COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 15 October 1996

CANBERRA

Monday, 28 October 1996

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chair)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Carr	Mr Laurie Ferguson
Senator Denman	Mr Hardgrave
Senator Ellison	Mr McClelland
Senator Neal	Mr Tony Smith
Senator O'Chee	Mr Truss
	Mr Tuckey

For inquiry into and report on:

Treaties tabled on 15 October 1996.

WITNESSES

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Present

Mr Taylor (Chair)

Senator Abetz	Mr Adams
	Mr Bartlett
	Mr Laurie Ferguson
	Mr Hardgrave
	Mr McClelland
	Mr Tony Smith
	Mr Truss
	Mr Tuckey

The committee met at 9.11 a.m.

Mr Taylor took the chair.

BIGGS, Mr Ian David Grainge, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, R.G.Casey Building, John McEwen Crescent, Barton, Australian Capital Territory, 0221

BRODRICK, Mr Lloyd David Hargreave, Desk Officer, Nuclear Non-Proliferation Policy Section, Department of Foreign Affairs and Trade, R.G.Casey Building, John McEwen Crescent, Barton, Australian Capital Territory, 0221

CAMPBELL, Mr William McFadyen, Acting Principal International Law Counsel, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory

DURNAN, Ms Margaret Mary, Executive Officer, Nuclear Safeguards Section, Department of Foreign Affairs and Trade, R.G.Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

HOWARTH, Dr Peter, Director, Nuclear Non-Proliferation Policy Section, R.G.Casey Building, John McEwen Crescent, Barton, Australian Capital Territory, 0221

LUCK, Mr Leslie Richard, Assistant Secretary, Nuclear Policy Branch, Department of Foreign Affairs and Trade, R.G.Casey Building, John McEwen Crescent, Barton, Australian Capital Territory, 0221

MOUNTFORD-SMITH, Mr Trevor Bertram, Nuclear Engineer, Plant Assessment Section, Nuclear Safety Bureau, Level 3, 14-16 Central Road, Miranda, New South Wales, 2228

CHAIR—I declare this public hearing open and welcome our first witnesses. Before we start the hearing I should say that we have a lot of treaties to cover—12 in number—and we are going to move through them as quickly as we can in the time we have. We understand four or five treaties are to be tabled in both houses tomorrow and what we are intending to do is pull all 16 or 17 together under one report which we plan to table on 2 December. Could we therefore keep opening remarks from the Department of Foreign Affairs, the Attorney-General's Department and other departments to the minimum so that we can get in as many questions as possible and get through as speedily as we can. Does DFAT have an opening comment to make on this one?

Mr Luck—Yes, Mr Chairman. Thank you for this opportunity to speak to the committee about the Nuclear Safety Convention. I will try to be brief and give you a broad outline since you have before you the national interest statement. The basic reason we are seeking ratification of this convention is that it represents an evolution of the international law of nuclear energy. It is a convention which will give established principles of nuclear safety the force of law. The contracting parties will bind themselves to important nuclear safety rules.

Although it has minimal direct implications for Australia for the foreseeable future since Australia does not have, nor does it plan to have, a nuclear power reactor, it will help consolidate and reinforce international safety standards. It will also create obligations whereby Australia would be consulted on, and would have the opportunity of reviewing, the implementation of nuclear safety standards of countries, globally and within our region.

The convention signifies that states accept that, for major civil power reactors, other states have clear interests in being assured that appropriate safety measures are being taken. Historically, nuclear safety has been seen as exclusively a national prerogative and responsibility. Attitudes on that score changed in the wake of the Chernobyl accident. The Nuclear Safety Convention recognises that safety remains primarily a national responsibility, but it also recognises the desirability of adopting an integrated international approach to aspects of nuclear safety.

To place it in its context, immediately after the Chernobyl accident there were two conventions negotiated dealing with how the international community should react in the event of an accident. These were the convention on an early notification of a nuclear accident and a convention on assistance in the case of a nuclear accident or radiological emergency. Australia is a signatory to both those conventions.

Other relevant conventions include the convention of 1979 on the physical protection of nuclear material, which covers nuclear material while in international transport. It was agreed during the negotiation of the Nuclear Safety Convention that its scope would be limited to civil nuclear power plants, with a clear understanding that there should be a political commitment to initiate negotiations as soon as possible on an international instrument on the safety of radioactive waste management. Those negotiations have commenced in Vienna and are proceeding.

In the context of increasing use of nuclear power for electricity generation in the western Pacific, the government has seen the nuclear safety convention as making a potentially important contribution to reinforcing global safety norms in our region. We are also acting in a number of other forums to pursue those objectives.

The basic shape of the convention requires contracting parties to comply with fundamental nuclear safety principles which are based on principles elaborated by the International Atomic Energy Agency. These concern a requirement for contracting parties to establish and maintain a legislative and regulatory framework, to govern the safety of nuclear installations and to have regard to those fundamental safety principles. An important feature of the convention is the obligation on parties to report at agreed intervals to meetings of the contracting parties on the implementation of their obligations under the convention.

That reporting system is linked to a system of international peer review which

provides opportunities for the contracting parties to analyse and scrutinise the activities of other parties and satisfy themselves that the obligations in the treaty are being met. As to the obligations specifically on Australia, since we do not have a nuclear power reactor, these are relatively few. They are mainly derived from article 16(3) of the convention dealing with emergency procedures and they require Australia to take appropriate steps in so far as Australia is likely to be affected in the event of a radiological emergency at a nuclear installation in the vicinity and to make preparations and plans for dealing with such an emergency. I think the key thing is that those steps are the sorts of things that Australian authorities, both at federal and state level, would be taking anyway, so the convention itself does not impose any particular new demands upon us. I think that is all I would say at the opening.

CHAIR—Thank you. First of all, in the domestic situation and the Lucas Heights facility, what covers that sort of situation? Secondly, could you give us an outline of the numbers that have signed and/or ratified this?

Mr Luck—Our research reactor at ANSTO at Lucas Heights is a research reactor and not a power reactor, so it is not covered by this convention. We have internal arrangements, including through the establishment of a separate regulatory body in the form of a nuclear safety bureau which has responsibilities for the nuclear safety of the operation of that reactor, but it does not fall within the context of this convention.

CHAIR—But are there comparable international treaties and/or agreements in relation to research reactors?

Mr Luck—No, there are not. That is envisaged as a possibility for the future, but at this stage in the international process this treaty has taken off, in the first instance, the actual power reactors, since they are of a sort of size and power which are more likely to cause transboundary damage and therefore that was regarded as the first priority. As to the number of parties—can someone help me here—

Mr Brodrick—There are 65 signatories, 27 of which have deposited their instruments of ratification or acceptance.

CHAIR—And what is the number required?

Mr Brodrick—The number required was 22 for ratification, 17 of which had to have nuclear power reactors.

CHAIR—So they have already achieved that.

Mr Brodrick—They have reached that.

Mr Luck—It came into force last Thursday, 24 October.

CHAIR—What is the significance of the proposed ratification of December? Are we doing that as a special thing in Vienna in December, or is that just a time scale you have been working to?

Mr Luck—We signed in September 1994 and our objective all along was to try and be early in the ratification process. We have not succeeded in the ratifying by the time the convention came into force, but we will shortly afterwards. It is really in order to keep up momentum for what we regard as a very desirable convention. Of course, if we ratified and are a full member, we have that much more authority in talking to countries in the region and advocating it as a useful convention for them to sign.

Mr McCLELLAND—I was primarily interested in Lucas Heights which the chairman has asked about. I note that no state in Australia is subjected to the treaty.

Mr TUCKEY—Just following that line of inquiry as to why, for instance, Lucas Heights or such facilities would be left out, in cost or additional work terms, what would be involved if they were put in?

Mr Luck—We are already doing what we regard as sensible on nuclear safety at Lucas Heights and there would be no additional costs.

Mr TUCKEY—I do not want to be specific to Lucas Heights or Australia. In the circumstances of civil activity, do we now start and put together a further treaty on research facilities because if Lucas Heights did go into orbit then the people of Sydney would find enough problems. I am not opposed to it but it just seems a bit silly to me that we would exclude those particular facilities. It would appear to me that this type of treaty is adequate for the purpose and I would not imagine that it would create any great difficulty.

Mr Luck—Margaret, do you remember the negotiating history of that?

Ms Durnan—When the negotiations for the convention first began, the agreement was that the treaty would cover power reactors only for two main reasons, one being that they were perceived to be the major problem in terms of consequences if something did go wrong. The second reason was that at the time the updated safety fundamentals had been virtually agreed within the IAEA and it was the safety fundamentals which form part of the IAEA safety series which provided the framework for the convention. The convention incorporates those safety fundamentals into international laws is the effect.

At the time the safety fundamentals or the equivalent documents for research reactors and for other nuclear facilities were not nearly at the same stage of advancement. That is why in preambular paragraph 10 of the convention there is an acknowledgment that further conventions covering other stages of the fuel cycle may be warranted in future. It was because the safety fundamentals for the other fuel cycle facilities were not

nearly ready at that stage.

Mr TUCKEY—Lucas Heights is just half a nuclear power station, is it not??

Ms Durnan—Much less than half I would think.

Mr TUCKEY—All right, so it is a quarter, so why does it not fit?

Ms Durnan—Because the risks from research reactors were not perceived to be nearly as great as from power reactors.

Mr TUCKEY—Is it just a question of how many people you kill?

Ms Durnan—I am not sure that I can comment on that.

Mr TUCKEY—All right. Quite clearly there is a component of these arrangements that must fit the lesser research activity and they should be clicked into sections a, b, c, d or whatever.

Mr Luck—I imagine that the basic structure and principles in this convention would be seen as a model for negotiations for the convention.

Mr TUCKEY—I wonder why we go through it all again, even at this table.

Mr Luck—It depends on what the international consensus is and what can be achieved in the negotiation. Clearly, at the time the focus was very much in that post-Chernobyl atmosphere on power reactors and their capacity to cause trans-boundary damage.

Senator ABETZ—Did Australia push in the negotiations to include the research reactors, for example?

Ms Durnan—We did not make a concerted push to include research reactors specifically. We did push to include other fuel cycle facilities and it was partly as a result of that that the agreement to include preambular paragraph 10 was included.

CHAIR—With this one, how much would it delay the ratification if there was now a proposal to include a protocol to this extent? Would you have to go back and redo the whole thing? Would it be a protocol to this convention to extend article 10 to cover—

Ms Durnan—My understanding is that it would have to be a new convention at this stage because there is no provision for a protocol within the text of the convention.

Mr Luck—The convention is now in force.

Senator ABETZ—How many countries have nuclear power facilities? You tell us that 65 have signed up at this stage. What percentage does that represent of those countries that have nuclear power facilities?

Ms Durnan—There are approximately 30 countries that have power reactors in operation.

Senator ABETZ—Are they then all signatories to this—

Ms Durnan—Not as yet is my understanding.

Senator ABETZ—Which ones have not?

Mr Luck—One would be Taiwan which cannot be a signatory.

Senator ABETZ—Yes. Who are the others?

Mr Luck—I must say, as I look through the list, that none of the major nuclear power generating countries struck me as not being there. All of our safeguards treaty partners have either signed or—

CHAIR—What about some of the former Soviet states, in particular, where there are big question marks about some of their reactors?

Mr Luck—Ukraine, Czech Republic, Hungary, Armenia, and Lithuania are there. Is Estonia there?

Ms Durnan—No. That does not have a power reactor. Lithuania does.

Mr Luck—I think that Lithuania and Latvia do.

Ms Durnan—No, Latvia does not.

Mr Luck—Latvia does not. Kazakstan certainly does. Most of them appear to be here, but that is something we could give you more detail on.

Mr LAURIE FERGUSON—Kazakstan is in, is it?

Mr Luck—Kazakstan, yes.

CHAIR—Perhaps, we could have that anyhow just to complete it. It would be for the purpose of the report.

Mr BARTLETT—What about countries in our region that are thinking of

developing nuclear power facilities, such as Indonesia?

Mr Luck—Indonesia signed on the same day as we did, 20 September 1994, but like us is yet to ratify. That is, I presume, a matter of internal process.

Mr TONY SMITH—My question has been partly answered. In our region what is the nearest nuclear installation? What are the countries in our region that have the potential to develop nuclear installations, and/or have indicated an intention to develop such installations? Are they parties?

Mr Luck—I think that the nearest nuclear power plants would be in southern China and Taiwan. There are also power plants in India. Taiwan, as I explained, cannot be a signatory. The other countries I mentioned are signatories. In the region, Indonesia is the only country that has canvassed prominently over a number of years the possibility of developing a nuclear power program, although it has not yet taken such a decision. There are a number of other countries in the region, and I can think of Vietnam and Taiwan which have substantial research programs in Thailand. The Philippines did construct a power reactor, but never brought it into operation and the status of its plans are still in abeyance there. There has been some debate in recent times about whether that was a good idea, and whether they should reconsider a reactor. But it was at the time, remember, of President Aquino and there was a very strong view that they should not bring that reactor into operation.

Beyond that—I mentioned China—you have the Republic of Korea and Japan, both of which have very large nuclear power programs and are signatories to this. The other country in the region would be North Korea which is not a signatory, and which does not have an operating power program. It has a rather advanced research program.

Mr TONY SMITH—Did you say that China was a signatory?

Mr Luck—Yes.

Mr TRUSS—The previous questions touch on the area that is perhaps of greater significance to Australia in relation to this convention. I would like to pursue it further as to what the impact of a country like Indonesia, say, ratifying the convention would be. Would it prevent Indonesia from building a nuclear power plant on an earthquake faultline, for example?

Mr Luck—No. The convention would require any country, including Indonesia, to have in place regulations and laws and to have regard to the safety standards which have been elaborated in the IAEA, and to have regard to those principles in siting, planning, constructing and operating a power reactor. But there is nothing in those principles that would compel it to not build a plant in, say, an earthquake zone—which was I think the specific question. The principles would simply require that all those decisions on all those

aspects of establishing a power plant have regard to the highest sort of current international standards.

