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JOINT COMMITTEE ON TREATIES

Reference: Treaties tabled on 6 June 2000

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JOINT COMMITTEE ON TREATIES

Monday, 19 June 2000

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

Senators and members in attendance: Senators Cooney, Mason and Tchen and Mrs De-Anne Kelly and Mr Andrew Thomson

Terms of reference for the inquiry:

Review of treaties tabled on 6 June 2000.

WITNESSES

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MASON, Mr David, Executive Director, Treaties Secretariat, Legal Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade 1

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STARR, Mr Simon, Desk Officer, Administrative and Domestic Law Section, Legal Branch, Department of Foreign Affairs and Trade 1

TRIMMER, Mr Mick, Director, Wildlife Permits and Enforcement, Australian CITES Management Authority, Environment Australia 5

WILSON, Mr Howard Bruce, Executive Officer, Protocol Branch, Department of Foreign Affairs and Trade 1

Committee met at 10.04 a.m.

Agreement between the Government of Australia and the Kingdom of Spain on Renumerated Employment for Dependants of Diplomatic, Consular, Administrative and Technical Personnel of Diplomatic and Consular Missions

JENNINGS, Mr Mark Brandon, Senior Adviser, Office of International Law, Attorney-General's Department

MASON, Mr David, Executive Director, Treaties Secretariat, Legal Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade

STARR, Mr Simon, Desk Officer, Administrative and Domestic Law Section, Legal Branch, Department of Foreign Affairs and Trade

WILSON, Mr Howard Bruce, Executive Officer, Protocol Branch, Department of Foreign Affairs and Trade

CHAIR—Welcome to this inquiry, firstly, into the agreement with Spain on remunerated employment for dependants of personnel at diplomatic and consular missions; and, secondly, into proposed amendments to the Convention on International Trade in Endangered Species. Firstly, I welcome the witnesses giving evidence regarding the proposed treaty action with Spain. Who will open the batting

Mr Starr—I will, Chair. The bilateral employment agreements and arrangements are a set of mostly non-treaty status documents which we have with a range of overseas countries. We are trying to put in a network of them with most of the countries with which Australia has diplomatic relations. The idea behind the arrangements and agreements is to provide an opportunity for the dependants of Australian diplomats and consular officials to work overseas. We also reciprocally provide the rights for foreign people to work in Australia. There are two basic aims of this. One is to encourage people with families to serve overseas, to get the widest possible range of people to apply for postings. The second is that it is just part of the government's responsibility as an employer, as a family friendly policy, to try to assist staff and their dependants in, at times, quite stressful and difficult situations in family life.

The standard form of these arrangements is a non-treaty status document. We have 19 of these arrangements now with various countries around the world. We also have three treaty status documents, and this will be the fourth. We prefer the arrangements. We think that is probably more appropriate for a matter of this importance. However, some countries overseas—and Spain has been one of them—have said that due to their own internal structure on how they deal with these matters, it is not possible for them to have it as an arrangement and that, despite the extra time and effort involved in a treaty, they would prefer to do it that way. Therefore, we went along with them on that.

The treaty that we have before us is quite close to the standard arrangements and agreements we have. I would like to draw the committee's attention, though, to one difference between the standard and what we have. The standard definition for a member of the family—that is, who

the treaty actually applies to—that we try to include in these treaties comes from a Dutch treaty that we had. It is a person who the receiving state has accepted as such and who forms part of the official household of a member of a diplomatic mission or consular post. So basically it is that the receiving state, in accepting a person as a dependant, will therefore automatically accept them as a person under this treaty who can work.

The Spanish did not like that. They thought it was too broad, too flexible, which in some ways was why we liked it. They wanted to list the various categories. Therefore, under the agreement, they were listed as spouse, single dependent children under the age of 21 in the care of their parents or under 23 when studying in higher education institutions, and single dependent children with a physical or mental handicap in the care of their parents. That is in article II of the treaty.

We are quite happy with that range of definitions. Those are the only people that we would post overseas as dependants. We would not conceive of posting anyone who did not come from those categories, so therefore it fully meets our needs. However, that said, it is a little less flexible, and we prefer the one that basically goes to the core of the reason why people are overseas. Basically, they are the reasonably standard agreements/arrangements that we are putting in place.

CHAIR—Thank you.

