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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 15 September 2003

Members: Ms Julie Bishop *(Chair)*, Senators Bartlett, Kirk, Marshall, Mason, Santoro, Stephens and Tchen and Mr Adams, Mr Bartlett, Mr Ciobo, Mr Evans, Mr Hunt, Mr Peter King, Mr Scott and Mr Wilkie

Senators and members in attendance: Senators Kirk, Mason, Stephens and Tchen and Mr Adams, Ms Julie Bishop Mr Evans and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled on 9 September 2003

WITNESSES

Committee met at 10.06 a.m.

CHAIR—I formally declare open the meeting of the Joint Standing Committee on Treaties. As part of the committee's ongoing review on Australia's international treaty obligations, the committee will review six treaties tabled in the parliament on 9 September 2003. I understand that witnesses from the Department of Foreign Affairs and Trade and the Attorney-General's Department will be with us for today's proceedings, with witnesses from other departments joining us for discussion of the specific treaties for which they are responsible.

I should remind witnesses that today's proceedings are being broadcast by the Department of the Parliamentary Reporting Staff. Should this present any problems for witnesses, it would be helpful if they could raise that issue now. Since there are no problems, we will proceed.

[10.07 a.m.]

Agreement between the European Community and Australia amending the Agreement between Australia and the European Community on Trade in Wine, and Protocol, of 1994

ALDER, Mr Michael, Manager, Wine Policy, Food and Agriculture, Department of Agriculture, Fisheries and Forestry

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

WILD, Mr Russell, Executive Officer, International Law and Transnational Crime Section, Legal Branch, Department of Foreign Affairs and Trade

CHAIR—Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Mr Alder—Yes, thank you. The treaty amendment that you have before you in this case is a very simple one and involves a very minor change to annex I of the 1994 bilateral wine agreement between Australia and the European Community. Annex I of this agreement lists a number of winemaking practices that were approved for Australian producers exporting wine into the European Union. It also approves a number of practices for European wine producers exporting wine to Australia.

Point 1(b) of that annex provides a provisional authorisation for the use of cation exchange resins for wine stabilisation purposes. However, this approval was only granted until 31 December 1998. This was done pending further consideration of this practice by the European Community pending making that approval permanent. The temporary approval, which ran out in 1998, as I mentioned, has been extended three times since the original agreement, most recently until 30 June 2003. It is simply now proposed, with the agreement of the European Community, to extend this approval for this particular wine making practice to 30 June 2004.

In short, there will be no changes. There is no domestic legislation involved. It will simply enable Australia's wine producers to continue using a common practice in the wine industry for wine that it exports to Europe.

CHAIR—I assume that this has been before the committee on the three previous occasions when the approval has been extended.

Mr Alder—No, it has not.

CHAIR—Is this the first time that it has come before the committee?

Mr Alder—Yes, it is.

CHAIR—Why did it not come before the committee on previous occasions?

Mr Alder—In the past I think there was a misunderstanding. The changes that we made to extend this derogation were thought not to constitute technical treaty changes. It was only in recent times that it came to light that in fact it was regarded as a treaty change. Hence we brought it forward.

CHAIR—On the previous occasions, a 12-month extension has been sought?

Mr Alder—I think one was 12 months and another couple perhaps for two-year periods.

Mr Wild—The first one extended it to 30 June 2000, so that one was for 1½ years. Then the subsequent ones extended it for one year each.

CHAIR—And the reason for the extension is to continue to allow scientific testing to continue on this technique?

Mr Alder—It is to continue enabling Australian producers to use it pending permanent agreement to that practice by the European Community.

Mr ADAMS—So that we can export it using that practice—putting the resin in to stabilise it? So that we can put it back into Europe—export the wine, which is worth a billion dollars.

Mr Alder—That is right.

CHAIR—What is the delay in permanent approval, as far as you can see?

Mr Alder—Political.

CHAIR—Nothing scientific?

Mr Alder—We do not believe there are any scientific problems. There are no health or safety issues as far as Australia is concerned. The practice of ion exchange is used in the water industry, I believe, in waste water management and so on. It is a practice that is approved in the Food Standards Code in Australia and that has been used for many years. However, it is not a practice that is approved for usage in the commercial wine industry in Europe. It is not so much a matter of health, safety or other issues; they do not like the practice generally and they wish to consider it further before approval.

CHAIR—So even though it is not a permanent arrangement, it is some achievement to have the approval in the first place, albeit extended every 12 months?

Mr Alder—Yes, that is right. It is better than the alternative. That is what our industry would say.

Mr WILKIE—Are they the only ones with a problem with the practice?

Mr Alder—As far as I am aware, ion exchange is used in the US, Canada, South America and South Africa. It is a particularly European approach to this practice.

Mr WILKIE—So this is the only agreement of this type that we have with any other partner?

Mr Alder—The only bilateral wine agreement that I am aware of, yes.

Mr ADAMS—I guess this comes out of the original agreements with the Europeans about changing names or taking away the word 'champagne' and area-specific name changes?

Mr Alder—Yes. The 1994 agreement, of which this is part, covers a whole range of issues, including the geographical indications that you mentioned.

Mr ADAMS—So we would say that this one is probably being fixed up as a bit of a leverage on us from time to time?

Mr Alder—I think that is a fair judgment.

Mr WILKIE—Given that it is highly likely that this practice of not approving it will continue, why do we only ask for one year?

Mr Alder—We did not; we asked for permanent derogation pending finalisation of the other matters that are outstanding under the agreement. However, our European colleagues did not agree to that.

Senator MASON—So we will see you in another year's time, will we?

Mr Alder—We have a meeting in November in Brussels with the European Commission. If we can finalise matters, you will see me in one form or another—whether it is about just this matter or about a whole range of other issues.

Mr ADAMS—I understand that they are winding up a bit on cheese now, aren't they? But that is not your area, is it? You are wine, aren't you?

Mr Alder—That is right, yes, but Europeans—

CHAIR—Are you on the roquefort cheese issue?

Mr Alder—Yes. The GI issue has come up in the WTO.

Mr ADAMS—You are the wine desk, are you?

Mr Alder—I am specifically wine.

Mr ADAMS—Do you have two barrels of wine with a plank across the top?

Mr Alder—No.

CHAIR—We are trying to make this a pleasant experience for you so you will look forward to coming back in 12 months time.

Mr Alder—I always enjoy coming here.

CHAIR—I think we understand the proposed amendment. Thank you very much for your time. Mr Wild, would you like to say something.

Mr Wild—Could I just correct one thing I said. The second extension was for two years. Then there was a third one for one year.

CHAIR—We will note the correction. Thank you for your time this morning, Mr Alder.

[10.15 a.m.]

Agreement, done at Townsville on 24 July 2003, between Solomon Islands, Australia and New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the Police and Armed Forces and Other Personnel deployed to Solomon Islands to assist in the restoration of law and order and security.

CAMPBELL, Mr William McFadyen, General Counsel, International Law, Attorney-General's Department

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

FLETCHER, Mr Graham Hugh, Assistant Secretary, Solomon Islands Task Force, Department of Foreign Affairs and Trade

WHITE, Mr Damian Craig, Executive Officer, Legal Branch, Department of Foreign Affairs and Trade

WALTERS, Mr Mark, Director International Operations and Acting General Manager International, Australian Federal Police

CHAIR—I am obliged to inform you that, although the committee does not require you to give evidence under oath, the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks?

Mr Campbell—The fundamental purpose of this agreement and of the Regional Assistance Mission to Solomon Islands is to restore law and order, security and good governance and to bring about economic recovery in the Solomon Islands. The multilateral agreement relating to the deployment of the Regional Assistance Mission to the Solomon Islands is one of the three major documents providing the legal authority for the operation of that mission in the Solomon Islands. The first document is a formal written request for assistance addressed to the Australian Prime Minister from the Solomon Islands Governor-General acting on the advice of the Solomon Islands cabinet. That was dated 4 July 2003. The second is the multilateral agreement before the committee. The third is the Facilitation of International Assistance Act 2003 that was passed by the Solomon Islands parliament and entered into force on 22 July 2003. That act provides the authority in Solomon Islands domestic law for the activities of the visiting contingent. Its terms mirror, to a large degree, the provisions of the multilateral agreement before the committee today.

As explained in the national interest analysis, the treaty was urgent and the necessity to become a party to the agreement prior to its tabling in the parliament was notified in writing to the chair of the committee, I believe by the Minister for Foreign Affairs. The agreement serves a number of purposes. It governs the relationship between the Regional Assistance Mission and

the Solomon Islands government; it governs also the relationship between countries and their nationals contributing to the visiting contingent. It also sets the powers, rights and privileges of members of the visiting contingent.

