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JOINT COMMITTEE ON TREATIES

Reference: Treaties tabled on 12 October 1999

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JOINT COMMITTEE ON TREATIES

Monday, 18 October 1999

Members: Mr Andrew Thomson *(Chair)*, Senator Cooney *(Deputy Chair)*, Senators Bourne, Coonan, Ludwig, Mason, Schacht and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mrs Crosio, Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Wilkie

Senators and members in attendance: Senators Coonan, Cooney, Ludwig, Mason and Tchen and Mr Bartlett, Mr Hardgrave and Mr Bartlett

Terms of reference for the inquiry:

Treaties tabled on 12 October 1999

WITNESSES

Committee met at 9.52 a.m.

Double tax agreements with Argentina and the Slovak Republic

LENNARD, Mr Michael Andrew, Manager, Treaties Unit, International Tax Division, Australian Taxation Office

NUGENT, Mr Michael, Senior Adviser, Treaties Unit, International Tax Division, Australian Taxation Office

IRWIN, Ms Rebecca, Acting Assistant Secretary, Public International Law Branch, Attorney-General's Department

MASON, Mr David, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade

CHAIR—Welcome. We have got a fair bit of business this morning to get through. We will begin with the two double tax agreements with Argentina and the Slovak Republic. Before I ask for an opening statement from you, I will say formally that these are proceedings of the parliament itself and so they merit the same respect as if they were taking place in the Senate or the House of Representatives. Hence, any misleading or false evidence is a very serious matter and may be regarded as a contempt of parliament. In spite of that, we are not going to ask you to give evidence on oath this morning. Mr Lennard, would you like to start the proceedings?

Mr Lennard—Thank you. Firstly, I will mention that Mr Allen, the regular tax treaties person, was unable to appear today because of illness, but we are well briefed on the treaties before us. As the committee has reconsidered very recently some other double tax agreements, I will not go into any detail on the purpose of tax agreements generally, except to say that they seek to give the best climate for improving trade and business relationships by, in particular, avoiding the imposition of taxation twice—that is, double taxation—on the activities of residents and, secondly, helping to prevent fiscal evasion. This morning I will try to be brief and we will focus on the special characteristics of the treaties before you and on some of the consultation aspects.

The first treaty I will deal with is the Argentine treaty, which is probably the more important in terms of the trade and investment relationship before us. It is a particularly important double tax agreement because, although the trade relationship with Argentina is not at this stage a very large one, the investment relationship is an important one, and one that is growing almost exponentially. There are some very big investments including, as mentioned in the national interest analysis, a $US1 billion joint venture between two Australian companies in the copper and gold mine, which we understand is the first of the large Argentinean mining projects. Also direct flights have commenced recently from Australia to Buenos Aires through Qantas and there are some other major investments in terms of cinemas and port handling. In the wider sense, it is the first double tax agreement with a South American country.

In terms of departures from our usual text, there are quite a few—which are dealt with in some detail in the national interest analysis—largely due to the very strong Argentine treaty policy in certain areas. It is often a particularly strong treaty policy towards certain provisions because they have provisions in many or all of their treaties which say that if they give a better treatment to the next country down the line that has a backward effect and the better treatment is also given to their earlier treaty partners through a most favoured nation clause. So, in that sense, they are often very unwilling to make major changes from their treaty policy.

The major departures from our usual text are that, normally, technical, engineering and consultancy services are only taxable in a country where those services are rendered if there is a fixed presence in that country. But Argentina, like some other countries that we have double tax agreements with, taxes all such services provided into Argentina. If they are performed for greater than 183 days in a 12-month period, then they are fully taxable in Argentina. If not, they can still tax them, but, under the agreement, there is a maximum of 10 per cent. There is precedent for this sort of approach in, for example, our double tax agreement with India. It is common amongst the developing countries in particular. Although it is not something we normally do, it is very helpful in the sense that we have capped in particular, at 10 per cent, the rate where services are performed for less than 183 days in a year. So it gives certainty, even though it is not our normal provision.

Another aspect of the treaty which is slightly unusual is that the interest withholding tax rate—the tax which is payable on interest being paid out of Argentina and out of Australia to Argentina—is capped at a maximum of 12 per cent. With us it is normally at 10 per cent. This has been a consistent Argentine position and, again, there would be a flow-on effect if Argentina had given us a lower rate. There is also provision for tax sparing provisions in the future. Members may recall from the Malaysian agreement that tax sparing is essentially where a country gives a tax holiday or reduced tax rates to those people who are participating in a certain enterprise. Under tax sparing, the other country assumes that the tax has been fully paid. In effect, you are treating that person as though they have paid the full amount of tax in the other country. If you did not do that, they would not really get the full benefit of that tax holiday because they would be fully taxed under the foreign tax credit. They would only receive a tax credit for what was actually paid in the other country.

Under this agreement, there are no tax sparing provisions as such, but there is a provision that says that, in future, if Argentina has development incentives in the mining area or in the manufacturing area, then it can ask Australia, ‘Will you give tax sparing to them?’ The current Australian policy, as announced in the budget of 1997, is against such provisions, and the Argentines are aware of that. But if they do introduce such incentives they can ask Australia, and Australia can either agree to tax spare such incentives or, if not, Argentina can say, ‘We accept that, but we won’t give those development incentives to Australian residents.’ That is something which may happen in the future, but there is no tax sparing at the moment and there is no need for us to consider any particular Argentine incentives at the moment.

There are two other aspects which I will mention very briefly. There is what is called a limited force of attraction rule in the treaty, in Article 5, which says that where an entity carries on a business through a permanent establishment in, for example, Argentina, and it

also sells similar goods in that state but not through the permanent establishment, then the sale is treated as having happened through the permanent establishment. That means that that would give Argentina the opportunity to fully tax those sales even though they were not made through a permanent presence in Argentina. That is somewhat modified by the fact that it only applies to sales which would not have been made but for the existence of that permanent establishment. So it is not a completely unusual provision in double tax agreements and it is not a full force of attraction law in that the sales, though not made through the permanent establishment, are only attributable to the permanent establishment when they would not have been made but for the permanent establishment. It is deeming a linkage that does not actually exist, but it is quite limited.

The other provision I will mention, which is actually quite a good one for us, is that we do not have a most favoured nation provision in our treaties—we have one in our US treaty, but one which does not have the force in domestic law—but in this treaty we do have a one-sided most favoured nation provision which says that if Argentina, which traditionally does have a most favoured nation clause, does give better treatment on withholding taxes to other OECD countries in the future, then our residents will automatically get the benefit of that. There are some limits to that, in that they are effectively limited to ensure that we do not get better treatment than we would give in practice to Argentine rates, but it is quite a useful provision for us. Mr Chairman, should I go on to the Slovak agreement now?

CHAIR—Yes, by all means.

Mr Lennard—I can deal with the Slovak agreement a little more briefly because it is much less complicated. The Slovak agreement is not with a major trading or investment partner. I think it is approximately No. 117 in trade, and the existing trade or investment relationship by itself probably would not justify a double tax agreement, although there has been greater investment in the Slovak Republic in the past and we think there is likely to be in the future.

The reason for this double tax agreement is to some extent historical, in that at the beginning of 1993 Czechoslovakia divided into two separate successor states—the Czech Republic and the Slovak Republic—and at that time we had already commenced negotiation with Czechoslovakia for a double tax agreement. The negotiations with the Czech and Slovak republics continued after then, largely because of the wider relationship, because of the potential that existed in the future as an emerging European market and because both were successor states, essentially, to the uncompleted agreement with Czechoslovakia.

The Czech agreement came into force in 1995. The Slovak agreement is very similar but took much longer, largely because of some difficulties, which I think took one and a half years, over the Slovak language text. Both texts of double tax agreements are equally authentic in an issue before, for example, a court, so we have to be very careful on those, and there was a considerable delay in getting a Slovak language text.

The other aspects were that we did have a focus on finishing some of our other major agreements and that it took some time to get a solution to the Lamesa court decision, which is mentioned in the national interest analysis. But, despite those, there was not actually a lot of extra cost involved in the Slovak agreement because it was based upon the Czechoslovak

text, because it is very similar to the Czech agreement and because negotiations occurred while officers were in Europe on other business. It follows our usual agreements closely, and the differences are ones which are the same as in the Czech agreement. The Slovaks, of course, were very concerned to get the same treatment as the Czechs.

Our dividend withholding tax rate is 15 per cent across the board. In our current treaties, what we would do is seek lower rates in certain circumstances. This would be on dividends paid out of profits which had been fully taxed in the company's hands and where the shareholder has at least 10 per cent of the shares. That is called a non-portfolio holding in the sense that it is more than just a portfolio holding of the shares. Of course, on our side, if dividends are fully franked at the domestic level, we do not actually tax them at all. As I say, in our more modern agreements we would seek that change, but the Slovaks insisted on this and it was the treatment that was given to the Czechoslovaks. It is probably not a hugely significant issue in practice.

The other main change is that there is a provision which is common to several developing country double tax agreements in particular, where the furnishing of services is deemed to be permanent establishment when they are provided for over six months in a 12-month period. This is similar to the provision in the Argentine agreement. This means that the country hosting or receiving the service can tax fully those services, and the resident country will give credit for those taxes which have been paid. It is in several of our double tax agreements with developing and emergent countries, including the Czech agreement. It is not by any means out of the ordinary in world terms of double tax agreements.

I will very briefly mention the consultation we have undertaken on both these agreements together. As we have mentioned in our submission to the previous hearings on double tax agreements, we do have a tax treaty advisory panel which is very widely representative, mentioned in the national interest analysis. The panel was supportive of these treaties; it did make a suggestion as to the Lamesa issue which we think we have taken in hand. We have also consulted, particularly on the Argentine agreement, very extensively with individual companies, particularly those active in the mining area and in transport, because of some of the peculiarities of these issues. The Argentine agreement has a provision which is beneficial to our airlines flying into Buenos Aires—Qantas—in that it prevents double taxation and it is retrospective until the time when we signed a memorandum of understanding as to flights between the two countries in 1988. So that is one that again has been strongly supportive.

We have also consulted with the Department of Foreign Affairs and Trade. We have taken on board the committee's suggestion in its previous report about consulting with country specific business councils. We think that is a very good suggestion and one we will be adhering to in the future. However, we consulted the Department of Foreign Affairs and Trade and could not find any councils for Argentina or Slovakia.

