



**COMMONWEALTH OF AUSTRALIA**

# **JOINT STANDING COMMITTEE ON TREATIES**

**Reference: Treaties tabled on 25 November 1997**

**SYDNEY**

**Monday, 8 December 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

## JOINT STANDING COMMITTEE ON TREATIES

### Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz  
Senator Bourne  
Senator Coonan  
Senator Cooney  
Senator Murphy  
Senator Neal  
Senator O'Chee

Mr Adams  
Mr Bartlett  
Mr Laurie Ferguson  
Mr Hardgrave  
Ms Jeanes  
Mr McGauran  
Mr Tony Smith

For inquiry into and report on:

Treaties tabled on 25 November 1997.

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Present

Mr McClelland (Acting Chair)

Senator Bourne

Ms Jeanes

Senator Coonan

Mr Tony Smith

Senator Cooney

The committee met at 9.06 a.m.

Mr McClelland took the chair

**ACTING CHAIR (Mr McClelland)**—I declare open this public hearing of the Joint Standing Committee on Treaties and welcome witnesses to the various parts of today's program. First, we will hear from Mr Chris Puplick, Chairman of the National Task Force on Whaling, for his comments on the 1997 amendments to the Schedule to the International Convention for the Regulation of Whaling. After morning tea representatives of non-government organisations will be asked for their comments on those amendments to the schedule.

I would ask that those representatives from the NGOs get together with a view to organising one person to make a short introductory statement summarising the concerns of those NGOs who are present. Then in turn each organisation can briefly indicate its general area of interest and any specific concerns that they may have. Then we will repeat the same procedure for NGOs with an interest in the protocol to the London Convention on the Prevention of Marine Pollution. If anyone present would like to make a comment on either treaty and has not made themselves known to the secretariat, I would ask them to do so now. You are most welcome to give evidence in the course of the morning if that is the case.

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**PUPLICK, Mr Chris, Chairman, National Whaling Task Force, C/- Department of the Environment, Canberra, Australian Capital Territory 2600**

**ACTING CHAIR**—Welcome, Mr Puplick. We have some briefing notes which have been provided to us regarding the evidence that we understand you will be giving. Would you like to make a brief opening statement before responding to our questions?

**Mr Puplick**—Yes, thank you. As I am sure members of the committee know, the task force was established in September 1996 following an election commitment given by the incoming government to establish a task force to review Australia's position in relation to whaling activities generally and in line with government stated policy that Australia should push more aggressively for a global whale sanctuary to ensure that there is a permanent international ban on commercial whaling. The task force reported to the minister in May 1997 and the minister released an edited version of the task force report with subsequent endorsement of the recommendations that were contained in that report.

Basically, the task force was asked to consider a number of strategies which would help advance the Australian government position in terms of opposition to any forms of commercial whaling and, in particular, address some of the areas in which the spirit, if not the letter, of the existing bans were being subverted, in particular in relation to our concerns over scientific or permit whaling and the question of the potential misuse of exceptions for aboriginal subsistence whaling.

At the same time, we were also conscious of the fact that what has become known as the 'Irish proposal' was being floated. It is a proposal by the Irish commissioner, which was presented formally at the last meeting of the International Whaling Commission in October in Monte Carlo. Again it has caused some concern to the task force and to the government because we see it as a covert way of reintroducing a new form of whaling—namely, small scale coastal whaling.

At the International Whaling Commission meeting there were a couple of things of significance which are reflected in the amendments to the schedule and in the national interest analysis, which has been prepared. One which does not perhaps appear in the national interest analysis but which was a significant resolution that was passed in Monaco basically condemned the Japanese for their continued so-called JARPA program, which was devised by the Japanese to allow them to continue to take cetacea in the Southern Ocean sanctuary for allegedly scientific purposes. The International Whaling Commission has now more formally recognised that, in fact, it is absolutely unnecessary and should not continue.

The other matters which were dealt with at Monaco are reflected in the national interest analysis, particularly the amendments regarding aboriginal subsistence whaling for the Makah people of the United States and the Chukotka people of the Russian Federation. In this, the Australian delegation at Monte Carlo was fairly active. We drew attention to

what we thought was, in fact, a sleight of hand on the part of the Americans in relation to this matter because of the way in which they linked, in one resolution, support for the Chukotka people of the Russian Federation, whose case for aboriginal subsistence whaling is quite overwhelming, with an allowance of grey whales to be taken by the Makah people in the United States, whose case for aboriginal subsistence whaling frankly is absolutely insupportable.

Linking the two in the one resolution was a very neat parliamentary trick but one which caused the Australian delegation some difficulty. We had an amendment moved to the adoption resolution which required that in the revised paragraph 13(b)(2) there should be some appropriate recognition of the aboriginal subsistence and cultural needs. The United States delegation and ourselves subsequently put out detailed press releases saying what we thought that meant. The two press releases bear absolutely no relationship to each other whatsoever. Undoubtedly, that will be a source of some ongoing difficulty.

The national task force was very pleased with the way in which the Australian delegation was led and performed at Monte Carlo. We were particularly anxious to ensure that when the next Australian commissioner is appointed, following the retirement of Dr Bridgewater, that commissioner is an officer of the Department of the Environment and should not be shifted to some other office or officer.

Finally, we expect to meet again as the national whaling task force to provide Senator Hill with our analysis of the Monte Carlo meeting and to make recommendations to him about the next two meetings—International Whaling Commission meetings 50 and 51. Meeting 50 is to take place in Oman in May next year, and 51 is to take place in Grenada the following year. They will both be quite important meetings. We look forward to making some recommendations to Senator Hill in that regard.

**ACTING CHAIR**—Has there been any reaction by Japan to the resolution condemning its activities in the Southern Ocean sanctuary.

**Mr Puplick**—The Japanese are used to resolutions condemning them for their behaviour as international whalers. It makes absolutely no difference whatsoever to the Japanese. The Japanese reaction to this has been the same as Japanese reaction to a whole series of previous resolutions of the International Whaling Commission and of the conservation community worldwide about their behaviour, and it continues unabated.

**ACTING CHAIR**—Last week we received some evidence from Greenpeace suggesting Australia could be more forthright in action against Japan. One suggestion that was made, for instance, was to refuse to permit supply ships supplying the whaling fleet to enter Australian ports. Would there be any utility in action such as that?

**Mr Puplick**—I think, in relation to all of those questions, nobody is going to make any decisions until Kyoto is over. The difficulty in that is that, while I think there is quite

an arguable case for the exclusion of Japanese vessels from Australian ports if those vessels are engaged in whaling activities, I am not in a position to know whether any of our other international treaty obligations require us, for a whole variety of reasons, to permit that access or whether any of the international maritime treaties or any of the provisions of the World Trade Organisation treaties make that an impossibility. In principle, it would be the sort of thing that would certainly be worth considering.

**Senator COONAN**—I just want to explore the aboriginal subsistence whaling issue. I want to explore it by referring to something I saw up at Boigu, which is an island in the Torres Strait Islands. On another committee there were some committee members standing at the edge of the ocean and a speedboat pulled up. Two turtles were in the boat, upside down and left in the sun for hours. Then one was dispatched alive. It was not actually killed; it was kept alive for hours on end and in great pain because bits of it were cut up. That is Aboriginal subsistence, if you like—turtle harvesting. But it was extraordinarily distressing.

Whilst there could not be any objection whatsoever to Aboriginals taking turtles as they need them for food and whatever, the method of doing it was extraordinarily cruel on any view. What has been done about aboriginal subsistence whaling in terms of the method of dispatch? I notice from the NIA that there is some guidance on a range of technical issues. So, presumably, that would have—if there can be any humane dispatch of a whale—addressed those sorts of issues. Can you just describe the scheme and let us know what sorts of discussions and ways that might have taken place?

**Mr Puplick**—I think I should start from the proposition that the task force and the Australian government have consistently said that they do not believe there is any such thing as a humane method of killing in relation to whales and cetacea. In fact, a very large part of national task force discussion and recommendations turn around the issue of the inherent cruelty, whatever method is engaged in killing whales. At the Monaco meeting, there was considerable discussion about some aspects of so-called humane killing. Very clearly, a resolution was adopted which basically condemns the method of the electric lance, which has been in common use among a number of whalers over the last couple of years, and an indication that, apart from the harpoons that are used, the secondary method of dispatch of whales being captured should be by rifle shot rather than other methods.