It contains provisions similar to treaties previously considered by this committee—for example, those relating to Bougainville. Other provisions are more particular to the circumstances of the Solomon Islands and the assistance being provided to the Solomon Islands. In that category are the provisions relating to the structure, command and powers of the visiting contingent, with its military, police and civilian components. Article 2 sets out particular purposes of the assistance being provided to the Solomon Islands; yet another article directed to the particular circumstances in the Solomon Islands is that relating to the seizure and destruction of weapons by the visiting contingent.

The agreement which underpins the assistance to the Solomon Islands government recognises the continuing sovereignty and independence of the Solomon Islands. For example, the contingent is required to withdraw on the request of the government of the Solomon Islands. Also, the head of the visiting contingent is appointed only after consultation with the Solomon Islands government, and the laws of the Solomon Islands are required to be respected by the visiting contingent.

A description of the consultations that took place in the rather short time in which the agreement was drafted is set out in annexure 1. The agreement and the other documents I mentioned earlier have provided a satisfactory basis to this date for the operations of the regional assistance mission since it commenced its operations on 24 July 2003.

CHAIR—Thank you, Mr Campbell. Just on the signing and entry into force, could you bring us up to date with annexure 2. Sixteen countries have signed the agreement and it has entered into force in the case of four countries—is that the current status?

Mr White—I can provide an update on that. When the NIA was drafted there were certainly four countries for which the agreement had entered into force. There are now six. The legal branch from DFAT can provide you with an updated multilateral status list.

CHAIR—Which are the other two?

Mr White—Fiji and Tonga have issued the required notifications to bring the treaty into force for them.

Mr ADAMS—What does that actually mean? Have they signed a treaty similar to this one with the Solomon Islands?

Mr White—Sixteen countries have signed the agreement. There are provisions within the agreement for it to come into force for individual countries. That is done by each country issuing notifications.

Mr ADAMS—I understand that.

Mr White—Now six countries have done the same.

CHAIR—That is Australia, Fiji, Kiribati, New Zealand, the Solomons and Tonga.

Mr White—That is right.

CHAIR—This committee has seen similar agreements in the past—the establishment of the neutral peace monitoring group in Bougainville, for example. We saw that agreement. Are there any fundamental differences between this agreement and the Bougainville agreement? Is it a similar sort of agreement?

Mr Campbell—This agreement is directed towards the particular circumstances of the Solomon Islands. For example, one difference is that which I mentioned earlier, relating to weapons—both the carriage of weapons by the members of the visiting contingent and the use of those weapons in certain circumstances; also to enable the seizure of weapons, which is supported by the Solomon Islands legislation. Also, the structure of the contingent is slightly different. I think the structure and the command and control powers are dealt with in more detail in this agreement. There are certain differences in the claims provisions, particularly relating to claims that might be made by third parties in the Solomon Islands against the visiting contingent.

CHAIR—Who drafted the agreement, or how was the agreement drafted?

Mr Campbell—I think the first draft of the agreement was prepared by the Commonwealth—the Attorney-General's Department in consultation with DFAT, the Australian Federal Police and the ADF principally—but we had a number of discussions, both over the telephone and in person, with the Attorney-General for the Solomon Islands and we also had a good deal of discussion, both over the phone and through email, with New Zealand over the content of the agreement. The agreement was circulated, I believe, through posts to other countries prior to its signature, so they had the opportunity to make comment on it. That said, it had to be drafted in a very short period of time.

CHAIR—Yes, I appreciate that.

Mr WILKIE—I see that the formal request was put in in April and the decision to put in assistance proceeded in June. Was there any prior request for assistance from the Solomons prior to April, either formally or informally, that you know of?

Mr Fletcher—I can answer that question. I believe that a request was made by the previous prime minister in early 2000 for police to assist the Solomon Islands.

Mr WILKIE—Was that a formal request?

Mr Fletcher—It was a request. I am not sure what form it came in, whether it was oral or written, but, from our point of view, a request is a request.

Mr WILKIE—All right, and obviously we did not do anything at that point?

Mr Fletcher—No. We did not believe that it was a wise thing to do given that the country was in the grip of large-scale ethnic unrest. Putting in a certain number of police would not have had the effect that the Solomon Islands wanted—or, indeed, that we would have wanted.

Mr ADAMS—Was that a cabinet decision?

Mr Fletcher—I do not believe so.

Mr WILKIE—So in hindsight, was not acting then a good move or a bad move?

Mr Fletcher—Hindsight is always a useful guide. It is possible that action earlier would have been of assistance but it is very difficult to say, 'What if?'

Mr WILKIE—When do you anticipate that Australia's involvement will cease? How long do you think the action will take?

Mr Fletcher—It depends what aspect of the involvement you describe. The quickest to leave will be the Defence Force element. We believe that will occur in a matter of months. But we are not setting specific deadlines because it is results based—we will not leave until the job is done, so to speak, and we believe that will be in a matter of months. The policing component will be there longer. We want to leave police support there until we are confident that the Royal Solomon Islands Police Force is a credible, effective, sustainable force. Mr Walters can comment on that further. The civilian AusAID type development assistance will be much longer term. We have not put a time line on that but we expect about 10 years of substantial assistance will be required to leave the country in good shape. So it is quite a big undertaking.

Mr WILKIE—Thank you. I may have some more questions later.

Senator MASON—Mr Campbell, you may have answered my question in your introductory remarks. Can I put this to you. Article 17 says:

> Without prejudice to the fact that all such premises—

and that is referring to headquarters, camps, training areas or other premises—

> remain Solomon Islands territory, they will be inviolable and subject to the exclusive control and authority of the Visiting Contingent. The consent of the head of the Visiting Contingent shall be required for the entry into such premises by any person.

I am assuming that Solomon Islands law still operates in that area.

Mr Campbell—Solomon Islands law still applies in that area, yes.

Senator MASON—Who would it be enforced by?

Mr Campbell—Solomon Islands law can be enforced by members of the visiting contingent. Each member of the police element of the visiting contingent and each member of the ADF is accorded the powers of the Solomon Islands police.

Senator MASON—So it is Solomon Islands law operating in an area that is in effect inviolable. That is not unusual?

Mr Campbell—If I can give an analogy, it is no different in one sense from an embassy of one country situated in another country. It still forms part of the territory of that country and the laws still apply in that embassy; nevertheless there are immunities and inviolabilities relating to it.

Mr ADAMS—What are the rules of engagement under which our service people are operating there? Can anyone answer that?

Mr Campbell—I believe that there are rules of engagement in force in relation to the operations of the ADF there.

Mr ADAMS—I am trying to find out whether it is at a peacekeeping level or a higher level. I am not an expert but there are different levels.

Mr Campbell—If I can put it this way, it is relating to the purpose of the mission. The purpose of the mission is to restore law and order in the Solomon Islands. So the ROE are directed towards doing that, without categorising it as peacekeeping or—

Mr ADAMS—So bringing back law and order was one of the objectives. Was that written down—the objective of retrieving firearms? Was that one of the objectives?

Mr Campbell—It was one of the objectives but the actual purpose of the visiting contingent is set out in article 2, and that refers to the suppression of violence, intimidation and crime and the restoration of law and order. The actual recovery of weapons forms part of that.

Mr ADAMS—That is good, but what is the agreement when it comes to better governance and restoring law and order in the Solomon Islands when it comes to the courts working properly? Are crimes of the past being investigated by our police there? There are unsolved murders. I understand a police commissioner was shot dead and one of our Seventh-Day Adventist missionaries was killed. There have been several murders. There are several allegations that go to the highest office in the land. Is there a process of investigation to bring those sorts of crimes to the court?

Mr Campbell—There were several questions there. The first element is that it is not only police and military who form part of the visiting contingent; there is a civilian component of assistance to the contingent. One of the major areas that that is looking at is the area of the justice system, so assistance is being provided in the justice system, in the administration of the High Court and in the magistrate's courts. Officers are being placed within the public solicitor's office and the DPP—in the justice system—to look at that particular element.

The second issue I think you raised was the issue of, if I can put it this way, heinous past crimes that might have been committed. Yes, there is a process in place. While the focus of the mission is forward looking, there is a process in place for looking at those crimes. I am not sure whether the AFP would like to comment.