Mr HARDGRAVE—Can I acknowledge that the ATO have greatly improved their consultation mechanisms, and congratulations for that. I appreciate knowing when and who you spoke to. It is something that I have not seen you do in previous submissions, so thank you for that. Is this going to basically encourage investment? Who is going to get the best result out of it, or is it a mutual benefit thing?

Mr Lennard—We would say mutual benefit. Probably at the moment the Australian interest in Argentina is significantly more than the Argentine interest in Australia. I think definitely in that sense it is mutually beneficial. At the moment, because of the practicalities of our relationship, it would benefit us more, although it is mutually beneficial to have investment in Argentina. The Slovak agreement perhaps in the wider sense has been more beneficial to Slovakia than to us, but it is an area where we do think there will be increasing investment.

Mr HARDGRAVE—Do these agreements, given that the tax system is changing here, accommodate those sorts of changes—in the Slovak Republic or in Argentina? If the taxation system is the base of collecting tax change, how flexible are these agreements?

Mr Lennard—To some extent these treaties are ambulatory, in that they do pick up similar taxes to the ones that they cover. There are provisions for notification of different taxes. If there was a tax which was not covered by this treaty, then you would have to seek consultations on that, and there are consultation provisions within it. So, in practice, they do get the blend right between being ambulatory as to similar new taxes but, if there was something which would change the give and take of the agreement, you would have to consult.

Mr Nugent—This gives business confidence, because there cannot be a unilateral change in one state without having an immediate knock-on effect on the treaty. They would have to come back and consult with Australia to seek to have the treaty modified if it was a tax which did not fall within the current provisions, as happened in the case with Malaysia.

Senator COONEY—Are there common accounting standards between the countries which we have the double tax agreements with?

Mr Nugent—No. Basically these treaties are looking at it from a tax point of view. It is up to the business itself to organise how it actually conducts its business. There is a process at the moment, as you know, with the Ralph committee to try to harmonise the different tax rules with the different accounting rules. That, even in the Australian context, has caused a lot of problems over the years. I would not know offhand, but I would be surprised if they were exactly the same.

Senator COONEY—I suppose the issue behind that is how can we be sure that the tax is what it ought to be—whether it is paid to the country we have the agreement with or whether it is paid to us?

Mr Nugent—The rules in the treaty provide guidance as to who should pay what, where and how. If Australian business or Argentine business was to find that either of the contracting parties was not honouring its obligations, for one reason or another, or was trying to impose tax which it felt was outside the scope of the treaty or not in the appropriate way, then it would approach the revenue authorities in those countries to seek—

Senator COONEY—But what about the calculation of that tax?

Mr Nugent—Normally double tax agreements do not go into the calculation of the tax; it is left to the domestic laws of each state. There are rules—for example, on the tax treaty credits. How you actually provide those credits is then left to the domestic law. It more or less leaves it at the broad general principle.

Senator COONEY—Is there any scope for arranging your affairs so that you might get a regime that has a loose accounting system?

Mr Nugent—The treaty, again, also has a common feature, which is to try to prevent tax avoidance. There is cooperation between the two revenue authorities to defeat that. So the treaty seeks to stop any sort of artificial scheme between related parties to try to get around the rules to seek an unwarranted advantage.

Senator COONEY—I an not speaking specifically about Argentina or the Slovak Republic at the moment, but generally are we are confident that all of the countries we have treaties with would use accounting standards and the appropriate approach to ensure that tax was properly worked out?

Mr Lennard—In deciding which country to have double tax agreements with one of the things we look very closely at is their tax system to make sure, essentially, that it is a reputable system. We also look at things like the extent to which they will exchange information with us. As my colleague said, we specifically preserve our rules also about anti-avoidance, our part IVA rules, in respect of all our double tax agreements. We also are not required to give foreign tax credits for taxes which were imposed contrary to the treaty. If there was a dispute, again it was something the taxpayer could actually raise with authorities. It is a fine balance in the sense that you do not seek to tell another country how to tax; but, in deciding whether to have an agreement, you do look at how they tax and at whether taxpayers get a fair treatment and that sort of thing.

Senator COONEY—I understand that we would not tell them how to tax, but I am talking about whether or not they are applying their own laws in an appropriate way. As I said, the point behind that is—if you had a choice about where you would arrange your affairs so as to pay tax—if you went to a regime that was not enforcing its own law, that might not be good. Are you saying that we get over that by examining that situation before we sign the treaty?

Mr Lennard—Yes. If they were not actually taxing when they had a taxing right, that of itself is not contrary to the treaty. There are instances where, for example, we do not tax all dividends. Under the Slovak agreement, for example, we can tax our dividends to the extent of 15 per cent. But that is a maximum, and we do not actually tax all of our dividends to that extent if they are fully franked, in terms of dividend withholding tax.

Senator COONEY—But our system has integrity; has it not?

Mr Lennard—Yes.

Senator COONEY—Are we assured that the other system has integrity in that sense?

Mr Lennard—We looked very closely at that. And, of course, the OECD and other forums do look at the integrity of different countries' systems. Of course, if we had major problems, there is ultimately the possibility of termination of a treaty.

Mr BARTLETT—Following Senator Cooney's question, what is the Taxation Office's estimate of the net impact of this agreement on tax revenue accruing to the Commonwealth government?

Mr Nugent—That has always been a very hard question to answer, because the purpose of tax agreements is more to harmonise the conflicts between the rules in two countries, rather than to raise revenue.

Mr BARTLETT—But we would not want it to be a cost to our revenue.

Mr Nugent—No. Basically, these agreements should facilitate further investment, so there should be a net increase over time in the Commonwealth revenues. But there are gives and takes on both sides. Some of the reductions in withholding tax, for example, may be a cost, but there is not substantial investment by Argentina in Australia at the moment.

Mr BARTLETT—But, putting aside for a moment the increase that may accrue as a result of increased investment in trade, just on current investment and trade figures, on current levels of profitability of the companies involved and on current tax rates, is there likely to be with this agreement a net decrease or a net increase in our tax base?

Mr Nugent—It should be about the same because of the giving of credits. If the other country imposes, say, a 30 per cent tax and it reduces to 15 per cent where we had a taxing right before, we would only give them a credit for 15 per cent instead of the previous 30 per cent. So there is a balancing out. The treaties are about trying to increase the volume of investment and trade between the two countries. They are very heavily sought after, and I think the balance of this agreement is definitely in Australia's favour at the moment.

Mr BARTLETT—I appreciate the potential impact on trade, but often the case is that these things come at a cost to us in terms of revenue base, and the potential benefits that we hope will accrue further down the track do not always accrue. Related to that, the NIA says:

. . . by eliminating possible barriers to trade and investment . . .

and encouraging further trade investment. What evidence do we have that there are significant barriers there already? Do we have any sort of modelling on the potential increase in trade and investment that might come or on the impact that these barriers have currently?

Mr Lennard—Just to follow on from what my colleague said, the general issue is one that Mr Allen touched on in the last hearings where the OECD tried to do some modelling, when Mexico joined the OECD, as to its treaties to find out the cost-benefit analysis and it ultimately found that it just was not possible. So what we rely on, in particular, is the consultation process which, as has been mentioned, has improved a lot lately and has given us confidence that it does prevent double taxation. Of course, preventing double taxation

may have some cost to the revenue but, on the other hand, it encourages investment. So the two are inextricably linked. Encouraging investment will hopefully increase the tax amount.

I think there are over 1,000 double tax agreements in the world operative at the moment. We see that as indicative of the fact that, if you do not have one in a reasonably strong trade and investment relationship, that is seen as a dampener on that relationship in future. So, although we cannot model specifically and although there is always some loss in terms of the amount at which you are capping your withholding tax rates and the fact that you are not double taxing, the consensus is very strongly that they are positive. Even if in certain instances they might have a reduced tax take in the short term, in the long run you actually do better out of them. The other reason why you cannot model too closely is that it is so difficult to work out the extent to which some of the incentives and benefits in these treaties will be taken up by taxpayers.

Mr BARTLETT—I must admit I am still not convinced by the use of words such as 'hopefully' and 'potentially' and so on. I am not even convinced that the existence of the large number of double tax arrangements that are in place is necessarily evidence of net benefits to Australia rather than just the power of large companies and multinationals to have those sorts of treaties negotiated. I still find it surprising that the tax office cannot give a clearer estimate of the impact on government revenue.

Mr Lennard—Yes, we have exercised our minds about that difficulty. We turned our attention to it again last year, but we searched the literature and we are not aware of any authority being able to give a really good estimate of the costs and benefits. The other point I would just briefly make is that they just do not benefit the multinationals. The big beneficiaries in the treaties before us are the Australian enterprises operating abroad—Qantas, for example—and also individuals who are working abroad, pensioners and other people who are not at the big end of town.

Mr BARTLETT—Providing that some of that revenue accrues to the government. Could I urge you to consider your investigation of those cost-benefit issues.

CHAIR—Can I suggest that you take this on notice and reply in writing because, obviously, you cannot do it without your boffins back there.

Senator LUDWIG—I have a question which follows on from this analysis. The negotiations on this treaty would have started prior to the development of the Alumbera mine—the MIM/North joint venture—and then concluded after the completion of that mine, so perhaps we can use it as an example in some of these questions. Does the treaty provide an incentive or disincentive for the Alumbera project to commence offshore development? Then, using that as an example, what is the cost-benefit impact on the company and, obviously, on the Australian government in terms of tax revenue and the impetus it places on investment overseas? That would give me a concrete example of how it works.

Mr Nugent—It is probably best to remember the purpose of tax treaties. You already have, under your domestic law, a right to tax your residents on their worldwide income, so we are not gaining a taxing right there that we have not already got. Similarly, in the case of non-residents—in this case Argentine residents in Australia—the domestic law provides

extensive rules on whether they will be taxed or not, depending on whether they have an Australian sourced income.

The purpose of tax treaties is to provide a high-level comfort zone, if you like, for companies or individuals operating in either state, to make sure that if there is a problem they have a document they can hold up to the other state and say, 'These are the agreed rules, and you are not complying with them.' So that is the sense in which it prevents double taxation. There can be differences in the tax rules in the two countries which could otherwise lead to problems. And, as we mentioned earlier, there could be a unilateral change in tax rules at any time in one state where there is no treaty, and that would have an immediate impact.