In relation to aboriginal subsistence whaling, part and parcel of the deal—I use that word advisedly—entered into between the Americans and the Russian Federation in order to secure the passage of the resolution relating to new quotas for the Chukotka and Makah people was the provision of ‘technical assistance’ from the United States to the Russian Federation to allow them to claim that their killing methods were essentially more humane than their traditional aboriginal methods.

Nevertheless, we know that some aboriginal whaling continues in a way which inflicts great pain on and causes great distress to the whales as they are taken. We know



that some of the activities of the so-called aboriginal whalers in the Caribbean continue to be of a fairly low level of sophistication. While there is an attempt to improve the standards, they are nevertheless standards which remain unacceptable to the task force and unacceptable to the Australian government.

**Senator COONAN**—Is there any way of supervising, or is that just not practical?

**Mr Puplick**—In terms of the aboriginal subsistence whaling, the issues of cultural independence and sensitivity, the idea that somebody would be allowed to supervise or regulate, particularly when you are talking about perhaps only five catches over 12 months, a lot of these will be serendipitous rather than planned as part of a hunt. The methods of supervision which have been discussed have proved very difficult even where one is dealing with commercial fleet operations. I think it would be almost impossible in a remote aboriginal situation with, as I say, a limited number of catches permitted over a fairly prolonged period.

**Senator COONAN**—We have talked a little about what methods we are using. For instance, with the turtles example, the method of catching was to chase them down in a speedboat, which did not seem to me to relate very much to what aboriginal subsistence turtle hunting might have been. So how are these captures made?

**Mr Puplick**—Most of them are made by, as I understand it, fairly crude harpooning and shooting methods. One would not in any sense characterise them as genuinely traditional in their method of operation, in exactly the same way as the turtle example you have given. So the great dichotomy here is that a claim is being made to justify whaling on cultural grounds. The practices which are then used bear very little relationship to the so-called cultural practices which would otherwise have been in place. That having been said, those earlier cultural practices were undoubtedly much more cruel and prolonged the death agony of the whales in a much greater sense than an attempt to make effective use of the harpoon and of the rifle in current circumstances.

**Senator BOURNE**—You mentioned the Irish package to start with. I noticed in here that the Irish commissioner thought that they had made good progress on it, which could be a bit of a worry, and also that he is the chair of the next meeting. Do you think that is going to mean that we are looking at the Irish package as being something that will be discussed at least significantly next time and what sort of a chance do you give it?

**Mr Puplick**—I think the Irish proposal will undoubtedly be one of centrepieces of the IWC 50 meeting, although being the 50th meeting there are a whole series of things which undoubtedly will be on the agenda about the long-term future of the commission. The difficulty is this that, in order to secure significant amendments which would be needed to allow the resumption of any form of commercial whaling—including the whaling proposed under the Irish package—more than a simple majority of the members must vote for that.

Both sides—if I can use that term loosely—have what amounts in fact to a blocking vote. It is impossible to move to the resumption of commercial whaling because there are enough countries opposed to commercial whaling to prevent that from occurring. It is very difficult to move at this stage to a total ban because there are enough countries with a blocking vote to prevent that.

One of the things that the National Whaling Task Force has attempted to address is to put to the Australian government some thoughts about how that matter might be addressed, given that the pro-whaling block consists in very large part of a number of Caribbean and Commonwealth countries, which, if the truth be known, have all of their expenses paid by the Japanese government, have their foreign aid provided primarily by the Japanese government and have all of their caucusing undertaken in association with the Japanese government. The question of whether those countries can be spoken to through the South Pacific Forum in relation to some of them, and through CHOGM and Commonwealth Heads of Government initiatives in relation to others, is one of the things that we have asked the Australian government to explore.

I think the Irish proposal is certainly going to be a substantial agenda item. The Irish commissioner will probably be the commissioner for three years. That is the normal routine, but I think that there is already a clear indication from the significant anti-whaling nations such as ourselves, New Zealand, the United States and the United Kingdom that they are really not that interested in the proposal. A number of other delegations with whom we had a very close working relationship at the last meeting—delegations like that from Austria for example—are also very unenthusiastic. I think that the proposal will get a fair amount of air play, but I do not think it is likely to make very much progress.

**Senator BOURNE**—I am glad to hear it. Do you think that the feeling amongst the 31 countries is moving more towards a total ban, no matter how long it takes? Secondly, there was a lovely term you had in here under ‘Infractions’ where in the Republic of Korea a large number were being killed incidentally. What is that incidental to?

**Mr Puplick**—A number of cetacea are killed incidental to catching other species.

**Senator BOURNE**—What species could be caught which would involve the incidental killing of a whale? It is not easy to do, I would imagine.

**Mr Puplick**—It is not. It requires some creative use of reporting mechanisms by the Koreans and elsewhere. Every now and again one gets reports that they have been killed because of a collision that has taken place between a naval vessel and a whale.

**Senator COONAN**—Just clumsy whales.

**Mr Puplick**—That is right.

**Senator BOURNE**—Or perhaps they are looking for more humane ways of catching them.

**Mr Puplick**—If you go back and look at the history of the debate on the Whale Protection Act 1980, one of the significant amendments that tied up the Senate for some time was the question of liabilities for the masters and owners of vessels involved in collisions with whales. So it is an issue that has been around for some time.

In relation to the first part of your question, Senator, I guess there are two aspects to it. I think among like-minded nations there is a growing recognition that the intellectual and, increasingly, the moral and ethical case for a total ban is stronger than ever. Nevertheless, among some of the developing countries—if I can use that term in the broadest sense—there is an increasing interest in what is regarded as a sustainable use of wildlife resources. You would be familiar with this debate having taken place at CITES in relation to elephant populations in Africa. The general view is that the ‘sustainable use’ of wildlife is something which poorer countries or developing countries should have access to and should not be—as they see it—bullied by rich Western countries which have a different economic and moral paradigm. The flaw in that argument is the question of sustainability. The evidence simply is not there for sustainability in the whale stocks, the way in which a number of its proponents would want to argue.

I think the most likely approach which will be successful, rather than looking for a quick fix such as a total ban, is the incremental use of sanctuaries, the expansion of sanctuaries and the acceptance of the capacity of countries operating within their own exclusive economic zones on a multilateral but regional basis to extend those sanctuaries in a way which, effectively, has a protective covering for whale species.

**Mr TONY SMITH**—In general terms, how would you sum up that recent meeting? What was your general feeling about it?

**Mr Puplick**—I think it was a holding operation in some respects. There are a number of matters which have to come back on to the agenda—for example, decisions about the whaling quota for Greenland which have basically been agreed to in terms of amendments but are currently under review. There are aboriginal subsistence questions which will have to be looked at. I suspect that the Makah will not do any whaling in the course of the next year or so. I think they will be so tied up in the American courts that that will not take place. There are some significant questions of an administrative nature. I was the Australian representative on a working party looking at voting methods, and the desire of the Japanese was to promote secret voting at these meetings rather than have open and transparent voting. That will be a significant issue, as you can imagine.

**Senator COONEY**—No postal voting.

**Mr Puplick**—No postal voting, Senator Cooney. But, as you and I know, secret

voting would make working out what was going to happen in the Senate even more difficult than it is at the moment. I recall an incident with secret voting for the presidency on one occasion which led to a fair amount of distress all round.

As I have said, it was very much a holding meeting because a lot of people were unsure about the position of a number of countries. A lot of people were looking to see how far the Irish intended to push their proposal at the 49th meeting rather than the 50th meeting. What it indicates is that the commission has come to a crossroads in terms of its long-term operations and its future and that, if there is no method of resolving some of these outstanding questions, the IWC runs the risk of becoming very ineffective in the years ahead because of this blocking majority on either side.

