

HOUSE OF LORDS

International Agreements Committee

5th Report of Session 2021–22

**Scrutiny of international
agreements: Protocol of
amendments to UK-Soviet
Agreement on preventing
incidents at sea beyond the
territorial sea**

Ordered to be printed 8 July 2021 and published 8 July 2021

Published by the Authority of the House of Lords

International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

Membership

The Members of the International Agreements Committee are:

<u>Lord Astor of Hever</u>	<u>Baroness Liddell of Coatdyke</u>
<u>Lord Foster of Bath</u>	<u>Lord Morris of Aberavon</u>
<u>Lord Gold</u>	<u>Lord Oates</u>
<u>Lord Goldsmith</u> (Chair)	<u>Lord Robathan</u>
<u>Lord Kerr of Kinlochard</u>	<u>Lord Sandwich</u>
<u>Lord Lansley</u>	<u>Lord Watts</u>

Declaration of interests

See Appendix 1.

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Committee staff

The current staff of the Committee are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst) and Robert Cocks (Committee Operations Officer).

Contact details

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SUMMARY

This report addresses the following Agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG), and considered at the meeting of the Committee on 7 July 2021, which we report for information:

- Protocol of amendments to the Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Soviet Union concerning the Prevention of Incidents at Sea beyond the Territorial Sea 15 July 1986 (CP 451, 2021)

Scrutiny of international agreements: Protocol of amendments to UK-Soviet Agreement on preventing incidents at sea beyond the territorial sea

AGREEMENT REPORTED FOR INFORMATION

Protocol of amendments to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Soviet Union concerning the Prevention of Incidents at Sea beyond the Territorial Sea 15 July 1986 (CP 451, 2021)¹

1. The Protocol of amendments to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Soviet Union concerning the Prevention of Incidents at Sea beyond the Territorial Sea 15 July 1986 (CP 451, 2021) was laid on 16 June 2021, and the scrutiny period is scheduled to end on 22 July 2021. It was considered by the Committee on 7 July 2021.
2. The 1986 Agreement on the prevention of incidents at sea (INCSEA), which the Protocol seeks to amend, provides a set of expected behaviours for the Parties' military ships and aircraft operating outside the territorial sea—in other words, in international waters.² These behaviours include ships avoiding certain activities and manoeuvres when in close proximity to prevent collisions, and using specific signals to aid communication. The Agreement also states that “the Parties shall not simulate attacks by aiming guns, missile launchers, torpedo tubes and other weapons in the direction of passing ships of the other Party”.³ The Explanatory Memorandum (EM) accompanying the amending Protocol explains that INCSEA was last updated in 1992, and the Protocol seeks to change the Agreement in three main ways:⁴
 - (a) to reflect modern naval practices and technologies;
 - (b) to reflect the fact that the Russian Federation, and not the Soviet Union, is now a Party to the treaty; and

1 Protocol of amendments to the Agreement concerning the Prevention of Incidents at Sea beyond the Territorial Sea 15 July 1986 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Japan, CP 451, June 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994185/CS_Russian_Fed_1.2021_Protocol_Amendments_Incidents_at_Sea.pdf [accessed 28 June 2021]

2 According to the 1982 United Nations Convention on the Law of the Sea, territorial sea refers to the coastal waters extending a maximum of twelve nautical miles from the coast. The territorial sea is considered to be the sovereign territory of the state, though foreign ships are allowed passage, subject to certain conditions.

3 Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Soviet Union concerning the Prevention of Incidents at Sea beyond the Territorial Sea 15 July 1986, Article 2.6

4 We note that the amending Protocol also has the effect of extending references to non-military ships to encompass non-military aircraft.

- (c) to refer to the 1982 UN Convention on the Law of the Sea, which both the UK and Russia acceded to in 1997.

Additional provisions

3. The main additions made by the amending Protocol are technical provisions on modern naval practices and technologies. Articles 5 and 6, for example, provide new restrictions on the use of lasers, signal rockets, and the jamming of communication systems of ships and aircraft.
4. The amending Protocol also includes new provisions on information exchange between the Parties. Article 7 specifies what radio frequencies can be used between British and Russian ships and aircraft. It also allows for the use of unencrypted radiocommunications in English to transmit additional information.⁵ Article 10 adds new signals to the table of special signals to be used between ships.⁶

Entry into force

5. The EM confirms that the amending Protocol will enter into force once both Parties have confirmed that all their internal procedures have been completed. No new legislation is required in the UK to implement the Protocol.⁷

Consultation and scope

6. The EM explains that because the UK is responsible for the defence of the Crown Dependencies and the Overseas Territories, the treaty has not been extended to them.⁸
7. The Government has not consulted the Devolved Administrations, Crown Dependencies, nor the Overseas Territories in the drafting of the amending Protocol, as the operation of military ships and aircraft is a reserved matter.⁹
8. We welcome the amendments to the 1986 Agreement but note that the Agreement relates to the prevention of incidents occurring in international waters. It has no direct bearing on incidents occurring inside territorial waters, such as the events involving HMS Defender, which took place off the coast of Crimea on 23 June.¹⁰ Since the UK Government considers Russia's annexation of Crimea illegal, the area where that incident occurred is regarded by the UK as within Ukraine's territorial waters.
9. **We report the Protocol of amendments to the Agreement between the UK and the Soviet Union concerning the prevention of incidents at sea beyond the territorial sea to the House for information.**

5 Article 7 of the Amending Protocol

6 Article 10 of the Amending Protocol

7 Foreign, Commonwealth and Development Office, *Explanatory Memorandum on the Protocol of Amendments to the Agreement concerning the Prevention of Incidents at Sea beyond the Territorial Sea 15 July 1986* (16 June 2021), p 2: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994123/EM_CS_Russian_Fed_1.2021_UK_Russian_Fed_Protocol_Amendments_Incidents_Ships.odt [accessed 8 July 2021]

8 *Ibid.*

9 *Ibid.*

10 'HMS Defender: Russian jets and ships shadow British warship', *BBC News* (23 June 2021): <https://www.bbc.co.uk/news/world-europe-57583363> [accessed 8 July 2021]

APPENDIX: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND COMMITTEE STAFF

International Agreements Committee Members and staff

Lord Astor of Hever

No relevant interests

Lord Foster of Bath

No relevant interests

Lord Gold

Director, Gold Collins Associates Ltd

Principal, David Gold & Associates LLP

Lord Goldsmith (Chair)

Partner, Debevoise & Plimpton LLP

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power plc

Member, Scottish Government's Standing Council on Europe

Lord Lansley

Director, LOW Associates Ltd

Chair, UK-Japan 21st Century Group

Trustee, Radix

Baroness Liddell of Coatdyke

Adviser, PricewaterhouseCoopers

Association Member, Bupa

Chair, Annington Ltd

Honorary Vice President, Britain-Australia Society Education Trust

Trustee, Northcote Educational Trust

Lord Morris of Aberavon

No relevant interests

Lord Oates

Chair, Advisory Committee, Weber Shandwick UK

Non-Executive Director, Centre for Countering Digital Hate

Director, H&O Communications Ltd

Lord Robathan

No relevant interests

Earl of Sandwich

No relevant interests

Lord Watts

No relevant interests

The Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst), and Robert Cocks (Committee Operations Officer).

A full list of Members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>