Because this is a future document, the effect on revenue depends on the extent to which new or existing taxpayers modify their current behaviour to take advantage of the provisions. But it is generally seen as assisting the revenue. These ventures at the moment would be taxable in Argentina anyway, because they are actually taking place on Argentine soil and they are actually deriving profits there. The issue will come in a few years time if those ventures become profitable and they want to repatriate their profits back to Australia. They would be faced with extremely high Argentine withholding tax rates at the moment, and the companies would not be encouraged to return that income to Australia. So in that sense it facilitates the return of revenue in the future in the form of repatriated profits.

CHAIR—Thank you kindly for that evidence. If you could do something on paper for Mr Bartlett and the committee, that would be terrific. Thank you.

[10.25 a.m.]

Agreement on Judicial Assistance with the Republic of Korea

Agreement on Criminal Assistance with Monaco

McGINNESS, Mr John, Principal Legal Officer, Legal Procedure Unit, Attorney-General's Department

MANNING, Mr Michael Grant, Senior Legal Officer, International Branch, Criminal Law Division, Attorney-General's Department

CHAIR—Welcome. We will not require you to give today's evidence under oath, but I have to formally advise that these hearings are legal proceedings of the parliament and hence warrant the same respect as do proceedings of either the House or the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

As these two treaties are both from the Attorney-General's Department I thought we would deal with them one after the other. Mr McGinness, could you go first with a submission on the Agreement on Judicial Assistance with the Republic of Korea. We will then pause for questions and then I will ask Mr Manning to deal with the Agreement on Criminal Assistance with Monaco after that.

Mr McGinness—I have a very brief statement to explain some background to the treaty with Korea. It deals with judicial assistance in civil litigation. It is one of the more routine treaties that the Attorney-General's Department deals with. We already have a range of these sorts of treaties, mainly with European countries—30 of them.

This particular treaty was an initiative of the Korean government. Their ministry of court administration is increasingly involved in international civil litigation, particularly in the Asia-Pacific region. Although it is quite unusual to have treaties on this subject matter in this region, they are interested in trying to set up a network of treaties in the region. Therefore, they thought it would be appropriate to negotiate one with Australia as the precedent for that proposed network.

The treaty deals with two basic matters in relation to civil litigation. The first is service of documents on parties between countries, and the second is the taking of evidence in one country on behalf of courts in the other. This treaty has some improvements on the usual standard treaty in this area, and two in particular I should mention. The first is that it gives courts in Australia the right to take evidence from witnesses in South Korea by video link. Secondly, it also allows Australian courts to take evidence from witnesses in Korea by appointing a commissioner to go to Korea and hear the evidence.

They are two quite new departures, particularly for a country like South Korea which has a civil law system and usually insists on their courts doing any taking of evidence on behalf of foreign courts. In our view it is a particularly useful precedent in the Asia-Pacific region if we are going to have a network of these treaties in the future.

Just briefly touching on the question of consultation, the Attorney-General provided a copy of the treaty to state and territory Attorneys-General in April this year during a meeting of the Standing Committee of Attorneys-General. He asked for any comments to be provided to the department. The only comment we received was from Western Australia which asked us to take into account the potential cost of Australian courts taking evidence for Korean courts.

This is a matter we took up with the Koreans before we finalised the treaty. The treaty includes a provision allowing Australian courts to claim reimbursement from the Korean authorities for any expenses incurred in the taking of evidence in any of their litigation. Our hope is to have the treaty in force by the end of the year. As I said before, it will serve as a basis for a network of treaties in the Asia-Pacific region if we can attract some interest from countries in the region entering into these sorts of treaties.

CHAIR—Thank you. Are there any questions from the committee?

Mr HARDGRAVE—You talked about civil law versus common law. What sort of sticking points are there between the different systems? It is not really like and like matched up here in this treaty.

Mr McGinness—That is right. That is the benefit of a treaty really: you try and match up the two quite different legal systems. In a civil law system like Korea or like Japan, the courts play a much greater role in determining what evidence is collected and how it is collected. The judge plays an investigative role. In a common law country like Australia, much of it is left up to the parties and the parties have a much greater role in progressing the litigation.

For South Korea to allow Australian parties to serve documents in Korea or for an Australian court to take evidence directly from a witness in Korea without the intervention of Korean courts is quite a departure. One of the benefits of this treaty is that it does allow Australian parties to progress litigation in Korea. We are not dependent solely on Korean courts.

Mr HARDGRAVE—Is there a lot of call for that?

Mr McGinness—Increasingly Australian courts prefer to take evidence directly because of the traditional bias in favour of hearing the witness—the judge hearing the witness himself and forming his own assessment as to credit. Increasingly, particularly in New South Wales, the judge appoints himself as a commissioner to go to the foreign country and hear the evidence from the witnesses there. So there is certainly some interest in having treaties that allow for that in civil law countries.

Mr HARDGRAVE—I do not really pretend for a moment to understand the make-up of the Korean nation at all. Do they believe in the doctrine of separation of powers? Do they believe in those sorts of similar systemic philosophies that we have at our heart and soul?

Mr McGinness—Yes, their legal system is derived, as I said before, from European systems, particularly the German civil law system; but they have a clear distinction between

parliament, the executive and the judiciary. The person we were negotiating with was a member of their Supreme Court, which is their equivalent of our High Court. He was a member of the delegation, but the ministry of court administration and the ministry of justice had the day-to-day responsibility for negotiating treaties. There is that clear distinction within Korea.

Senator COONAN—I am sorry I have not read it closely enough; maybe I should have. Does it cover arbitrations or service for the purposes of arbitration?

Mr McGinness—No, the Koreans prefer to restrict it to judicial proceedings. As I said, they wanted to set it up as a precedent and they thought it was best to keep it proceeding in one direction of litigation.

Senator COONAN—Wouldn't there be more arbitrations with Korea than civil processes?

Mr McGinness—That is right. It is not my field, but I think Korea is a party to some of the multilateral treaties on arbitration, as Australia is. Any evidence and service-type matters would be dealt with under those treaties.

Senator COONAN—I am wondering what the break-up is. Do you know? The difference between the numerical percentage of actions that Australians are involved in one way or another with Korea by way of arbitration would be far greater, I would think, than actions they would be involved in through the courts?

Mr McGinness—That is right. The anecdotal evidence is that arbitration is used far more than civil litigation. I do not know any authority in Australia that actually collects statistics on foreign judicial proceedings. It is the state and territory governments which implement it.

Senator COONAN—Does it go to enforcement, or does it simply go to service?

Mr McGinness—No, it is just the preliminary matters of service and evidence.

Senator COONAN—So if you get a judgment, this is not going to help you one bit in enforcing it?

Mr McGinness—No this treaty will not, and we did discuss that with the Koreans. Both Australia and Korea in that area prefer to proceed on a non-treaty basis, so we are proposing to recognise Korea under our Foreign Judgments Act to allow their judgments to be enforced here. We have received an assurance from them that, under their law, our judgments will be recognised there. It is just more a unilateral declaration than a treaty.

Senator COONAN—And has that happened?

Mr McGinness—We are just consulting with the state and territory governments at the moment and we expect it to happen later in the year.

Senator COONEY—I have not had a chance to look at it thoroughly, but I was looking at article 24(5)(a) and I think article 5(8). It says there is no measure of compulsion that shall apply to make the person appear or give evidence. Is that right? It is on page 11, the video link, where it says:

No measure of compulsion shall be applied to make the person appear or give testimony.

Article 25(5)(a) is the one that deals with evidence by commissioners. There is no ability to compel a witness; is that right?

Mr McGinness—Yes, there is a distinction between witnesses voluntarily giving evidence and witnesses who have to be compelled. The usual system followed in these treaties in relation to that distinction is that, if you want to compel a witness to give evidence, you have to ask the Korean court to use their powers to do that. An Australian court has no power to compel somebody in another country to give evidence. If the witness is prepared to give his evidence voluntarily, then you can use video link or send a commissioner to take the evidence. But that is only where the witness is volunteering to give the evidence.

Senator COONEY—Is there an ability to get a video link by compulsion?

Mr McGinness—No, we say with video link or where you have appointed a commissioner that it can only be voluntary evidence. Where you want to compel somebody, you have to have a Korean court do it.

Senator MASON—I think the next treaty we are looking at is individual assistance in criminal matters with Monaco. The compellability of witnesses would be a big issue there, wouldn't it?

Mr McGinness—Yes, but my colleague could speak on that. In the civil law area it has always been a traditional distinction that, if you want to compel a witness to come to court and give evidence, you have to rely on the courts in the other country responding to a request from you to do that. You cannot compel anybody in another country to do anything.

Mr HARDGRAVE—Would you have a series of hearings and so forth to put your submission to the court?

Mr McGinness—Yes, that is right.

Senator LUDWIG—Where is the demand for this coming from? What others are in the pipeline? I understand that we have a number with European countries and this is the second within the Asia-Pacific area. Is it considered to do more in that area? Is it demand driven, or is it supply driven?

Mr McGinness—The initiative for this one did come from Korea, as I mentioned when I was making the opening statement. They are finding themselves involved increasingly in international civil litigation. On the Australian side, the department does get calls every week from legal practitioners in Australia asking what treaty is in force with such and such a

country. If there is no treaty, they are forced to go and make a request through the diplomatic channel, and that can be very slow and quite expensive. Some countries particularly will not respond to a request if there is no treaty in place. So I think we could say there is demand from legal practitioners in Australia for this sort of treaty arrangement to be in place. Just in the Asia-Pacific region there has traditionally not been any interest on the part of Asian countries to enter into one to date.

Senator LUDWIG—As a consequence, how many others are in the pipeline or are being considered, just roughly? Or is this it?

Mr McGinness—We have had some approaches from European countries but, at the moment, we have not had any approaches from Asia-Pacific countries. This treaty was tabled at a meeting of chief justices of Asia and the Pacific in September in Seoul. We are waiting to see if any interest arises out of that meeting. Certainly South Korea is pushing for a network of them in the region, so it could be that there will be approaches from other countries in the region.

CHAIR—Many thanks. Mr Manning, could you make a statement or submission regarding the agreement on criminal assistance with Monaco.

Mr Manning—If I may I will begin by giving a bit of general background. This is a network of bilateral treaties for the provision of mutual assistance in criminal matters. Australia began negotiating this network in the 1980s and now has 20 such treaties in force. Another four, including this treaty, have been signed and are awaiting entry into force. Negotiations are also continuing in relation to several other countries. The areas covered by these treaties are essentially Europe, parts of the Americas and parts of East Asia.