**Mr TONY SMITH**—Irrelevant even?

**Mr Puplick**—It could be superseded by a whole series of other organisations. There are difficulties, for example, with the interrelationship between the IWC and CITES in terms of definitions of endangered species. There is a growing interest in the North Atlantic for a new alliance of North Atlantic countries which might bring a country like Iceland back into whaling activities. I think there is a real risk, unless the IWC over the course of the next two meetings spends a considerable amount of time working out its long-term future—you are right—of it becoming a far less relevant organisation than it has been for the previous 49 years.

**Mr TONY SMITH**—Why the scepticism about the Makah claim?

**Mr Puplick**—There are a couple of reasons. In order to establish cultural and subsistence needs, you need to have a couple of tests in place. The Makah have not whaled for 71 years. So the idea that there is some ongoing cultural tradition in relation to taking whales is a bit tenuous. Secondly, there is the question of subsistence. Whereas for the Chukotka people of the Russian Federation there is a clear need for whaling in terms of food and other by-products of the whale for their use, for the Makah there is absolutely nothing that demonstrates there is any subsistence, any economic or any financial need for them to get back into whaling. At the meeting the United States produced a document in which they argued the following:

In addition, a recent US welfare reform law will deny cash assistance to tribal members who cannot find work during the next five years.

As we remarked at the meeting, you cannot expect the International Whaling Commission to pick up the debris of the ideological dismantlement of the United States welfare system. Yet that was seriously being promoted as part and parcel of the argument.

The United States also argued that the salmon harvest in the Makah area had been depleted and then said that that was a result of poor timber practices by the industry.

Frankly, you fix that by fixing the poor timber practices of the industry, not by going back into aboriginal subsistence whaling. The issue was that there was no demonstrated cultural tradition after 71 years of absence and no economic need established whereas for the Chukotka people it was quite a different issue.

**Mr TONY SMITH**—So what were the politics behind that?

**Mr Puplick**—Mr Gore has a campaign strategy which depends somewhat on maintaining the Democrat vote in the north-western states of the United States. The Vice-President has become a considerable enthusiast of the rights of the Makah people in relation to this matter. You will recall that in the last American presidential elections there was considerable difficulty for President Clinton over some of the decisions that he had taken about protection of the spotted owl and about some of the timber permits in states such as Washington and Oregon. I see this as basically part of Vice-President Gore repositioning himself in relation to those states as the next presidential election trundles around. It has a considerable amount to do with the overall approach which the Vice-President is taking to questions of indigenous rights throughout the broader scale of the indigenous rights debates in the United States at the moment.

**Senator COONEY**—As per usual, you have set it out most lucidly. When you are talking internationally, I take it there is agreement in principle that we ought to preserve the whales, but what about the factual situation? Where does the dispute occur? Do people say, 'Look, there's lots of whales and ships keep running into them?' How does the debate go? Could you give us a feel for that?

**Mr Puplick**—I guess one really divides this into two. In relation to the scientific evidence about virtually all whale species other than the minke, I do not think that there is any credible scientific dispute about the fact that numbers are still at extraordinarily low and vulnerable levels. There are some considerable concerns about the long-term survival of some of the species, even in their current numbers.

In relation to the minke, there are considerable differences between scientists and scientific authorities. The Japanese and the Norwegians, for example, occasionally refer to the minkes in their area as the rats of the sea, claiming that the minkes are around in such large numbers, they are predators on other fish stocks and, as a result, there is a real issue. It is the same sort of debate, as you will recall, about the Canadian harp seals, which took place some years ago. You may have seen in today's *Daily Telegraph* a report that the Norwegians have just increased their minke quota from 580 to 671 for the next year.

I think it is true to say that there is some dispute about the numbers in relation to minke whales. As you and Senator Coonan would in particular know, it depends which lawyer you pay for the advice that you want to get. It is exactly the same within the scientific community. I think that is the only one that one would concede that there was anything in terms of the scientific evidence which is still unclear.

**Senator COONEY**—So as far as all the other whales other than the minke are concerned, the disputing parties, if I can call them that, simply say, ‘It’s just bad luck about them.’

**Mr Puplick**—There really is not a significant debate about taking other species. We know that other species are taken. We know that because there have been DNA tests of whale meat occurring in the Japanese and Korean commercial markets, which were able to demonstrate that they are from species other than minke whales. But the dispute here is primarily about the minke. There is a secondary dispute, which does not really come within the ambit of the IWC at the moment, about the taking of other small cetacea—the various porpoises and dolphins—which is an argument of a different character.

**ACTING CHAIR**—Has there been any research as to whether promoting tourism among these aboriginal areas would substitute the revenue earned by whaling? Is that the sort of issue that the IWC would look at and how to promote that?

**Mr Puplick**—The IWC gave some considerable attention to the economic value of whale watching. There is absolutely no doubt that it is a huge growth area. It is certainly one in which there is a considerable amount of interest. The value of whale watching worldwide is quite substantial. There are a large number of places where whale watching is now a very significant activity. I believe, for example, that in Iceland the value of whale watching in and around Icelandic waters is greater than the value that the Icelandic catch ever was.

In relation to areas such as the Caribbean and the north-western coast of the United States of America, that would certainly be worth further investigation. I doubt that anybody would go to the Chukotka Peninsula for the purposes of spending their hard-earned tourist dollars in order to watch whales there. Again, it is also something that Australia has a leading role in. A number of the NGOs in Australia, organisations such as Whales Alive and Project Jonah and a number of others, have worked with governments to develop guidelines for whale watching. There are regulations, primarily under state and Commonwealth laws, about the regulation of whale watching. It is an enormously valuable industry. There is even growing interest within Japan in relation to these things, particularly among the younger Japanese. There tends to be, in the Japanese debate, something of a generational issue as far as this is concerned. So the tourist potential, properly controlled, is very substantial.

**ACTING CHAIR**—I gather that Australia’s amendment to the necessity to recognise aboriginal subsistence and cultural needs actually got up by a big majority or with intense debate.

**Mr Puplick**—By what is called consensus. The Austrian delegation floated the idea of there being some method of the IWC deciding whether aboriginal subsistence claims were justified or not justified. In debate, the Austrians decided that they were not

going to push that to a vote. The Americans started to get somewhat agitated at this stage, so the Australian delegation took it over. We announced that, unless we got a satisfactory indication from the United States about a number of questions that had been asked about aboriginal subsistence whaling, we would move an amendment that would require the traditional aboriginal subsistence and cultural needs to be recognised by the International Whaling Commission.

At that stage, the Americans secured an adjournment of the debate overnight. They got very busy. The Australian delegation spent a bit of time talking to some other like-minded countries. But the Americans were in a delegation of 35 or 40 people. They basically spread out, hit the phones and everything else that they could. When we came back in the morning, there was a meeting of commissioners, not a full meeting of the commission. An agreement was hammered out with the commissioners that the amendment would be to insert the words 'whose traditional aboriginal subsistence and culture needs to be recognised' and we drop the words 'by the International Whaling Commission'.

That then led to the Americans putting out a press statement saying that that meant that everything had been accepted and the Australians putting out a press statement saying that that was not what it meant at all; it meant that the IWC now had to develop a method for that recognition to be accorded on a case by case basis. So we both spent the rest of the morning chasing the *New York Times* and various other people around the place to explain who was telling the truth and who was not. That is undoubtedly a matter that will arise when the American courts get around to this. We wrote the press statement in a way that was as clear as possible and as potentially useful for the American NGOs in their legal proceedings as we could possibly make it.

**Ms JEANES**—I apologise if I am going to ask you anything that you have already covered. Unfortunately, it was out of my control that the plane was half an hour late. I see that it is Australia's view that there are no techniques available to kill whales humanely. What do we know about the pain that they experience over the time that it takes to kill them? Has any consideration been given within the IWC to waging some domestic campaigns within Japan, particularly targeting the younger Japanese people, to elevate that dreadful issue?