Mr TRUSS—But surely if we have got any standards at all about nuclear power plants, one would be that it is not on an earthquake faultline.

Mr Luck—I do not know whether our colleague from the Nuclear Safety Bureau could comment, but the standards which the IAEA has elaborated do incorporate seismic earthquake activity, a whole range of possibilities in the normal engineering standards that go into the nuclear power plants.

Mr TRUSS—A country that signs or ratifies this convention would be obligated to choose the safest possible sites for its nuclear power plants?

Mr Luck—It would be obligated to choose sites which allowed for the safe operation of the plant, taking into account whatever the local contingency might be, whether it is earthquake, flooding, aircraft or whatever the hazard might be.

Mr TRUSS—Let me pursue it a bit further. If earthquakes are not a serious enough problem, you mentioned flooding. Could you build one on a flood plain?

Mr Luck—I must say I am not a technical expert on the siting of plants but I think the answer would be—

Mr TUCKEY—In a safe place.

Mr Luck—In a safe place, yes. There are a range of factors which would be taken into account.

Mr TRUSS—But will the convention place that obligation on them?

Mr Luck—To take into account the international standards? Yes.

Mr TUCKEY—The issues of topography?

Mr Luck—But the convention does not specify detailed technical specifications. It specifies a requirement for contracting parties to adhere to certain fundamentals regarding the nuclear safety principles and their observation and to the international co-operation in that regard. It does not specify in the text of the convention just exactly what those specific safety standards are.

Mr BARTLETT—How rigorous is the peer review process?

Mr Luck—That is yet to be elaborated. We regard it as a very innovative idea to

have peer review and it is basically intended to provide transparency to the international community that standards are being adhered to. A preparatory committee of this convention will be established within six months of coming into force to look into the actual procedures of peer review, the details required and reports and so on.

Mr BARTLETT—Would that apply, though, to the question of siting?

Mr Luck—Yes.

Mr BARTLETT—It would?

Mr Luck—Yes, it could. Siting, construction, operation, planning as well as principles like having adequate financing for the safety aspects of a nuclear power plant, having proper training of work forces, being able to deal with the human factor in potential accidents, having proper risk analysis and so on.

CHAIR—Mr Campbell, you had a comment on the international legal situation.

Mr Campbell—I had three comments. I had better deal with the last issue first. The convention obliges countries to take certain measures, to take into account certain principles in relation to nuclear power stations. Those principles include ones relating to siting of the nuclear installation. For example, article 17(i) states:

Each contracting party shall take the appropriate steps to ensure that appropriate procedures are established and implemented:

(i) for evaluating all site related factors . . .

There are various factors like that to which a country which is a party to the convention would be obliged to give effect. If Australia is a party to the convention and did not feel that another country was actually doing that, then this convention would provide a leg-in to take up the issue with the other country.

If it got to a stage of being a disagreement between the two, there is a provision in article 29 for a resolution of disagreements between two or more contracting parties about the interpretation and application of the convention. So there is that particular element to it. It does provide us with a lever to take up the issue with the other country.

The second issue was the question about amendment of the convention or a protocol to apply it to a research facility. The convention actually contains a provision in it for amendment of it, so I suppose it would be possible, if you were a party to the convention, to actually propose an amendment to it which would apply it to research facilities as well as—

Mr TUCKEY—Widen its application.

Mr Campbell—Yes. But the point is that you cannot actually propose an amendment until you are a party to the convention.

The third issue which I just wanted to mention was the question of what would be the consequences of applying it to the research facility at Lucas Heights. The consequences would be that we would have all the obligations set out in this convention relating to nuclear facilities, including, for example, the preparation of comprehensive legislation dealing with civil nuclear facilities, which we do not have now.

CHAIR—On the question of the pluses and minuses, what are the benefits, economic and otherwise, to Australia of this? On the downside, what are the budgetary implications for Australia on becoming a full partner to this?

Mr Luck—I think the broad economic benefits are fairly indirect. We are a major exporter of uranium and we also have a general interest in ensuring that there is not likely to be a cataclysmic accident either in our region or globally which would affect the regional or global economy from a nuclear incident. So they are rather indirect in that respect. There may be opportunities, once this convention matures and when the international consultation matures—not only this convention but other forms of cooperation, including ones in our region—for our expertise and technology in nuclear safety to contribute and maybe there could be some economic benefit directly there.

As to the cost to the budget, we consider that would be very small and limited to the cost of being present at the preparatory committee to be established once the convention is in force, now that it is in force, and to attend the regular review meetings of the parties, but that would be quite a minor cost. As to any costs which might be contingent upon the establishment of emergency procedures, these would be borne essentially by the agencies concerned, including the state agencies, but they are not directly contingent on the convention. They are the sorts of procedures that are already in place and we would not see them having to be vastly upgraded unless there were some new contingency which caused us to make a judgment that the risk of a nuclear accident affecting Australia was greater than it is now. Clearly it is very low at the moment.

Mr TUCKEY—A couple of points. Firstly, just coming back to the performance of this agreement, do you foresee some sort of ISO developing out of this agreement, and, more particularly, what does it envisage in terms of monitoring as time goes by? Does it envisage standards and a monitoring organisation? I have a second question, but it is different.

Mr Luck—The standards have already been developed by the International Atomic Energy Agency, which will act as the technical and resource secretariat for this convention, including for the conduct of review meetings and peer review processes. So those standards already exist. The convention itself, as I understand it, will not give birth to a new set of international standards. They will reinforce existing standards and give the

obligation to adhere to those standards, and have in regard to them the force of international law, which is the important value added, if you like, of this treaty.

Mr TUCKEY—What then becomes the process of monitoring? Is the agency going to deliver on that and advise the participating parties?

Mr Luck—Yes. Monitoring of performance of the convention is something which the contracting parties will do, with the agency's assistance, through this peer review process, through regular review meetings to be held at intervals of no more than three years. That is intended to be an efficient but transparent process, actually demonstrating compliance with the obligations in the treaty.

As to the monitoring of a radiological emergency, there are already systems in place globally, including in Australia, for the detection of radiological releases and so on. The two conventions I mentioned in my introductory statement, dealing with early notification and assistance in the event of emergency, are part of the international cooperative machinery established to deal with an actual incident if it takes place. This convention is more in the vein of trying to prevent such an incident taking place.

Mr TUCKEY—Yes, and consequently, if I am the dictator of some country and I decide I am going to have a nuclear power station, who stamps my plans?

Mr Luck—Essentially, that is a national responsibility.

Mr TUCKEY—So this agreement does not get us to the point where the Atomic Energy Agency says, 'Yes, if you build it according to that set of engineering standards, the world community can be reasonably safe'?

Mr Luck—The principle is that the Atomic Energy Agency is there to assist members of the agency and the states that seek its assistance in the establishment of appropriate standards. But it does not have a right to walk in and dictate those standards.

Mr TUCKEY—I am asking you: just how much power does this convention give the international community to stamp the plans? You are saying none?

Mr Luck—If a state chooses not to be a contracting party.

Mr TUCKEY—We know about those that are not within the confines of this. What does this do to those that have signed? Do they have to seek any approval for what they are going to do, or is it just that they promise everybody else that they will be good boys?

Mr Luck—Essentially, the latter.

Mr TUCKEY—Taiwan is excluded because China says they do not exist. In a broader foreign affairs context, isn't this starting to identify just how dangerous that is to the rest of the world, to let that situation exist?

Mr Luck—That is an aspect of policy that I am not briefed to cover.

Mr TUCKEY—I think it is worth putting on the record, Mr Chairman, that we are getting to the point of the ridiculous when a country operating nuclear power plants is unable to promise the rest of the world it will be good.

CHAIR—It is a similar situation with North Korea, too, in many ways.

Mr TUCKEY—It just refuses to come along.

Mr Luck—North Korea is a member of some of the relevant international conventions and treaties in the area, including the non-proliferation treaty, which has been very important.

Senator ABETZ—Has it signed up for this one?

Mr Luck—No.

Mr TUCKEY—But it has the capacity to join. What I am saying to the people putting this together—and I am quite serious about it; I think it is worthy of note—is that when you start getting to the point where the probably willing party is unable to contract with the rest of the world on nuclear safety, we have got a rather funny arrangement.

CHAIR—We will cover that in the report, Wilson.

Mr TUCKEY—I do not think we have to pass an opinion on it, but I think we should record that fact.

Mr Luck—I understand the point, of course, but it is relevant to add that on a related subject—nuclear non-proliferation—authorities in Taiwan have actually indicated their support for those arrangements. So even though they are not formally part of those arrangements, they have had a voice.

Senator ABETZ—Reading through the documentation, we are told that it will deal with siting, design construction and operation of such installations. Basically, what would that do to a state government that ever sought to embark upon a nuclear power program? Basically, they would be at the behest of the federal government, wouldn't they, agreeing to the siting, the design, the construction and operation? Am I reading it correctly?

Mr Campbell—Obviously, if a state government wanted to have a civil nuclear

power installation, Australia would have to ensure that it could give effect to the obligations in this agreement. It may be that the federal government might decide to rely upon state legislation and practice to actually do that.

Senator ABETZ—But at the end of the day they could rely on the international treaty?

Mr Campbell—There is no doubt that at the end of—

Senator ABETZ—To determine the siting, design, construction and operation; there wouldn't be much left, would there?

Mr Campbell—There is no doubt that the Commonwealth could enact legislation to give effect to this convention.

Senator ABETZ—Usually, power production has been an area of state responsibility, which leads me onto the next point, where we are told that states and territories were consulted and no objections have been raised, nor have inconsistencies with their legislation. I suppose that makes sense because there is no such legislation. Where we are told no objections have been raised, in the future can we get, from whoever prepares this documentation, an indication of whether the states have actually responded? 'There was no objection' may in fact mean that there was no response at all; the gravity of the situation may well have escaped some adviser in a state bureaucracy and we just did not get a response, as opposed to their positively saying, 'We do not object.'

Mr TRUSS—Or even better, 'we support'.

Senator ABETZ—Or an absolutely positive statement, Mr Truss, saying, 'We support this treaty.' One thing that concerns me is that whilst we are told that there are no inconsistencies with their legislation, it would be fair to say that under the federal compact that we have in this country, it does chew away at that again where, in the past, states have had the right to determine their own power options, until we had the Gordon below Franklin in Tasmania and all those sorts of situations. But that aside, it is not only legislative inconsistencies, but also it seems to be another area in which the federal parliament is now clothed with legislative power which it did not have before.

CHAIR—I think we have generally raised that in the context of our first report, where we suggested there should be some variation to the NIAs. Whether that would pick up this one, I am not sure; perhaps it does. That is with the ministers at the moment.

Mr TUCKEY—Could you extend the view, in a legislative sense? This is a broader question, taking this example: I perceive the absolute need of the federal parliament to be involved in an international sense in the management of nuclear power stations. I would hate to see a situation arise, as it could, where the rules were used to

prevent a state power entity, or a private power entity contracting to the state, from building a nuclear power plant that really and truly met this convention. But every time they said, 'We're going to put it here', the federal government of the day said, 'I'm sorry, you can't put it there, we don't like it there.' In other words, they abused the convention because they had a philosophical opposition to a nuclear power facility.

It is probably time that we said, in the context of all this, that when the Commonwealth chooses, as it would be entitled, to legislate on this, it should do so in a way that the courts could eventually determine what the agreements were, et cetera, so that you did not get this ridiculous situation of abusing what is otherwise a very sensible arrangement.

Senator ABETZ—I suppose Bill will tell us that it is up to us here as to whether we are going to abuse it or not.

Mr TUCKEY—No, it is a case of how we might legislate.

Mr Campbell—What you are raising is a general point about how you legislate to give effect to international treaties. It comes back to the decision of the High Court in the Tasmanian dam case and as also recently confirmed in the case involving Victoria and the Commonwealth and the Industrial Relations Act, which I think the High Court handed down about a month ago. The test that the High Court has said is that the parliament can legislate in a manner which is 'reasonably appropriate and adapted'—they were the words it used—to give effect to the treaty. There is an element of discretion in that formula.

Taking up the point you have made, if the Commonwealth parliament on the basis of this convention sought to interfere or sought to stop the building of a power station which was not inconsistent with the terms of the convention, and that action by the federal parliament was not done in a manner which was giving effect to the convention, then it would be open to the state to challenge that before the High Court. In other words, there does have to be a connection between the Commonwealth legislation giving effect to the convention and the obligations and benefits under the convention. The court has said on many occasions that, just because you have a convention on nuclear safety, or on any subject, that does not mean that you thereby gain power over the subject matter. You have to relate it to the obligations and benefits under the convention.

The other thing I should say is that, of course, you can give effect to an international obligation under a treaty by powers other than the external affairs power. So, in the case that you are talking about, it might still be open to the federal parliament to have some say over the citing of the convention—for example, by the use of the corporations power or something like that.

Senator ABETZ—I think we have got somewhat sidetracked with Wilson's line of questioning, which is interesting; but can I take you back to what we do with the states

and territories? Can we have a checklist in the future telling us which states and territories have in fact actually responded and what the terms of their response have been? Saying that there has been no objection does not necessarily mean that they have addressed their minds not only to legislative consequences but also to the federal balance. I happen to think, along with Wilson, that with nuclear power it may well be an appropriate situation for the federal parliament to be involved. Nevertheless, it is something we ought to be alerting ourselves to, each and every time, because that is where, I suppose, ultimately this committee arose from. It was those sorts of concerns with the senate inquiry that formed our policy that we took to the last election on the establishment of this committee, and I would hate us to lose the focus from the Commonwealth-state balance in our deliberations on all these treaties.

CHAIR—For example, would it not be possible for the states and territories to get a draft copy of the NIA? I understand that they do not, at the moment.

Mr Biggs—They get copies of draft NIAs in every case where they have indicated an interest in the treaty in question. We give them six months notice on all treaty actions that we are aware of. When they nominate a treaty as having some relation to their own concerns, they are involved in the NIA negotiation process.