Mr Walters—There are a number of investigations currently under way looking at previous heinous crimes, as has been suggested. They are going through their normal processes at the

moment. You would be aware of the arrest of several people, and briefs of evidence are currently being prepared in relation to those individuals.

Mr ADAMS—I take it that aid programs are helping to fund good governance through the normal processes. In other countries, we have other aid programs that we fund for better governance and improvement of the legal systems.

Mr Fletcher—In the case of the Solomon Islands, the good governance assistance is perhaps more intrusive than is the norm in other places. The Australian government has put to the Solomon Islands a program of assistance which involves up to 65 expatriates being placed in the Solomon Islands—some in inline positions, others in advisory positions. They are concentrated in the judicial sector and the financial sector to ensure that the courts work properly.

In relation to the judiciary, it was not so much that there was corruption or those sorts of problems as we had in the police; it was more just weakness, lack of funds. They did not have the proper personnel, access to officers—that sort of thing. So we are building that up. We are ensuring that the prison is run by people who can be relied on—that they will not let people walk free. In the financial system, we are trying to make sure we get a handle on revenue coming in and expenditure going out, because until the arrival of the contingent the government was operating on a cash-in, cash-out basis. Money that should have been spent on basic services was being diverted to other purposes.

Mr ADAMS—So it is a culture change. Is that what you are saying?

Mr Fletcher—Essentially, we are trying to enforce the rules that are there. It is not as though there were not proper control systems. They have been ignored and there was a rundown in government finances over the past few years. A lot of people had left and work was not being done.

Mr ADAMS—What about confidence in the system? Have people lost confidence in the government and structures of the government? Is that what you are saying?

Mr Fletcher—Yes. There was weakness throughout what we would call the good governance sector.

Mr ADAMS—Maybe we made a mistake by not offering assistance in 2000. Maybe we did not read it properly.

Mr Fletcher—This assistance is vastly more comprehensive than what was contemplated or requested in the year 2000.

Mr ADAMS—It is also three years later. Mr Walters, how many Commonwealth police do we have there?

Mr Walters—There are currently 134 Australian Federal Police, and there are 54 Australian Protective Service officers as well.

Mr ADAMS—How big a hole does that make in the Federal Police's operational structure?

Mr Walters—It has required some degree of work force planning to ensure that we are able to maintain sufficient resources to our core business activities here in Australia. It has required some reprioritisation, but we are managing at this point in time.

Mr ADAMS—Are we taking on more people, have we cancelled all leave or what?

Mr Walters—We are doing it within existing resources at the moment, ably supported by the New Zealand Police and by police officers from other Pacific Island countries.

Mr ADAMS—Are police from the other six countries there?

Mr Walters—We have 33 New Zealand Police officers. Currently there are 32 officers from the Pacific Island countries—from Kiribati, Tonga and the Cook Islands, and Fiji I think has just arrived. There are police officers from other countries coming through the training program who will be deployed in the coming weeks.

Mr ADAMS—Do we have troops from other countries?

Mr Fletcher—Yes. We have military forces from the five countries in the Pacific that have them—Australia, New Zealand, Papua New Guinea, Fiji and Tonga.

Senator TCHEN—For the committee's knowledge, in 2000 I was a member of the all-party parliamentary delegation to Papua New Guinea and the Solomon Islands. At a private meeting with the then Solomons Prime Minister, he expressed a desire that Australia should intervene and send police to stabilise the Solomons social unrest at that time. The delegation also met three other members of the Solomon Islands. I assume that it was the occasion that Mr Fletcher referred to.

CHAIR—This is the request in 2000 from the then Prime Minister.

Senator TCHEN—The Australian High Commissioner was unaware of that particular desire until it was mentioned, and the delegation also met two or three other cabinet ministers of the Solomon Islands government. From memory, on none of those occasions was a similar indication given. The delegation discussed the issues and decided that, given the circumstances—at that time the Australian Federal Police and also the New Zealand Police were already seconded to the Solomon Islands constabulary at the Solomon Islands government's request to help them to restructure the police force—it was not a matter that was formally put to the delegation and that no formal action should be taken. The leader of the delegation was the President of the Senate at that time, and the deputy leader I think was the Labor member for Newcastle at the time.

Mr ADAMS—Was that Duncan Kerr?

Senator TCHEN—I cannot recall. I think Duncan Kerr was on the delegation as well. The delegation requested that the leader and deputy leader raise the matter as a matter of information within their own parties. As far as I know, nothing further came from that and no further requests or indication came from the Solomon Islands government either. As the matter was raised earlier, I thought I would put that on the record.

CHAIR—I appreciate that. Mr Fletcher, did you want to comment at all on that? I also have experience of being in the Solomon Islands last December. While we were there, there was a very volatile debate in the parliament on Australia intervening in the Solomons, to the extent that there was a vote of no confidence in the Prime Minister. They argued that any intervention would be seen as an attempt at colonisation. Was there any comment that you wanted to make in response to Senator Tchen or to what I just said?

Mr Fletcher—Yes, please. Without going back into history, it is a good thing that the passage of time has clarified the nature of the problem in the Solomon Islands. It has meant that the intervention or assistance from outside now has overwhelming support within the community and lip-service at least from a large number of people who perhaps privately would prefer us not to be there. It is now so much easier to do and probably more effective, because they have seen that, left to themselves, without some kind of external circuit-breaker, really there was no way forward under the previous circumstances. Without going into the past, we are very pleased with the extent of the public support that we have at the moment. That is crucial to ensuring that the mission succeeds.

Senator KIRK—I have a question in relation to the legal basis for the agreements. It is most probably addressed to Mr Campbell. Paragraph 12 of the NIA says:

The Agreement, together with the formal request from the Solomon Islands Government, provides a basis in international law for the presence of the Regional Assistance Mission to Solomon Islands.

It then mentions a piece of Solomon Islands legislation, the Facilitation of International Assistance Bill 2003. I understand that that provides legal protection for the military police and civilian members of RAMSI. Is there any need for Australian legislation in order to implement this agreement or is the agreement itself sufficient?

Mr Campbell—There is no need for additional Australian legislation. There is constituent legislation in place that supports the operations of the AFP, the Defence Force and the civilian component of the contingent as well. But it was necessary to have a piece of legislation in the Solomon Islands so that they would be authorised under Solomon Islands law. The one piece of legislation that I think has been introduced into the House of Representatives that might have some application to the Solomon Islands is the Crimes (Overseas) Amendment Bill 2003, which I think was introduced recently. That means that, in the unlikely circumstance that a member of the visiting Australian contingent—other than the Defence Force, which already has legislation in place—such as the AFP, the APS or the civilian component, commits an offence in the Solomon Islands, they will have the opportunity to be prosecuted in Australia rather than in the Solomon Islands. But that is the only piece of additional legislation that would cover the Solomon Islands.

Senator KIRK—Would that legislation have a general application? It is called the Crimes (Overseas) Act, so does it apply to countries other than the Solomon Islands?

Mr Campbell—I am not across all of the detail of that legislation. I think it enables regulations to be made to say which contingents it will apply to. At the moment, the Defence Force Discipline Act covers the Defence Force overseas. If a member of the Defence Force commits a crime overseas they can be prosecuted under Australian law, but there is no similar

legislation of general application in relation to non-Defence Force members of visiting contingents overseas. The Crimes (Overseas) Amendment Bill is designed to fix that.

Senator KIRK—From what you are telling me, there is no need for any Australian legislation to implement this agreement. Is that the case with other operations that we have been involved in, such as in Bougainville and East Timor?

Mr Campbell—I cannot recall any specific legislation in relation to either of those operations. I would have to take that on notice. Certainly, in the case of Bougainville, Papua New Guinea enacted legislation to enable that agreement to be given effect in Papua New Guinea.

Senator KIRK—You talked about the Defence Force Discipline Act and the Crimes (Overseas) Act, which will allow members of the Defence Force and others to be prosecuted in the event that they commit some crime while overseas. What about the protection of members of the Defence Force and other operations—what if a crime is committed against them by somebody or if there is some other act?

Mr Campbell—They will be dealt with in accordance with the laws of the Solomon Islands and the laws of the country they are in. There are certain exceptions to that, which would provide a basis for prosecuting people in Australia, such as the recent legislation created for the crime of murdering an Australian citizen overseas or something like that. But generally speaking it would be prosecuted in accordance with local jurisdiction.

Senator KIRK—Thank you for that clarification.

Mr MARTYN EVANS—I have one final question on this. The visit I undertook last December with the chair and the Minister for Foreign Affairs—

CHAIR—Hands up, anyone who has not been to the Solomon Islands!