**Mr Puplick**—The IWC has a subcommittee which has dealt with the question of so-called 'humane' killing. There is a huge amount of information which demonstrates that, in some instances, whales can be in the most extraordinary, in extremis agony for eight to 10 minutes during the time it takes to kill them. In some instances, that is prolonged by some of the killing methods, such as the use of the electric lance. There has been an enormous amount of material which has indicated just how barbaric killing methods have been and just how difficult it is, in some respects, to kill these great animals. The agony they go through is not only profound as far as they are concerned but the social nature of the animals is such that, without being overly anthropomorphic about

it, it is a 'death in the family' type of issue and has, not physiological effects but effects on other related animals. So there is plenty of information. We certainly have all of that available. The Department of the Environment and the National Parks and Wildlife Service here in Australia certainly have all of that information easily accessible.

In terms of approaches to the Japanese and younger Japanese in particular, there are a couple of things that can be said. We have made sure that all of the information that we want to try to get into the public debate is on the Internet. The report of the task force and various other associated material is available on the Net. Secondly, we have suggested that the government might look at sponsoring programs such as the effective use of our sister city programs with the Japanese cities, of which there are quite a large number in place, and that there ought to be programs which could be run as projects through school to school contacts in which there would be an attempt to explain why younger people, particularly in Australia, have a negative view about the Japanese because of this particular issue and which could attempt to explain to their age cohorts and contemporaries in Japan why that view is held and engage in some effective dialogue about that.

Thirdly, there is already a developing NGO movement in Japan among the anti-whaling coalition. A number of Japanese are much more interested in watching whales than killing them. Also, a number of Japanese organisations with whom the Australian NGOs are working very closely are attempting to get precisely that message out to younger Japanese—that this is a cultural issue which needs to be reassessed in light of the changes in worldwide attitudes and in terms of scientific knowledge.

**Ms JEANES**—Do you see, therefore, light at the end of the tunnel in terms of the ultimate world sanctuary?

**Mr Puplick**—I certainly hope so. I do not, in any sense, underestimate the difficulty of dealing with Japanese, particularly given the very close association of the Liberal Democratic Party with the fishing constituencies of Japan. As you know, the rural gerrymander of Japanese Diet districts is such that those fishing villages have overrepresentation, in the parliamentary sense, which is reflected in the internalised arrangements of the LDP.

Norwegians, I suspect, are more likely to be influenced in the longer term over the question of whether at some stage they will revisit the question of joining the European Union. As you know, the Norwegians some years ago voted not to. The success or otherwise of the EU, which has a very strong anti-whaling position, is such that at some stage, if the Norwegians were to seek to enter the EU, I am sure that part and parcel of all of that would have to be a significant revision of their fisheries management programs, including their whaling program.

Frankly, the Norwegian whaling program is not an economically viable one. We



understand that there are tonnes and tonnes and tonnes of whale blubber decaying in storage in Norway. There have been attempts to export it illegally, which have been detected. It is an offence under CITES to do so. So I think, economically, there are long-term questions about the future of the Norwegian whaling industry.

I think there are long-term prospects of getting the sanctuary movement further progressed. But by saying 'long-term', I mean that it would not surprise me if this were to take another decade, given the glacial pace at which the IWC moves on most of these things.

**Ms JEANES**—Why should unused strikes be carried over each year with aboriginal whaling? Did the IWC discuss this?

**Mr Puplick**—Not in the last round. From my point of view and the task force's point of view, the answer is: there is absolutely no reason that they should.

**Ms JEANES**—But that was not discussed.

**Mr Puplick**—It was discussed, but without coming to any resolution to change or alter the existing arrangements.

**Senator COONEY**—Would the Japanese and the Norwegians support the sanctuary idea if it were extended, or do you think they would say, 'Well, this is really only a pretence to stop us from whaling'?

**Mr Puplick**—No. I think they would see it as effectively a method of closing off more and more of the oceans to their activities. I would not expect them to come on board enthusiastically about it. This is why the question of looking at the voting numbers and having significant discussions—particularly with those Caribbean and South Pacific countries which have given support to the Japanese in the last couple of years—is an opportunity in which I think Australia has a potential leadership role, both through the Commonwealth and through the South Pacific Forum, for making progress in that area.

**ACTING CHAIR**—Do you know whether anyone has retained copies of those media releases issued regarding recognition of aboriginal practices?

**Mr Puplick**—I certainly have, yes.

**ACTING CHAIR**—I do not expect you to have them on you now, but would you mind our having a copy of those for our evidence in due course?

**Mr Puplick**—No. In fact, I do have them here. So if somebody could copy them, I would be more than happy to provide them to you.

**ACTING CHAIR**—Are they spare copies?

**Mr Puplick**—No.

**ACTING CHAIR**—We will get them copied. Thank you very much for your evidence; it was very enlightening.

**Mr Puplick**—Thank you, Mr Chairman.

**ACTING CHAIR**—We will break for 10 minutes or so. If there are any other representatives from non-government organisations who would like to give evidence, now is a good time to advise a member of the secretariat.

**Short adjournment**

[10.25 a.m.]

**ADAM, Mrs Sylvia Annie, Government Liaison Officer, Australian Marine Conservation Society (New South Wales), c/- Manly Environment Centre, 41 Belgrave Street, Manly, New South Wales 2095**

**ARNOLD, Ms Jane Suzanne, Coordinator, Australians for Animals, PO Box 673, Byron Bay, New South Wales 2481**

**DAWBIN, Dr William Henry, Research Associate (Honorary), Australian Museum, College Street, Sydney, New South Wales 2000**

**KENNEDY, Mr Michael Geoffrey, Director, Humane Society International, PO Box 439, Avalon, New South Wales 2107**

**ACTING CHAIR**—Dr Dawbin, do you have any comments to make on the capacity in which you appear?

**Dr Dawbin**—I am a Doctor of Science. I retired officially about 13 or 14 years ago. The only difference it has made is that I go on working but I do not get paid. I am still at it, which means that I have been at it with whales now for 55 years. I started in 1942 on the New Zealand boating station. I was finishing my masters degree at the Victoria University there and had my introduction the hard way.

**ACTING CHAIR**—So you will be giving evidence in a personal capacity in light of your expertise and experience?

**Dr Dawbin**—Yes.

**ACTING CHAIR**—It is probably appropriate that we ask each of you to make a brief opening statement. I do not want to cut you off, but I just emphasise that from our point of view it is often good to let us give you the opportunity of persuading us on matters of our concern. So it is often better to respond to our questions rather than necessarily to take up all the time with your statements. I just stress that it is often more effective in presenting your argument to keep these opening statements brief. Mr Kennedy, would you like to make an opening statement?

**Mr Kennedy**—Thank you. I will. Humane Society International supports using the IWC as a means of furthering long-term conservation aims for cetaceans. We support the outcomes of the National Task Force on Whaling and the consequential government support for their goals and generally support those directions proposed. Our aim is to see to fruition the goals of the task force and the government which is permanent cessation of whaling.

**Ms Arnold**—Australians for Animals initiated and launched a law suit against the US government which was filed in the District Court of Columbia on 17 October. I have quite a deal I would like to say on this issue, particularly in reference to what Mr Puplick has said. I believe that any support of the IWC amendments is completely and utterly inconsistent with the Australian government's stated position of opposition to whaling.

I spoke to David Kay from Environment Australia before the IWC meetings. The Australian government was fully aware that the US would seek to obtain a generic aboriginal quota through the IWC. The removal of the words 'aboriginal subsistence whaling' in this schedule amendment whose cultural and aboriginal subsistence needs have been recognised by the IWC has created an extremely serious legal precedent. Our lawyers in Washington say that the deletion of those words recognised by the IWC is extremely serious. The IWC has in fact, by passing this amendment, delegated its authority to aboriginal subsistence groups to set their own quotas. It is quite clear under our law suit we have sued the US government under at least five breaches of their own legislation.

I would like to be able to speak in some detail about these matters. Mr Puplick has said this morning that he thinks that domestic electoral considerations are behind this support of the US government for the Makah. There is plenty of evidence to show that in fact the Japanese are behind it; that the commencement of aboriginal subsistence whaling that is not genuine is going to be part of the big fight with free trade and the downing of international treaties.

