

**JOINT STANDING COMMITTEE  
ON TREATIES**

**REVIEW OF TREATIES TABLED 20 AUGUST 2009**

**HEARING HELD ON 7 SEPTEMBER 2009**

**QUESTIONS TAKEN ON NOTICE**

**Q1**

**Death Penalty**

**Mr Kelvin Thompson, Chair, Hansard, 7 September 2009, p21**

**Would Defence please confirm whether a member of the Australian Defence Force serving in the United States under the written agreement for cooperation could be subject to the death penalty?**

**RESPONSE**

The agreement does not provide for immunity from United States criminal law for ADF members who are serving in the United States and participating in defence commitments under the agreement. An ADF member could be subject to the death penalty if sentenced to that penalty by a United States court following conviction for an offence committed in the United States.

**Q2**

**Dispute Resolution**

**Senator Cash, Hansard, 7 September 2009, p21**

**Would Defence please explain why disputes arising from matters covered by the original Chapeau agreement are to be resolved by consultation and are specifically prohibited from being referred to a national or international tribunal? Could Defence also explain the implications for disputes being resolved in this manner?**

**RESPONSE**

The domestic legal courts of one State are not usually seen as an appropriate mechanism for the resolution of disputes between States. Rather such disputes are typically settled by consultation or consideration by an international tribunal. Australia's practice is to negotiate the dispute settlement procedures most appropriate to the particular treaty. Reflecting the nature of the obligations as concerning national security, most defence matters tend to contain dispute settlement provisions focussed around consultation rather than more formal forms of dispute settlement. This practice is reflected in the text of the original Chapeau Defense Agreement and ensures that disputes are resolved by cooperation between the parties to the Agreement.