Mutual assistance in criminal matters is a relatively modern form of international cooperation which covers a broad range of assistance in relation to criminal investigation and prosecution and also the pursuit of the proceeds of crime. It can include measures for which no particular legal authority is required—for example, service of documents in relation to foreign criminal proceedings, location of persons or taking unsworn statements from witnesses. However, the main importance of mutual assistance in criminal matters lies in the provision of assistance which requires the exercise or the modification of measures of compulsion in the requested country. In this respect, it is a streamlined and expanded form of the traditional process of court to court assistance through letters of request.

The services that fall into this compulsory category include the taking of sworn evidence from witnesses, requiring a production of physical evidence by means of notice to produce, obtaining and executing search warrants, making prisoners available to give evidence or assist with criminal inquiries in the requesting country and, lastly, measures to locate, restrain and confiscate the proceeds of crimes committed in the requesting country.

The advantage of mutual assistance treaties is that they establish clear international obligations in respect of these matters and provide for requests and responses to be channelled through a specified central authority in each country so as to promote compliance with those obligations and effective communication as to the precise nature of the assistance required and how it can be obtained. It should be noted that mutual assistance in criminal

matters does not include extradition; nor does it include execution of foreign criminal judgments or transfer of prisoners to complete sentences imposed in foreign countries.

In negotiating these treaties, we seek where possible to base our negotiations on an Australian model mutual assistance in criminal matters treaty. The present treaty is generally similar to the model treaty and, to the extent that there are differences, we have assessed these as matters essentially of technical detail which are well within acceptable bounds. The most significant variations you will find listed at the top of the third page of the national interest analysis.

Importantly, the treaty includes all the safeguards required by our Mutual Assistance in Criminal Matters Act, so that it would enable us to refuse assistance in relation to a political or military offence or if an investigation or prosecution involved discrimination on grounds of race, sex, religion, nationality or political opinion. It also permits refusal of assistance in a case of double jeopardy or where an essential national interest would be compromised by provision of the assistance requested. Lastly, although it is very much a technicality, we are not obliged to provide assistance in relation to an offence punishable by death. Since Monaco has not executed anyone since the middle of the 19th century, it is not really a current issue.

Monaco is by far the smallest country with which we have entered into a mutual assistance in criminal matters treaty, but it does not diminish the significance of this treaty, as Monaco is a tax haven and also operates a substantial offshore financial sector. There is some suspicion of the use of this sector for the laundering of criminal profits, which has been a matter of concern for some years. We anticipate that this treaty will place us in the best possible position to pursue any proceeds of crime which we believe have been passed through financial institutions operating in Monaco.

Senator MASON—In the cheat sheet in front of us, there is a point which says:

This Agreement is based on a model template. The most significant variations to the basic text are noted in the NIA:

. . . . . .

the lack of provision of compulsory production of documents;

That is quite significant as a deviation from a model template.

Mr Manning—It is certainly an inconvenience from our point of view. Unfortunately, we found that Monaco does not have provision for production of documents under its law in relation to obtaining evidence.

Senator MASON—Is that right?

Mr Manning—Yes, that is what they told us, and we believe it. So unfortunately, we are not in a position to receive that kind of assistance from them. Naturally, we would prefer that we were.

Senator MASON—If you are prosecuting tax matters, that would be a fairly significant diminution of your capacity to prove issues.

Mr Manning—It may be that you can get around some of this by obtaining search warrants, but they do not have a provision equivalent to ours of actually requiring someone to produce a document in court. Presumably, that would be the way you would deal with that situation.

Senator COONEY—I want to deal with article 15—search and seizure. Do we have any agreements with the countries we make these treaties with—not so much with Monaco—as to the method of search and seizure? Do we expect the other country to have a warrant system or don't we really worry about how they search and seize?

Mr Manning—We do not have agreements specifically on that. However, we are obviously concerned to instruct them not to take any action which would lead to any evidence obtained being inadmissible in our courts. Our treaties normally provide for each party to be able to make a request of the other party as to the manner of carrying out the request to ensure that, insofar as we can do so consistently with their law, we do not trip ourselves up in terms of admissibility of the evidence when it comes back here.

Senator COONEY—That is in the treaty somewhere, is it?

Mr Manning—Yes, if you look at it you will find there is a provision about that particular issue. It is a standard feature of our treaties.

Mr HARDGRAVE—How did this particular treaty come about? Who sought it and what was the basis of that?

Mr Manning—I cannot answer that off the top of my head. I will have to take it on notice.

Mr HARDGRAVE—Who initiated it?

Mr Manning—Australia initiated it, to the best of my knowledge, during the 1980s. As you will be aware, there was considerable concern in this country about the accuracy or otherwise of the treaty arrangements we had for cooperation in relation to law enforcement matters. There was a fairly extensive program of negotiations set under way, some of which have taken a long time to finalise the last details on.

Mr HARDGRAVE—Did we have to travel to Monte Carlo a few times to do this? How did we do it?

Mr Manning—I think we travelled there only once and that was in association with a trip to several other European countries. The normal pattern adopted at the time was that a negotiating team would travel through a particular geographical area, negotiating successively with various countries.

Mr HARDGRAVE—The south of France around spring is normally a pretty reasonable place to travel to, so someone had to do it.

Mr Manning—I regret to say that one fact I can give you is that the negotiations were conducted in February 1989, so it probably was not quite so comfortable.

Mr HARDGRAVE—That is a great response in anticipation perhaps of what this committee has drawn out in the past on such matters. I am trying to get a view of exactly who initiated it because that is missing from the consultation part of your NIA. That disappoints me in the sense that I would have thought AUSTRAC, the National Crime Authority, the Australian Federal Police and other agencies that are very solid stakeholders in the question of criminal matters, money laundering and so forth would have been consulted and what those consultations brought out might have in fact been referred to in this NIA. Did you speak with those agencies?

Mr Manning—What do you mean when you say 'you'?

Mr HARDGRAVE—Did the AGD speak to those agencies?

Mr Manning—I am not aware of them having specifically consulted those agencies in relation to this. I am pretty sure there is nothing on file to indicate that they did. However, I should add that, because we also deal with the casework aspects of this area, we are constantly receiving inquiries and requests from police forces and other law enforcement agencies about the possibility of obtaining information from particular countries. So we have a pretty good idea, without entering into a formal process of consultation, about where their interests lie.

Mr HARDGRAVE—I do not doubt that for a moment. All of my intestinal logic suggests to me that the principality of Monaco would, of course, be a place to target. But the reason I ask this question, and the reason it is a serious nature, is that it is my understanding that AUSTRAC, the NCA and those other agencies may have other priorities ahead of this. So I am again disappointed that the consultation that, to my mind, should have taken place with those lead agencies that may work in concert with A-G's was not there. I thought that was a deficiency in this submission.

Mr Manning—Yes, I know. I would point out one thing: this is not being treated as what you would call a matter of priority. It is some 10 years since the process began.

Mr HARDGRAVE—And fortunately there has been only one trip.

CHAIR—Thank you. We will reserve judgment on that. We will now deal with the next two agreements, given that there are a lot of them in common.

[10.54 a.m.]

Agreement with Singapore for the Use of Shoalwater Bay

BLEAKLEY, Mr Peter Ward, Director of Agreements, Defence Legal Office, Department of Defence

HIGGINS, Colonel Donald George, Acting Director General, Major Powers and Global Security, Department of Defence

MOLYNEUX, Lieutenant Colonel Gregory Ian, Deputy Director of Preparedness and Mobilisation, Department of Defence

O'CONNOR, Mr Feargus, Senior Policy Adviser, International Policy Division, Defence Headquarters, Department of Defence

RITCHIE, Lieutenant Scott Martin, Legal Officer, Directorate of Agreements, Defence Legal Office, Department of Defence

IMBER, Mr Mark Stephen, Environmental Policy Officer, Defence Estate Organisation

CHAIR—The first agreement we will deal with is the agreement with Singapore for the use of Shoalwater Bay. Welcome everybody. No-one will be required to give evidence under oath, but I should formally advise you that these hearings are legal proceedings of the parliament. They warrant the same respect as proceedings of either the House of Representatives or the Senate. Hence, the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Can I ask someone to make some introductory remarks before we proceed to questions about the agreement with Singapore.

Mr Bleakley—Certainly. We are very pleased to present this treaty to the committee this morning. It is essentially an extension of the earlier treaty, which has proved very successful in facilitating cooperation with Singapore and use of the training area. There are some features in particular which I draw to the committee's attention. One feature is the provisions on environmental considerations—that is article 5, which specifically acknowledges the training area as an environmentally sensitive area and that access is dependent on environmental and weather conditions, and sets up a regime for inspections and restoration. Mr Mark Imber is here this morning to talk about that as the committee requires.

Another feature is the commercial support arrangements. These arrangements deal with Australian industry involvement and are set out in some detail in article 11 to provide considerable transparency. I would also note that, if the committee considered that there might be value in an inspection of the area—if you would let us know through the secretariat—we would certainly look to see how that might be arranged to the convenience of the committee. I call on Feargus O'Connor from our International Policy Division to provide a policy overview.

Mr O'Connor—We have had a very good, broad, long-term military relationship with the Singapore Armed Forces which sort of mirrors the good standing of the political

relationship between our two countries. They are a key military partner for us in the region. They see strategic issues more or less in the same way that we do and they have a very high level of military capability. They are a valued exercise partner and operational partner. I would also note that they are currently contributing to INTERFET in East Timor.

Bilaterally, we conduct a range of joint military exercises with Singapore—that is, with Singapore, multilaterally under the five-power defence arrangements, and including exercises with Malaysia, the UK and New Zealand. We also conduct trilateral exercises with Singapore and the United States. We have a substantial program of education exchange whereby personnel go to be trained in each other's countries. This goes right up to senior staff level, which gives us a very good entree into senior military thinking in Singapore. We have an intelligence exchange with Singapore and we are beginning to develop a program of joint development in science and technology.