It is extremely important to recognise that mostly female grey whales are killed and that 20 years of Russian statistics show that the kill is two to one: they are mostly pregnant or else they have young calves and, because they swim close to shore, they are easy to kill. There is absolutely no enforcement of any sort under the IWC, and it is quite absurd for the Australian government to support an amendment which claims to set down that it is forbidden to strike, take or kill calves, when there is not one single boat out there funded or supported or legally able to enforce the IWC convention. So I am hoping that you will give me the opportunity to go through this in a little more depth. Thank you.

**Mrs Adam**—Our concern is that, if aboriginal quotas are changing or increasing, why then accept that any unused portion of a strike quota from any year shall be carried forward and added to the strike quotas of any subsequent years? The bowhead whale is under the endangered species listing. Why then do we allow the strike quota of any year to be forwarded on to the following year's quota?

**Dr Dawbin**—I have not come with a prepared document, but I thought I would make some comments about the killing of the whales, which is a very unpleasant business. I have been unlucky enough to see every single method from electric through to hand harpoons—in the islands and in the Azores—through to the big explosive guns. This subject has come up at every IWC meeting I have attended, and I have attended quite a few, and I do not think we have got anywhere. The simple fact of the matter is that we

know of no humane method of killing them. It is a terrible business.

The explosive harpoon breaks up into shrapnel—little bits of metal. It is plain awful. I have seen the Japanese using what they call the ‘cold harpoon’, which has no explosive in it. It is a fastening device, and then they spear it. I cannot make up my own mind which is the more devastating. I think a lot of it depends on the luck of exactly how the strike was made. Sometimes it is quick and sometimes it is just plain horrid and takes quite a long time.

And I think the electric is the most abominable of the lot. I have seen the whale go out straight like a board, while the 50-odd amps and so on is being plugged through. And, if the connection is a bit faulty, a lot of that is being dissipated into the sea so it is not being properly effective. I have no useful suggestions to make about this horrible topic because, as I say, it keeps on coming up and I do not think we are any further ahead now than we were 50-odd years ago. I wish I could be more constructive, but I cannot. Thank goodness most of the time I have had to be on whale factories where I am away from the kill. But I have seen more than enough to be pretty disturbed about it.

**ACTING CHAIR**—Thank you. In terms of this American litigation, Ms Arnold, is it actually the Australian organisation that has been given standing to commence the proceedings or is it an affiliate of—

**Ms Arnold**—It is my organisation, Australians for Animals, which is a registered New South Wales charity, which has been given standing. We already had standing under the US Endangered Species Act, as we lodged a submission three years ago to have the koala listed. We have included a British grassroots marine protection group, we have included Jack Metcalf, who is a Republican congressman from the state of Washington, and we have included a variety of American citizens who have an interest in kayaking and whale watching. That group includes a whale watch boat operator.

**ACTING CHAIR**—So are you trying to injunct the commencement of whaling in the area?

**Ms Arnold**—No, we are not. We are suing the US government over various breaches of their acts, and we will take out an injunction if the Makah attempt to whale before the law suit is heard. We forced the US government into doing a draft environment assessment under the NIPA—the National Environment Policy Act—and that was—

**ACTING CHAIR**—As to the consequences that whaling would have if it were reinitiated?

**Ms Arnold**—That is right. And there were at least 200 submissions from American groups and various citizens to that draft EA, and the results of that EA were published two days before the IWC. We filed our lawsuit in Washington at the same time.

But I need to point out that the grey whale was delisted from the US Endangered Species Act only 3½ years ago. Under that act there is a requirement that a five-year monitoring program take place. That five-year monitoring program is incomplete. The US government should have carried out a full and complete environmental impact study into the effects of killing those grey whales.

I need to stress the fact that those grey whales will almost certainly be a resident population around Neah Bay and the waters of Washington state. Those resident populations again consist mostly of females with their young. Whale watching is very popular there. They propose whaling in a national sanctuary which is going to create an enormous controversy. The US authorities are trying to claim that fishing and whaling are no different one from another. The Japanese fishing interests have been very active in supporting the Makah.

**ACTING CHAIR**—On that, we heard evidence previously that one of the motivating factors may have been political patronage from the north-western states. Is there a countervailing political pressure from those who have similar views to those of your organisation?

**Ms Arnold**—No, there is not. There have been a lot of problems with the Makah tribe. The elders who are totally opposed to the killing of whales have been harassed. We had one of the elders on our lawsuit, and she was forced to come off that lawsuit because she was threatened with the loss of her pension. She and another elder who were present at the IWC last year have been almost run out of the village. It is almost impossible for people to get in there to speak to those who are opposed. I need to explain that the Makah carried out slavery up until 70 years ago as well. So it is quite inconsistent—

**ACTING CHAIR**—What about amongst the American population generally: is the prospect of whaling recommencing in the area a significant issue?

**Ms Arnold**—As in Australia, because of the media it is very difficult for American people to find out what is going on. I can tell you that in Washington state the people are absolutely appalled. We have had enormous support there. In the district of Columbia in Washington, where people are aware of it, there has been great shock. But the American people, like the Australian people, remain like mushrooms.

**ACTING CHAIR**—Your organisation is obviously spending quite a lot on litigation. Has it considered spending some money on a public information exercise?

**Ms Arnold**—In this country?

**ACTING CHAIR**—No, in the United States, to get that public sentiment in opposition to the recommencing of whaling.

**Ms Arnold**—I have just come back from Washington state, and we are in the process of putting out a newsletter. We are going to do it electronically and publicly as well. But I need to re-emphasise that, if this amendment is supported by the Australian government, it is completely inconsistent with our position of being absolutely opposed to all whaling.

**ACTING CHAIR**—I am not sure it is fair to say that it is supported. Australia's position is still for a complete ban on whaling. I think the situation is one of the amendment being given relevance and currency as opposed to no amendments at all, in which case there would be an old, superseded, irrelevant appendix. I see this in the context of it being a far from perfect situation but having some relevance to controlling the situation.

**Ms Arnold**—With respect to you, the IWC has defined very clearly what aboriginal subsistence whaling is. By deleting those words 'recognised by the IWC', it in fact gives, according to our lawyers in Washington, grounds for any contracting party to say, 'We recognise your need for aboriginal subsistence whaling.' So the deletion of the words 'recognised by the IWC' is extremely serious.

**Senator COONAN**—Do you have any comment on the definition of aboriginal subsistence whaling?

**Ms Arnold**—The IWC's definition of aboriginal subsistence whaling is quite clear. When you read it, it is quite clear that the Makah definitely do not fulfil that definition. That is why I believe that this recommendation, which was supported in this way by the Australian government, is just a piece of street theatre. It is quite clear the US authorities went out with a press release claiming victory and claiming that the Makah had got to first base because they had.

No schedule amendment now specifies what process the IWC will take to actually recognise this as aboriginal subsistence whaling. So the whole thing has just been tied up in knots. If we are a signatory to the IWC and we have a strong position of no whaling of any description, then we should be insisting that it is recognised by the convention to which we are a signatory, not deleting those words.

**Senator COONAN**—Have the Makah indicated some intention to hunt?

**Ms Arnold**—Yes, they have come out, as well as the US government, and said they have got to first base: that the IWC has now given them consent to go ahead with their whaling, and we anticipate that they will probably try to kill a whale this year.

**Senator COONAN**—I understood from Mr Puplick's evidence that there has not been any Makah whaling for some 70-odd years and, therefore, one could be critical of any suggestion that there is some ongoing connection. What do you know of the intention

of the Makah to actually go and take whales? How is it justified?

**Ms Arnold**—The US government has provided them with 50 millimetre guns which are capable of sinking a destroyer, and for the last several months a veterinarian—I cannot remember which government institution he comes from—has been taking out Makahs and they have been killing who-knows-what and making target practice of whales that have supposedly died on the shore. We believe that the US government, although it is snarled up in law suits, is not capable of stopping the Makah from going out and starting to kill, which is why we are preparing to take out an injunction in that eventuality. The US government has left no stone unturned in its attempts to support the Makah. It has built a marina for them to take the carcasses on shore and it has provided the ammunition and the training.