Senator COONEY—I take it that this is just a means of enabling people to work while they are in the country and that as soon as the person in the mission leaves the country, so does the right to work

Mr Starr—Exactly; it is completely tied to the consular and diplomatic officer for the term of his duty, and that is it.

Senator COONEY—And it is reciprocal with us; we do the same.

Mr Starr—Exactly; and quite small numbers of people are affected by it.

Senator MASON—Mr Starr, you mentioned that the Spanish preferred to incorporate this agreement in a treaty. What is the specific reason for that?

Mr Starr—I do not actually know the specific reason. I was not involved in that specific part of the negotiations. In some respects, we do not actually push that hard on this point. When a state tells you that they cannot or will not do the agreement in that way, that they prefer it in another form, we push them. If they still say no, we just accept it. We do not effectively require them to explain their own internal constitutional practices.

Senator MASON—Secondly, you mentioned that there are 19 other similar agreements. Perhaps the only distinction is the definition of a member of a family, which is a bit narrower in this case. Is there any other difference?

Mr Starr—There are several differences. One of the problems with treaties is that they tend to take a lot longer to negotiate. While we were actually negotiating this treaty with Spain, we tidied up our pro forma arrangements. So we cleaned up several terms that perhaps could have been better defined. When we came to Spain, we decided not to approach them with that neater form of treaty just to try and keep the process of negotiation moving along. For example, in the matter of single dependent children—I forget the term we use now—there was some uncertainty as to whether the term ‘children’ meant they had to be young. For instance, is a 40-year-old person a child? So we tidied up that.

We also made more explicit some of the limitations on when people could not expect to work in specific professions. The current agreement lays out that they cannot work where national security requirements demand that only a citizen can work and also where there are particular requirements for work. For example, if you do not have the qualifications to be a doctor, you cannot expect to act as a doctor under this agreement. We made those even broader under the standard pro forma, but we are happy enough with how they are under the current agreement. In dealing with the Spanish, they were very clear on the purpose of it. Certainly, that is how we will interpret and implement the treaty.

Senator MASON—Does this treaty supersede other professional treaties or arrangements with another country?

Mr Starr—No, it does not at all.

CHAIR—In the spectrum of language used in instruments between nations, you calibrate language according to the strength of the commitment from the very clear undertaking of an obligation or right to more vague language. What is your rule of thumb on the phrase ‘the state will study seriously’? Where does that lie in the spectrum of commitment?

Mr Starr—Towards the more flexible end. Basically, it is a commitment to bear in mind the treaty when they are making a decision, but I think this is from waiving criminal—

CHAIR—Yes, it is about criminal jurisdiction and the waiving of rights.

Mr Starr—Yes, exactly. That is a very basic sort of principle under the Vienna Convention on diplomatic relations. All we can do is give a gentle shove in the direction of waiving, and we do not want to do anything more really.

CHAIR—Understood.

Senator TCHEN—In terms of employment, does this treaty limit employment only or does it allow the spouse dependants to carry out business

Mr Starr—It does allow carrying out business. If there are no other professional requirements on them, then they would pass through just the same as a permanent resident would normally be able to open up a business.

Senator TCHEN—It seemed to me that that tends to open out the field a little bit because, if a person is in an employed position, whatever legal situation he or she might get into involving criminal jurisdiction under clause 6, it would be fairly specified cases, but the employer would have much broader obligations under our various industrial acts as well. That would too much of a let-out, this provision in article VI, wouldn’t it?

Mr Starr—You are right, Senator, there always is a risk when you allow someone with immunity to do something in the country. The government’s view on this is that the risk is reasonably minor because there is that capacity to waive. We would expect countries to waive that immunity and we would have political pressure that we would be able to bring to bear on them to ensure it was waived in a case where it was appropriate. There is a risk involved, of course, but these types of things have to be balanced out.

Senator TCHEN—The problem would come in where a business activity is a criminal act in Australia but not, say, in Spain—something that might be regarded as fraud or occupational health and safety types of things.

Mr Starr—That would be treated far more seriously—yes, I understand. It is clear that the fact that something is not a criminal responsibility in your home country is irrelevant; it is the country where you are currently which is the relevant jurisdiction. Despite the fact that you might have some immunity under the Vienna convention, you are still under an obligation under that convention to comply with local law. We would expect in the strongest terms the Spanish government to waive its immunity to enable us to implement Australian law in industrial relations situations, in personal injury claims—all those types of things are classic cases of where we would expect waiver. We would be very surprised if we ran into serious trouble, especially with governments like Spain’s.