However, what we are talking about here with Shoalwater Bay is somewhat separate to that because the Singapore Armed Forces exercises at Shoalwater Bay are unilateral. The ADF does not exercise with Singapore there. The reason why we do this is that it is very important for Singapore to exercise overseas. Singapore is an island about 40 kilometres across. They cannot conduct any kind of meaningful military training inside their own country. For that reason, Singapore deploys for unilateral training in the United States, France, Thailand, Taiwan and Australia—to name only some countries—and we are one of the countries that offers them that access. We provide them with permanent ongoing deployments to the RAAF base in Pearce where they do pilot training and to the Army Aviation Centre in Oakey in Queensland where they do helicopter training. We also allow them periodic access on an annual basis to Shoalwater Bay for ground forces and air asset exercises and to some of our RAAF bases such as Darwin and Townsville where they do fighter deployments.

Australia gains a lot of benefit from the overall defence relationship with Singapore. As I said, they are a very good exercise partner and the training and exercise exchange that we do with them is very valuable. Because the deployments at Shoalwater Bay are unilateral, there is no direct benefit to the ADF from the access that you are considering today, although I would note that we require Singapore to outsource a lot of its maintenance to Australian firms, so the deployments to Shoalwater Bay are worth about half a million dollars annually to Australian companies and of considerable benefit to the economies immediately around Shoalwater Bay.

However, there is considerable indirect benefit to the Australian military from the unilateral deployments to Shoalwater Bay. For a start, as I have said, it contributes considerably to Singapore's defence self-reliance. They cannot train inside Australia; they must train outside. By Singapore being a self-reliant nation in defence terms, it minimises the risk of any pressure being applied to Singapore or it maximises their chances of being able to fend that off by themselves. If the worst came to the worst and we had to operate alongside Singapore, it is obviously in our interests that our operational partner is as capable as possible.

In exercise terms, while the deployments to Shoalwater Bay are unilateral, they nevertheless contribute to the capability of the assets that deploy at Shoalwater Bay and ADF

exercises with those bilaterally in other contexts. So some of the ground troops and some of the air assets that deploy at Shoalwater Bay that just exercise unilaterally are later on used in exercises with ADF. Obviously, we are very interested in high quality exercises that deliver the maximum training benefit to our soldiers—particularly in times such as this—so that is of great benefit to us as well.

Finally, from Singapore's point of view, access to Shoalwater Bay is really gilt-edged stock. Singapore and its politicians are very conscious of the need to maintain their defence and military self-reliance. It therefore gives Australia a great deal of stature in any contact we have with Singapore because they know that we hold quite a number of the court cards when it comes to maintaining their military preparedness. I am in a position to give you a very quick map briefing of Shoalwater Bay if you are interested in seeing where it is and the rough layout.

CHAIR—Yes, for a couple of minutes, if you have brought it along. We have time.

Mr O'Connor—Just briefly, Shoalwater Bay is an area of 454,000 hectares—that is, about 1,800 square miles. It is about 50 kilometres north of Rockhampton. Basically, everything you see here on the map is Shoalwater Bay. The line around here on the map is the outer boundary, so it includes both mainland Australia, a sea component and also some islands. In terms of the geography, part of the area is fairly flat, another part of it is quite mountainous and then there is a coastal fringe, the sea and the land. So it is of considerable valuable as a military training area because it is not all of a piece. It enables you to do quite a lot of different things.

The area, in terms of its infrastructure, is pretty undeveloped because it is a military exercise area and has been so since the mid-1960s. There are a couple of permanent camps and three permanent airstrips and about four major roads run through Shoalwater Bay but, apart from that, the area is pretty much untouched. That is obviously to increase the military benefit of operating in an undeveloped area.

CHAIR—That concludes the statement regarding this agreement?

Mr O'Connor—Yes.

Senator TCHEN—Mr O'Connor, generally, I have no real problem with this. Certainly, cooperation with the Republic of Singapore is desirable in this region. I just have one question about this: presumably, the Singaporean forces will be training for defence?

Mr O'Connor—Yes, that is right.

Senator TCHEN—But they are training in an area which is totally alien to what you will find in Singapore. Are they going to operate their defensive procedures on Sumatra or somewhere like that? The question is: would it be read that way by people outside Australia?

Mr O'Connor—The region certainly is sensitive to some ground forces and their level of capability, particularly since they largely escaped the Asian financial crisis. Their level of military capability is quite a lot higher than in the rest of the region. But I think everyone in

the region accepts that you just cannot train anywhere else. As I have noted, Singapore also trains in other ASEAN countries, such as Thailand. They also exercise with Malaysia. While there is an element of sensitivity, I think the region is fairly used to the idea.

Senator TCHEN—I am looking at a hypothetical format, such as a theatre, that they have to operate in and whether that can be misinterpreted.

Mr O'Connor—We have certainly never had any approaches made to us suggesting that other countries consider it inappropriate for Singapore to be exercising in Australia.

Senator MASON—You started off by saying that it was an environmentally sensitive area and that the Singaporeans use it unilaterally by themselves without joint exercises. Do we monitor the environmental impact?

Mr Imber—Yes, we do, Senator. We arrange control staff who are actually located on the training area for the duration of the exercise. We also have inspections before, after and during the exercise as a form of monitoring program. Any restorative works required as a result of the Singaporean activity must be funded by the Singaporeans.

Senator COONEY—Are the Singaporeans themselves environmentally conscious?

Mr O'Connor—We have provided them with a full explanation of our environmental management practices which are, of course, quite alien to their approach in Singapore. We have told them about our environmental legislation and our system of environment impact assessments and so on. We have provided them with a full range of literature.

Senator COONEY—As far as we can judge, they are fully enthused about that?

Mr O'Connor—Yes. Our environmental officer has noticed a considerable improvement in the level of their environmental conduct over, say, the last five years.

Mr Imber—The Singaporean activities will be undertaken under extant Australian environmental legislation and under the guidelines set out in our defence instruction for environmental management.

Senator COONEY—This is not directly related but, in terms of the overall defence relationships, I take it that a lot of good cross-fertilisation comes out of all this at a strategic level.

Mr O'Connor—At a strategic level there is. They are obviously quite plugged into events in the region for their own interests. Some of the exchanges that I referred to give us some good insights. They are also operating very sophisticated equipment. They have their own doctrine. So, for instance, it gives our pilots something very good to run up against in an exercise.

Mr HARDGRAVE—It is my understanding that the Singaporeans have a great deal of respect for our environment. I suspect that they wish they had it themselves. We have been told this morning that $500,000 per annum comes into the Australian economy and that a lot

of that goes into the local economy. There is no mention of consultation with, say, the Chamber of Commerce in the Rockhampton area, which I think would have helped your submission. Likewise, there is no mention of consultation of with the Capricornia Conservation Council, which, as I understand it, are very big fans of Defence's effort in the Shoalwater Bay training facility.

That lack of consultation diminishes the value of your national interest analysis. So we need to know that you have actually offered these people the opportunity to comment. That would then enhance your submission to us and would assist us in your deliberations on what is obviously a fairly straightforward matter. It really is something you should be doing in these matters.

Mr Imber—The Capricornia branch of the Wilderness Wildlife Preservation Society is quite involved in the environmental management process with the Shoalwater Bay training area. Indeed, they are on the environmental advisory committee.

Mr HARDGRAVE—That is good to know. There are a few Queenslanders here, so we have a little more of an understanding than those south of the Tweed on most matters, but particularly on this. I would have thought that it would have assisted all of us to deliberate better on this.

Senator LUDWIG—You talk about the particular treaty and the opportunity to use the facility. It is basically for them to use the facility, as I understand it, rather than for joint exercises. There is not that sharing of detailed knowledge at that level because basically they will be doing whatever exercises that their doctrine requires.

Mr O'Connor—Yes, they are exercising a basic level of training for their soldiers and building up to, say, battalion level. Doctrine does not really exist down at that level.

Senator LUDWIG—The benefit to Australia in terms of that is relatively minimal but the strategic elements you have mentioned are obviously helpful.

Mr O'Connor—Yes.

Senator LUDWIG—In respect of the question about the local area, will these soldiers—how ever many there might be—have leave to visit the local communities? If so, have you consulted the local communities about that impact?

Mr O'Connor—There is, I believe, a two-day period of R&R at the end of the exercise. The Singaporean troops generally go into Rockhampton for that. Singapore is extremely conscious as a matter of policy about how its troops conduct themselves in foreign countries, for the reasons that I have given of how important it is to them. Livingstone Shire Council is very much in favour of the Singapore presence. Indeed, the Singapore government invites the Mayor of Livingstone Shire to Singapore every year as a guest of government. They enjoy a very good relationship with them. I understand the Singapore soldiers are issued with condoms before they are unleashed in Rockhampton as well.

Senator LUDWIG—I do not know that I would go as far as that. Are you are aware of the recent media coverage of Rockhampton and the US visit?

Mr O'Connor—No.

Senator LUDWIG—It got a certain amount of airplay about R&R in Rockhampton and thereabouts from, I suspect, the recent exercise in Shoalwater Bay joint facility. There were a number of community organisations that were entering the debate. Are you aware of that? If not, why not? What do you intend to do about it with respect to Singapore? Are you going to advise them of their responsibilities in the local community? Have you spoken to the local Mayor of Rockhampton City Council and the various community groups about the likely impact of troops on R&R in the Rockhampton area to obtain a broader view from the local community?

Mr O'Connor—We have pretty good liaison with Rockhampton in the sense that the Defence Corporate Support office which runs Shoalwater Bay operates in Rockhampton City, so we have that direct coalface element there. Those people would receive any adverse comments from the locals about Singapore deployments. I draw from my knowledge quite a sharp distinction between the conduct of American troops and the conduct of Singaporean troops. From my experience the Singaporeans are far better disciplined and far better controlled when they are out and about.

Senator LUDWIG—I have no doubt about that, but you are still not answering my question. What efforts have you made to consult about these issues? Obviously, you are aware of the US joint exercise?

Mr O'Connor—Yes.

Senator LUDWIG—But you are not aware of the fallout or the media that surrounds that. I am curious about why you are not because it would have been one of the things that you could have followed up on, I would suspect, especially given that there is a likelihood of Singapore troops going in. You could then find out what went on in that exercise and what can be learned about the media coverage and what can be learned from the community groups. We could then advise the Singapore government of the issues that they should take into consideration and advise them appropriately. If you do not do that then they are going to go in blind. I think you are letting them down in part by not providing that information to them.

Mr Bleakley—It is understandable that Feargus with his concentration on Singapore may not be across the US side of the house. If there have been issues more recently that are relevant to Singaporeans, absolutely we will investigate those, take them on board and pass them along, if that has not been done already. I think Feargus was indicating that in the normal processes that might be done and not bubble up, as it were, to the strategic level. It might be on the ground. Those sorts of lessons are learned by our corporate support office on site and automatically passed along.