**Mr Kennedy**—There appears to be some concern—if I may say, Sue—that there have been statements in the press by the Makah that they have an intent of commercial use at some time in the future, which is our biggest concern in the longer term. This has happened in the past with other Inuit tribes. For example, the head office of our organisation in Washington undertook an investigation in Russia recently into the grey whale kill by the indigenous peoples and found that they were killing the whales extremely cruelly, taking sometimes 2½ hours and longer to kill females with calves using 700 or 800 rounds of .303 bullets, using dozens of harpoons and then, having killed the whale, feeding the meat in part to fox farms—in effect, commercial use. So once there is the foot in the door there is always the danger that the next step to commercialisation can be taken and, given the fact that enforcement is so weak under IWC rules, it has happened and can happen in the future.

**Senator COONAN**—Does the definition of aboriginal subsistence whaling contemplate some form of commercial exploitation?

**Mr Kennedy**—It must not be commercial. It is for nutritional, cultural and subsistence needs.

**Senator COONAN**—So commercial exploitation would be an offence?

**Mr Kennedy**—It would be illegal.

**Ms JEANES**—Do you have any evidence for these claims that you could offer the committee?

**Mr Kennedy**—Yes, in fact I sent the secretariat two papers last week: one to do with the Makah kill and one to do with the Russian kill, which outlined our findings in that investigation. We also produced a three-minute video which showed the kill actually occurring; that was shown at the IWC this year.



**Ms JEANES**—Does that actually include the Makah's claims?

**Mr Kennedy**—No, this is the Russian Inuits, not the Makahs.

**Ms JEANES**—So you could not offer us anything on the Makahs?

**Mr Kennedy**—There are clippings which quote the Indians saying they have in mind commercial use.

**Ms JEANES**—Could you obtain those for us?

**Mr Kennedy**—I can try and get them for you.

**Ms Arnold**—It is also in their own legal documents that they are going to seek to use the whale commercially. It is important to recognise that there are at least 13 or 14 tribes lined up waiting to follow the precedent set by the Makah. The big concern is that, if this succeeds, any country with an indigenous population, particularly Japan and Norway, could declare that their indigenous populations have the right to start whaling.

At this point in time in the High Court of Australia, Aboriginal interests are seeking clarification of their rights over the sea. So, by Australia supporting this amendment as it is currently worded, we could be creating a precedent that would see our humpback whales, which migrate up and down the coast, liable to be killed as well.

**Senator BOURNE**—Does anybody have any ideas on what Australia should be doing to push enforcement at the next meeting? Obviously, from what Sue was saying, it is almost non-existent.

**Ms Arnold**—It is non-existent. There is nothing in the convention that applies to enforcement. It was previously done with trade sanctions under the WTO; now there is no such thing.

**Senator BOURNE**—Can anyone suggest anything that we should be trying to get the government to push at the next meeting?

**Ms Arnold**—Yes, do not sign this amendment.

**Senator BOURNE**—But as for enforcement? You have probably not thought about it.

**Ms Arnold**—There should be trade sanctions. We should be able to use trade sanctions again. The International Whaling Convention is the first international treaty that has been targeted by free trade in the WTO to be downed. Once it goes, CITES will go. I think it is extremely important, even in this present political climate in which we are

supporting free trade, to note that trade sanctions are the only way that we can bring the force of law against countries that are defying the IWC.

**Senator BOURNE**—Does anybody else want to comment?

**Mr Kennedy**—If I may, I will table today a document that was tabled at the IWC last year—not this year—which proposed an outline for an enforcement regime for the IWC, which it does not have now. It spelt out observer systems and penalties because we rely upon national domestic enforcement, which, for example, does not occur in Russia. There is no real enforcement so this tries to suggest that there ought to be a role for the IWC to be an enforcement agency itself, relying upon international pressure and action rather than domestic pressure at home once the offence has been committed. History has shown that the penalties are either not imposed or are so light as to be laughable.

**Senator BOURNE**—A copy of that would be great. Thank you.

**Senator COONAN**—How would you get over the jurisdictional problems of enforcing any code where you really do need to rely on national borders and national enforcement?

**Mr Kennedy**—That is the \$64,000 question, of course. You are talking about the high seas and coastal waters and having enforcement on board the ships themselves, indigenous whalers or whatever. There have been precedents in terms of northern tuna conservation efforts in which they have almost 99 per cent coverage, I think, on all tuna boats. The observers are put there by the tuna commission, not by nationals, so in effect you have a true international observer regime on board the boat that does not have, hopefully, in-built prejudices about the pros and cons of the industry. They help to actually judge and monitor what is going on. Those sorts of systems could be put in place for cetaceans if that were required in the future.

**Senator COONAN**—For prosecutions what would you do?

**Mr Kennedy**—Sue has mentioned trade sanctions and, certainly, we think trade sanctions can be used usefully for penalising nations that do not abide by global conservation rules. The IWC may itself perhaps suggest that, if you break a rule one year, the next year you do not get your quota for an aboriginal take. There are ways and means which have not really been looked at closely by the IWC. It is about time that it did so.

**Senator COONEY**—It was suggested, I think by Mr Puplick, that one way to get over the problem of trying to get something done would be to get the general population of different countries—he mentioned Japan—behind the program to preserve whales or any species. He said the most effective thing would be to swing the public's mind behind the need to conserve. When I say the public I mean the world public. It seems to me that the NGOs are perhaps the best way of doing that. Have you got any thoughts about that?

Have you made any attempt, as NGOs or just as individuals, to get a change in, say, Japan or Norway?

**Ms Arnold**—There are some extremely effective Japanese activist groups who are working against enormous odds to try to bring about changes in their own country. But I think the Japanese government is extremely corrupt. I know that earlier this year when a pod of wild orcas was driven into Taiji and they were sold and taken into captivity there was a very large protest from Japanese people themselves, but the government ignored it as they ignored all the protest that came from around the world. Unfortunately, with corrupt administrations, no matter how many people protest it can be very difficult.

**Senator COONEY**—Has any progress been made?

**Ms Arnold**—It is not easy. It is not like what you can do in Australia by putting the issue out in public advertisements or television advertisements. The Japanese people think so differently to westerners. I have been told that the only way we could successfully do it would be to introduce a whale story into a Japanese soapie.

**Senator COONEY**—What about Norway? Is that a better prospect?

**Ms Arnold**—I think so. What Mr Puplick was saying this morning about Norway wanting to join the EU is probably the biggest chance.

**Mr Kennedy**—Education must continue around the globe in terms of cetacean conservation. Indeed, from our point of view, the real game is beyond opposing this whole sustained use philosophy that is now gaining a head of steam around the world. We are competing with Japan in its demands to use resources in all their forms wherever they occur. Japan is well into—

**Senator COONEY**—That is their attitude, is it: whatever is available should be used?

**Mr Kennedy**—It is and they are very good. They turn up at every fora you can think of and push the idea that even by-catch, even for threatened species say in a fishery, ought to be used because the world needs the food. They are, bit by bit, taking out different fora. Therefore, when it comes down to it, the urgency is for the anti-whaling states, particularly Australia, to devise a means to combat the Japanese global action in terms of having all resources—wildlife—made available.

I can table two documents in that respect. This is an analysis of the Japanese proposals for coastal whaling, which we believe to be no more than economic regimes in disguise. It outlines how we feel their proposals for coastal whaling really are no more than long-term commercial ventures and stresses how dangerous it is to open up coastal whaling to the world. This paper outlines in detail all the whales currently in the world in

coastal zones that would be under threat should such coastal regimes begin again in the future. Most of the whales in the coastal zones are still very threatened. Therefore, opening up coastal commercial regimes would be the end for most of those species.

**Mrs Adam**—Sue mentioned sanctions before. In the early 1980s the United States stated they would place sanctions on Norway if it continued its whaling capacity. They stated that they would not allow Norwegian fish to be imported into the United States. It worked effectively. I do not think that the United States sanction against Norway still holds, but it did hold and it did work quite well in the 1980s.

**Senator COONEY**—That is very interesting. Thank you for that. As I understand it, she said there had been a change in the United States.