Senator TCHEN—I would prefer to see some of this confidence documented.

Senator COONEY—It is very interesting. The ambassador for Australia—is he any relation to you?

Mr Starr—Yes, he is my father.

Senator MASON—So you can get a job over there!

Mr Starr—Unfortunately, I do not fall under the current definition. We argued long and hard on that one.

CHAIR—Thanks for your evidence. We will now call witnesses to give evidence regarding the second of the instruments we will examine this morning: the amendments to the appendices of the Convention on International Trade in Endangered Species of wild fauna and flora.

[10.19 a.m.]

Amendments to the Convention on International Trade in Endangered Species

BIGWOOD, Mr Anthony James, Director, Marine Species Section, Environment Australia

TRIMMER, Mr Mick, Director, Wildlife Permits and Enforcement, Australian CITES Management Authority, Environment Australia

JENNINGS, Mr Mark Brandon, Senior Adviser, Office of International Law, Attorney-General's Department

MASON, Mr David, Executive Director, Treaties Secretariat, Legal Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade

CHAIR—I welcome representatives from Environment Australia, plus the representatives from the Department of Foreign Affairs and Trade and the Attorney-General's Department to maintain legal rigour. We do not require evidence on oath in these hearings, but they are proceedings of the parliament as if they were taking place in the House of Representatives or the Senate, so please treat them as such. Would one of you like to make the opening statement

Mr Trimmer—Thank you. The Convention on International Trade in Endangered Species was established in 1975 and Australia became a party in 1976. There have been 11 meetings of the convention since then and the last was held in April this year. The meetings essentially established the listing of the species on the appendices. The appendix on which the species is listed determines the level of protection the species is afforded. The species on appendix I are afforded the highest level of protection; the species listed on appendix II are listed at a lesser level of enforcement.

Australia had a number of proposals at the recent convention meeting in Nairobi in April. The principal one that succeeded was the proposal in relation to dugongs which is mentioned in the national interest analysis. A number of other proposals which we either proposed or supported, mainly in relation to sharks, did not receive the necessary support and, accordingly, failed to get up.

The meeting was highly successful in terms of the position Australia adopted overall in respect of the broad range of proposals put forward, and from our point of view it was a good outcome. We have some consequential amendments which we put through the parliament in the form of amendments to the schedule shortly. Thank you.

CHAIR—Is there any more you would like to add about the particular situation of dugongs and the background to why we nominated?

Mr Bigwood—Dugongs occur from East Africa through to about the western Pacific. Over most of their range, other than Australia, they are in pretty dire straits. They are either extinct or very rare and, consequently, all populations other than Australia's have been on appendix I for a

number of years. The Australian population, being quite healthy at around 85,000 individuals, has been on appendix II. Under resolution 924, which is the resolution which sets out what appendix a species should be on, there is a clause which says that unless it is absolutely necessary all populations of a species should be on the same appendix. The reason for that is to avoid enforcement problems so that a trader cannot falsify an appendix II permit and allow commercial trade when, in fact, the specimen they are wishing to export or import is from an appendix I population.

In recognition of that we considered whether the Australian population could be up-listed to appendix I. There were generally no concerns. Dugongs, having been given the higher level of protection domestically, were protected throughout their range and all trade was banned so there was no domestic reason we could not up-list. We wrote to all the other range states seeking their views about whether Australia should up-list and whether they were aware of any illegal or legal trade in dugongs, and all of them responded positively. Indonesia responded by saying that having the Australian population on appendix II did cause some enforcement concerns and for that reason we put a proposal to the convention to up-list the Australian population to appendix I.

Senator TCHEN—I think the only thing that is affecting Australia is the transferring of dugong from appendix II to appendix I—I have no problem with that.

Senator MASON—Mr Bigwood, what evidence do you have? You said 85,000 individuals—how do you know that

Mr Bigwood—There has been a series of fairly recent aerial surveys around the Australian coast—the oldest one was in 1983—which show populations within different parts of the coast. Dugong are fairly hard to count because they generally occur in silty water so you tend to underestimate. But from the aerial surveys the estimate is 85,000 as a minimum. That is an ongoing survey. There are currently surveys going on in north-west Australia, which is an area which has not been surveyed. That is another reason why we think 85,000 is probably an underestimate. The methodology is aerial surveying and using corrections, if you like, for ones you cannot see from ones you do see.