Mr MARTYN EVANS—That is right; it was a very select group that attended last year! We had the opportunity to see the Solomons, as you indicated, in very dire circumstances. We were particularly concerned about the condition of the infrastructure in the islands, particularly the medical and electricity infrastructure. Have significant improvements been undertaken to bring the medical infrastructure in the local clinic and the electricity infrastructure more up to date?

Mr Fletcher—In relation to the electricity and water supply, as part of RAMSI's initial week or two, engineers are over there trying to ensure that the generators do not fall over. Some urgent maintenance is required. Similarly, we have brought chlorine for the water supply, because they did not have any and, if we did not provide it, nobody was going to put it in. We cannot do everything. AusAID has a very targeted plan to ensure that essential basic services are restored and kept at a reasonable standard. I am not aware of the detail of that in relation to the hospital, but I would be very surprised if they are not sending people there to fix that as well.

Mr MARTYN EVANS—But that is part of our overall assessment?

Mr Fletcher—Yes. Overall, we are the spearhead, if you like, of the bigger donor engagement there. We have always been involved in the health sector, supplying pharmaceuticals and whatnot. We are not involved in education but, through the donor coordination meetings which Australia and New Zealand are chairing, we aim to develop a fairly substantial package of assistance which will 'cover the waterfront' in terms of the country's needs but not go overboard to the extent of building something there that is unaffordable and unsustainable. We have to pitch it at a level that is effective but also which will work in the long term.

Senator MASON—Mr Campbell, my colleague Senator Kirk asked some erudite questions about the legal basis for Australia's intervention in the Solomon Islands. That, of course, includes the invitation from the Solomon Islands. As a matter of background, to be valid in international law, what form must that invitation take? Can it be a phone call from the Prime Minister or does it require an act of parliament?

Mr Campbell—We would say that it does not require an act of parliament. The important thing, under international law, is that it has the authority of the government of the day of the country from which it comes. In the case of the Solomon Islands, we examined the constitution of the Solomon Islands and it seemed to us that the best form of invitation would be a request made by the Governor-General on the advice of the prime minister and cabinet of the Solomon Islands. It would also be satisfactory to get a request from the prime minister of the Solomon Islands.

Senator MASON—A phone call? A letter?

Mr Campbell—Let me say this: a phone call might be sufficient but some form of formal letter would be much better.

Senator MASON—So it is an executive decision?

Mr Campbell—It is not a parliamentary one. Either soon after or soon before the request was made, I believe there was a parliamentary vote approving the request for assistance being made.

Senator MASON—What would have happened if it had been defeated and the executive had asked for intervention and the parliament had said no? What would you have done then?

Mr Campbell—In those circumstances we would have gone with the request of the executive government but—

Senator MASON—Oh, Mr Campbell!

Mr Campbell—if I could just mention something. I realise this is probably the wrong place to say that.

Senator MASON—We are outraged!

Mr Campbell—It is something that would have had to be taken into consideration because it was the Solomon Islands parliament that had to pass the legislation that provided the domestic authority for the visiting contingent to be there and to carry out its operations.

Mr WILKIE—But they passed that before we got involved?

Mr Campbell—They passed that legislation before we got involved. It entered into force, I think, on 22 July, and we arrived on 24 July.

Mr ADAMS—The Iraqi government did not pass similar legislation.

CHAIR—Stick to the subject matter, Mr Adams.

Senator MASON—It is an interesting point, Mr Campbell. Thank you for that. It is a very interesting answer.

CHAIR—Mr Walters, the idea of the operation was to get the guns out of the community. Firstly, what progress has been made currently? What are the statistics on guns out of the community? Secondly, in terms of the Solomon Islands police service, has it been stabilised? How is morale? What is the current status of the police service?

Mr Walters—In relation to the first part of your question regarding weapons, I can advise the committee that, as of today, 3,627 weapons have been seized and surrendered to the participating police force. Of those, 878 have been destroyed.

CHAIR—What sorts of weapons were they?

Mr Walters—Quite a diverse range of weapons: some you would put in a category of being homemade weapons; some are high-calibre weapons. So it really spans the range of what we would classify as being weapons. The amnesty and the operation to seize weapons were quite successful.

Mr WILKIE—When you talk about weapons, you are talking about firearms?

Mr Walters—Yes. In relation to the Royal Solomon Islands Police Force, they have been very welcoming of the participating police force. The integration has been going along quite smoothly. There are some elements of disquiet there, I suppose, in relation to acceptance of the participating police force, but certainly Commander Ben McDevitt has been working closely with not only the Commissioner of the Royal Solomon Islands Police Force but with other prominent members within the community and the government to ensure that the operations go very smoothly, taking into account the requirements and wishes of the local communities.

CHAIR—Do you wish to make any final comments, Mr Campbell?

Mr Campbell—No.

CHAIR—Thank you very much for your attendance here this morning. It is much appreciated.

[10.55 a.m.]

International Labour Organisation Convention No. 155: Occupational Safety and Health, 1981

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

WHITE, Mr Damian Craig, Executive Officer, Legal Branch, Department of Foreign Affairs and Trade

HOY, Mr Rex Jeffery, Group Manager, Workplace Relations Policy Group, Department of Employment and Workplace Relations

ROWLING, Mr John, Assistant Secretary, Safety, Compensation and International Branch, Department of Employment and Workplace Relations

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Mr Hoy, I invite you to make some introductory remarks before we go to questions.

Mr Hoy—The Australian government propose to ratify International Labour Organisation Convention No. 155 on Occupational Safety and Health on several grounds pertaining to the national interest. The convention requires a ratifying country to formulate, implement and periodically review a coherent national policy on occupational safety and health in the work environment. The objective of the policy shall be to prevent workplace accidents and injury to health by minimising as far as possible the cause of hazards inherent in the work environment. The Australian government considers that ratification of the convention would demonstrate to Australian employers and employees that Australian governments are concerned to ensure the safety of people at work and that proper laws and practices are maintained to achieve such safety. Ratification of the convention would also demonstrate to the international community Australia's commitment to occupational health and safety.

Even without ratification, Australia is still one of the leaders in occupational health and safety performance compared with the 40 countries which have ratified the convention. Ratification would also serve to underline Australia's determination to improve occupational health and safety outcomes and to achieve the targets set with the agreement of the states and territories, business and unions in the National Occupational Health and Safety Strategy 2002-12.

Implementation of the convention falls partly within the jurisdiction of the Australian government and primarily within the jurisdictions of the state and territory governments. Law and practice at the federal, state and territory levels of government are consistent with Australia's obligations under the convention. Between 1989 and 2001, all state and territory governments formally agreed to ratification of the convention. New South Wales had been unable to agree

formally to its ratification until the government amended its occupational health and safety legislation in 2001 to bring it into compliance with the convention.

All ministers expressed their support for ratification of the convention at a meeting of the Workplace Relations Ministers Council on 8 November 2002. At the Workplace Relations Ministers Council meeting held on 28 March 2003, ministers from all governments agreed to support ratification, subject to the International Labour Conference in June 2003 reconfirming the convention in substantially the same terms. The conference committee on occupational safety and health endorsed the up-to-date status of the convention and did not recommend any changes, so there is now no reason to delay consideration of ratification.

The government has consulted the state and territory governments, the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions. All have advised that they support ratification of the convention. The state and territory governments in particular have expressed strong support for ratification. In view of the broad support for ratification and in recognition of the ongoing commitment of Australian governments to high standards of occupational health and safety, we ask the committee to recommend that the Australian government proceed to ratify convention 155.

CHAIR—Mr Hoy, given the objective of this convention, why has it taken 20 years for it to be ratified by Australia? Let me get this right. The ILO adopted it in 1981.

Mr Hoy—That is correct.

CHAIR—It entered into force generally in 1983?

Mr Hoy—Yes.

CHAIR—That is 20 years ago. Between 1989 and 2001, what happened? State and territory governments formally agreed to ratification. Was it on the agenda? Was it a matter that was being discussed daily between—

Mr Hoy—It had been discussed during those years, but I mentioned in my statement that it was not until 2001 that all states and territories complied with the convention.

Mr WILKIE—Was it something to do with having all Labor states?

Mr Hoy—I do not think it has anything to do with having all Labor states.

CHAIR—It was 2001.

Mr Hoy—In 2001, New South Wales changed the legislation to enable law and practice to comply with the convention.

CHAIR—So the delay has been due to states amending their respective legislation?

Mr Hoy—In part, yes.