Senator ABETZ—May I just follow this up, Chair? If they are told, for example, that there is a convention on nuclear safety, most state governments would not be alerted to the fact that that convention on nuclear safety would impact on what, in the past, had been the domain of the states in relation to power generation. The convention on nuclear safety would not alert my mind to the idea that it meant the state government could not deal in nuclear power stations without recourse to the federal government. They are the sort of things that I am trying to explore with you as to how much notice and advice is given to the state governments.

Mr Biggs—They are given a two- or three-page precis of each treaty action through the Standing Committee on Treaties, as far ahead as the Commonwealth has information. We rely on the state Premier's Department, who staff that standing committee, to advise us of those that they see a problem with or a potential problem with.

Senator ABETZ—So, they basically only respond if they have got a problem?

Mr Biggs—If they see an interest or some reason for control.

CHAIR—The Standing Committee on Treaties—the ongoing officials committee—as a matter of course involves all the states and territories, does it not?

Mr Biggs—Yes.

CHAIR—How much of an encumbrance would it be to have, as a standard

methodology, a copy of the draft NIA considered? Is that unreasonable?

Mr Campbell—The standing committee only meets about two or three times a year.

CHAIR—Is that all?

Mr Campbell—Yes. The other thing is the question of the actual timing of it, and waiting for responses from the states. Because you send them a document, that does not mean that they are going to send you back a response within two or three days, in relation to an NIA.

CHAIR—Everything is time-scaled. I know there are tight time scales. This committee knows all about that.

Mr Campbell—Bear in mind that there are eight states and territories that we are talking about.

Mr TUCKEY—Putting this into some sort of context, why can we not then, as a committee, remind the states of our role and tell them that, if their responses are going to get consideration at our hearings, this is the timetable with which they must comply? Having done that, they either get their notice from wherever—but I tend to support Senator Abetz: if there has been a response, it should be attached to our papers—which is basically what you are looking for, is it not?

Mr Campbell—Yes. Can I make a couple more points? Firstly, there are the principles and procedures for state and Commonwealth consultation on treaties. Those principles and procedures provide for the states to be given notice of all treaties, and for them to have a particular input into ones which are of particular sensitivity and importance to the states—which does not include every treaty on the agenda.

CHAIR—It is something that we can consider. Rather than take up too much time on this particular one, as a committee we could consider writing a letter to the Treaties Council secretariat, with some general comments for the inaugural meeting in November. It might be handy to make some general comments in this area.

Mr ADAMS—The states have got their own responsibilities. This committee can only do so much.

CHAIR—That is right.

Mr ADAMS—The states have got their own responsibilities, and they have got to react. It is up to them: it is not up to this committee to carry every brief for every state. If they have concerns, they have got to do it, or members of this committee have got to run

the case. It is up to them. I think we are going beyond what we can do.

Mr TUCKEY—That is suggesting that they need to write you a letter, otherwise we need not know what their response is. We are only talking about the response, but I agree with the chairman that it is an issue we could probably discuss in private.

Mr ADAMS—We dealt with waste. Can you just elaborate? I was not quite clear on whether this treaty deals with the waste or whether there is another treaty dealing with waste?

Mr Luck—As part of the treaty negotiation, the international consensus in Vienna was, in a sense, to bite off what could be chewed, which was to focus on large power reactors and on any activities which take place on the site of large power reactors—with the exception that it does not deal with the safe management of radioactive waste. It did, in its preamble, refer to the desirability of such a convention, and the negotiations for that convention started in Vienna at the beginning of last year and are now quite well advanced, so perhaps we might get a result next year on that. That will be another convention which will sit alongside this one.

Mr Chairman, I would like to take half a second to say for the record, in answer to Senator Abetz's question, that in this case we did consult all the states and territories and we received responses from them. So it was a positive affirmation.

CHAIR—What we said, if I recall, in our first report to the parliament was that there should be an indication in the NIAs of the degree to which there has been consultation, particularly with a lead department. I think that is what we said in the first report. Maybe that will be picked up, anyway; but, yes, I agree.

Mr ADAMS—In relation to issues dealing with safety and everything else, I understand that if there is a problem it is where the winds go that causes the problem. Who looks at that concept of how one country's reactor can affect another one? Is that dealt with in this?

Mr Luck—It is not specifically in the convention but the World Meteorological Organisation has a network of cooperating agencies at the national level that has the capacity to look at that sort of information. That was a feature of the Chernobyl accident where some of the worst results were 1,000 or more kilometres from the actual site. There are certainly those capacities around.

Mr ADAMS—But not specifically written into this or discussed at treaty negotiations.

Ms Durnan—Not specifically. If you like, it was assumed that those facilities existed and would be used as part of the negotiations.

Mr Luck—In a sense that question is there. The way in which an accident could manifest itself and the radiological effect could be distributed could be in a number of ways—water, air, through imports of food and so on. The standards do address the potential for an accident to have those consequences. For example, modern reactors specify a containment building which goes completely around the reactors and tend to contain any accidental release of radioactivity. In that sense, that issue is anticipated but I gather it was not explored in any greater detail because this convention did not purport to actually prescribe detailed standards and rather relied on existing standards.

Mr ADAMS—What about in the future? Would those sorts of things be given consideration?

Mr Luck—As one way in which an accident will manifest itself that will always be under consideration. The current negotiation does not specifically address that but it is one of the factors that will have to be considered as contributing to the magnitude of an accident, if you like. That is done at a more technical level by the people who are devising the guidelines and standards in Vienna, the experts there, with assistance from national authorities, obviously.

CHAIR—Thank you very much.

[10.03 a.m.]

ALLAN, Mr Derek, Director, Film Industry Section, Department of Communications and the Arts, GPO Box 2154, Canberra, Australian Capital Territory, 2601

COLEY, Mr Michael, Acting Assistant Secretary, Film Branch, Department of Communications and the Arts, Cnr Moore Street and Barry Drive, Canberra, Australian Capital Territory, 2600

READ, Mr Timothy, Director and Acting Chief Executive, Film Development, Australian Film Commission, Level 4, 150 William Street, Woolloomooloo, New South Wales

CHAIR—Welcome. I have asked Mr Campbell and Mr Biggs to remain at the table for the rest of the hearing. Mr Read, do you have a short opening statement to make?

Mr Read—Yes, thank you. Australia currently has five instruments under which co-productions between countries are undertaken. Three of them are at agreement or treaty level and they are between the United Kingdom, Canada and Italy. Two of them are at a lesser status level called a memorandum of understanding and they are between New Zealand and France.

The first of these arrangements was signed with the United Kingdom in 1986 and the most recent was the one signed here with Italy on 28 June 1993. Since 1986 there have been 27 productions completed under the official co-production program and while we sit here today a further two are under way now, so that will make 29. By the end of the year I expect a further one completed which will make 30 in the period concerned.

The primary objective of Australian co-productions is to assist filmmakers to continue to improve the quality and competitiveness of Australian productions. It affords Australian filmmakers the opportunity to use the advantage of international liaison to present their ideas and skills and to work in concert with some of the world's best film personnel.

They are also a mechanism for attracting Australia's major filmmakers to return to Australia to make films on the greater international level. Co-productions allow the pooling of financial resources from two countries, and sometimes more, together with the sharing of creative and production expertise which otherwise would not be financed from the domestic resources of the countries concerned. That is to say that the agreements treat any production made under them as national productions. A program or film made, say, between Australia and the United Kingdom becomes a film both of Australia and of the United Kingdom. As such, its producers, and the film itself, are recipients of any national benefits which accrue.

In Australian terms this is important because it unlocks certain benefits in financing and also as a qualifying Australian film via the Australian Broadcasting Authority's standards for Australian content. These arrangements are conducted under agreements or memorandum of understanding, as I said earlier, which contain the precise clauses under which countries may co-produce programs. Each of the arrangements we have is developed from a basic model, and the model contains mechanisms for accountability and review within it.

I do not think there is much more that I would like to add by way of introductory remarks, except to say that when the Film Commission did an audit report of co-productional arrangements in the middle of 1994, the total budgeted cost of co-productions at that time was $164,700,826, of which Australia had contributed $58,555,000. The overseas investment to that was $106,145,000. So it works well as a practical mechanism to encourage the exchange of creative and financial engagements between two or three countries.

CHAIR—Do we have a similar agreement with India, which is a very large film production country?

Mr Read—No, we do not.

Mr McCLELLAND—In your report on the national interest analysis of consultation, you indicate that there was consultation with peak industry bodies and relevant professional associations and unions. There is no indication as to whether any of them objected. Did any of them object?

Mr Read—No, none of them objected. The Film Commission maintains a standing industry advisory panel through which all these arrangements are first taken. Had there been a serious objection—in this case I am quite sure there was not—the matter would have been delayed until such time as there had been agreement.

Mr BARTLETT—The NIA indicates there is a cost of $30,000 per meeting to send representatives. What are the financial benefits to Australia?

Mr Read—Do you mean of the treaties themselves or of sending representatives to the meeting?

Mr BARTLETT—The treaty. What financial benefits are likely to accrue as a result of the treaty?

Mr Read—I think the financial benefit is that, firstly, a film or a program is made where it otherwise would not have been and so there is an exchange of ideas. There is also an exchange of employment, and an exchange of commercial potential when and if the film succeeds. I think it has to be seen as a mechanism which helps something into

existence which otherwise would not occur and, as it is a practical piece of work that requires people to make it, the benefit is a tangible result. As my earlier figures demonstrated in 1994, Australia had contributed approximately $58 million to an arrangement which had a total financing structure of $164 million, so it brings money into the pot.

Mr BARTLETT—Do you have any figures, though, in terms of the commercial success of those operations that were co-financed?

Mr Read—No, I do not.

Mr BARTLETT—Or of export earnings for Australia, perhaps?

Mr Read—I do not have particular figures for the success of each of the 27 films which have been completed since. I guess I could say that it is inevitably true that not all feature films are successful at the box office. But some are. For instance, the co-productions of the *Black Robe* and *Sirens* were reasonably successful at the box office—they were not breakout hits by any means—whereas some others on this list that I have here were not.

Mr BARTLETT—Is there a mechanism in place for recovery of the costs involved in being a party to the treaty if films are successful?

Mr Read—The investors recover their costs. In the case of Australian films generally speaking, currently the major investor is the Australian government itself through the Australian Film Finance Corporation which maintains an equity interest. They are beneficiaries to that extent.

Mr TUCKEY—I gather that fundamentally this agreement tells us that if I go rushing over to Italy in the next couple of months and find someone who thinks that they and I could make a brilliant piece of movie, each of us would be able to then go to the government funding body that from time to time subsidises movie production and, jointly, from both sources we can get some money to assist us in making the film. Is that the fundamental reason for having this thing in existence?

Mr Read—Yes, so long as each of the films concerned qualifies as a national film of the country that is one of the parties to the arrangement. Not every film could do it. It would have to be a film which qualified.

Mr TUCKEY—I accept that that there is still a process within each country. Clearly even the Australians would not give me money just on the grounds that they had an agreement with the Italians to facilitate that. But, in truth, if my Italian partners are good enough and they convince the Italian government to do it—to jointly fund this thing—why do we need the treaty? How does that improve the arrangement?

Mr Read—We need the treaty because a decision made by your Italian partner in this case would not necessarily trigger interest or finance from Australia. You as the Australian producer would have to satisfy Australian commercial interests and the Australian Film Finance Corporation that it was a viable project.

Mr TUCKEY—Supposing we both did that?

Mr Read—Right.

Mr TUCKEY—We have powerful connections.

Mr Read—Yes.

Mr TUCKEY—Why do we need the treaty?

Mr Read—You need a treaty in that instance because so far as Australia is concerned, as the Australian producer you are using finance and receiving a benefit as far as your film qualifying as Australian on television is concerned. You need the treaty to confirm your film is Australian in which case the finance for the film may flow, but without it your film might not get any. For instance, you might be proposing a film which had 90 per cent Italian content but which required 50 per cent Australian finance. In this case, you would fail because the approval mechanisms of the treaty require that the national requirements of each country be met.

In Australia's case, one of those requirements is that there is a link between the financial equity in a film and the creative input. So, for instance, if your creative part of the film—that is, your directors, camera people, and actors—amount to, let us say, 50 per cent of the creative team, then you may raise 50 per cent of the money in Australia via the Film Finance Corporation. Without that, you would not get it. To get that certification, that approval, it has to be an official co-production.

Mr TUCKEY—That is surely something that we can just deal with legislatively. So I come back to the question: why do we need a treaty? I just cannot see what this mechanism and these $30,000 meetings have achieved. If the Taiwanese want to come out to my electorate, as they are going to, and build a steel mill, and there is going to be some Australian investment, it is unlikely that we will have a treaty to deal with the matter. Yes, the state government passes an act of parliament relevant to certain aspects of it, but this is just a case of international cooperation and investment, surely. Is it not a matter that can just be dealt with by our parliaments?

Mr Coley—Could I come in here? The key to obtaining support from the Film Finance Corporation is a certificate under the Income Tax Assessment Act. There are two kinds of certificates: one is for an Australian film that is, in a normal way with Australian producers, directors and so forth; the other is for a co-production. By obtaining co-

production approval through the AFC and through those processes, you do not have to go for the normal Australian elements.

I suppose that there are three different kinds of film: there is an Australian film, there is something that is halfway between, say, Australian and Italian, and then there is an Italian film. The treaty, or other than treaty arrangements, allow you to make films that would not be either Italian or Australian; they are somewhere in between. They confer both commercial and cultural advantages through that sharing.

Mr Read—In case you got an incorrect impression, Mr Tuckey, these things normally take place whenever the need arises. We do not have $30,000 trips to verify each application. Trips costing $30,000 only occur when and if the regulatory body, called a mixed commission, decides that it wants to meet. There is actually no real requirement for it to meet unless it asks itself to meet. So, by and large, all these productions which I have mentioned just go on. The producers of the two countries concerned get together; they decide that they have got a co-production; they apply in the normal way, and they receive very little let or hindrance in order to do it. In our survey conducted in 1994, the Australian producers commented on the relatively easy passage that their requests had.

But I would like to say that we need a treaty because these are very valuable benefits which the Australian government has given Australian national films—very valuable benefits, indeed. They are not to be handed out willy-nilly. The treaty summarises on what terms they can be handed out and the Australian Film Commission administers them on behalf of the parliament and, by and large, it happens seamlessly.