Senator MASON—Has that been found to be a fairly accurate form of survey?

Mr Bigwood—‘Fairly accurate’ is reasonable. It gives you a pretty good indication. There is certainly not an order of magnitude difference. There may be differences of tens of thousands, I guess, but it is considered to be an underestimate. So 85,000 is probably a conservative figure.

Senator MASON—Are there any groups opposing the move from appendix II to appendix I?

Mr Bigwood—No.

Senator MASON—Thank you.

Senator COONEY—As a matter of curiosity, what led to the diminution of the dugongs around the world? Are they hunted for any particular reason?

Mr Bigwood—It is generally overhunting that is the reason. It is predominantly for food. There has never been a great deal of trade that I am aware of. It has been largely for food for local people.

Senator COONEY—I see here dugongs are plant eaters that eat seagrasses. So it is the disappearance of the seagrasses around the world that is the problem?

Mr Bigwood—No, it has generally been overhunting that has caused their great reduction.

Senator COONEY—What do they hunt them for?

Mr Bigwood—For food. People hunt them for food for their local villages or whatever.

Senator COONEY—I see. We do not do that? We have not hunted them?

Mr Bigwood—There is some local use in northern Australia in Aboriginal communities, yes, but it is not considered—

Senator COONEY—But other than that there is no hunt for them in Australia, other than in a limited range?

Mr Bigwood—Other than Aboriginal and Torres Strait Islander use, no.

Senator MASON—But the destruction of habitat is the problem?

Mr Bigwood—Within Australia the destruction of habitat is a problem, certainly within the Great Barrier Reef. In the southern parts of the Great Barrier Reef particularly, habitat destruction has been a bit of a problem. By-catch from fishing has also been a bit of a problem.

Senator COONEY—I see here it says their lifespan is 50 years. How many calves do they have? Is that the right term—calves? Do you know the breeding habits of dugongs? How many calves do they have per year?

Mr Bigwood—It is fewer than one. From memory, they only have one at a time, and it tends not to be annual.

Senator COONEY—Thank you.

Mrs DE-ANNE KELLY—I would like to clarify a couple of things. I understand that this treaty is to restrict trade in animals, body parts or whatever. Is that correct?

Mr Trimmer—The treaty basically is an enabling treaty. It enables trade, but under certain conditions which protect the species from extinction or from the threat of extinction. It is basically an enabling mechanism, but to do it subject to appropriate rules for sustainability reasons.

Mrs DE-ANNE KELLY—Bearing in mind that you have just told us that most dugongs either die by misadventure—and we will get to that shortly—or are hunted for food, what proportion actually make their way into the international trade? Is this a problem? With respect, I cannot see Torres Strait Islanders—or whoever may hunt them—deciding to trade the meat or the body parts or whatever out of the country.

Mr Bigwood—Certainly the reason why we up-listed was not because of any concern about Australian trade overseas, it was to facilitate enforcement in overseas countries, particularly Indonesia, so that there was no chance that somebody could present a permit to the Indonesian authorities saying, 'This is an appendix II permit allowing me to trade because it is an Australian dugong,' and the Indonesians accepting that and therefore allowing trade from Indonesia to overseas.

Mrs DE-ANNE KELLY—But surely that is a matter for the Indonesians, not for us, if we are not trading our dugong? I am not opposed to the treaty but I want to get to some of the other myths in this for a moment, if I may. If we are not trading dugong meat, animals or body parts to any great extent, then is that not a matter for Indonesia?

Mr Bigwood—To an extent it is, in that it is up to them to enforce the treaty, but the resolution under the convention which outlines where a species should be listed on the appendices has a section which says that, unless there is a good reason for split-listing a population—for having a species on different appendices; for example, all dugongs being on appendix I other than Australia's, and Australia's being on appendix II—you should not have it; you should have all populations on the one appendix.

Mrs DE-ANNE KELLY—Are manatees listed?

Mr Bigwood—Yes.

Mrs DE-ANNE KELLY—They are, right. Aren't these species of dugong around the Great Barrier Reef Marine Park different?

Mr Bigwood—No.

Mrs DE-ANNE KELLY—I have been told that they are by, in fact, no greater authority than the Great Barrier Reef Marine Park Authority. I understood that there were distinct differences in the population between the far north and our central area.

Mr Bigwood—There may be some differences in terms of population, but they are all the same species—they are all *Dugong dugon*.