CHAIR—Has there been any delay on the Commonwealth's part, apart from between 2001 and now, given that at some time in 2001 New South Wales, a Labor state, amended its occupational health and safety legislation?

Mr Rowling—The Australian government introduced legislation in 1985, when it established the National Occupational Health and Safety Commission, which put in place all the national structures that were required in relation to the convention and subsequently introduced legislation in relation to Commonwealth employees and seafarers, which ensured compliance with the convention. That occurred in 1988 and 1989. At the Australian government level we had compliance fairly quickly in relation to the convention. As suggested, it took some time for all the states to being their legislation into compliance. The last state, New South Wales, advised us in late 2001 that the substantial legislative package that it introduced in October 2001 saw passage at that time and enabled it to comply.

Senator TCHEN—The federal legislation was established in 1988 or 1989?

Mr Rowling—In 1985 we saw the establishment of the National Occupational Health and Safety Commission, and then the Commonwealth Occupational Health and Safety (Commonwealth Employment) Act was around about 1989. The seafarers legislation followed shortly thereafter. Both of those comply with the convention.

Senator TCHEN—Neither bill was held up in the Senate?

Mr Rowling—Not that I am aware of, no.

Senator TCHEN—Thank you.

CHAIR—That was a timely intervention.

Mr ADAMS—This is going from a prescriptive to a legislative framework—this is the idea of the convention, is it?

Mr Rowling—The convention is a Lord Robens type model, yes, where you move away from industry-by-industry prescription to—

Mr ADAMS—So you are saying that employers have a duty of care to their employees. It basically says that if the board is pushing for more production and says that 12-hour or 14-hour shifts have to apply and somebody dies, a court of law can say that the duty of care was not observed and that people could be charged?

Mr Rowling—It depends on the—

Mr ADAMS—Evidence and the circumstances?

Mr Rowling—The circumstances.

Mr ADAMS—But that is what could occur?

Mr Rowling—It may occur.

Mr ADAMS—It could occur?

Mr Rowling—It may occur. It depends on the circumstances.

Mr ADAMS—But under this convention, as opposed to the old state laws where the foreman probably got the blame for letting the machine take someone's arm off, this is now a duty of care on the employer going to a board level. That is what that means, isn't it?

Mr Rowling—It is not quite what it means. It means that there is a duty of care between the employers and the employees in relation to safety in the workplace.

Mr ADAMS—But if the board decides that the ferry will run an extra shift and, therefore, there is a disaster, doesn't the responsibility come back to who made the decision?

Mr Rowling—It may, yes, if there is any relationship between the decision and the disaster, but the facts would have to be established.

Mr ADAMS—Sure, it is operational. I appreciate that and I realise that you are probably not an expert in that area of law. I thank you for your reply.

Mr WILKIE—Mr Hoy, you mentioned that the delay in getting the legislation passed was part of the problem. What were the other problems associated with—

CHAIR—The states.

Mr WILKIE—the states getting their legislation through? What were the other problems that you mentioned?

Mr Hoy—That the ministers agree to do it. The other aspect I mentioned was the International Labour Conference considering this year the overall position of the convention.

Mr WILKIE—I meant the delay in getting to this stage. Obviously part of the delay was the legislation in the states.

Mr Hoy—The major one was that it was not until 2001 that all law and practice complied with the convention. From that period on, there was a review of the convention by the International Labour Conference and then there were recommitments by the state and territory governments and the Australian government.

Mr WILKIE—Yet why did it take them until 2001?

Mr Hoy—That was a matter for particular states. As I said at the outset, the primary responsibility for occupational health and safety rests with the state and territory governments.

CHAIR—Ask Bob Carr.

Mr WILKIE—Did they put any objections forward as to why they did not proceed with it in a timely fashion?

Mr Hoy—I do not know the answer to that. It is worth noting that only 40 countries have ratified this convention and some of the major countries—the UK, the US et cetera—have not ratified it.

CHAIR—Do you anticipate that any other countries are going to ratify the convention? Are we aware of any that are planning to?

Mr Hoy—I do not think we would know that.

CHAIR—Australia has been a member of the ILO since 1919 and, according to the NIA, we have ratified 57 of the ILO's 184 conventions.

Mr Hoy—That is correct.

CHAIR—Was this one of the major remaining conventions to be ratified? Of the other 130 that we have not ratified, are there any others that we are likely to see in the near future?

Mr Hoy—Australia has ratified six out of the eight core conventions. It is currently considering ratifying one of the other ones—ILO Convention No. 182 on the Worst Forms of Child Labour. The government is in the process of giving consideration to that. But that is the only other one of those conventions that is currently being considered.

CHAIR—Has any country ratified all 184 conventions?

Mr Hoy—I think the answer is no.

CHAIR—Have any countries ratified more than Australia? Where are we on the scale of ILO ratifications?

Mr Hoy—I would need to check that; I do not know. But I can tell you that in terms of the core conventions, of which Australia has ratified six out of eight, I think the USA have ratified two out of eight.

CHAIR—What about the UK?

Mr Hoy—We do not know. We will give you some advice on that.

CHAIR—The six out of eight conventions do not include this one—this is not one of the core conventions?

Mr Hoy—No.

Mr WILKIE—This seems like a pretty innocuous convention. I should think most people would want to sign up to it. What reasons have the US and the UK given for not ratifying it?

Mr Hoy—I think the US has a general policy of not ratifying too many conventions.

CHAIR—It is hard to get them through their Senate!

Mr Hoy—The other issue which Australia has been grappling with over the years is that a number of these conventions are quite prescriptive. Australia has been arguing to move conventions from being prescription based to being principles based. When they are prescriptive, it is also pretty difficult at times for all state and territory governments to fully comply with them. If they moved away from that to be principles based, I think you might find more countries ratifying some of these conventions.

Mr ADAMS—Hong Kong would have played a role in why the British did not ratify a lot of those conventions, wouldn't it?

Mr Hoy—I do not know

Mr ADAMS—The working conditions in Hong Kong may not have been up to complying.

CHAIR—I think the point is federal law and practice already complies with the convention. Thank you very much, Mr Hoy and Mr Rowling, for your time here this morning.

[11.10 a.m.]

Stockholm Convention on Persistent Organic Pollutants done at Stockholm on 22 May 2001 and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade done at Rotterdam on 10 September 1998

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

HEYWARD, Mr Peter Maxwell, Assistant Secretary, Environment Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade

KENNEY, Ms Sarah Bridget, Environment Strategies Section, Environment Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade

WHITE, Mr Damian Craig, Executive Officer, Legal Branch, Department of Foreign Affairs and Trade

HYMAN, Mr Mark Gordon, Assistant Secretary, Environment Protection Branch, Department of the Environment and Heritage

MAYNE, Mr Andre Clive, Senior Manager, Agricultural and Veterinary Chemicals, Product Safety and Integrity Branch, Product Integrity Plant and Animal Health, Department of Agriculture, Fisheries and Forestry

SATYA, Dr Sneha, Senior Manager, Existing Chemicals, National Industrial Chemicals Notification and Assessment Scheme, Office of Chemical Safety, TGA Group of Regulators, Department of Health and Ageing

WYNTER, Dr Marie Catherine Paula, Acting Principal Legal Officer, Office of International Law, Attorney-General's Department

CHAIR—Welcome. I have called both treaties because I understand the same witnesses are giving evidence in relation to both. Perhaps we could hear evidence consecutively; first on POPs and second on PICs. We will do questions after each one. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Mr Hyman, would you like to make some introductory remarks? Then we will proceed to questions. We will start with the Stockholm convention.

Mr Hyman—Thank you, Madam Chair. If it is all right with the committee, I will make some initial remarks that relate to both conventions and then proceed to talk about the Stockholm convention.

CHAIR—Certainly.

Mr Hyman—There are three conventions developed under the auspices of the United Nations Environment Program, which together provide an international framework governing the environmentally sound management of hazardous chemicals throughout their life cycles. These include the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal—which Australia ratified some 10 or 11 years ago—and the two conventions before us today, which are the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

These conventions are significant in terms of protecting the environment and human health from the impacts of chemicals, and they address different aspects of the management of hazardous chemicals. In the case of persistent organic pollutants, there are relevant provisions in all three treaties—so they are all related to each other. Ratification of the Stockholm and Rotterdam conventions will build on existing systems that protect the environment and health of Australians and enhance our capacity to influence international efforts to address chemical safety issues. Ratification will also complement Australia's actions under the Basel convention.