Mr TONY SMITH—If you are saying that we need a treaty, I am not convinced, personally, that we do, and nothing that you have said has indicated to me that if we did not have a treaty we would not be able to reach an agreement whereby we could facilitate this process in any event. Can you demonstrate any other mechanism that would be available, other than a treaty, that could deal with this? Are there not any number of mechanisms that could deal with this legislatively, or by agreement?

Mr Read—As I understand it, the one aspect of the treaties we have is that they do bind Australia in a very firm way to provide certain benefits, including the right to have people come into the country and work; the passage of equipment in and out of the country, and so on. They also provide, as well, the benefits of national status with finance.

Mr LAURIE FERGUSON—In the obligations, you speak of Italian or European nationals. In the body of the agreement, you do not specifically mention European nationals. Does that European connection automatically operate with some agreements signed with members of the European Community, or how does that come about?

Mr Read—Yes. I am just going to the treaty itself—

Mr LAURIE FERGUSON—The treaty mentions Italians or third country co-production. It does not mention Europeans, whereas in the obligations you specify other Europeans as a separate entity.

Mr Read—That is correct. However, article 8 of the treaty says:

The provisions of this Agreement are without prejudice to the international obligations of the contracting Parties, including, in relation to Italy, obligations devolving from European Community Law.

Mr LAURIE FERGUSON—In the summary document, in your national interest analysis, when you use the phrase 'European nationals' you are referring only to some European countries?

Mr Read—I am referring to those signatories.

Mr LAURIE FERGUSON—Signatories to what?

Mr Read—I am pausing because I do not know if it is to the specific treaty arrangement which is between some of the countries or just all those in the community. I would need to take that on notice.

Mr LAURIE FERGUSON—Could you come back to us on that?

Mr Read—Yes.

Mr LAURIE FERGUSON—On the experience of the 27 films so far, as a ballpark figure, how many people have entered Australia?

Mr Read—A precise answer to that will require to be given on notice.

Mr LAURIE FERGUSON—You have got no idea of a ballpark figure—hundreds?

Mr Read—I can say that, as of 1994, the principal photography of only seven of those pictures had taken place in Australia. So on that basis there would not be a great preponderance of overseas crew entering the country.

Mr LAURIE FERGUSON—Could you come back to us with some figures?

Mr Read—I would do that.

Mr LAURIE FERGUSON—The reason I am interested is that certain European countries have high at-risk factors in regard to immigration department analysis. Instances

include Poland, Czechoslovakia, Russia, et cetera. I would be interested to know whether this agreement automatically gives the right to significant numbers of those people to automatically enter.

Mr Read—It would if a Russian person—incidentally, that could not be so, I believe—were a member of a crew that was an international co-production. That person could enter the country. But, of course, the expectation would be that that person had to leave it. So if your question is: does it guarantee entry of crew to this country? then the answer is yes. What the precise figures are, I do not know, I am sorry.

Mr LAURIE FERGUSON—What I am getting at is that we sign this agreement with Italy and thereby, from what you seem to be indicating to us today, a significant number of other countries might be indirectly involved, some of which do show up in immigration. Basically, normally we discriminate against them in regard to entry into Australia. It is more difficult for a lot of them to enter Australia. So I would like you to come back on this whole broad area as to what is going on with these.

Mr Read—Certainly.

Mr Campbell—Just to pick up the last point, the provision about entry of nationals into the country comes under article 5. Most of these agreements do have a provision in them saying that it is subject to the requirement that they comply with the laws relating to entry and residence. In other words, it is an obligation subject to our laws, basically, that are in place. The reason for that is the very reason of national security and people coming in. So we can say that we are not in breach of this agreement if we do stop somebody for national security.

Mr LAURIE FERGUSON—National security, yes, but I am not certain that that covers what I am talking about in regard to risk analysis.

Mr Campbell—I think it still covers risk analysis, again—that they comply with the laws relating to entry and residence.

Mr LAURIE FERGUSON—To comply with the laws is post-entry. Right?

Mr Campbell—No. It says 'relating to entry and residence'. That is in article 5.

Mr McCLELLAND—I think the feedback from the committee members is to ask why what is proposed to be done under this treaty could not be done simply by amendment of the regulations applying to the Australian Film Commission and the Australian Film Finance Corporation, or even by amendment of the Income Tax Assessment Act, specifically section 10BA. Why do you need a treaty rather than parliament simply amending those guidelines, regulations, legislation?

Mr Campbell—I would say for a start that section 10BA, in so far as it does apply to these sorts of agreements, does define two elements to an 'Australian film'. One is an Australian film and one is a film which is made under an agreement such as this, or an arrangement such as the other ones that were mentioned earlier. So 10BA does expressly pick up this sort of film. I suppose the argument is that you have got to have an agreement or arrangement before 10BA will actually operate in relation to one of these films.

Mr McCLELLAND—But does it have to be in a formal treaty? Cannot the—

Mr Campbell—It can be an arrangement. As was said earlier, there can be arrangements. The difference, in my understanding—I stand to be corrected on this—is that the whole essence of these agreements is to underpin cooperative filmmaking between producers of countries, to assist in getting finance for these films. What the treaty actually says is that the Italian producer of a film will get the same benefits as he or she would get if it were a national film, and the Australian producer will get the same benefits—taxation and other benefits—as he or she would get if it were a national film.

What this agreement does is to say that the Italian government actually undertakes to provide those benefits to the Italian producer; the Australian government undertakes to Italy to provide the benefits to the Australian producer. Thereby it provides some certainty in relation to the financing of a film and the benefits that will be there, and it will not be open in those circumstances for the plug to be pulled halfway through the film.

Mr Read—May I add something to that? This deals only with a particular sort of production. Nothing prevents producers from the two countries concerned from making any other commercial agreement that they want, outside the terms of this particular benefit, and that does happen. This mechanism is in place to guarantee the delivery of certain benefits, but producers can co-venture outside that if they wish.

Mr Coley—I should add that, as far as the FFC—the Film Finance Corporation—is concerned, they would normally expect a certain amount of foreign money to come in, but leaving creative control in Australian hands. As I was saying earlier, however, that is this side rather than the roughly fifty-fifty that you get with a co-production.

CHAIR—I will just ask a final question, if nobody else has any other questions. I asked first up whether India was involved and you said no. What about the United States?

Mr Read—No, we do not have an arrangement with the United States.

CHAIR—Why is that? It is one of the world's biggest—

Mr Read—There might be two sorts of answers to that. One is that the industry already has arrangements with major US companies—distribution and sales

organisations—which are going on no matter what. The other point to be made, I believe, is that from some people's point of view these mechanisms are seen to have grown up, probably in Europe, as a way of combating the enormous strength of the US industry, in a way such that countries could form powerful cooperative ventures to try and offset the enormous impact of US films in their country. I think that we want to cooperate with the UK and with European countries for that reason, in many respects. But in any case we already have the benefit of very strong commercial arrangements with American companies in such a way that we can maintain our own creative integrity in them. So we do not really require it.

Mr TUCKEY—What you are really saying is that we did not need it to make *Crocodile Dundee*?

Mr Read—That is correct, but *Crocodile Dundee* was supported by the taxation arrangements in place. It is just that, in that case, the American financiers were very happy to have *Crocodile Dundee* completely under Australian creative control. That is not always the case.

Mr TUCKEY—But we made half of it in the US.

Mr Read—We made a great percentage of it in the US, yes.

CHAIR—A final one, Tony.

Mr TONY SMITH—Given what you said a moment ago, are you saying that the Australian involvement in this particular treaty will enhance a more European element in filmmaking, rather than some of the trashy American stuff that has been foisted on us in recent times?

Mr Read—I am not quite saying that, no. I am saying that these arrangements facilitate the making of productions which can be strongly identified as Australian productions but which bring to the table overseas elements which will assist in their financing and marketing and, hopefully, box office success. There is no intention to try to make Australian films more European in that sense.

Mr TONY SMITH—But more Australian?

Mr Read—Quite so; strongly Australian, yes.

Mr LAURIE FERGUSON—Given the fact that France held out in world trade negotiations in relation to film, is there any particular reason why the situation with us is on a lower level than the UK, Italy, et cetera?

Mr Read—There is no particular reason. In fact, we are currently under way to try

to upgrade the memorandum of understanding with France to full agreement status. We are within an ace of presenting the parliament with that proposal.

Mr LAURIE FERGUSON—You said that you thought it covered what I was getting at. What I am not getting at is someone who has, say, a subversive national interest. What I am getting at is the situation of, let us say, Bosnia—the possibility of refugee claims once they get onshore here and therefore they are often discriminated against in regard to entry. Are you saying that this clause will be utilised by the immigration department to ensure that the normal at-risk analysis of individuals is not ignored?

Mr Campbell—What I am saying is that I believe that that provision there enables that at-risk analysis to take place.

Mr LAURIE FERGUSON—And stop people?

Mr Campbell—Yes.

Mr LAURIE FERGUSON—I am still interested in the background and number of people coming in and which European countries are picked up by which treaty.

CHAIR—Thank you very much, gentlemen.

[10.35 a.m.]

GOUGH, Mr Ross, Director, ASEAN and Europe Section, International Relations Branch, Department of Transport and Regional Development, GPO Box 594, Canberra, Australian Capital Territory

McCOLL, Mr Gregory Neil, Director, Aviation Industry Policy, Department of Transport and Regional Development, GPO Box 594, Canberra, Australian Capital Territory

WHEELENS, Mr Tony, Assistant Secretary, International Relations, Department of Transport and Regional Development, GPO Box 594, Canberra, Australian Capital Territory

CHAIR—Do you want to make a brief opening comment in relation to both the one with Germany and the general one, the Montreal Protocol?

Mr Wheelens—In respect of Germany, Mr Chairman, which is the one that I will deal with, this is a relatively simple amendment to the treaty. It arises out of the unification of Germany and is designed to give us access to airports that were previously in East Germany.

Mr McColl—Montreal Protocol No. 4 is a relatively straightforward protocol, in that it provides for the use of EDI, or electronic interchange of waybills. That should provide potentially substantial productivity benefits for the industry internationally. The other component of that protocol is really just to replace the outdated Poincare franc, which is no longer used internationally, with special drawing rights, which is an internationally accepted currency conversion.

CHAIR—On the Montreal Protocol, is there any impact on Australian air cargo carriers?

Mr McColl—No, none whatsoever. Interstate and intrastate travel have the potential now to use electronic transfer of waybills. This is really, if you like, a reverse of some treaties, and it is bringing it internationally up with what is already happening domestically.

Mr McCLELLAND—I note that in each case the states appear to have supported these treaties. Is that right?

Mr Wheelens—In respect of Germany—

Mr McCLELLAND—I am sorry; the states of Australia. There does not appear to have been any dissent from the consultations section—

Mr Wheelens—No, there has not been. Before we go to the table on international treaties, the states are consulted, and their views form part of the negotiating position.

CHAIR—Thank you very much.

[10.39 a.m.]

RYAN, Mr Richard David, Director, Canada, Latin America and Caribbean Section, Americas Branch, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

SCULLY, Mr Mark James, Desk Officer, Trade, Environment and Nuclear Law Unit, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

Mr Scully—Mr Chairman, my supervisor, Mr Greg Rose, was not able to make it today, so I am filling in for him.

CHAIR—Do you want to make a brief opening comment on either or both of items 6 and 7, Peru and Chile?

Mr Ryan—Yes, I would like to make some very brief comments. Investment is the driving force of our commercial relationship with both Chile and Peru. It is primarily directed at the mining industry, I guess, because of the expertise we have developed within Australia, and that expertise has particular application in South America, particularly in Chile and Peru. There are a number of Australian companies now active in Chile and, to a lesser extent, in Peru. BHP is an obvious example, but others such as Nuigini Mining and, in the services sector, TNT and Safcol have substantial investments in Chile. In total, we estimate that the Australian investment presence in Chile is about $1.3 billion at the moment. It is of the order of $50 million in Peru.

I will let Mr Scully talk about the provisions of the agreements, but these agreements are regarded by our commercial interests as important factors in their investment decision because of the provisions that enable them to have some guarantee over the safety, if you like, of their investments, particularly in countries which have had experience of political and economic instability in the past.

Mr Scully—I would just like to mention that the national interest analysis statement sets out briefly the particular provisions of the IPPAs. The important protection they give is in relation to providing that prompt, adequate and effective compensation has to be paid if a particular investment is expropriated and also the repatriation of profits or capital from investments. Finally, they provide a dispute resolution procedure where disputes arise either between the contracting parties or between an investor and a contracting party about investments.

CHAIR—I guess both of these agreements are a reflection of Australia's diplomatic move into South America, quite apart from the economic side of it. Just for the benefit of the record, what in dollar terms are the investment levels—Australia in Peru and Chile, and Peru and Chile in Australia? Have we got any figures?

Mr Ryan—I have mentioned the figure for Chile. It is about $1.3 billion for the Australian investment in Chile and about $50 million in Peru. We are not aware of any reciprocal investment, if you like, by Chilean or Peruvian companies. At the moment, it is primarily one-way.

Mr TUCKEY—So the agreement protects our people more than others at the moment?

Mr Ryan—Yes; until they establish a presence in Australia.

Mr BARTLETT—What sort of tax arrangements do those two countries have in place on Australian investments in those countries?

Mr Ryan—We do not have a double-tax agreement with either country. Chile does not have any double-tax agreements at the moment. There are signs that it is moving that way, but as yet it does not have that facility in place, nor does Peru.

Mr BARTLETT—Are the main features of these treaties similar to those that we have with other countries? Are they pretty standard types of arrangements?

Mr Scully—Yes. There is a model for this investment protection agreement. We try to stick to that, and by and large we do. The Peruvian one is slightly different, in that it provides for national treatment. National treatment is where you do not discriminate between investors and foreigners. We cannot provide that guarantee ourselves in Australia because we do discriminate between nationals and foreigners as in our media rules especially in relation to broadcasting, but there is a protocol in the Peruvian one that says that the Peruvians will not discriminate between Australians and Peruvian nationals.