CHAIR—Perhaps you could write back to us within the next week and let us have a look at that.

Mr O'Connor—Yes, indeed.

Agreement relating to Multinational Force Observers

CHAIR—Can we deal next with the agreement relating to Multinational Force Observers.

Mr Bleakley—This agreement is also an extension agreement. Colonel Higgins is here from our international policy division to talk about the strategic policy setting for this agreement and Lieutenant Colonel Greg Molyneux is here to speak more about the operational aspects. Lieutenant Colonel Molyneux was the commanding officer of the Australian contingent to the MFO in the calendar year of 1996 and was concurrently the Assistant Chief of Staff for the MFO.

Before turning to them, I will mention a couple of features of this treaty. One is that it is intended to be brought into force shortly, certainly, but it will have retrospective application back to 4 January 1998. There is no legal difficulty about this. That is confirmed by our friends from Foreign Affairs. The delay in doing this is largely due to negotiations on the changes to the conditions of service in the treaty and also some hesitation about whether there was a requirement, in fact, to proceed with the treaty. To cover the current period, we have a non legally binding understanding with the MFO that the conditions in the previous agreement will be applied pending the new agreement coming into force. In fact, this situation mirrors the earlier renewal of the agreement. I will now turn to Colonel Higgins.

Col. Higgins—The Multinational Force and Observers, as you probably recall, is an international organisation established back in 1981 to oversee the Camp David Accords and the Israel-Egypt peace treaty of 1979. It is not under United Nations auspices. It is, in fact, funded by Egypt, Israel and the United States and receives financial contributions as well from Germany, Japan and Switzerland. Australia was an original participant in the MFO and from the period 1982-86 we maintained a helicopter detachment in the MFO. That was withdrawn and in 1992 we restarted our commitment, this time with a contribution to the headquarters and 26-odd people. This level of commitment has been continued through various extensions and amendments and is due for revision in January 2000.

Our interest in the region is based on the achievement of an enduring and comprehensive settlement to the Israeli-Arab dispute through which all countries in the region, including Israel, may live in peace and security. Our participation in the MFO reaffirms and demonstrates Australia's support for peace in the Middle East in a practical way. The commitment has, for us, a number of benefits including operational and training peacekeeping experience, the maintenance of the Australian Defence Force's professional image in the international community, the exposure of ADF personnel to the workings of an operational headquarters and it also improves our interoperability with the United States.

We are watching the impact that the election of the new Israeli government is having on advancing the Middle East peace process. If these recent positive developments continue, it is quite possible that Israel and Egypt will, at some point in the future, both be confident to manage their bilateral relationships without the need to deploy the multinational force astride their common border. That completes my statement.

Lt Col. Molyneux—I would like to continue the map theme, if I may, by inviting you to have a look at a map here with some individual copies. It might assist you as we discuss the area briefly. May I also take the opportunity to hand you about 12 or 13 selected photographs of the area, which you may care to peruse as I make a few comments. In fact, I would like to take five or six minutes, if I could, to give you an overview of service with the MFO in the Sinai and then, of course, we would be happy to answer your questions.

The MFO generally, as you are probably aware, is a relatively small formation. It is based on three light infantry battalions and it is, of course, located on your map. As you can see, they are in the Sinai in Egypt.

The force part of the MFO is deployed along the length of the Israeli border, which you can see indicated there, and down along the Gulf of Aqaba, but only in Zone Charlie. That is an important point to remember—only in Zone Charlie. The observer part of the force, interestingly, is only a very small group of individuals—about 10 to 12 civilians—and they are the only individuals who are authorised to travel around the complete AO—that is, in areas Alpha, Bravo, Charlie and Delta. The main force, the three battalions, are in Zone Charlie, and it is only a very small handful of people who do the observing around the complete Sinai.

The mission of the MFO is to observe, report and verify. It is very strictly a peace monitoring role, and since its inception, as Colonel Higgins has said, the MFO has been of fundamental importance to the preservation of peace between Egypt and Israel and it remains very much a pillar of a comprehensive peace in the Middle East.

Moving to the Australian contingent, again, as Colonel Higgins said, we number about 26. It consists of six officers, three warrant officers, 13 sergeants and four corporals, to give you a feeling for the breakdown. It is headed by a lieutenant colonel commanding officer. One of the majors, you may be aware, from the contingent actually operates out of Rome. He is the computer information systems officer. All other members of the contingent, as you can see on your map, are based at North Camp in the north-eastern Sinai. Everybody is located in that one area, but all do get to travel throughout their tour through the complete length and breadth of the Sinai. Many in fact get to visit the 33 remote sites that are spread out through all of Zone Charlie, and all members of the contingent get to spend a percentage of their time down in South Camp, which is also located on your map, near Sharm el Sheikh.

What the Australian soldiers do in the MFO—and I think you will probably find this of interest—is in fact fill a very wide range of key appointments within the force, mainly in the force headquarters. The contingent CO, as I was, is the force's assistant chief of staff and, as a result of that, in the headquarters gets involved in most planning activities that the force undertakes. A major, for example, and four sergeants are responsible for force security. A major and a warrant officer run the camp commandant's office. For example, they are responsible for the accommodation facilities of the 2,600-member multinational force right throughout the Sinai, including both camps, as per your map, and the 33 remote sites throughout Zone Charlie.

The contingent RSM—the regimental sergeant major—and another four sergeants are responsible to run the FDC—the force duty centre. As the name implies, it is a very critical function because that force duty centre in fact initiates the force's responses to all contingencies, both the operational ones and those that are not operational, including medical evacuations and so on. A warrant officer and a couple of corporal clerks actually provide the administrative assistance to the force commander and all the other key officers in the force headquarters.

Referring to the value of service with the MFO, the experience that soldiers acquire through service with the MFO really is invaluable. Exposure to an operational area such as this, in a volatile area of the world such as that, and when you enter the dynamics and vagaries of a multinational force, all ensures that each contingent member returns to Australia, certainly in my opinion, a much more complete soldier and citizen, well satisfied from both the professional and personal perspectives. As you can imagine, a significant bonus that service with the MFO offers is that members enjoy deployment in a mixed rank contingent into a fully functional and operational formation in a remote area. Apart from the force's operational requirements, members experience a work environment with approximately 1,700 soldiers and 900 civilians of all ranks from 10 other countries. This type of exposure is extremely rare.

The quid pro quo, of course, for the ADF and for Australia is that our soldiers who serve with the MFO come back to Australia better able to contribute their professional experience and expertise wherever they subsequently serve within the ADF. As you would appreciate, at the higher level, Australia's commitment to operations such as the MFO provides promotes our professional image in the international community, and indeed I have seen it provide us with leverage in our diplomatic relations in this case as it affected Middle Eastern affairs.

During that operational experience our soldiers also benefit—I am sure that you will be pleased to hear—from the military history perspective. It is a wonderful part of the world to study military history as an individual and as a group. During the year that I was there, 1996, we were very lucky to visit both Gallipoli and El Alamein.

Our soldiers also benefit from the exposure to a wide range of cultures and experiences that of course they cannot achieve in Australia to the same extent. All in all, our soldiers returned to Australia much more experienced, both operationally and culturally, better able to more fully contribute within the ADF and also the nation. A good current example of this is how people with MFO experience can come back and apply that knowledge to planning for our current commitment to East Timor, for example, and contribute to and participate in that sort of operation.

Conditions in the Sinai are drawing to a close now. I am sure you can see from the photographs that I have given you that it is a very harsh environment, particularly in the photographs. But the living conditions in North Camp where we were all essentially based are comfortable and really more than adequate. Facilities are good at North Camp, and they really need to be because I would just like to remind you that our soldiers are over there generally unaccompanied for six months, so conditions need to be good. I will not go through all the detail but there are good sporting facilities. There is a swimming pool and

library that has videos and CDs. There are medical and dental facilities equivalent to what you would find on a military base in Australia.

I thought I would just mention operations. As you know, the Sinai is and remains a relatively benign operational environment compared to some others, but there is a constant potential for violence to erupt throughout the AO, as it has in the past, particularly if you look at your map at the southern part of the Gaza Strip which is actually in the MFO zone delta. There have been several firefights in that area and MFO people have been involved in a mediatory role.

Terrorism in the Middle East is a constant threat. Our soldiers over there need to remain constantly vigilant. There is always the threat from mines in the Sinai. As you would be aware from the Arab-Israeli wars that have gone backwards and forwards across that strip of land, there are countless millions of mines still in the Sinai that are uncharted. They really do not know where they are. Most of them are still live. They move around as the sand drifts. You saw in one of the photographs the sand drifting across the road. Quite often there are mines in those. On an annual basis several people, mostly civilians, are killed by the mines in the Sinai.

In conclusion, the value of service in the Sinai—and I should generalise and say this sort of service—to our soldiers and to the ADF and indirectly to the nation, particularly when it comes to our ability to then come back and apply that experience to planning for operations such as are going on in East Timor, I think cannot be overstated. I would like to answer your questions now if you have any.

Senator MASON—It is a long way from our sphere of influence or indeed sphere of interest at some level. How did we initially become involved? Did the Egyptians and Israelis choose us or did we volunteer our services?

Col. Higgins—The original reason we went there I am not certain of. I can presume, though, that at the time what the participating states were looking for were countries that could provide competent military forces. It was very much designed as a confidence building measure between Israel and Egypt. I think confidence would have been the key feature. Given the strong role that the US had in establishing the force, I think they would have turned to Australia as one country they knew they could count on for the quality of the force.

Senator MASON—Throughout the national interest analysis you mention that it does not cost Australia very much at all because a lot of it is reimbursed. How much does it cost?

Col. Higgins—For a financial year it is something less than $750,000. One of the attractions of this new agreement is that it does increase the amount annually that the MFO pays back to Australia. There would be a windfall gain of about $2½ million if the treaty were to be backdated to 1998.

Senator MASON—Better still.

Lt Col. Molyneux—The other thing that I could add to that, if I may, is that the MFO not only has a very good reputation internationally for what it does—that is, providing this pillar of a comprehensive peace in the Middle East—but it also has a very good reputation for being cost efficient and cost effective. There has been an analysis done by the MFO headquarters in Rome comparing the MFO's operation to all of the other United Nations equipment activities around the world, and it compares very favourably in that respect.