Turning to the Stockholm convention, the adoption of this convention in May 2001 marked a significant step forward in developing an international approach to addressing hazardous chemicals. In completing this agreement, countries had negotiated legally binding obligations aimed at eliminating or restricting certain chemicals or the release of chemicals as by-products. While this was not the first convention that did so, it was the first that did so for reasons associated with their conventional use as chemicals. While there are over 70,000 chemicals on the market, persistent organic pollutants have been of particular concern because of their long-term persistence in the environment, their ability to accumulate in the tissues of organisms, including humans, and their capacity to be transported long distances. This latter point is highlighted by evidence showing that wildlife in Antarctica and the Arctic and human populations in the Arctic contain POPs that may have originated many thousands of kilometres away. The development of a legally binding agreement was seen as the most effective way of reducing the impact of these chemicals on remote areas well away from their source of origin.

Australia has already taken strong measures to reduce and eliminate releases of POPs, including banning the production and import of polychlorinated biphenyls, or PCBs, and deregistering the use of eight pesticide POPs listed in the convention. Other initiatives include implementation of national plans for the management of existing stockpiles of PCBs, hexachlorobenzene and organochlorine pesticides; the highly successful Chem Collect program, which collected over 1,700 tonnes of unwanted farm chemicals, including POPs; and the National Dioxins Program to address dioxin and furans by-products. Ratification of the convention by Australia will provide a number of benefits which will build upon these initiatives, including access to valuable international information on techniques and approaches to POPs which would reduce the risk of accidents involving contamination of agricultural products with POPs. It will enhance Australia's capacity to protect its national interests by giving it a stake in international cooperation in reducing the presence of POPs at the lowest administrative cost to industry and government. It will increase certainty of access to overseas markets for Australian products. Many countries are moving towards placing stricter limits on the levels of POPs in foods and stockfeed, so the Australian agriculture industry would benefit

through a reduction of POPs in the environment, thus lessening the risk of contaminants affecting products. It will support Australian agriculture by maintaining Australia's reputation as a supplier of products which are clean and green and demonstrating Australia's commitment to sustainable development.

Other countries will benefit from Australia's expertise, and ratification would better place us to encourage and assist other countries to take action to address POPs where they might not have the capacity to do so otherwise. For example, Australia, through AusAID, is funding the removal and destruction of POPs and other chemicals from Pacific Island countries. Australia has also been approached by a number of South-East Asian countries—Sri Lanka and Indonesia—and will possibly be approached by Cambodia over their representatives visiting Australia to learn how we manage POPs and other pesticides.

In summing up, the Stockholm convention is widely supported within Australia by industry, agriculture, environmental groups and the general community. The support by other countries is strong, with over 150 countries as signatories and 35 as parties, including our major trading partners. Japan and the US are signatories and are currently giving consideration to ratification. The cost to Australia of implementation and ongoing management will be modest, given the initiatives currently in place. Thank you.

CHAIR—Thank you, Mr Hyman. On that last point, there are 150 signatories. Did you say 35 have ratified or approved it?

Mr Hyman—Yes.

CHAIR—Has there been any update of the status list since annexure 2 was produced for the committee?

Mr Hyman—I am not aware that there have been any further ratifications since then.

CHAIR—We understood that there were 33 but the national interest analysis says there are 35, so I was just wondering which two countries had been added.

Mr Hyman—I do not know the answer to that question. We might be able to find out.

CHAIR—Perhaps we could get an update on parties ratifying before we go to print on our report. You mentioned the notion of being seen to be green and environmentally responsible in the trading sense. Have any countries formally determined that countries which do not ratify this treaty will not have access to markets for their produce? Has this treaty been used in that way?

Mr Mayne—Not that I am aware of.

Mr WILKIE—I have a question about costs. The treaty itself is pretty straightforward, but, given that we have already ceased to import or use nine out of the 10 intentionally produced POPs covered by the treaty and only $85,000 is going into the actual operation of the international body, I am trying to work out why it is going to cost us $540,000. Where are the costs?

Mr Hyman—Much of that covers existing activities which now become part of our contribution to giving effect to the convention. Those costs are shared across several departments. I might ask my colleagues to talk about the part that each of them plays in doing that.

Mr Mayne—Within the agriculture portfolio we have responsibilities to monitor the imports and exports of some of these pesticides. With our colleagues in NICNAS there will be joint arrangements to monitor the situation of each of these pesticides and make some minor changes to the legislation so that we can in fact place the import and export blocks on these chemicals. We have some statistics to attend to, then there is participation in the actual convention process itself.

Mr WILKIE—Yes. The convention process is $85,000. What I am trying to get at here, I suppose, is that we often get costs put forward as, 'This is what it is going to cost us to have these treaties.' Given that we have ceased to produce, import or use nine out of the 10, I question what sort of involvement we have in monitoring, given that it is no longer brought in. I am just wondering how realistic the cost of $400,000-odd a year is—probably a lot more than that, but roughly $400,000-odd—to implement a treaty that is basically looking after itself.

Mr Hyman—It might be useful if I address the by-products part of the convention. At the moment we have a National Dioxins Program carried out through my department, the Department of the Environment and Heritage. That kind of activity will now count towards, if you like, implementation of the convention. The costing projects continued work on dioxins and furans into our future work program. Because dioxins and furans do not relate to chemical use in the sense of chemicals that are continually registered, there will be an ongoing cost to us in giving effect to our obligations under the convention, such as the development and implementation of a national action plan on by-products. That is probably the largest proportion of the costs here.

Mr WILKIE—I suppose I am just wondering how much work is done in actually looking at the real costs associated with this. Is it more a situation of saying, 'Generally we could take a bit of the money here to go into something and a bit more off this to continue the operation of the treaty?'

Mr Hyman—Because we are already doing work on dioxins, we have a fairly good handle on what it costs to conscientiously give effect to what the convention demands of us. We will need to extend the work that we are currently doing on dioxins and furans to other by-products covered by the convention—for example, hexachlorobenzene or polychlorinated biphenyls. That will involve additional costs beyond what we are currently spending. But we do have a reasonably good understanding of what it costs to address dioxins through, for example, sampling. The current process involves a risk assessment stage, and then there will be the need to advance actions to address dioxin emissions where there is perceived to be a problem as the result of the work that has been done. There is an element of this costing which is necessarily speculative, because until you have done some of that work you cannot know exactly what will need to be done. But I think it is probably a reasonable and realistic estimate.

Mr WILKIE—To put that into perspective, the Rotterdam convention figure here is $500,000. It looks like there is a lot more work involved in putting that in place and ongoing

reporting than you would have from the Stockholm convention. I want to put the two into perspective.

Mr Hyman—I guess you have arrived at that conclusion because so many of these chemicals have already been withdrawn from the market. It is worth remembering that, because they are persistent, you may need to keep monitoring for their presence in the environment for an extended period. That would be one point. The second point would be that, although many of the chemicals have been withdrawn, there are, for example, PCBs still in use in transformers and capacitors and there is work involved in running a program of monitoring the withdrawal of the fluid from those transformers and capacitors and its destruction. So there is a certain amount of work involved in continuing the program over a fairly extended period while that sort of phase-out process takes place.

Mr MARTYN EVANS—I take it from my reading of this—and I have not really been able to clarify this—that the criterion on which people are listing these chemicals seems to me to be very much the scientific one. The persistent organic chemicals are well-known long-term hazards to the environment and to public health, but I have not actually been able to clarify from my reading of the treaty that the criterion on which they are actually selected and on which new chemicals can be added is the best available scientific evidence that these are hazardous chemicals. It is obvious when you read annex A and look at the chemicals that that is the criterion on which they have been selected, but I have not actually been able to verify that from my understanding and reading of the treaty. When one looks at the list, that is the obvious conclusion which one draws. I take it that that is the basis on which they are selected and on which new chemicals would be added.

Mr Hyman—Yes, that is correct. If you look at annex D, you will find a number of criteria set out there. Some of them are just to do with identifying the chemical—the chemical identity and so forth—but there are specific criteria relating to persistence, bio-accumulation, potential for long-range environment transport and adverse effects. The adverse effects one is necessarily a little more general than the others. But those criteria are the fundamental basis for deciding whether a newly proposed chemical would be added to the list.

Mr MARTYN EVANS—What concerns me is that article 1, Objective, at the commencement of the treaty referred to what is now very discredited in international literature, the precautionary approach, which is very much the European non-tariff trade barrier which is favoured by our European colleagues to prevent others from trading in the international arena. It really fails to pick up the best scientific standard, which is of course the competing principle one might use. But instead of using best available scientific evidence, when the Europeans wish to prevent other people trading they simply refer back to the old precautionary approach. They have managed no doubt again to get this incorporated in this treaty in case there are some new, modern chemicals which they would like to ban. They do not have the intellectual property for them and so they insert ‘precautionary approach’ in the treaties.