**Ms Arnold**—It is the WTO. The WTO has rendered meaningless the Pelly amendment and various other US laws that could be used to bring about sanctions. The US is no longer a sovereign nation, just as Australia is no longer a sovereign nation.

One last point, which has nothing to do with whales, is that Mr Puplick did say this morning that he was under the impression that Canadian seal hunting had stopped. It has not. It is worse than it ever was, with larger quotas.

**Senator COONEY**—I think he was just using that as a comparison.

**Ms Arnold**—I know, but he said it was in the past and it is not; it is very much in the present. The whole state of the marine environment is really serious. We cannot afford to keep killing marine mammals in this way, and the world's whales are seriously at risk. I again say to you that, even though you think this might be the best the Australian government can do, by ratifying this amendment we are going to be changing our position as a like-minded nation and opening the door to indigenous whaling.

**ACTING CHAIR**—You say that, but what is the alternative? The alternative is to have no quotas in respect of aboriginal whaling from next year onwards and then it would be open-ended. Is that not a symbolic stance which would result in even greater numbers of whales being killed?

**Ms Arnold**—No, I think we have to insist that we abide by the aboriginal subsistence whaling definition as described by the IWC.

**ACTING CHAIR**—Australia is one of 39 countries.

**Ms Arnold**—We can do it.

**ACTING CHAIR**—If Australia goes one out and the—

**Ms Arnold**—We have already done it by saying we do not want any whaling. For us to create a precedent that says we are prepared to recognise this on our own and not abide by the convention's definition—

**ACTING CHAIR**—You do not think you are being naive to the internal politics and machinations that go on within the forum itself? It is all very well to say, 'I want a perfect outcome over this,' but you are aware of the pressures of Japan, the United States, Norway and a number of organisations, and how all of these various power plays have to occur. If, at the end of the day, nothing comes out of it in terms of prescribing a quota for Aboriginal whaling and more whales are killed, what will you have achieved?

**Ms Arnold**—I do not think I am naive. I think that there are many people who attend these foras who may be naive. The public, in particular, are being kept in the dark. When the Australian government on the one hand says to the public, 'We are totally opposed to all whaling,' and then allows its delegation to put up an amendment which deletes the words 'Aboriginal subsistence whaling as recognised by the IWC' Australia has gone very much out, one up, on its own. The people of this country are entitled to know precisely why the government is playing such a double role.

**ACTING CHAIR**—Australia actually moved the amendment which included the words 'whose traditional aboriginal subsistence and cultural needs have been recognised'. It wanted to add the words 'by the IWC'. As a result of the pressures of, in particular, the United States during the evening, we were told, as a compromise, the words 'by the IWC' were removed. But that was done from Australia's point of view to at least get the bulk and the thrust of its amendment up. Aren't you being a little judgmental? Aren't you being like a spectator in the grandstand watching a grand final and thinking that the half-back should have kicked over the top when he side-stepped instead?

**Ms Arnold**—Could we do soccer instead? I wanted soccer.

**ACTING CHAIR**—It is all very easy to achieve a better result from the sidelines but when you are amongst the action and you are dealing with the various power plays of very significant organisations and trying to read it, one would say that Australia did very well to even get those words 'whose traditional aboriginal subsistence and cultural needs have been recognised' into the document.

**Ms Arnold**—I would have to disagree with you. I have seen what the US does at IWC meetings and I think Australia plays a very sneaky role in many instances at IWC and other treaty meetings. If Australia ends up being the country that deletes the words 'recognised by the IWC' and this leads to coastal whaling worldwide, then we certainly will have played a role that is totally in contradiction to our national policy.

Somebody has to stop whaling. Some country has to bite the bullet and stop whales being killed. It is the most bloody, mindless slaughter of this century and we are on the

brink of worldwide whaling recommencing. As an activist of 18 years standing, I can only say to you that it is time for politicians of every country to understand that we cannot keep killing such a highly intelligent species which dies so horribly.

**ACTING CHAIR**—You have got no disagreement from any Australian politician on that, I suspect.

**Ms Arnold**—I hope not.

**ACTING CHAIR**—The question is the practicalities of trying to get that result.

**Ms JEANES**—I have two questions for Mr Kennedy and one for Dr Dawbin. Mr Kennedy, have you put your enforcement suggestions to any officials from Environment Australia, and what would the view be of Humane Society International of Australia not ratifying the amendment?

**Mr Kennedy**—We would have provided the department and the minister with that document in 1996 as part of the pre-IWC lobbying efforts. My organisation has not taken a decision to oppose the amendment of the schedule as it stands, and that is our position.

**Ms JEANES**—Dr Dawbin, you made some comments about the methods of killing whales. Could you describe to me the ongoing effect within the whale community of the loss of one or more of its members?

**Dr Dawbin**—I inevitably got to know quite a few of the whalers personally—

**Ms JEANES**—I mean when a pod of whales, the whales themselves, lose a family member, not the whaling community.

**Dr Dawbin**—That is a more difficult one because it is only in quite extraordinary circumstances that you can identify which one is related to which. There are obvious cases like a mother and calf or a mother and yearling. The whalers confidently say that they can pick a male from a female and so on, but I would check this on the whaling platform when I was examining animals and there was a fifty-fifty success rate.

There are some species, like killer whales—orcas—where it is much easier because there is a big sex difference, and in sperm whales there is a huge difference between the great big males and the very much smaller females. But with most of the big baleen whales, like fins, blues, humpbacks and rights, it is almost impossible unless you are able to have a skindiver go down and inspect the ventral surface. The odds of being able to do that are very remote. So I am afraid we have not made much progress on that, except by biopsies where tiny bits of tissue are taken and from those the sex can be derived.

**Ms JEANES**—I am more interested in the social effects within the whale

community itself—the loss of a whale from its family. Does anyone know anything about that? What do they know about the fact that one has gone missing and how long it takes for them to recover from that?

**Dr Dawbin**—The ones we know most about are the orcas because a lot of these are individually identified, particularly off Washington state and off Vancouver Island. A good deal is known there, and it is quite certain that there are very close family attachments which persist for years. Some whales are known to go with their mother and so on for up to 10 or 12 years from the time they are first identified. Maybe they will go even longer when we know more about it. With the big whalebone whales, you do not get that sort of overt reaction, and I am afraid we do not know too much about that at all.

**Ms JEANES**—We do not know enough.

**Dr Dawbin**—We do not know enough. We know a bit about their songs, particularly humpbacks, and that knowledge is being increased. We are gradually getting to know what some types of signals mean but, oh my, we have a long way to go.

**Ms Arnold**—There is quite a body of information which shows that females seek to rescue their young and male whales seek to rescue females. If you want me to send you some of the information I would be happy to. There is quite a lot known about social behaviour. The Makah have gone on record saying that once they succeed with the grey whale the orcas will be next.

**Ms JEANES**—Do you have any evidence of that?

**Ms Arnold**—Yes, I will send that to the committee.

**ACTING CHAIR**—Mrs Adam, I understand that your organisation has been active in striving for a global sanctuary. Is there anything you would like to add in that respect?

**Mrs Adam**—No, I think everything that the AMCS wanted to say has already been said. So I think I would be doubling up on everything they have reiterated.

**Senator COONEY**—I would like to come back to the issue of public opinion around the world because that gives a strong base for political action. Can you give us any idea of how strong people in other countries are? Quite clearly, you are very persuasive and very dedicated to the issue. Politically, how strong is the movement around the world?

**Ms Arnold**—There is a British marine group called Breach Marine Protection, which has put together a popular resolution which was presented to IWC commissioners at Monaco calling for an end to all whaling. That has received almost 11 million signatures so far around the world. I anticipate that by the time the IWC meets in Oman next year

that could easily be 20 million. There is enormous worldwide sentiment against whaling.

Can I bring up one last issue, which is the treaty of Neah Bay. The treaty of Neah Bay is the treaty that the Makah tribe is using as justification to go whaling. Once again that treaty, which was challenged in a Washington court way back in the late 1890s over an international convention which related to sealing, held that the Makah had no rights over and above any other US citizens. US citizens are not allowed to whale. Clearly, neither are the Makah.