Senator COONEY—I am very impressed. I think it is a great idea. As a matter of curiosity, how do you decide the zones? You talked about Delta and Charlie. What is A and B?

Lt Col. Molyneux—Generally speaking, those zones are designed to control the number, in this case, of Egyptian forces that are in the Sinai. You will recall that after the Arab-Israeli wars, and as a result of the Camp David Accord, the Israeli troops were required to pull back to the east and back into Israel. They are to the east now or to the right-hand side of that Zone Delta, but, in accordance with the agreements and the subsequent protocols, the Egyptians are allowed to have certain numbers of forces up to certain maximum limits within those zones.

Just to clarify that, it is the MFO only that is in Zone Charlie—that is the buffer between the two countries. In Zone Bravo there are some Egyptian forces but not many. In Zone Alpha there are some more Egyptian forces and more heavy items such as tanks and so on, but still not many. You will recall that I said it is the observer part of the MFO—which I have always found interesting, and it is only 10 or 12 civilians, generally American civilians who used to be in the military—who are the only ones who are allowed to actually fly around all of those areas, the complete Sinai, to check who is there and so on. They get out and they talk to commanders and count the number of vehicles and so on. They are the only ones. The three battalions in the force remain lined up in Zone Charlie. They are not allowed to go anywhere else.

Senator COONEY—There are the words 'Israeli military' there. What is that doing there?

Lt Col. Molyneux—That is a nothing. In trying to find this map, I took it out of an atlas so I made a photocopy. This is not a military map; this is a photocopy of an atlas and I drew some lines on it to give you an idea.

Senator COONEY—Thank you.

Senator LUDWIG—Briefly, if you can, why is the chief information systems officer in Rome? Is that the headquarters?

Lt Col. Molyneux—Yes. The MFO headquarters is based in Rome. There is a director-general there who is a very senior individual. He has a fairly extensive headquarters, and what they have asked for, as part of this agreement, is to have one Australian officer with IT skills, and it turns out that it has invariably been a major with those skills. He spends his time there but he does visit the force about half-a-dozen times during the course of a year.

Col. Higgins—There is an advantage in having a staff officer at headquarters so that you have a national view on what is happening inside the headquarters.

CHAIR—When do you see the Australian contingent finishing up there?

Col. Higgins—That is something we are looking at very closely now. It is a matter of judgment and for us to recommend to our minister when we think that the crossover point has been reached in terms of Israeli and Egyptian confidence that they can now do without that. It is a fairly tricky one for us because the current treaty does require us to give 12 months notice for us to withdraw. It is trying to look at what the situation will be in 12 months time and then make a judgment accordingly. I would not think that there would forever be an MFO astride the border between those two countries.

CHAIR—Fair enough. Many thanks for that.

Senator TCHEN—Our contribution is very heavy in officers and very heavy in senior NCOs. Who provides the ORs in the multinational force, and observers?

Lt Col. Molyneux—They come from various other countries. As I indicated, there are 10 countries involved and, fundamentally, if you look at Zone Charlie again, there are three battalions there. The southern part of Zone Charlie is an American battalion, the central part is a Colombian battalion and the northern part is a Fijian battalion. In terms of answering your question more directly, there are lots of soldier level participants from lots of other countries, for example, such as New Zealand, Uruguay and Hungary. They are the sort of people who are not quite as top heavy as the Australian contingent is and, therefore, they are in a position to be able to provide soldiers that are military policemen, engineer clerks and physical training instructors and that sort of thing.

We do provide some administrative clerks at the corporal level, but due to the nature of the activities that we participate in and the very key roles that we play—I will go as far as saying that we are really responsible for running the headquarters of the MFO—we are a little bit top heavy with officers and senior NCOs.

Senator TCHEN—I thought it was quite a good business move, getting senior people in there.

Lt Col. Molyneux—That too.

Senator TCHEN—Think of the reimbursement.

CHAIR—Many thanks.

[11.34 a.m.]

Agreement to the Implementation of Provisions of the United Nations Convention on the Law of the Sea relating to the straddling fish stocks and highly migratory species

DOUST, Ms Jennifer Louise, Senior Policy Officer, Fisheries and Aquaculture Branch, Department of Agriculture, Fisheries and Forestry—Australia

GLEESON, Mr Leonard Matthew, Senior Policy Officer, Fisheries and Aquaculture Branch, Department of Agriculture, Fisheries and Forestry—Australia

HURRY, Mr Glenn, Assistant Secretary, Fisheries and Aquaculture Branch, Department of Agriculture, Fisheries and Forestry—Australia

PEARSON, Mr Andrew Keith, Director, Fisheries Policy and Trade, Fisheries and Aquaculture Branch, Department of Agriculture, Fisheries and Forestry—Australia

McILGORM, Dr Alistair, Director, Dominion Consulting Pty Ltd

MEERE, Mr Frank, Acting Managing Director, Australia Fisheries Management Authority

CHAIR—The next treaty, and the final one we will consider in the 30 minutes remaining, is the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

Welcome. I have to formally advise you that while no-one is going to be required to give evidence on oath today, these hearings are legal proceedings of the parliament and they warrant the same respect as if they were taking place in either the House or the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would someone volunteer to make some introductory remarks before we go to questions.

Mr Hurry—We have a short presentation we would like to run you through with some overheads and then we can open it up to questions from the committee.

Overhead transparencies were then shown—

Mr Hurry—The ratification of the UN Fish Stocks Agreement brings into being the provisions of article 63 and 64 of the United Nations Law of the Sea. It was opened for signatory in December 1995. Since that time, 59 countries have signed the agreement and 24 have ratified. The full list of signatories is there. Of the 59 that have signed, they are an interesting mix of high seas fishing countries and small island states and developing countries. With this agreement coming into place it allows them far better protection over their stocks of fishing resources and better controls over foreign nationals coming in and fishing.

Senator COONEY—The United States would be willing to ratify that one.

Mr Hurry—Yes, they have. So has Canada, and it is good to have Canada on board. Norway is in there. Namibia is another significant fishing country, along with Iceland. There is a fairly good mix in there. South Africa is also going through the throes of ratifying. And New Zealand has legislation before parliament to ratify as well.

Why should we ratify? There are some obvious advantages for Australia. I will talk about some of these in more detail as we go along but we were one of the countries that led the charge to develop the UN Fish Stocks Agreement. We are considered to be a world leader. We are generally regarded as having some of the best managed fisheries in the world. We have been a fairly solid global citizen on regional and high seas fisheries issues for a number of years.

We do suffer in this end of the world from some fairly serious problems. There is unregulated fishing, particularly on the high seas with straddling stocks. Everybody would be aware of the current dispute we are having with the Japanese over southern bluefin tuna, the problems we are having with the South Africans and the New Zealanders over orange roughy on the South Tasman Rise, and the ongoing poaching of Patagonian toothfish stocks from around Heard and McDonald Islands.

This is probably a good map of Australia but not necessarily a good map of the region. Heard and McDonald Islands have moved about 3,500 kilometres, they are not under Western Australia. If you look at that map there, we have significant developments in the east coast tuna and billfish fishery along this part of the Australian coast. There is also an emerging west coast tuna and billfish fishery off Western Australia.

The orange roughy fishery on the South Tasman Rise is down here, but there are obviously other orange roughy aggregations both here and over across on the Western Australian side that will benefit in the future. That orange roughy fishery goes across on to the high seas and basically right across to Africa. If Australia is going to claim a stake in the Indian Ocean and particularly claim that Southern Ocean area there and benefit from the income from fisheries, then we need regional fisheries agreements in place and we need to make sure that they benefit Australian fishermen.

In this context, highly migratory stock are the billfish species and the tuna species, and the two straddling stocks that we are mainly interested in are orange roughy and the Patagonian toothfish.

The benefits to Australia are that we actually strengthen the regional fisheries management organisations and, in effect, give them a bit more teeth. There is greater transparency in the way that the fisheries management organisations operate. There is better data exchange. There is far better collaboration between the parties and, hopefully, far better implementation of the rules of the fisheries management agreements so that countries will actually do what they said they would do. There is greater knowledge between the parties of what each country is individually up to.

The high seas component of the Australian industry at the moment is worth about $260 million a year. The western and central Pacific tuna fishery—this one here—is worth, for the countries that fish it, about $1.7 billion annually. The east coast tuna fishing stocks that we have over here actually flow out of the western and central tuna and billfish stock. I guess we are sensitive to the fact that we need to be involved in that process in order to continue to get benefits for Australia.

When you look at the value of the domestic industry and its potential for it to grow in years to come, it is also important in the context of what it delivers by way of regional employment. Most of the fisheries industries are in Tasmania or in small ports in South Australia and Western Australia. They actually contribute quite a lot to the income of those centres. There are also benefits for the recreation and charter fishery sectors, particularly by having access to tuna and billfish stocks on the east coast. There are powers in this legislation to reduce the incidence of illegal, unregulated and unreported fishing.

There are a lot of collective operations for improved management, but there are also compliance and enforcement provisions in this agreement which will be of benefit to us. The agreement does not come without a set of obligations on Australia, but it also imposes a block of obligations on every other country who signs on and ratifies this agreement. They are about the application of proper management principles over high seas stocks so that they are sustainable, we are responsible and we apply precautionary measures to the actual management of the fisheries. It puts responsibilities on flag states to make sure that they control their national boats out on the high seas properly. At the moment, there is a block of boats out there that are not particularly well controlled, and we noticed that down in the Patagonian toothfish fishery.

There will be responsibilities for licences, for vessel monitoring systems, and for data collection or information on the fisheries to be shared between parties, and cooperative management arrangements in the regional fisheries management organisations. As a signatory to this, if you are not a member of the organisation and you are not prepared to control your boats then you do not fish in the fishery. There are provisions for cooperative enforcement between countries. To that extent, there are provisions for the boarding of vessels of other countries on the high seas by other members of the organisation. If they were boarding an Australian boat they would need to advise us in advance that they were going to do it and then they would have to make sure that they applied the provisions of the agreement in boarding and reporting. They are supposed to board and report where they have some suspicion that there has been illegal activity taking place. If we had had an agreement in place under this provision on the South Tasman Rise it probably would have given us far greater scope to do something with the South African vessels that were down there.