There is also an extremely complicated issue concerning effective control of certain companies which is addressed in the protocol to the Chilean IPPA, which just sets out what we determine to be effective control for the purposes of the agreement. It may actually be less than 50 per cent of the shares of a company, but there may still actually be effective control of that company, which would allow for Australian investment interests to be protected under the agreement.

CHAIR—Both these agreements involve MFN, do they not?

Mr Scully—Yes.

CHAIR—What are the ramifications of that for Australia, for example?

Mr Scully—It can be difficult in some cases, because you might 'deliberately discriminate' against a particular nationality, like Australia, if it was perhaps the only country building nuclear reactors in Chile or Peru. Chile or Peru could actually expropriate

that and they would not say that they were discriminating against Australians; they would simply say that that just happened to be the entire nuclear reactor industry they were taking the actions against. It can be awfully difficult to actually prove that you are discriminating between Australians and other investors in particular cases. In a particular industry, like forestry, if the Australian industry was subject to expropriation but the American and Canadian industries were left alone, then you could say that that was a breach of MFN status.

CHAIR—But at this stage in our relations with South America both of these agreements, would you say, are a good lever in terms of our financial investment or foreign investment in those two countries?

Mr Scully—There have been a lot of statements by various business people, not only in Chile and Peru, about the desirability of these sorts of agreements. But it is not for me to say—

CHAIR—Yes, but when some of these countries have been involved with the large Australian companies have they been consulted in relation to these agreements?

Mr Scully—As I understand it, it is—

Mr Ryan—They very much drive the process. The presence of these agreements makes it easier for them in terms of attracting finance to underwrite these investments, it is important from EFIC's point of view in terms of extending insurance political risk cover, and the countries themselves, Chile and Peru, see the instrument as a vehicle for attracting foreign investment.

CHAIR—What I am asking is what is the chicken and what is the egg in relation to this. Have BHP, for example, taken the lead or has the department, in terms of the diplomatic channels?

Mr Ryan—It is primarily the companies involved. In other South American countries, for example Venezuela, we do not have an investment protection agreement, because we do not have the necessary level of investment there and therefore, I guess, interest on the part of Australian commercial entities to have an investment protection agreement in place. So we do not initiate the process, if you like. I stand to be corrected, but certainly in the case of Peru and Chile this was driven by requests by the Australian interests.

Mr TUCKEY—The need to protect our investments. Can we not decide on that, Mr Chairman? It is a model agreement. Obviously, our business community want the protection when they are in these countries, particularly if there is any volatility in their political process. I just think we can move on.

CHAIR—Yes. There being no more questions, I thank you for appearing before the committee.

[10.49 a.m.]

RAY, Mr Nigel Richard, Assistant Secretary, International Finance and Development Branch, Department of the Treasury, Parkes Place, Parkes, Australian Capital Territory 2600

NEAL, Ms Lenore Ruth, Executive Officer, International Economics and Finance Section, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

CHAIR—Welcome. We move on to items 8 and 9. First we will do No. 8, the Multilateral Investment Guarantee Agency. Does either of you have a short opening comment to make?

Mr Ray—I could be very brief. The reasons why the government is asking for ratification action to be taken on this treaty are set out in the national interest analysis that we have tabled. Quite simply, for Australian companies to be eligible to obtain MIGA guarantees, Australia needs to be a member. Secondly, EFIC will be able to use MIGA as a co-insurer and also as a reinsurer as a result of Australia being a member.

The obligations are mainly financial. Australia is required to contribute US$1.85 million in cash before completing the necessary action. There are also privileges, immunities and obligations that flow with international organisations.

CHAIR—On that one, to take up the NIA, the balance of US$14.8 million will be at call. What does that actually mean? Under what circumstances is that money likely to be called in?

Mr Ray—In brief, if MIGA gets into financial trouble and requires additional capital.

CHAIR—How does that compare with other shareholders? What is the rough shareholding—

Mr Ray—We will have roughly 1.7 per cent of the shares—1.713, I think it is—and, were there to be a call, all shareholders would be called equally.

Mr TUCKEY—So the 10 per cent you have referred to is 10 per cent of the 1.7 per cent?

Mr Ray—Correct.

Mr McCLELLAND—Is it like an indemnity insurance that travel agents or legal practitioners have, where all the participants throw into a pool and if anything goes wrong

the person who suffers a loss has access to funds in that pool? Is that how this operates?

Mr Ray—This is MIGA?

Mr McCLELLAND—Yes.

Mr Ray—Yes. It is similar to the sorts of products that EFIC offers.

Mr ADAMS—What is EFIC?

Mr Ray—The Export Finance and Insurance Corporation. Basically, members throw capital into a pot in order that MIGA can give an insurance policy for an investor in a developing member country.

CHAIR—Why did we take eight years to get to the signature stage?

Mr Ray—I think that was because the former government weighed the costs and benefits over a period of time before deciding that the benefits outweigh the costs.

CHAIR—The Joint Committee on Foreign Affairs, Defence and Trade recommended that MIGA—

Mr Ray—That the benefits did outweigh the costs, yes.

CHAIR—What report was that?

Mr Ray—It was in 1991—on Australia, the IMF and the World Bank, I think.

CHAIR—That was the trade one, was it?

Mr Ray—It was in 1993, sorry.

CHAIR—There being no more questions, thank you for appearing before the committee.

[10.54 a.m.]

BARDEN, Mr Allan, Corporate Affairs Manager, Australian Centre for International Agricultural Research, Traeger Court, Fern Hill Park, Bruce, Australian Capital Territory

LEE, Mr Nigel Brian, Communications Coordinator, Australian Centre for International Agricultural Research, GPO Box 1571, Canberra, Australian Capital Territory 2601

TAYLOR, Ms Kim, Acting Project Officer, Contracts and Agreements, Australian Centre for International Agricultural Research, Traeger Court, Fern Hill Park, Bruce, Australian Capital Territory

CHAIR—We will leave item 9, Hong Kong, and we will move on to the Rice Research Institute, No. 10. Do you have a short opening statement to make in relation to this?

Mr Lee—Mr Chairman, if I take about three minutes of the committee's time, it may save some questions. I show my age a bit here. When I was a kid at school, India was the basket case of the world. There were famines all the time in the media and so forth. India was unable to grow enough food. Today India is an exporter of rice. It exports twice as much as Australia does. The main cause of this miracle was new varieties of rice that were bred at the International Rice Research Institute in the Philippines.

The population of Asia is increasing by 50 million people every year. Most of those people eat rice. By 2025 Asia has got to produce 70 per cent more rice just to feed its expanding population. To date, rice production has actually kept pace with the increasing population, but it is only just keeping going. On present projections, by 2025 there will only be 35 per cent more rice than is produced today, rather than the 70 per cent which will be needed, which means that more productive ways of growing rice are going to have to be found.

We have been able to keep pace to date only because of what has been known as the 'green revolution', which is particularly a product of the International Rice Research Institute. The research that has been done has come up with new varieties of rice which are more high-yielding forms. They grow much more rice per plant. The problem is that the green revolution is slowing down, and the challenge now is to achieve a second one under more difficult circumstances.

The problem is that the first green revolution has been produced particularly using irrigated land, which is the best form of land. The amount of irrigated land is going down because of urbanisation, urban spread. Labour in many developing countries is moving into the cities, which means that the amount of labour available for growing rice is

dropping. There is the problem with some of those that the price for getting that additional rice, in fact, is using more fertiliser, which creates its own pollution problems.

As the international repository of expertise and knowledge about rice, the International Rice Research Institute, or IRRI, will have to play an absolutely crucial role in enabling Asian countries to grow more rice. If they fail, in our Asian neighbours we are going to see starvation and poverty in the next century. This could well result in political unrest and problems for our trading partners, as well as, obviously, creating a threat for the environment.

The International Rice Research Institute was established in the Philippines as a domestic non-profit corporation by the Ford and Rockefeller foundations in 1959. Its role is to conduct research on the rice plants and all aspects of rice production—particularly in Asia but also in other major rice producing areas of the world, of which Madagascar, for instance, is a big producer, and South America also—as well as doing associated activities such as training and extension of that knowledge to farmers; in other words, getting those results used.

It was granted international status in the Philippines by presidential decree in 1979. This enabled IRRI to enjoy, in the Philippines only, all the immunities and privileges accorded to international organisations. But, because this international status was only granted under local law, it is not recognised beyond the Philippines' borders. So, until recently, IRRI has had to work in collaboration with other states—I am talking here of about 45 countries that it works with—by entering into bilateral agreements, which is not a particularly efficient way of operating.

It finally concluded an international agreement, in 1995 only—30 years after it was established—which was signed by 15 countries, which enables it to operate as an international organisation. Australia has been moving along the same path. On 29 March this year, it signed an agreement, which, of course, is subject to ratification; hence this hearing. It is important from Australia's long-term interests that IRRI is adequately supported and finds a way to maintain those food supplies and, hence, maintain stability in Asia.

IRRI, in fact, has received regular support from Australia for many years through the overseas development assistance program, which is a combination, of course, of AusAID and ACIAR, in this case. The reason for those is that it matches Australia's ODA objectives. A particular example would be the Cambodia-IRRI rice project. It is not commonly realised that during the killing fields period in Indonesia they ate all their rice seed, which meant when the war was over that country had no seed whatsoever. Cambodia is now a rice exporting country. The reason is that Australia, through AusAID, funded to the tune of $10 million a program which re-established Cambodia's rice industry.

At the same time, the activities of IRRI are very valuable to our own rice industry.

There is major collaboration going on between IRRI and the Yanco rice research institute. That is the main rice research institute for our own industry, which is based around Yanco, in the Riverina.

It is possible that, if we do not become part of the treaty as the world is changing—the GATT agreement is passed through—Australians institutions and hence the Australian rice industry may have less access to such things such as IRRI's germplasm bank. This is their huge bank of seed of as many rice varieties as possible in the world. They have 80,000 samples of different seeds, based at Los Banos in the Philippines. If our access to that was inhibited, certainly we would lose advantages. Our own industry loses advantages.

The agreement that you have before you here basically sets out the goals, objects and powers of IRRI and recognises the status of IRRI as an international organisation. It does not expressly impose any obligations on member parties, of which Australia, if it signs, will be one. However, by virtue of becoming a member of the agreement, Australia is obligated to recognise the status of IRRI as an international organisation. For the good of both Asia and Australia it is important that IRRI continues to operate effectively. Recognising IRRI as the international organisation that it is, with its international sources of financing, its international operations and the international character of its board of trustees and staff, will certainly help IRRI to do so.

CHAIR—The ODA levels in the 1996-97 budget were not affected at all? Were they maintained, reduced or what?

Mr Lee—ODA levels from ACIAR were maintained. The major funding from AusAID was for the Cambodia-IRRI-Australia project, which was $2.2 million per year. As far as I know, that was maintained.

CHAIR—In the NIA it is stated that there was consultation with the states and territories. What about the rice industry? In domestic terms, what are the implications for the Australian rice industry? Was there consultation with the industry?

Mr Barden—There was no specific consultation by ACIAR with the rice industry. We wrote, in accordance with procedures, to the appropriate state ministers of agriculture and other interested parties, but not specifically to the Australian rice industry.

CHAIR—With due respect, in the NGO area surely something like this would not be negotiated in a vacuum but would be done in consultation with the major domestic peak body. Do we have assurances from state ministers, for example, DPIs, et cetera that the peak body for the Australian rice industry—that would be the Australian Rice Industry Council, I guess—

Mr Barden—I cannot recall whether that is the exact name, I am sorry, but there

is an equivalent body, yes.

CHAIR—So basically what you are saying is that it was all done under the Standing Committee on Treaties, through the state and territory appropriate ministers or officials?

Mr Barden—And federal ministers, and through our mainline Department of Foreign Affairs and Trade.

CHAIR—I wonder whether we might get you, as a result of this hearing, at least to write to the peak body—whatever that peak body might be—quickly, because we need to get some comments on this if we are going to table these in accordance with our very tight time scale. We need to make quite sure that the domestic ramifications are positive rather than later to be accused, as indeed we have been over the last few years in Australia, of not consulting people. This seems to me to be a classic example of a lack of consultation.

Mr Lee—May I just make a comment, Mr Chairman? In terms of the Australian rice industry, the situation is not actually going to change as a result of signing this treaty. Through the Yanco Agricultural Institute, which is the research body for the rice industry, there is considerable collaboration already happening. This will not affect that collaboration whatsoever. What the treaty does is basically to ensure that such collaboration continues in a smooth way. We will certainly do that, but the substance is not going to change.

CHAIR—But it does not alter what I said. I hope my colleagues agree with me that that is the first thing we should get. So we ask you to take that on notice as a matter of some urgency if we are to meet our parliamentary remit. As there are no further questions, thank you. That was easy, except for that one.

[11.07 a.m.]

PERGAMINELIS, Ms Maria, Acting Director, Hong Kong, Macau and Taiwan Affairs Section, Department of Foreign Affairs and Trade, RG Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

CHAIR—Welcome. Would you like to make a short opening comment on this particular issue.

Ms Pergaminelis—The objective of this agreement is to ensure the continuity of Australia's consular representation in Hong Kong beyond the transfer of Hong Kong's sovereignty from Britain to China on 1 July 1997. Continuity of consular representation for those countries which have diplomatic relations with China is provided for in the 1984 Sino-British joint declaration on Hong Kong and in China's 1990 Basic Law for the Hong Kong Special Administrative Region, which will in fact be Hong Kong's mini-constitution after the transfer of sovereignty.

The operations of the consulate-general will continue to be based on the Vienna Convention on Consular Relations, and it is intended that the agreement will enter into force on 1 July 1997.

CHAIR—So what you are saying is that from 1 July next year this will still have legal effect. Is that correct?

Ms Pergaminelis—The agreement?

CHAIR—The agreement.

Ms Pergaminelis—The agreement will come into force on 1 July 1997.

CHAIR—That is not the question I am asking.

Ms Pergaminelis—I am sorry.