I am not sure how ‘precautionary approach’ refers to this treaty, because it does not appear again. Nor, on the other hand, does ‘best available scientific evidence’ appear in the treaty. So the annex D criteria which you mention, which I have noticed, again do not actually refer to the use of best available scientific evidence as an overall criterion for judging the merits of any of the classifications which come up in annex D. Annex D does, as you say, refer to a variety of

what are almost sources of evidence, but it does not then say, in judging all the sources of evidence which you come up with in D—issues about persistence and so on—having taken all this material, what overriding principle you use in judging its merits. You could take the best available scientific evidence and weigh the material on that criterion or you could fall back on 'old Europe', to quote an ally of ours, and fall back to that precautionary approach again, as old Europe would do. That would then give you quite a different outcome to 'best available scientific evidence'. The treaty does not come down on either side here, because annex D just gives you a source of information; it does not give you a criterion. I notice that this is true in both treaties. Was any consideration given to that? As Australia, do we have a view on that?

Mr Hyman—Certainly, very much consideration was given to this. In the negotiation of the treaty, the question of whether the precautionary approach should be referenced and, if so, how was probably the single most controversial issue—certainly one of the most controversial issues.

Mr MARTYN EVANS—As it should have been.

Mr Hyman—And the references in the convention were all very hard-fought. As is the nature of such things, to some degree the convention represents a compromise between competing perspectives. I suppose you might argue that you have drawn out polls in that perspective. If you read the convention carefully, you will find that there are kinds of precautionary references in, I think, three places. One is in the objective, which you have just referred to. I would note that, although there is a reference at the beginning of that objective to the precautionary approach, the objective of the convention is nevertheless to protect human health and the environment. The precautionary approach is at best instrumental in pursuit of that objective. Secondly, you will find a reference, if I am not mistaken, somewhere in the preamble. If you look halfway down the page, you will find:

Acknowledging that precaution underlies the concerns of all the Parties and is embedded within this Convention ...

If you look at article 8, which is the critical article here, you will find that at various points in the text there are phrases. For example, in paragraph 7(a) you will find the sentence:

Lack of full scientific certainty shall not prevent the proposal from proceeding.

In a couple of other places you will find phrases like 'in a precautionary manner'.

Mr MARTYN EVANS—I see.

Mr Hyman—Those represent the final and most hard-fought outcome on this issue.

Mr MARTYN EVANS—Where did science feature?

Mr Hyman—May I complete my explanation?

Mr MARTYN EVANS—Yes; my apologies.

Mr Hyman—I think that article 8 in the end is the critical article for the point that you were making and for the kind of argument that prevailed among the various parties negotiating the

convention. At the end of the day we are satisfied that article 8 represents a systematic examination of the criteria set out in annex D of chemicals brought forward and that they ensure that a chemical cannot be added to the convention unless it has been subject to the most thorough scientific scrutiny. If you read that carefully, you will find that it is an extraordinarily thorough examination of the case for putting a chemical forward. There are phrases from time to time that suggest that there may be uncertainties that need to be taken into account. This was a point of great contention since it was argued that the criteria set out in annex D were essentially numerical ones—either a substance had a particular persistence or it did not. If it did not then it should not be added to the convention; if it did then that was one step towards it being added.

The area where precaution potentially could apply—or at least scientific uncertainty could be found—might be, for example, in the potential for long-range transport, where a new chemical, which has only recently been in use, might show the potential for such transport, but it has not yet been found very remotely from where it is used. A case might conceivably be made for taking action against a chemical because it is persistent, it has all the hallmarks of something which will travel long distances, it has adverse effects and it bioaccumulates, but it has not yet been found in the Arctic, for example, when it is in use in tropical areas. I suppose it could conceivably be argued that, under such circumstances, the exercise of conservative decision making might legitimately be applied, but that is probably an extreme and unlikely occurrence. What I would say is that the number of steps which have to be gone through in article 8 before a chemical can be added provides a very firm assurance that no chemical will be added until it has been subject to the proper scrutiny and has been accepted by the international community as a genuine and reasonable addition to the existing list.

Mr MARTYN EVANS—Article 8 of part 9, for example, says 'shall decide, in a precautionary manner'. It is very much the case that, as you have correctly drawn to my attention, the word is used a lot in article 8. As I have with regard to a number of these sorts of treaties, I just draw your attention to the fact that we are allowing the NGOs and Europe to insert this totally non-scientific language and this totally ill-defined language—language which almost of itself falls foul of the precautionary principle. It is almost legally precautionary. You could never know the outcome because you will never get there.

I suspect that, instead of allowing hard science to determine hard scientific questions—science itself takes account of uncertainty because science is designed around uncertainty—we are almost, in what are meant to be legally binding treaties, inserting language that we can never properly define or understand. By doing that, we are setting ourselves up for some very difficult questions in the future. By always giving in to people who wish to create a climate of uncertainty, fear and doubt at an international level about issues of which we should attempt to create certainty and scientific clarity, we are simply creating a climate in which we will never have certainty and clarity. It is a very difficult precedent to set.

Mr Hyman—I understand entirely the point you are making. This is something which, as I say, was extremely hard fought. Probably the Australian delegation would have been more comfortable—in fact, I am sure it would have been more comfortable—if these references had been omitted. This is the outcome of a difficult, protracted negotiation process in which a decision had to be made about whether a convention was wanted or not. Some compromise had to be arrived at. It was arrived at with great difficulty and it was not one that was welcomed.

However, I would point out that article 8 requires a multiplicity of steps before a chemical can be brought forward. It has to pass a screening step, there has to be a risk profile prepared and there has to be a risk management evaluation prepared, even before the question of listing comes before the convention of the parties. During all those phases, there is ample opportunity for countries to question the evidence—to question whether this chemical has really passed the hurdles that it needs to pass. Because of the number of times in which the question is revisited during that process, we believe that at the end of the day this is acceptable. That was a decision we made at the time and it is a decision we still hold to.

Mr MARTYN EVANS—I do not dispute that.

Mr Hyman—We recognise the more general point entirely, and it is something that we carry into negotiation after negotiation and have fights about all the time.

Mr MARTYN EVANS—I am not saying that in this particular case. I totally agree in the case of article 8. The end result in this case is completely correct; your point is quite right. All I draw to your attention is that, in case after case, we lose the argument every time. In case after case—in every treaty—the word 'precautionary' comes up at every opportunity. We are simply losing this argument every time.

Mr Hyman—We are very conscious that the argument happens every time. I draw your attention to the outcome of the world summit on sustainable development, where we would argument that we certainly did not lose.

Mr MARTYN EVANS—Congratulations. I agree.

Mr ADAMS—I see that one out of the 10 chemicals is for getting rid of the giant termite. Where are we on that? Have we any alternatives and how far away are they?

Mr Mayne—From the last conversation I had with the Northern Territory, they were comfortable that they would be able to find alternatives within the five-year exemption period. They are quite comfortable that they are well down the path of finding a suitable alternative.

Mr ADAMS—So there is work going on in that area?

Mr Mayne—There certainly is—at the Northern Territory government's expense.

Mr ADAMS—Okay. In regard to the dioxins that you were mentioning, Mr Hyman, is that work that is going on now?

Mr Hyman—Yes. We are in the middle of the National Dioxins Program, which involves the collection of detailed information about dioxin emissions and dioxin residues in Australia. We have recently put out a risk assessment methodology for public comment. We will be conducting a risk assessment. On the basis of the risk assessment and the information we have gathered about dioxin releases in Australia, we will be identifying what would be the most appropriate course of action to address dioxins in Australia—dioxin emissions and reducing exposure to dioxins.

Mr ADAMS—There is a world health standard level of dioxin release, isn't there? Is that the best science at the moment?

Mr Hyman—There is what is regarded as a best available technology standard for release of dioxins from combustion-style processes. As far as I know this has not been endorsed by the World Health Organisation because the World Health Organisation would normally look at ambient standards, I suspect, rather than emission standards. This one is based, I think, on a standard originally established in Germany, but it has become a de facto benchmark around the world and is widely used by Australian states—this is the 0.1 nanograms per cubic metre figure.

Mr ADAMS—Are we going to go beyond that now?

Mr Hyman—That is something I cannot say yet. I know many of the states have applied that figure to various different kinds of proposals and facilities that have been brought forward.

