Council to make regulations which effectively implement Australia's obligations under the Charter. Those regulations will be designed to implement the decisions of the Security Council and will be based upon the wording of those decisions.

Section 7: Regulations may have extra-territorial effect

Security Council resolutions may provide that member states of the United Nations shall prevent their nationals from engaging in specified conduct. This section will allow the Government to effectively implement such provisions.

Section 8: Regulations expire when sanctions resolution ceases to bind Australia

- As part of the introduction of a sanctions regime against a particular state, the Security Council institutes a mechanism for the periodic review of the need for the maintenance of the sanctions. That mechanism allows the states subject to the sanctions to request the Security Council to lift or alter the sanctions. Whilst prompt action would be taken to formally repeal or amend the regulations in line with the decision of the Security Council, this section will make it clear that they cease to have effect when the sanctions are lifted by the Security Council.

Section 9: Effect of regulations on earlier Commonwealth Acts and on State and Territory laws

This section will make it clear that Australia's implementation of its international legal obligations is not subject to existing legislation.

Section 10: Later Acts not to be interpreted as overriding this Part or the regulations

This section is intended to prevent the accidental effective revocation of regulations made pursuant to the Act. The failure to do so might mean that Australia is unable to effectively implement Security Council decisions because the regulations purporting to do so were held by a Court to have been effectively repealed by later legislation or regulations, notwithstanding that this was not the intention of the Parliament or of the Executive Council. Subsection (2) confirms the capacity of the Parliament to explicitly repeal any regulations made under the Act.

Section 11: Other instruments giving effect to Security Council decisions

The Government has previously implemented, and will continue to implement, United Nations sanctions by way of Regulations under the Customs Act, the Air Navigation Act, the Banking Act and the Migration Act. Doing so confers substantial advantages in regard to the administration of the regulations and the imposition of more appropriate penalties than are available under this Bill. This Bill is intended to supplement, not replace, that existing pattern of legislation

and regulation. The section makes it clear that regulations made under the legislation referred to above will continue in force.

Section 12: Offence

- In determining the appropriate level of penalty to be imposed for a breach of the regulations, the Government has had to balance two competing considerations. On the one hand, it has a general view that it is inappropriate for stiff penalties to be imposed by way of regulation. On the other hand, it is aware that there is a potential for large profits to be generated by actions taken in breach of the regulations. The Government has decided that the appropriate level of penalty for a breach of the regulations is 50 penalty units (\$5000 for an individual or \$25000 for a body corporate).

Section 13: Injunctions

- This section will allow the Attorney-General to seek an injunction to restrain a threatened breach of the regulations. The Government would prefer to be able to stop threatened breaches of the sanctions rather than seek to impose penalties for breach after the event.





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