Mr Campbell—This agreement is an agreement with China and it will continue to have effect after July 1997.

Mr TUCKEY—I understand the proposal and support it. Basically, we are having a change of circumstance in Hong Kong and we need to have an agreement with the Chinese government to accommodate it.

CHAIR—So really we are depending on the ongoing bilateral dialogue with the PRC to ensure that the spirit of this agreement is carried through. Is that basically what you are saying?

Ms Pergaminelis—Continuity of representation is provided for in that Sino-British Joint Declaration. What this agreement does is give effect to that provision to Australia's consular representation in Hong Kong.

CHAIR—The NIA talks about no legislation required. Is that the case?

Mr Campbell—That is the case.

Mr TUCKEY—If I can just ask a question more from curiosity than anything else, it is consulate standard, not commission standard, is it? That is all right, I was getting mixed up. It is not a high commission. It will become a consulate—in other words, an extension of our arrangements with China, with our ambassador being in another part of China.

Ms Pergaminelis—Yes, it will be a consulate-general.

Mr TUCKEY—Yes.

Ms Pergaminelis—In fact, it is a consulate-general now. It was a commission until the late 1980s.

CHAIR—And will that go back through Beijing or, under interim arrangements, will that come back to Canberra?

Ms Pergaminelis—I am sorry. I do not understand the question.

CHAIR—With our consul in Hong Kong from 1 July next year, will he or she come straight back to DFAT as part of the reporting chain or through our embassy in Beijing?

Ms Pergaminelis—I understand that it will probably go through Beijing. Hong Kong after 1997 will have autonomy in all matters except foreign affairs and defence, and this would be a foreign affairs matter.

CHAIR—Thank you.

[11.11 a.m.]

BROWN, Mr Stephen Paul Keating, Assistant Secretary, Legal Services, Department of Defence, Russell Offices, Canberra, Australian Capital Territory 2600

CORDNER, Captain Lee George, Director, Naval Current Policy and Plans, Department of Defence (Navy), A-3-14, Russell Offices, Canberra, Australian Capital Territory

MOSKWA, Mr Richard John, Acting Director, Naval Resource Evaluation and Costing, Department of Defence (Navy), A-4-12 Russell Offices, Canberra, Australian Capital Territory

SHARP, Captain Russell Warwick, Director, Joint Logistic Operations and Plans, Department of Defence, Russell Offices, Canberra, Australian Capital Territory

CHAIR—Welcome. Would you like to make a short opening comment on both the agreements?

Mr Brown—Both of these agreements are concerned with extending existing arrangements. In the case of the Multinational Force and Observers, it is the continuation of an arrangement which has been in place for a number of years for participation in that organisation which assists in maintaining the peace in the Sinai as a result of the Israel-Egypt peace treaty.

In the case of the enhanced Nowra agreement, it is an extension and, to some extent, an enhancement of arrangements which have been in place for a number of years for the New Zealand Air Force to provide flying support to Australia located at the naval air station at Nowra.

CHAIR—On the MFO agreement, in the light of the deterioration in Arab-Israeli relationships in the Middle East, have we got any feel for the operational effectiveness of the MFO? What is the feedback, for example, to Headquarters ADF?

Capt. Sharp—The feedback is that the MFO agreement is a model agreement for other areas—potentially for areas such as the Golan Heights. It is held in wide esteem as an operation which is not under UN auspices that can be conducted effectively and efficiently. It is also held in high regard by the governments of both Israel and Egypt and, in relation to the current difficulties which Israel is experiencing, I could only speculate on the length of the current operation.

CHAIR—In relation to this one, the NIA talks about consultation provided to states and territories. I assume that was done, again, through the committee of officials. What about consultation, for example, with Israel and Egypt? Maybe this is one for

DFAT. Mr Biggs, do you know?

Mr McCLELLAND—Could it have happened through the Israel and Egypt armed forces reserve consultation?

Mr Brown—I think what needs to be understood is that the basic arrangement for the provision of the activity is undertaken by the MFO organisation itself. It is the MFO organisation which has the basic agreement with the governments of both Israel and Egypt. The MFO then has separate arrangements with the participating countries—including Australia—for the provision of forces. It is our understanding that when there is a change in the participation by one of the other countries, the MFO informs the two host governments, but just what the details and processes for that are, I am afraid I cannot say.

CHAIR—Yes. My understanding is that MFO at the moment—besides Australia—covers Canada, Colombia, Fiji, France, Hungary, Italy, New Zealand, the United States and Uruguay and, to a certain extent—not a member—Norway. One would assume that the appropriate consultation took place with those groups.

Mr Brown—Yes, we assume that.

Mr TUCKEY—Just briefly and in regard to this matter, what sort of operational experience benefits those troops that we have present while they are there, whether it be in maintaining skills or achieving additional knowledge of defence arrangements through exchange with other military countries present? How many people have we got there?

Capt. Sharp—We have 28, which includes the force commander, Major-General Ferguson, his driver, 26 on the staff at headquarters, and one person who shares his duties between MFO Rome headquarters and the North Camp at El Gorah. He is the command information systems officer.

In terms of the benefits, I could only suggest to you that this is a very mature peacekeeping operation. It is the only operation where we have a full spread of personnel—people, officers, senior NCOs, junior NCOs. You can rotate people every six months through the positions to gain experience in a very mature operation dealing with a number of other countries. And, as it is seen internationally as the model arrangement, we can bring that sort of experience back to the ADF for days when, perhaps, we might be deployed to less than mature operations, such as that that we experienced with UNAMIR in Rwanda.

CHAIR—And this extends it for three years from January 1995? Why January 1995?

Capt. Sharp—They have traditionally run from the January of each year which means that this agreement, should there not be an invitation to extend, and should we not

agree to any such invitation, will conclude in January 1998.

CHAIR—But wait a minute, we are halfway through that period, anyhow. What are we dependent on—just a handshake?

Mr Brown—There has been a less than treaty status arrangement in place since then. There were a number of difficulties with the negotiation of the detail of this particular agreement.

CHAIR—And the extension beyond the three years: is that just done by mutual agreement?

Mr Brown—It can be extended by mutual agreement.

CHAIR—Mutual determination in writing.

Mr Brown—That was to avoid the necessity of having yet another agreement if we were to decide to continue beyond January 1998.

Mr TUCKEY—Just coming back on that operational thing, you started to talk about headquarters and that. There was a time when we had people flying helicopters there: has that all ceased?

Capt. Sharp—We had people there from 1982 to 1986. In MFO Sinai there were about 100 personnel with eight helicopters. They were replaced by the Canadians and were then invited back at the beginning of January of 1993.

CHAIR—Instead of the United Kingdom.

Capt. Sharp—Yes. We were asked to consider the sorts of opportunities that we might like to pursue, and we offered headquarter detachment.

Mr TUCKEY—Thanks.

Mr BARTLETT—What is the benefit for Australia in being involved on a treaty basis, rather than just continuing to contribute assistance as we have?

Mr Brown—It is an international arrangement with fairly significant consequences, and that is why it should be reflected in the form of a treaty level document. The previous arrangements—the original one in 1982 and the revival—were both covered by treaty status documents. Because of the difficulties there were in finalising the detail of this particular agreement, we had a less than treaty status arrangement which has covered the interim period from January 1995 up to now, but it has always been envisaged that a treaty would be eventually concluded.

Mr BARTLETT—So this is just a more formalised basis for an on-going arrangement?

Mr Brown—Yes.

Mr Biggs—One of the principles underlying the treaty's scrutiny through parliament was that anything with significant international ramifications and a high level of Australian public interest should be subject to treaty processes, including the parliamentary scrutiny. And since there was in the 1980s a lot of controversy attached to the MFO agreement, it is an important example of the sort of arrangement that needs to be subject to that process.

CHAIR—To put it into perspective, what is the total MFO force?

Capt. Sharp—I believe that they have a force of about 3000 military and civilian personnel scattered between two camps, El Gorah in the north and Sharm El Sheikh in the south.

CHAIR—So, for ADF professional enhancement, this is important in terms of the peacekeeping function?

Capt. Sharp—Absolutely, and most particularly with the positions that we have on a headquarter staff, rather than just simply providing infantry.

CHAIR—So, we do not have people out observing. They are all headquarters under the new arrangements, are they?

Capt. Sharp—Under this agreement, yes.

CHAIR—Can their function be varied within the agreement?

Capt. Sharp—Yes, it can. Should we wish to forsake one position and seek another, that has to be negotiated with the Director General and MFO Rome.

CHAIR—So we are not envisaging any change in either numbers or scope or function?

Capt. Sharp—Certainly there is no indication of a need to change numbers. I will be talking to Major-General Ferguson tomorrow, who is on a visit here to Australia, about possible changes that he would like to see in terms of position in the headquarter.

Mr TUCKEY—Mr Chairman, just making a note on Kerry's comment, put in its most fundamental sense, we have troops based in a foreign country and, as such, a treaty would seem appropriate.

CHAIR—Yes, absolutely. With regard to the New South Wales FMO at Nowra, my understanding is that what we have before us is something that replaces the one that was covered in our first report to the parliament. So this is a replacement for the one that was originally considered.

Capt. Cordner—It is a follow-on. The original Nowra agreement was for five years, from 1991 to 1996. It originally expired in March 1996 and then was extended to the end of June this year. So, formally, that agreement expired on 30 June. This agreement is known as the enhanced Nowra agreement because its terms are similar to the original agreement. However, we have increased the amount of Royal New Zealand Air Force flying commitment to this agreement.

CHAIR—So before it was only 2 Squadron, or was 75 Squadron involved as well previously?

Capt. Cordner—Under the original Nowra agreement it was only 2 Squadron, involving six aircraft and about 53 personnel based at NAS Nowra or HMAS *Albatross*, and they provided us with 800 hours per annum on task flying to support Navy Fleet Air Defence training support requirements. Under this enhanced Nowra agreement, the amount of flying from 2 Squadron and the basing of 2 Squadron at Nowra continues pretty much as before, but this time we will be also making use of 75 Squadron aircraft, which is the Royal New Zealand Air Force's operational attack squadron, based in Ohakea in New Zealand. What they will do is provide us with an additional 200 hours per annum as they transit to and from Australia on other exercises and operational requirements. The reason we are seeking this enhancement is that, with the introduction to service of the ANZAC frigates and the increasing commitments due to two-ocean basing, navy needs an increased air support training to meet our air defence training requirements.

CHAIR—The only thing that has confused me, and I suspect some of my colleagues, in relation to the NIA is, and I quote:

> The cost of the RNZAF detachment must be weighed against the cost to the ADF of maintaining a squadron of Skyhawk aircraft and the supporting personnel, stores, aircraft, engineering and the associated infrastructure. Personnel costs alone to maintain a similar squadron of Skyhawks have been estimated at $52.8 million for the period 1991-96 against the $14.8 million total cost to the RAN.

Is that a cost-benefit analysis statement?

Capt. Cordner—That is correct.

CHAIR—If the RAN had continued to have the Skyhawks for fleet support, it would have cost about $52 million; what it has cost us is $14 million.

Capt. Cordner—That is correct, Mr Chairman. We have been asked this question:

if we did not have the services of the Royal New Zealand Air Force and had to provide this fleet air defence flying support by other means, how much would it cost? That is one answer. Another answer would be to use our air force more, and that is also a more costly proposition.

CHAIR—Yes. It is rather ironic, having disposed of the Skyhawks many years ago to the New Zealanders, to find that they are coming back to provide a function that we really needed in the first place.

Mr TUCKEY—You call it outsourcing, Mr Chairman.

CHAIR—That is right. That is what you call CDR, I guess.

Mr TUCKEY—I am across it and I think we are well aware of the arrangements. It is really up to Foreign Affairs and Defence to discuss whether that is the appropriate means of doing it. But, while we are doing it, I just think we have to have a treaty. It is much the same as the previous one.

CHAIR—Just on the budgeting, the costing side of it, the agreement provides that cost offsetting arrangements shall result in a net annual payment to New Zealand in the order of $2 million, subject to audit and all the rest of it. What has been the actual result of that audit process in the past? How much in terms of financial outturn has there been for Australia? Is it near enough to $2 million or is this a variation on what has happened before?

Capt. Cordner—It is a slightly better situation than what has happened before. I think in the briefing notes it mentions that the previous agreement cost us about $14.8 million. In other words, we transferred approximately $14.8 million over the five years. Under this agreement, once all the cost offsetting arrangements have been sorted out—they are in place now, but once that has all been settled—we expect to transfer about $2 million per annum. So, from a navy program perspective, we are getting a better level of support than under the previous agreement at a cheaper price.

CHAIR—Just on a peripheral question—this is a personal thing—how many of the RAN's original six aircraft, albeit that they have been updated and all the rest of it, have now come back to haunt us?

Capt. Cordner—I am not sure. All of those aircraft that we transferred, plus the aircraft that the Royal New Zealand Air Force had beforehand, have all been subject to a considerable upgrade program. I do not think I could tell easily which were originally RAN aircraft. We could find that out if you want us to pursue it.

CHAIR—No.

Capt. Cordner—They do cycle the airframes around as they are going through maintenance cycles and so on. So it would vary from time to time.

CHAIR—Mr Truss, we have kept the best one for last, so don't disappoint me.

Mr TRUSS—You have made great progress in my absence.

CHAIR—Do you have any questions on the Skyhawks?

Mr TRUSS—I have not heard the previous questions, so probably any I asked would double up. It just seems to me that New Zealand does rather well out of this. We even paid their Medicare bills and all that sort of thing.

Mr TUCKEY—I made the point a little while ago that I think for us in circumstances like this, where there is another parliamentary committee—in other words, foreign affairs and defence—that deals with these matters, we asked for the cost because in many cases, like the film thing, nobody else is going to ask. But, in this case, I do not think, outside of curiosity, we need to go very far into the financial arrangements. It is whether or not a treaty is appropriate. I say a treaty is appropriate.

CHAIR—Except, if there is a substantial cost to us, over and above what we might have had had we retained those aircraft, then I think it is reasonable for this committee to ask it.

Mr TRUSS—We are meeting Medicare costs, the schooling costs for their children and all those sorts of things. Is that normal in these sorts of arrangements?