Mrs DE-ANNE KELLY—You say there are 85,000 dugong from aerial surveys. Who has undertaken the aerial surveys?

Mr Bigwood—Mainly state agencies, certainly the ones that are—

Mrs DE-ANNE KELLY—Which might they be?

Mr Bigwood—The surveys that are currently being undertaken in north-western Australia are being undertaken by the Department of Conservation and Land Management in WA.

Mrs DE-ANNE KELLY—What about Queensland?

Mr Bigwood—I am not sure that there are any being undertaken at the moment.

Mrs DE-ANNE KELLY—Allow me to enlighten you. They have in fact been done through the Great Barrier Reef Marine Park Authority—they were aerial surveys. Is it not true though that dugong travel extensive distances fairly quickly and are unlikely to come back to a site, so aerial surveys in fact are highly questionable. That comes from GBRMPA's own—

Mr Bigwood—Dugong are migratory, they do move around. I am not sure that 'questionable' is the right word. Aerial surveys are the best methodology for estimating a population over large areas. They are probably not exact—they give you an approximate figure—but I guess it is generally considered they give you a reasonable indication of population status.

Mrs DE-ANNE KELLY—The reality is though that, if you used that to work out the populations of cattle in your paddock and they happened to go and sleep on the other side of the paddock while you were aerial surveying one side, you would discover that you had no cattle. The reality is that dugongs are called sea cows—and that is exactly what they do; they graze and move—and if you survey one area, quite often they are off grazing somewhere else. So for the record I want to say that those surveys are highly questionable, but I note you said they were conservative. On their habitat and the seagrass: what is causing the decline in habitat?

Mr Bigwood—On the east coast, my understanding is that it is mainly caused by run-off, so large amounts of sedimentation are making greater turbidity and cutting down on the photosynthetic capacity of the seagrasses and therefore effectively killing them.

Mrs DE-ANNE KELLY—Are there any particular industries that you believe are responsible for this run-off?

Mr Bigwood—That I believe?

Mrs DE-ANNE KELLY—That Environment Australia believes.

Mr Bigwood—I am not a dugong expert. I am not really qualified to answer the question.

Mrs DE-ANNE KELLY—On by-catch from fishing: how are dugong affected by fishing?

Mr Bigwood—It is my understanding that in Queensland dugongs have been caught largely by set netting.

Mrs DE-ANNE KELLY—There has been a restriction now on gill netting?

Mr Bigwood—Yes.

Mrs DE-ANNE KELLY—And that seems to have been largely successful, hasn't it?

Mr Bigwood—Yes. There certainly seems to have been a reduction in the number of deaths.

Mrs DE-ANNE KELLY—If we agree to this treaty, what negative implications will that have for our management of our own dugong population?

Mr Bigwood—None. It will not change how they are managed at all.

CHAIR—I have got a few questions. Firstly, on the law: roughly speaking what is the dispute resolution mechanism in this treaty?

Mr Jennings—I happen to have the convention in front of me. The dispute resolution mechanism is article 18 and it says:

(1) Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.

(2) If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at the Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

This is a fairly standard sort of provision that you see where you have disputes arising out of treaties. Parties are required to negotiate between themselves to see if they can arrive at a resolution. Paragraph 2 does not impose a binding obligation to go to arbitration. That is clear by the use of the words 'by mutual consent'. If it were a binding obligation you would see words to the effect that any of the parties to the dispute could initiate arbitration. The Permanent Court of Arbitration at The Hague, which is referred to there, is a longstanding institution which dates from early last century. The form of dispute settlement in paragraph 2 is arbitration which excludes things like the International Court of Justice. It is a fairly limited provision in that sense. But, of course, there are always obligations under the UN Charter, article 33, which provides obligations on UN members to resolve their disputes peacefully. Chapter 6 of the UN Charter concerns Pacific settlement of disputes. Article 33 says:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all seek a solution by negotiation, inquiry, mediation, conciliation and arbitration—

Article 33 of the Charter is often referred to in terms of listing the various means of pacific settlement of disputes. But there is an overriding obligation under the UN Charter to settle disputes peacefully.

CHAIR—Going back to the CITES convention for a scoff law party—as in someone who is going to scoff at the law; it is an expression that a lot of American academics use—is this a charter to scoff at the law? The obligation is to negotiate but then again if there is no agreement between the parties to have a binding arbitration—which as scoff law they are hardly likely to agree to anyway—they can simply negotiate till they are blue in the face and there will be no resolution of the dispute.