**Mr Kennedy**—Just to conclude, we certainly think one of the major goals ought to be the universal sanctuary proposal in terms of a long-term conservation solution. Government strategy through the IWC needs to be quick and effective. It needs to be backed by the resources to achieve that campaign aim. We need to be assured that DFAT is supportive of our actions and that trade concerns do not get in the way of this longer term campaign. We need to be sure that we can bring on board for the meeting in May in Oman a new Australian commissioner who will pursue the aims of the task force recommendations with some vigour. While I have not talked to Chris Puplick, we support Chris being the new commissioner to the IWC. He is recognised by NGOs here and overseas and by governments as being a person of some integrity, conservation experience and commitment to the ending of commercial whaling. We support ASAP his induction to that job, if he wants it, which I do not know.

**ACTING CHAIR**—He perhaps spoke against himself, suggesting that someone from the Department of the Environment receive it, but I note those comments. Thanks very much for coming along and assisting us with your evidence today. I understand, Mrs Adam, that you would like to speak about the anti-dumping protocol. We will get you to remain.

**Ms Arnold**—Can I ask you when the results of this meeting will be tabled and what is going to happen with this amendment—whether you decide to support it or not? I am aware that you have only gone against one amendment in the history of this committee, but there is always hope.

**Ms JEANES**—And we won that one, if you will note.

**Ms Arnold**—I know.

**ACTING CHAIR**—The report will be tabled when parliament meets in March.

**Ms Arnold**—If it is of any value I am very happy to send the lawsuit to the committee. I could also send the legal opinion on these matters we have been discussing on Australia's support, because it is so serious. But I will do anything at all to provide you with information so you are fully aware of the ramifications that supported it.



**ACTING CHAIR**—Perhaps some schedule stating the issues in the proceedings would be useful.

**Ms Arnold**—I would be delighted.

**ACTING CHAIR**—We will now move on to deal with the protocol concerning the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. I thank Mrs Adam for coming along to give evidence in this part of our hearing. Would you like to make a brief opening statement regarding your evidence?

**Mrs Adam**—Very briefly, I have with me photographic evidence of dumping, which I would like to present to the committee. When it has a listing of the types of dumping that occurs, I think mine is at the bottom of the list where it refers to other matters. There are a whole lot of lists from there, including, I think, building materials, wastes from oil. But these are the photographs which I would like to lodge with the committee for you to view. What I have to say is very brief and I was hoping the photographs may intimate exactly what is the situation. These photographs were sent to me from up and down the east coast of Australia. There is about five of them and I would like the panel to view them.

**ACTING CHAIR**—These are photographs of the Australian coastline?

**Mrs Adam**—Yes, up and down the east coast of Australia. This would go from Sydney up to Thursday Island.

**Senator COONEY**—South of Sydney does not count as the east coast of Australia?

**Mrs Adam**—It does count. I do have other photographs but they are of traps and not necessarily things that have actually been as a result of other matters of dumping.

**ACTING CHAIR**—Those photographs are distressing. Are they the result, however, of dumping as opposed to, for instance, discarded fishing tackle that may have come loose during operations?

**Mrs Adam**—That is a debatable question. When you say ‘dislodged’, often, especially in fishing, when debris is caught a lot of it is actually cut loose in preference to taking the excess up on some of the fishing vessels.

**ACTING CHAIR**—Does your organisation support Australia ratifying the treaty action?

**Mrs Adam**—Yes, it supports it in every way.

**Ms JEANES**—Do you have any evidence that fishing nets are cut loose rather than brought up on board?

**Mrs Adam**—Do you mean actual footage?

**Ms JEANES**—Any sort of evidence. What do you know about it?

**Mrs Adam**—No, this is not so much on film but photographs of the evidence that has been taken, say, under water. I also have some underwater photographs of nets as well, again.

**Ms JEANES**—What, underwater photographs of nets that have clearly been cut?

**Mrs Adam**—That have actually clearly been cut, yes.

**Senator BOURNE**—Have you got any suspicion that there may be lobbying going on against Australia ratifying the sea dumping, or do you think there are any reservations we want to put on it or that any lobby group would want Australia to put on it?

**Mrs Adam**—No, not that I am aware of.

**Senator BOURNE**—So it is a fairly low key one but it is still very important.

**Mrs Adam**—It is very important, yes.

**ACTING CHAIR**—From the seven items that are allowed to be dumped under the protocol, what we have seen from your photos of fishing nets and plastic, for instance, the dumping of those would be contrary to the protocol; they do not fall within any of the seven items. If a fishing vessel cut adrift its fishing nets, that would clearly be dumping in breach of the protocol.

**Mrs Adam**—That is correct, but I think Ms Jeanes was asking for evidence of this, and the only evidence we have is the evidence in photographs. Nets have been cut or they are caught on some objects under water and then they are cut by the trawlers. They will not retrieve the sector that is possibly on board in preference to cutting it and allowing it to drift away.

**ACTING CHAIR**—The enforcement role after the protocol comes into effect is for each individual nation to enforce and police this?

**Mrs Adam**—Yes.

**ACTING CHAIR**—But fundamentally you would support Australia ratifying the protocol?

**Mrs Adam**—Yes, we do.

**ACTING CHAIR**—Thank you very much for your evidence and the photos, which are helpful. We appreciate it. Would anyone else in the gallery like to give evidence on this protocol?

[11.18 a.m.]

**EMMETT, Mrs Louise, Director, Water Pollution Prevention Section, Environment Australia, 40 Blackall Street, Barton, Australian Capital Territory 2600**

**Mrs Emmett**—Can I have a look at the photos and respond, please?

**ACTING CHAIR**—Take a seat.

**Mrs Emmett**—We have the responsibility of administering the Environment Protection (Sea Dumping) Act, which actually implements this Convention, the London Convention. If the Protocol is signed and ratified, it in turn will implement that Protocol. Thank you very much, Sylvia, for showing us these photos. They are very distressing and I do not condone any such practices. But we must be careful about what the London Convention is about. It is about loading on ships or platforms or aircraft for the purpose of deliberate disposal. I will take it on notice and respond more properly and in writing on this issue. I realise that these are distressing and awful, but I doubt that these nets were deliberately put on a ship, vessel or an aircraft for the purpose of deliberate disposal.

There is another Convention called the MARPOL Convention which looks at the operations of ships and I suspect that these events would actually come under the MARPOL Convention. But I will take the question on notice and have it properly answered to you in writing.

**Senator COONEY**—I suppose, whether or not that was done in contravention of the London Convention or the other one, the effects would be the same, whether they were dumped deliberately off a ship or whether they were just cut free.

**Mrs Emmett**—I am not denying the effect at all.

**Senator COONEY**—You are not saying that those photographs are not of some value, even if we are just considering the London Convention, but what you are saying is that the London Convention only takes it a certain distance.

**Mrs Emmett**—I am certainly saying that these issues need to be raised but perhaps, and I will check this, under another Convention, the MARPOL Convention. I do not think they are appropriate to raise under the London Convention, which is about loading for deliberate disposal. The MARPOL Convention, however, does address ship sourced pollution, and that is the convention which I think covers these matters. But I will clarify that and confirm it and come back in writing.

**Senator COONEY**—Yes, but all I am saying to you is that you could have the effect whether it was loaded for the purposes of dumping or not.

**Mrs Emmett**—I understand. A photograph does not tell lies. The photographs are here and the effect is very clear. That I am not denying at all.

**Ms JEANES**—Could you explain to me the domestic instruments for meeting Australia's obligations under the MARPOL Convention?

**Mrs Emmett**—There are a couple of acts. I do not have the full titles here, but I will certainly answer that for you. It is not administered by our department; it is administered by the Australian Maritime Safety Authority, which has just been moved into Mr Reith's department. I will confirm that in writing as well.

**ACTING CHAIR**—You are not suggesting they are going to dump waterside workers. As there are no other questions, we will conclude the hearing. I thank everyone for their assistance, including Hansard.

Resolved (on motion by Senator Bourne):

That this committee authorises publication of the evidence given before it at public hearing this day.

**Committee adjourned at 11.22 a.m.**