Capt. Cordner—With some countries, we would have a status of forces agreement. We do not currently have one with New Zealand, although there is one in the course of development in the Department of Defence. However, what is included in this agreement are the normal arrangements, whereby if we had New Zealand servicemen based in Australia for a considerable period of time—or on the other side of the coin, if we had Australian servicemen based in New Zealand for a considerable period of time—we would have access to each other's normal facilities such as education, Medicare and so on.

Mr TRUSS—At their cost?

Capt. Cordner—In this case there are about 53 New Zealand airmen and officers, some of whom who will have families, and they will be included in the community in Nowra and have access to the same sorts of facilities that other members of that community have.

CHAIR—But the bottom line really is that for an outturn to the defence budget of

about $2 million per annum, the ADF and the New Zealand defence force elements are achieving substantial operational capabilities in the process. Is that a fair comment?

Capt. Cordner—That is correct, Mr Chairman. Indeed, you noted one cost benefit analysis aspect that we had produced. Another one is that if we were to have to do this flying using our own air force, our own F18s mainly—and we do already use them significantly—the internal costs would be considerably more than we are paying here. For example, we are getting these New Zealand aircraft for about $1,820 per hour and we pay internally between navy and air force $7,500 an hour for an F18. So from the total defence picture and from navy's perspective, this is a very good arrangement.

CHAIR—As there are no further questions, thank you very much.

[11.32 a.m.]

JENNINGS, Mr Mark Brandon, Principal Government Lawyer—International Branch, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

MEANEY, Mr Christopher William, Assistant Secretary—International Branch, Criminal Law Division, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

CHAIR—Welcome. Would one of you like to make a short opening statement in relation to this agreement?

Mr Jennings—I will make a brief statement. A good deal of information has obviously been provided in the national interest analysis. In the past decade or so, Australia has taken a leading international role in efforts to promote cooperation against organised crime. We have been active in negotiating bilateral extradition agreements and mutual assistance in criminal matters agreements. We participated in the negotiations in the 1988 UN drugs convention and, as part of this exercise and because of our prominent role in this area, we were involved with the Council of Europe negotiations on the convention which the committee has before it.

We are obviously not a member of the Council of Europe, but there is a mechanism by which countries can be invited to participate in the negotiation of Council of Europe conventions. We so participated, and we signed the agreement in September 1992, which is a little over four years ago. Primarily, it deals with money laundering and the issue of dealing with the proceeds of crime. We have a federal Proceeds of Crime Act, but there are also state and territory acts in relation to that particular matter. Those state and territory acts were put in place primarily to enable Australia to become a party to the 1988 drugs convention. Obviously, they can be used to enable us in this case to become party to the Council of Europe Convention; so we have federal, state and territory legislation involved in relation to proceeds of crime.

In terms of consultations that have taken place with the states and territories, these have been conducted over a period of time. There was consultation, as I understand it, before signature; and, through the Standing Committee of Attorneys-General, there have been further consultations and exchanges of correspondence between the Commonwealth Attorney-General and his state and territory counterparts. Under the previous government, the Attorney-General was Mr Lavarch, and we currently have a submission with the Attorney, seeking his agreement for finalising the process of consultation.

There is one state which is yet to indicate at ministerial level that it is happy for us to proceed to ratification. However, at officials level, we have been told that they are supportive of that. Clearly, there are benefits for states and territories in Australia

becoming a party to this, because it allows an opportunity for state proceeds and territory proceeds orders to be dealt with by other parties—European parties, obviously—to this particular convention. And, conversely, we would have orders coming the other way from the European countries concerned.

I might say that our latest figures provided by the Department of Foreign Affairs and Trade indicate 25 signatories and 10 parties. The convention itself entered into force in September 1993, when the requisite three parties were achieved. I will briefly indicate that the Council of Europe is not a European Union, or European Community institution: it is more broadly based than that. Essentially, it seeks to develop common understanding and common approaches between European countries as a whole, as opposed to the different, but not very different, approach that is taken in relation to the European Union. The legal area is one area where the Council of Europe has been very active. There is a Council of Europe multilateral extradition convention and a mutual assistance in criminal matters convention and, quite topically, a convention dealing with the transfer of prisoners.

CHAIR—Just before I ask Mr Truss to open the batting, are you able to say which state at ministerial level has not yet—

Mr Jennings—I think I can say that Queensland is the state—with the change of government and so on that occurred there.

CHAIR—Has Denver Beanland indicated any objections informally?

Mr Jennings—As I understand, at officials level, there are no difficulties. I am not aware of any conversations with Denver Beanland.

CHAIR—When would you expect the Queensland Attorney-General to come to the party?

Mr Jennings—It requires a letter to be signed by the Attorney to the Queensland Attorney, and as I said, there is a submission with the Attorney.

Mr TRUSS—On that matter, the national interest analysis actually speaks about two states having not signed off.

CHAIR—It has come back to one, has it?

Mr Jennings—We say two jurisdictions are yet to respond formally to that effect. Victoria was the other, but we very recently received a letter from the Victorian Attorney.

Mr TRUSS—You mentioned that each of the states and territories has a Proceeds of Crime Act. Are those acts identical?

Mr Jennings—The broad thrust of them will be, in the sense that there is an approach that is taken in the federal legislation and in the state and territory legislation, in terms of the time at which a confiscation order can be made—which is generally after a conviction, for instance; but you can have restraint freezing orders and so on. I must say, Mr Chairman, I am not an expert in proceeds of crime: I have a very general understanding of it. Essentially, the broad thrust of these acts is much the same.

Mr TRUSS—Are the state acts consistent with the Commonwealth act?

Mr Jennings—The Commonwealth act, if I recall correctly, probably predates most of the state legislation. I would not say 'all', but I would say 'most'. Given that, there were probably fairly similar approaches taken.

Mr TRUSS—Going back to the issue that Mr Tuckey and others were raising earlier in the day, particularly with the High Court's expansionary views about interpretation of foreign affairs powers, does this convention give the Commonwealth the capacity to override the state Proceeds of Crime Acts?

Mr Jennings—In terms of whether it overrides acts, the issue when we look at how this convention will operate is that Australia will be the party to the convention. The central authority, the channel of communication, will run through the Attorney-General's Department. But, as is the case generally with mutual assistance treaties—and this is, let us say, a very specific type of mutual assistance treaty—we act in state matters and territory matters on behalf of the states and territories. Where they have an investigation running in relation to a particular matter, we act as a channel, because that is the way the operations have been set up.

Essentially, the state legislation operates on its own terms. Let us talk about an example under this convention. If they have a proceeds order that they wish to lodge and be actioned in a European country that is a party, then the channel of communication would be through the Attorney-General's Department, but there would be no effect on the state legislation. We are only operating as a channel. If we had a Commonwealth proceeds order, then the issue of state and territory legislation would not arise. Referring back to the broader mutual assistance operation, we have a Mutual Assistance in Criminal Matters Act which sets up mechanisms and so on that apply in these cases, as well.

Mr TRUSS—That would apply to the actual triggering of this convention.

Mr Jennings—Yes. We would have the operation at the Commonwealth level of the Commonwealth Proceeds of Crime Act and the Commonwealth Mutual Assistance In Criminal Matters Act. Where you are operating with state legislation, you would still be using our mutual assistance legislation, but the intention would be to apply the Mutual Assistance Act for the purposes of this to other parties.

CHAIR—In terms of the legal effect of the convention once it is ratified, do the provisions of the convention apply prospectively to crimes committed after ratification, or does it pick up any sort of retrospective application?

Mr Jennings—I am not sure on that point, Mr Chairman, without a closer reading of it.

CHAIR—For example, if we had a Skase type of situation, like now, in advance of ratification, and then we ratified in X months time, would we be able to pick up that particular case under the convention?

Mr Jennings—In that case, because we do not have a conviction, because we do not have Mr Skase before courts in Australia, that order would come into effect, assuming that an order was made and a conviction was entered, after the entering into force of the convention—despite the facts occurring prior to that.

CHAIR—I am just thinking of the Polish situation, although that is an extradition matter, Bill, is it not, with the fellow in Poland at the moment?

Mr Campbell—There are people here who are more expert in that than I am.

CHAIR—Mr Meaney, would you like to comment at the table?

Mr Meaney—I am the Assistant Secretary in charge of the International Branch of the Criminal Law Division, so I deal with international criminal law matters, one of which is extradition.

CHAIR—This is just a hypothetical, and it links in with extradition and the impact of this. Do you know whether, if we had a hypothetical case, it would be subject to the ratification of this or be subsequent to the ratification?

Mr Meaney—The convention deals with the confiscation of the proceeds of crime. It depends what the focus of the treaty is and when it occurs. In relation to, for example, an extradition, you would have to have a conviction in Australia and you would need to have your forfeiture orders. Prospectively, certainly if a forfeiture order is made after the convention is in place, it would be enforceable. In relation to somebody like Mr Oates who might well be extradited back to Australia, if there was a subsequent forfeiture order then that would be post-conviction. All of that is well down the track in the future.

CHAIR—Yes. I am sorry for interrupting, Warren.

Mr TRUSS—While we are on those specifics, I understand that fiscal and political offences are either excluded or a party can choose not to exercise or use the convention in those circumstances.

Mr Meaney—That is right.

Mr TRUSS—What is meant by 'fiscal offences'?

Mr Meaney—Fiscal offences are a very common exception to cooperation. For example, laws relating to taxation are very much fiscal offences. Switzerland, for example, has a long standing practice—as do many other jurisdictions, of course, but Switzerland would probably be the best known—of not assisting in enforcing another country's taxation or fiscal laws, on the rather simple basis that, if Switzerland assists other countries to enforce their laws, that is to the detriment of Switzerland and its own revenues. I guess that that position, from their point of view, is entirely justifiable. But it is a well-recognised exception to cooperation generally, under the rubric of mutual assistance; and, therefore, what is stated in the convention here merely reflects the internationally accepted best practice, if you like.

Mr TRUSS—What about corporate fraud involving multinational companies?

Mr Meaney—No. Fiscal offences invariably involve defrauding of the revenue of one country. It goes to the sovereignty of enforcing laws of a country. In a commercial fraud where individuals, other companies, separate parties or natural persons suffer, they are the defrauded parties. That sort of conduct certainly is not encompassed by the notion of 'fiscal offence'.

Mr TRUSS—And what is a 'political offence', in that same terminology, and how would that affect the proceeds in relation to, say, Jewish families and crimes against humanity?

Mr Jennings—I could answer that, Mr Chairman. I believe you are referring to article 18 here, where it is a discretionary refusal ground because the offence to which the request relates is a political or fiscal offence. We have already dealt with fiscal offence. Political offence would be given the meaning that it is generally given in Council of Europe penal conventions, if you want to call them that. In that regard, article 3 of the European Convention on Extradition provides a definition of political offences, and in some detail. For instance, it states that the taking or attempted taking of the life of a head of state or a member of his family shall not be deemed to be a political offence for the purposes of the convention, and there are other exceptions. It is a quite tightly drawn exception, for obvious reasons. Looking at the definition of political offence under the Extradition Act, which is in fact the definition that is used for the purposes of the Mutual Assistance Act, offences under the multilateral hijacking conventions, for example, are excluded. They cannot be regarded as political offences.

In relation to the issue of genocide, crimes against humanity and war crimes, certainly it is generally accepted that they do not fall within political exceptions. Although I do not have a copy of it, Mr Chairman, if I recall correctly from my research, there is an

additional 1975 protocol to the extradition convention which states that it interpreted war crimes as not falling within the definition of political offences.

Mr TRUSS—While we are on those areas that the convention covers or does not cover, what about the impact of the convention on third parties? Are they protected in any way? What happens in relation to proceeds of crime that have been used in a way which perhaps requires the sale of property to recover them, and innocent third parties are involved: things of that nature?

Mr Meaney—Perhaps I could start and then let my colleague get into the detail. Under domestic proceeds of crime law, both federal and state, there are provisions that deal with the protection of innocent bona fide third parties who have purchased for value. For people who innocently have a dealing with some sort of proceed of crime, certainly the position is that they should not be disadvantaged. The underlying philosophy behind proceeds of crime legislation is to take the benefit from the criminals, not to take the benefit from anybody who might have had some sort of dealing with it. But, certainly, people who have a criminal intent or knowledge that these are ill-gotten gains ought to suffer the punishment. In the federal Proceeds of Crime Act and in all state legislation, there are provisions that protect bona fide purchasers for value, and I think my colleague can probably direct you to the exact provisions in the convention.

Mr TRUSS—The other area I would like to look at is the question of proceeds of crime from drug offences and drug trafficking and the like. Do you envisage that the countries of southern Asia or South America, for instance, might be signatories to this convention, or are they not likely to be involved?

Mr Meaney—It is basically Council of Europe so, therefore, notwithstanding its more extended definition than the European Economic Community, it is fundamentally still Eurocentric; although the USA, Canada and Australia are also parties to this. Other than those sorts of parties who are the normal members of the Council of Europe, the only way Australia, for example, gets a guernsey is because we have been specially invited to participate in the elaboration of the convention; and, as such, we were invited to accede to it. Further than that, I think it must be that all parties to the convention would have to agree to any other country becoming a party. My understanding is that it is certainly not general practice that Asian or Latin-American countries are parties to European conventions.

Mr TRUSS—And why is that?

Mr Meaney—They are not a UN convention. It is from the Council of Europe, so it is basically set up for members of the Council of Europe, but with provision that others can join. They do not try and extend it.

CHAIR—Can I just jump in there? In the NIA it says:

This scheme of international cooperation follows the pattern of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which Australia is already a party. The main difference is that the Council of Europe Convention is not limited to drugs.