Mr Jennings—No binding third party settlement of the dispute. Negotiation can involve a range of mechanisms—for example, the various tools available to diplomacy. Indeed, if you look at a range of conventions, often you will see provisions like this. States are not prepared to enter into binding obligations to settle their disputes but, if I might point to a current example, Mr Chairman, which you may well be aware of, the southern bluefin tuna dispute with Japan, the Law of the Sea Convention does provide for compulsory settlement of disputes as long as the requisite provisions and requirements are met. That is often referred to as the constitution of the oceans and it covers a broad range of activities such as fisheries, marine mammals, and delimiting of maritime boundaries and so on. It is a great achievement in such an important convention that you do have binding third party settlement, but it does require states to attempt to settle their disputes in the first instance through, for example, negotiation and consultation.

CHAIR—What I am concerned about here is that we have an example of a large convention with many parties to it which is taking this unfortunate mechanism or principle another step in the sense that we are being asked to sign up to all sorts of obligations when delinquent states cannot be forced into compulsory arbitration. The latest example is in the Cartagena Protocol on biosafety where, likewise, there is no obligation to submit to compulsory arbitration—in fact, it is exactly the same mechanism—whereas in the WTO-GATT regime there are panels. And while sovereignty is respected through the flexibility of that process, at least you can take people to court if you like, as with the Law of the Sea.

So, as Mrs Kelly points out here, what we are being asked to do is undertake a further obligation ourselves through no consequence of any delinquent conduct in Australia to help out Indonesia, as one example, and yet we are doing it under the rubric of a treaty that does not have any rigour for the settlement of disputes. It is no particular problem we have got, perhaps, with the dugong, although there are difficulties about some of the risk assessment processes there, as Mrs Kelly pointed out. Here is this principle of here we go again signing up to another obligation with this very flimsy law behind its regime of dispute settlement, and especially where it is to do with trade. Furthermore, this is an example of a convention where you are able to take a sanction against a non-consenting third party.

Mr Jennings—I am not an expert on CITES, Mr Chairman, as to what your possibilities are in that regard. I do know something about the resolution of disputes because I am involved in the SBT dispute myself. But you also need to bear in mind that this was a convention negotiated in the mid-1970s. The Law of the Sea Convention at that time was still under negotiation. That major breakthrough in compulsory settlement of disputes was still probably some years away from being adopted as a final text, although negotiations were going on.

There are a number of major conventions which lack this binding obligation. Some options that have been explored are optional protocols to conventions. So a country, if it is committed to the principle, can sign up to an optional convention. Again, it is provided for, but as an option. It is an extremely interesting area of study to look at what conventions have a binding third party settlement and so on. Of course, when you are talking about multilateral conventions you also look at the issue of many countries being involved in the negotiations, some of which are quite happy to submit to binding obligations and others who are not—

CHAIR—Exactly.

Mr Jennings—But not because they are intending to be miscreants, Mr Chairman; they may in fact have other concerns. Just because a country does not support binding obligations for third-party settlements, you should not make assumptions about that.

If I might take the discussion a little wider, just because you do not have binding obligations in relation to this convention you should also bear in mind that some countries who are parties to this, including Australia, have made declarations under the Statute of the International Court of Justice and there may possibly be options there, although you get into the difficult area of a non-binding provision in the convention and binding obligations under the ICJ Statute. So there may be other options out there that would involve binding dispute settlement. I do not want to give an opinion in relation to CITES, but you need to bear in mind that out there is also the ICJ and that roughly—I do not have the current figure—between 50 and 60 countries, including Australia, have made declarations under the ICJ Statute.

CHAIR—This is going to be, if I may predict, the subject of some fairly vigorous debate in our private meeting when we consider whether or not to approve this. You should never take this committee for granted, that we should approve things simply because evidence is given here. Some would argue we have been far too nice in the past about some of these things. What we would appreciate is a bit of background, perhaps by way of a letter from you or Mr Mason, regarding just how many such treaties have such a flimsy dispute resolution mechanism and why Australia, as a well-behaved international state, should agreed to strengthening this flimsy regime when it is more in our interest to get up more examples of rigour in international law to protect our own goodwill more often. We will do this over some weeks.

As there are no further questions, thank you very kindly everybody. I look forward to considering this in private.

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

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

Committee adjourned at 10.47 a.m.