One of the reasons we brought Dr McIlgorm along was because we got him to do an independent assessment of what the costs and benefits of this arrangement would be for Australia. But there is the need to develop statutory fishing rights registers of vessels from Australia that will be fishing on the high seas. These vessels will have to be authorised, there will have to be licence conditions and we will have to make sure that we monitor them. There will be operating and ongoing compliance costs. We have come up with a schedule of costs for this that has a core lot of costs and an optional lot of costs for increased

surveillance and monitoring, if we decide to go down that track. Then there is the ongoing cost of participation in the fisheries management organisations themselves.

At the moment, Foreign Affairs pays for the membership of Australia to the Commission for the Conservation of Antarctic Living Marine Resources—CCALMR—and we pay for the membership of the southern bluefin tuna commission. We try to find the money for the Indian Ocean tuna commission on an ad hoc basis. I think the important thing is that if we sign on for these agreements, if we involve Australian industry in regional fisheries management organisations, then we need to be able to participate. Given that a number of them are developing fisheries at this point in time, there is obviously an obligation for the cost to fall, in part, to the Commonwealth.

On consultation, we set up a high seas and remote area fisheries consultative group when we started to head into this process. That group is still in place and we have met with them on a regular basis and shared information with them. We have consulted with the Australian Seafood Industry Council. We have consulted with the management advisory committees that are set up under the Fisheries Management Authority. We have letters of support from WWF and from one of the major Australian companies involved in high seas fishing, and we can table those for you, if you like. We have developed a pamphlet that has now been picked up in different countries around the world on just what this agreement means to Australia and to its industry on the high seas, and that was circulated fairly widely. We have had information in the AFMA newsletter that goes out to members of the industry. I do not know if there is a lot more I need to cover, but we are happy to answer whatever questions you have.

Senator MASON—You said that we were solid global citizens in the context of fishing. What happens if we have a nation that is not quite so solid and is not a signatory? I note on page 5 of the national interest analysis, under the heading 'Non-members and non-participants', you say:

> Under Part IV of the Agreement, Parties that are non-members or participants in RFMOs or similar arrangements, and do not agree to apply the conservation and management measures established by a RFMO, must cooperate in the conservation of relevant fish stocks.

What can we do to a state that does not participate and does not cooperate?

Mr Hurry—I will get Matt or Jennifer to talk about that, but my understanding of this is that their having to cooperate gives the actual members the ability to be able to monitor and board vessels.

Mr Gleeson—It is one of those cases where we have to initiate ratifications and maintain an international momentum to bring change to the order of things. Sure, we have countries which we label flag of convenience countries, the most troublesome ones, as they also are in the transport industry. Our ratifying and other countries ratifying will bring the agreement into force and, over time, new customary international law will evolve. There is a lot of pressure for countries to get on and ratify this agreement, otherwise they become international pariahs. It is really a matter of evolving customary practices.

Senator MASON—I understand that and that is a fair point. But if we play by the rules, we want to make sure that other countries play by the rules, so how do we do that on the high seas? That is really what I am getting to.

Mr Hurry—A couple of the provisions on this on the exchange of data between countries on catch and effort will be fairly beneficial to us. We are putting into place—not under this but under other arrangement—trade certification schemes so that we can track product out of fisheries into markets, which has been one of the great holes in the system. People can pretend to be complying, but until you get some idea of the volume of product they are putting onto a market you have no real idea of what they are actually pulling out of the fishery. We notice that with southern bluefin tuna to a degree, but particularly for Patagonian toothfish stocks.

Belize was a flag of convenience country, but when we had the problems with the South Tasman Rise, and they have signed but not ratified this agreement at this stage, they were prepared to give Australia a head of power to board the vessel as she was on the South Tasman Rise. They deregistered it as a Belize vessel because they believed it was fishing in an unsustainable way. Those types of things give you some hope that, in the future, countries will begin to comply on the high seas. But I think Matt is right—we have to take the initial steps and build the framework and get the rules into place.

Senator MASON—I agree with the intention; there is no argument there. It is more the question of how we enforce these provisions against rogue states. That is the hard thing.

Mr Gleeson—This is a framework agreement, which regional organisations fit within. It is those regional organisations that can develop further measures which will control parties to those arrangements and also, to some extent, non-parties. As Mr Hurry mentioned, there is development of market controls within the bluefin tuna commission and also with the Patagonian toothfish in the sub-Antarctic environment whereby countries are not at CITES control but in some ways comparable. We will be regulating market access to people who are catching fish within the regulated regime. Therefore, people who are outside the regime will not be having market access.

We presently control port access in Australia, only allowing access to our ports by boats which are members of regional organisations and their fora, such that only regulated boats controlled by responsible fishing nations have access to our ports. So there are a number of different measures, like markets and port controls, where we can try to deter the activities of those boats which are outside organisations.

Senator MASON—That is a start. Thank you.

Mr Hurry—Probably a short answer is that it is not going to be an easy job in the initial stages. But unless we start, and start to give these UN agreements support and bring them into effect, then in the longer term we are at an ever greater disadvantage.

Senator COONEY—Has Australia introduced some legislation to give us rights to board ships, not only for fishing but generally?

Mr Pearson—Yes.

Senator COONEY—That includes ships that are not members of this treaty?

Mr Hurry—Yes. There are two bits of legislation. One is to support this and other changes to the Fisheries Management Act. The other is to support the board of control provisions. Andrew, you sat through—

Mr Pearson—Yes. Last week, in fact, the amendments to the fisheries legislation were passed by both Houses. They will provide a combination of enforcement measures within the Australian fishing zone against illegal foreign fishers, and the other schedule set in place the legislative framework that would support Australia's ratification of the fish stocks agreement if we go ahead. This explained a number of management operational requirements and the changes to the objectives of the Australian Fisheries Management Authority so that it would have the legislative underpinning to enable its operations effectively to support our involvement in the fish stocks agreement.

The second piece of legislation that you referred to was, in fact, the Border Protection Legislation Amendment Bill. This is due for debate later this week. That has a much broader focus beyond fisheries. It is particularly focused on the problems of illegal immigrants. It does have a set of provisions which provide for Customs to undertake boardings of suspect vessels as well.

Senator COONEY—It gives them arms.

Mr Pearson—Yes, they will have that capacity. Similarly, in the fisheries legislation amendments which have just been passed, there is not the arming but there is the recognition of the capacity for enforcement and use of force as a gradated application. You cannot just walk out there and shoot somebody whom you suspect, but you certainly have the ultimate power, in line with the international power, that, ultimately, if vessels do not respond to requests for boarding and to warning shots being fired, you can ultimately fire at the vessel. But there are other alternatives such as propeller entrapment devices that are also mentioned as well. That is the legislative framework that is going in to support a much stronger capacity for Australia to support its own action against illegal foreign fishers in its zone.

Senator MASON—It depends whether it is in Australian territorial waters.

Mr Pearson—Yes, as well as support the capacity for us to support the fish stocks agreement.

Senator COONEY—That is on the high seas.

Mr Pearson—Yes, that is on the high seas, and so it is a combination. There is also the element, I might quickly mention, of mother ships and those vessels which sit just outside the Australian fishing zone but support operations within the zone. We are able to take action against mother ships now under the legislation which was passed last week as well.

Senator COONEY—Mr Hurry shudders at these very big players on the world stage who support this regime.

Mr Pearson—Yes. It is a challenge when you remember that the Australian fisheries zone is the third largest in the world.

Senator COONEY—What about the other two? Who has the biggest zone?

Dr McIlgorm—The US and Russia.

Senator TCHEN—I have a query about the estimated value of the catch every year. In table 1 of the NIA they estimate the value of southern bluefin at $36 per kilo—

Mr Hurry—It is about $26 per kilo.

Senator TCHEN—compared with west coast tuna which is $3 per kilo. The value of the west coast tuna is only $3 per kilo and the southern bluefin is $36 per kilo. Is that right?

Mr Hurry—The South Australian southern bluefin tuna fishery is a value added product. They bring in between 18 and 20 kilos, they farm it for between four and eight months, and it is a substantial fattening operation. They turn out a better quality product at the end of it. They value add the raw fish that they bring in, and it is significantly enhanced when they sell it.

Senator TCHEN—Some of the 5,000 tonnes that come in become more than 5,000 tonnes when it goes to the market.

Mr Hurry—Yes, it does. It probably goes out at about 6,300 or 6,400 tonnes. Of that, last year I think 5,000 tonnes were actually fattened. The rest was caught as a long-line fishery. That figure, because it works out at $36 a kilo, is probably a bit more—probably about $28 or $29 a kilo.

Senator TCHEN—It does seem very high. This is the basis that justifies the rest.

Mr Hurry—Yes.

Senator TCHEN—If there is any worry about those figures we will have another look at them.

Mr Hurry—I think they are probably not too bad.

Dr McIlgorm—Maybe I can just throw in an independent view. You can argue the converse with the other fisheries with east coast tuna. I would say it is an underestimate—$37.5 million.

Senator TCHEN—Yes. It comes up at $7 per kilo.

Dr McIlgorm—Yes. Last year there was a lot of fish supplied at $US12 a kilo which translated to about $20 at that time, so I think that is way under. The west coast fishery is a developing fishery. That is $3 a kilo. I would say that is several years back. As they get their air links and the whole infrastructure set up it starts to improve.

Senator TCHEN—Surely the value per tonne is still the same. It is the fish, is it?

Dr McIlgorm—No, what happens is, as you get your added value processed together so that you can actually air freight it to Japan and get your marketing together, the price goes up from $3 a kilo.

Senator TCHEN—The value you have there is not the off-wharf value but the actual landed value—landed in the supermarket value.

Dr McIlgorm—No, that would be landed in Australia—point of first sale.

Mr Meere—That is gross value of production. I would suggest just on figures that I have recently seen that that is, for east coast tuna, a substantial underestimate. I have not seen the final figures for gross value of production for 1998-99, but I was told they were of the order of $60 million for east coast tuna. That looks like the figure from 1997-98, the gross value, so that is the landed value. On the southern bluefin tuna, though, the $190 million is actually the figure of exports, I would suspect, rather than the landed value, which would be substantially less than that.

Senator TCHEN—May I suggest that perhaps tables like this should have more clarification on them to make them valuable.

Mr Hurry—That is acceptable. We can fix that up.

CHAIR—There being no further questions we will adjourn.

Resolved (on motion by **Senator Mason**):

That, pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 11.58 a.m.