It facilitates international cooperation et cetera. What you are saying is that, in a multilateral sense, the 1988 UN convention is the thing that covers—

Mr Meaney—That covers drugs and, since the elaboration of the 1988 convention, there has been a move that said that originally money laundering or dealing with the proceeds of crime was concerned with the proceeds of drug trafficking. That was its genesis, if you like, back in the eighties. Internationally there has been a move since—we are very proud to say that Australia was at the forefront—to say that, in principle, there is no reason why the proceeds of drug crimes should be treated any differently to the proceeds of any other crimes: if you engage in prostitution or racketeering—the usual range of criminal activities—why should you single out drug trafficking? The Council of Europe being later than the 1988 Vienna drug convention. The 1988 Vienna drug convention was, of course, set up to specifically deal with drugs, but internationally in relation to dealing with the proceeds of crime there have been moves to say it should be more generally based. The Council of Europe is one of the first international instruments that recognises this more generally based approach that it should deal with the proceeds of all criminal activity.

Mr Jennings—Mr Chairman, if I could return to the point about third parties, I refer the committee to article 5 of the convention, which says:

Each party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected by measures under Articles 2 and 3 shall have effective legal remedies in order to preserve their rights.

I also refer the committee to article 22, which deals with recognition of judicial decisions. Paragraph 2 says:

recognition may be refused if third parties did not have adequate opportunity to assert their rights.

So there clearly is a good appreciation on the need to protect the rights of innocent bona fide third parties.

Mr TRUSS—So, in practice, the way that would work is that if Australia were asked to repatriate some proceeds of crime, the obligation would be on us to ensure that third parties' interests were protected?

Mr Meaney—We would need to be satisfied that either the third party had an appropriate opportunity in the forum where the order was given to make their claim or, conversely, if there was no such facility under the domestic law of the country that was requesting our assistance, I think it would be open to Australia to refuse assistance

pursuant to the convention because those claims had not been adequately dealt with.

Mr TRUSS—But is the obligation on the country that happens to have domiciled the proceeds of crime or is the obligation on the country that is asking?

Mr Meaney—Which obligation?

Mr TRUSS—To make sure that the third party's rights are protected.

Mr Meaney—It is expected that all litigation will occur in the domicile that sought the restraining order in the first place, so it should have appropriate due process in that forum. The general sort of principle is that once an appropriate order is given there is no relitigation of that once you go to another country merely because some of the proceeds are there. We would, to the extent possible, intend to give full faith and credit to orders properly given by another court of another country. But we can still look to the law of that country and, if somebody comes to us and says, 'I am an affected third party. I have had no recourse. There is no way that I can even get before the courts in the jurisdiction within which this order was given,' the sanction is not that Australia should then entertain in our courts some sort of relitigation of whether or not this person has an appropriate remedy. All we would say to the requesting country that says, 'We wish your assistance to repatriate proceeds,' or whatever, is, 'In accordance with the treaty we refuse to give that assistance until you sort this sort of issue out.' We would just put our hands up and say, 'We are not prepared to offer the assistance.'

Mr TRUSS—Are we, under the convention, able to take other things into account in deciding whether or not we will offer assistance? For instance, it has come to my attention recently in another committee that I am involved with that with a lot of our mutual assistance agreements with overseas countries Australia has a policy of not cooperating if they have a death penalty for the offence. In other words, we do not get much cooperation with Thailand in relation to drug matters because we adopt a non-cooperative approach on the basis that they have a death penalty for the offences. Are we able to make those sorts of value judgments? Are they allowed for in this convention? Can we decide whether we like the laws of another country before we participate in each individual instance?

Mr Meaney—In relation to your first point, the concerns about the death penalty, that was in fact an enactment of this government recently passed and has not yet come into force. Quite frankly, with the greatest respect, I do not think there is any evidence that it has impacted on our ability to get any cooperation yet because the law is not in fact on the books in that amended form. Let me say, just as an example, I was involved in that amendment too, so I guess I am a little protective of it.

Secondly, there are specified grounds for refusal under article 18 of the convention here. In relation to treaties, for example, a mutual assistance treaty is slightly different

from this convention. A treaty is not a multilateral convention, but our mutual assistance treaties are governed by our own domestic Mutual Assistance Act as it is amended from time to time and, of course, any treaty incorporation must be in accordance with that law. There is also provision in the law that the act can be modified by a treaty, providing regulations have been passed to give effect to a treaty. So you could have differences in detail, if you like, in how you deal with things. It can be varied.

But there are some fundamentals in our legislation that of course are just not open to vary by way of treaty at all. That mechanism is designed, as I say, to deal with matters of detail which might vary from jurisdiction to jurisdiction. It is not designed to give carte blanche in negotiating a treaty to change the whole fundamental parameters of what we are doing.

Mr TRUSS—But the detail in the Australian act can be changed by international treaty.

Mr Meaney—The act can be applied subject to the treaty. So you get variations in the process it is designed to achieve.

CHAIR—Can we just come back on something that Mr Truss raised earlier which I do not think was answered, and that is in relation to the potential for Commonwealth override. I do not think that was answered in the degree to which the Commonwealth, as a result of this convention, has the ability to override comparable state legislation in terms of search, seizure and confiscation.

Mr Meaney—Quite frankly, I had not really focused on that issue. It would be very difficult to imagine how that would occur, because the sort of detail that is set out in the convention here is totally different from the sort of detail that is set out in state and federal legislation on proceeds of crime. When you look at, for example, the proposition that my colleague just read about the protection for third parties, all it says is a broad statement of principle. If you look at, for example, the Commonwealth Proceeds of Crime Act, I think there are about six or seven pages of detail on how we would say that sort of a principle is articulated in our law in a legal sense. But to say that somehow or other that fundamental principle was violated, what this covers is the generally agreed principles that have been agreed that ought to be embodied in proceeds of crime or forfeiture legislation which has been agreed in the Standing Committee of Attorneys-General. The only potential I think really is where there could be some sort of conflict, and I do not really see that, given the broad nature of this—

Mr TRUSS—Just to give you a practical example of where conflict could occur—and I do not know whether it would because I am not sufficiently up to date with the various state laws—under the grounds for refusal, for instance, the fourth one is that you can refuse if the requested party does not allow for confiscation under its various laws. What if we had one of the Australian states that did not allow for confiscation under a

particular law? What would be Australia's approach in those circumstances? Would we accept the jurisdiction of the state bearing in mind that the national government is the signatory party?

Mr Meaney—I think there is a big difference here between a power and what the state law does and what this law does. This law provides the interface between Australia as an international nation state with another state, and it provides mechanisms whereby we can cooperate with them. All of that is premised on there being appropriate laws in each of the jurisdictions. In the circumstances that you just quoted, if there was not an appropriate forfeiture law, according to the convention the remedy, if you want to put it that way, is that cooperation is not granted. The federal government would not be saying to a state that its law was inappropriate; it would not be saying that if it did not have a law it should enact one. All it might be saying, and what would actually happen, is that it would be open to the other country to say, 'We will not cooperate with Australia.' That is a far remove, I think, from the Commonwealth being in a position to be able to tell the states what their laws should be or override state law.

Mr TRUSS—Say that only one state stands out on refusing to allow confiscation in a particular circumstance; this convention could not be used to put pressure on that state following a request from another country to change their law?

Mr Meaney—I do not wish to be difficult but this sort of begs the question because, if there was a state in Australia that did not comply, we would not be able to come before this committee and give you a statement that says each jurisdiction has the law in place and therefore we would like to ratify the convention. That is, this is the step that we go through before we even come to the committee, and it is to make sure that all the states are happy with it.

Mr McCLELLAND—I think the point is that although, for instance, Queensland may not—

Mr Meaney—Could I just clarify the point about Queensland that my colleague answered earlier? This in fact is not a question of substance, as I understand it; it is a question of form. The previous federal Attorney-General wrote to the previous Attorney in Queensland. As a matter of convention, I understand, given that there had been a change of government at the federal level, the minister will not respond to a minister from the preceding government. In fact it is a letter from the preceding government to his predecessor and, as a matter of convention, he will not respond to that—he wants another letter from the current minister. However, his department when they responded said, apart from that protocol, the minister himself is more than happy with the scheme. What we have to go through now are the steps to get a further letter signed and another letter from Queensland.

Mr McCLELLAND—Yes, I take all that. It is not relevant to my question but,

taking Warren's point on board, his point is relevant to this extent: in Victoria there is no ability for the Victorian courts to impose a forfeiture order in respect to a particular crime, be it prostitution or whatever it might be, but the courts in Holland have that power to impose a forfeiture order in respect to that particular crime. As I understand this convention, the federal government could still assist the Dutch government to enforce that forfeiture order in Victoria for the crime committed in Holland, even though the Victorian courts themselves could not impose a forfeiture order. So it will not override the state law, but it may result in someone who committed a crime in Holland having to recompense the—

Mr Meaney—Exactly. It could be that the circumstance turns out that you could do for Holland what you could not do for Victoria but, given that Victoria chooses to adopt that as the policy position and its interests are not violated by the effect of that, I do not think there is anything that the Victorian government would object to in the sense that proceeds of crime were taken off a criminal and sent back to Holland, or whatever might be the arrangement. I do not think that would impact on the sovereignty of Victoria at all.

Mr TRUSS—They might think it does.

Mr Meaney—My understanding from the letter—

Mr TRUSS—They made a conscious decision not to regard forfeiture as being a part of the penalties for that particular crime. A Victorian therefore cannot get that degree of compensation, but a Dutchman can.

Mr Meaney—It is not compensation because it goes back to the government. So it is not going to an individual. When property is confiscated it goes to the revenue.

Mr TRUSS—The Dutch revenue?

Mr Meaney—The same as if Commonwealth property is confiscated pursuant to the federal proceeds of crime law, it goes back into the Commonwealth revenue. It does not go to an individual. So it is not compensation in the sense that you are repatriating it back to a victim of some sort. But could I just say, Mr Chairman, these are the sorts of questions that we have already raised with the states. We have pointed to the convention, and they have considered these positions and have agreed that the convention should go forward.

Mr TRUSS—What would be the process of activating the convention? Let us take the reverse case. How would a Victorian court activate the process to get proceeds of crime from somewhere else?

Mr Meaney—In an administrative sense, I could say, my branch would be the conduit through which we would cooperate, because we have the contacts in foreign

governments: ones that we have developed over time. There would be the relevant court order. Take the case of a final order where it has actually been forfeited: a forfeiture order from the Victorian Supreme Court would be sent to us. We would advise the Victorian authorities on the form of a request to be made to the appropriate authority in the other country. We would put that through the diplomatic channel, if necessary, or it would go direct to a central authority, should there be such a thing—which is the way we do most mutual assistance requests. That is then given to the appropriate authorities in the other country and they are asked to enforce it.

Mr TRUSS—Would that presumably be the police in the other country, or would it require another court order?

Mr Meaney—It would depend. Sometimes they will recognise an order from our country and enforce it, in an administrative sense. At other times, the order from the Australian court is actually the basis for the application to one of their own courts to say, 'We would like you to ratify this order from a foreign country,' and then it becomes an order of their court and they enforce it as such.

Mr TRUSS—What would be the process in Australia if a Dutch court ordered proceeds here?

Mr Meaney—Essentially, it would be the reverse. It would come through our counterpart to my area. Usually, we would give it to the Commonwealth DPP, who would take it forward in a particular—

Mr TRUSS—Would it require another court order in Australia?

Mr Jennings—In relation to the process, we refer the committee to Part 6 of the Mutual Assistance in Criminal Matters Act, which deals with proceeds of crime. It is quite detailed. It explains in section 34, where we get requests for enforcement of orders, the process which takes place and how a foreign order is to be treated and what the DPP needs to do. At section 34, paragraph 4, it talks about the DPP applying to court for registration of a foreign order and registering the order accordingly, et cetera. Paragraph 5 then deals with enforcement. So there is quite a detailed scheme that is laid down for handling these orders.

Mr TRUSS—It does require another court order, it seems, in Australia.

Mr Jennings—Without professing to be an expert on this aspect of it, there is provision for the DPP to go before the relevant court of the state or territory Supreme Court.

Mr TRUSS—Finally, could the National Crime Authority presumably also activate these measures?

Mr Meaney—Yes; they could be a requesting authority, if they had the appropriate court orders. Mr Chairman, it has been drawn to my attention that, when I discussed the question of mutual assistance treaties in relation to the Mutual Assistance Act, I mentioned that it could be modified. Let me say that modification only arises when a treaty regulation is made. I did not want to give the impression that there was carte blanche for perhaps bureaucratic negotiators to negotiate a treaty which could then modify the act. Once that treaty has been agreed—signed and whatever—to come into effect, a regulation must be made. The act, in fact, indicates that the act can be modified by virtue of regulations that give effect to the treaty and the modifications.

CHAIR—So, it is within the umbrella of the treaty?

Mr Meaney—Yes. Certainly, the regulations are disallowable instruments; and there is appropriate parliamentary scrutiny of that process.

CHAIR—No more questions?

Mr Campbell—I would like to take a moment to say that it seems to me that, on a number of occasions today, the question has been mentioned about the ability to use a treaty to override state legislative power. Obviously, there are a number of principles underlying this issue, one of them being that it has been held that the external affairs power gives the Commonwealth the legislative power to give effect to treaty obligations, with the test I mentioned earlier. But, again, the principles and procedures on consultations with the states refer to the states being given the opportunity, in areas which are traditionally subject to state legislation—I have not got the precise wording—to have the first opportunity to actually implement the treaty. There is a good deal of cooperation with the states in this area, and in some other areas such as the environment, where we actually rely upon the state legislation to give effect to the treaty obligations.

I do not know if this is too blunt a way of putting it, but in one sense, once you enter into a treaty, there is a link to the external affairs power to give effect to the obligations under the treaties. Most treaties contain international obligation; so in fact, in one sense, most treaties might give rise to obligations that can be given effect under the external affairs power. But the point is that, in a lot of cases, that power is not used and, in many cases, we do rely upon state legislation to actually give effect to a treaty: even in circumstances where we could use the external affairs power, we do not.

CHAIR—We await the advice from the Attorney-General on that particular issue in relation to what we have raised previously—the Teoh case and others.

Mr Campbell—The Teoh case is an issue which is the subject of correspondence from you to the Attorney-General.

CHAIR—Yes. That is fine. Thanks very much.

Resolved (on motion by Mr McClelland):

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

Committee adjourned at 12.14 p.m.