Mr ADAMS—We are going to up the ante?

Mr Hyman—Not necessarily. We will base our decisions on the result of the work that is going on at the moment.

Mr ADAMS—You will base it on good science.

Mr Hyman—Indeed we will.

Mr ADAMS—Thank you.

CHAIR—Mr Hyman, I take it that this convention enters into force 90 days after the 50th state has ratified or accepted. We are up to 35. Do we have any time frame in mind? When do we anticipate the 50th state?

Mr Hyman—The first meeting of the conference of the parties is, I think, scheduled for late next year or early in 2005.

Mr Heyward—It cannot be formally scheduled until the ratification processes are complete and the convention enters into force. Our best guess is that it will happen sometime in the middle of next year.

CHAIR—Are we anticipating 15 countries in a short period of time or are we anticipating a bulk ratification, like the European Union?

Mr Heyward—I think many states are at a similar stage in the process to that at which Australia finds itself. The process takes a while and some of those will happen between now and the middle of next year.

CHAIR—In the regulation impact statement there is reference to the convention's expert body, and we are keen, I take it, that Australia ought participate at an early stage in that expert body. How is the membership of the expert body determined? It is in the regulation impact statement in paragraph 2.1(3). It just makes reference to the expert body.

Ms Kenney—It is referred to in article 19 of the convention text: the conference of the party shall establish it.

Mr Hyman—Yes; paragraph 6.

CHAIR—That is the expert body. Are you referring to the Persistent Organic Pollutants Review Committee in the regulation impact statement?

Ms Kenney—Yes.

CHAIR—Membership, size, terms of reference et cetera are still to be determined?

Mr Hyman—Yes, that is correct.

CHAIR—We anticipate that Australia will somehow, somewhere get on that expert body?

Mr Hyman—It would be our intention to, yes.

CHAIR—How would we be represented; in other words, by whom? Who would be our likely representative? From what category of expert?

Mr Hyman—The requirement is that the committee shall consist of government designated experts in chemical assessment or management. We have, through the process of assessing chemicals for both NICNAS and the APVMA—the two major chemical regulatory bodies in Australia—a body of people who undertake such assessments. It could well be that someone would be drawn from that pool. There are other people who work in policy areas who have experience of that kind of assessment who might also be suitable for that purpose.

CHAIR—Thank you. As there are no further questions on that convention, we will now turn to the Rotterdam convention. My Hyman, is there anything further you wish to add in relation to the Rotterdam convention?

Mr Hyman—Just a few remarks. This convention allows governments to inform a central international clearing house of domestic action taken to ban or severely restrict use of certain chemicals for health or environmental reasons. This information is available to all countries participating in the prior informed consent, or PIC, scheme. Countries can use this information to make informed decisions on whether they wish to receive future imports.

We have been involved in the Rotterdam convention and its predecessor procedures for over 10 years, and our involvement has provided both direct and indirect benefits. We were able to successfully contribute to developing many of the operational aspects of the convention, consistent with our national interests. The convention has provided us with an effective tool to obtain and exchange information about hazardous chemicals that are traded internationally. We also benefit by encouraging better management of hazardous chemicals in our region. Implementation of the convention within Australia requires the cooperation of several agencies, particularly my department as the DNA for industrial chemicals and the Department of Agriculture, Fisheries and Forestry as the DNA for pesticides—DNA being designated national authority.

As I highlighted in my opening remarks about the Stockholm convention, ratification would strengthen our existing domestic systems which protect the environment and human health of Australia and Australians and enhance our capacity to influence international efforts to address chemical issues. The convention is widely supported both within Australia and by overseas countries, including our major trading partners. We would again continue to be viewed as a nation which can rely on its clean and green image.

CHAIR—Thanks, Mr Hyman. Essentially, this seems to be a treaty which gives rise to an information sharing forum, if you like. Why is it necessary to have a binding international agreement in place of the voluntary reporting system? The national interest analysis says, 'Ratification of the treaty would provide a useful forum.' Is there no other forum where this kind of information sharing could exist?

Mr Hyman—I suppose one could argue that the interim procedures could continue to be interim. The experience of the voluntary system which preceded negotiation of the Rotterdam convention was regarded as successful but as a system that would benefit from carrying with it the force of international law in terms of encouraging wider compliance and a greater degree of participation.

CHAIR—If we did not take binding treaty action, that would not prevent us from information sharing on this topic.

Mr Hyman—I am sorry; could I ask you to repeat the question?

CHAIR—In the event that we decided not to take binding treaty action, that would not preclude us from obtaining this kind of information in another context.

Mr Mayne—I will try to answer that question if I can. If we are not a party to the convention, the process in effect would identify a number of chemicals of international concern and introduce, possibly, compulsory controls by other parties. If we are not in there then we are not able to influence that process. It is going to happen. I am answering the question that it is best for us to be engaged in the process.

Mr Hyman—There is perhaps one other factor that might be borne in mind. We have not applied the export related requirements because to do so would require us to impose obligations on domestic exporters. The action that we can take as a government in sharing information is something that we can do by government decision alone. For us to apply the export related controls will oblige us to impose conditions on exporters and to do that requires a certain amount of legal force which is more appropriate to apply on the basis of binding international obligations.

CHAIR—We signed this treaty in 1999 and we are proposing to ratify it, depending upon JSCOT and the other parliamentary processes, by the end of 2003. What will have happened in that four-year period?

Mr Hyman—We did think earlier in the process about whether we should proceed to ratification of Rotterdam and Stockholm in sequence in the same way as they were negotiated. It was felt that there was advantage in deferring ratification of Rotterdam until we were also ready

to ratify Stockholm. Apart from anything else, the existence of the interim procedures allowed us to gain experience in and understanding of how the system would work and therefore to ratify in a more informed way when the time came. So the existence of the interim scheme made it possible for us to do both ratifications at one time.

CHAIR—I note that the regulation impact statement says 42 countries have ratified while the national interest analysis says 45 have ratified and that it enters into force after 50 have ratified. Are we attempting to be one of the first 50?

Mr Hyman—It is less important to be one of the first 50 than to be one of the original parties at the time of the first meeting of the conference of the parties. So this is a timely opportunity for us to ratify.

CHAIR—So that is our particular incentive for getting this done now?

Mr Hyman—Yes, particularly in respect of membership of the Chemicals Review Committee, or CRC, which is the decision making body for listing future chemicals.

CHAIR—Is that the Scientific Review Committee or is that another one?

Dr Satya—No, that is it.

CHAIR—So it is the SRC or the CRC.

Mr ADAMS—This would have an effect in the future on the trade of food in the world, wouldn't it?

Mr Hyman—To the extent that it will contribute to better management of chemicals, it should lead to lower residues of chemicals in food—so to that extent, yes.

Mr ADAMS—That will affect the whole trade in food because there are going to be some countries that are going to ban food with certain chemicals in the additives. We have already seen fights over this going on, and this is a circumstance that is gradually growing in the world today.

Mr Hyman—The application of standards for residues in food is something which happens in any case. Because this convention deals with the most hazardous end of the chemicals spectrum, it is probably only a minor contributor to that process.

Mr Mayne—It is not meant to directly affect trade. The transfer of information will influence people's awareness and their domestic national decision making regimes, but it is not directly aimed at interfering with food standards.

Mr ADAMS—But it will have an effect in the long term on that. Is the data in a digital form so that it is readily available for anybody that wants it?

Mr Mayne—The information is published. Each time that the interim chemicals review committee makes a report the report is published. There is a summary of the reasons why the

national actions were taken on each chemical. There is full identification of the relevant information—the legal decisions and statements about the general problems with each of the chemicals. So it is very much a public process.

Mr ADAMS—Would that be on a web site?

Mr Mayne—It is indeed.

Mr ADAMS—Would that be on your web site?

Mr Mayne—Eventually it will be. At the moment it is on the UNEP and FAO PIC web site.

Mr MARTYN EVANS—From looking at the list, I think that most of the Pacific islands nations do not appear to have ratified it. Is there any particular problem that they have with ratification? Can you give us a bit more detail as to whether you think the Pacific islands states will be able to ratify it?

Mr Heyward—As a general rule, Pacific islands states are not the fastest to ratify conventions simply because of the limitations they have in their capacity to deal with a plethora of international law. But steps are being taken to inform Pacific islands states about the benefits of ratification and of what domestic procedures are necessary for them to do so. While they are often slow, there are measures available to assist them in ratification.

Mr MARTYN EVANS—There is no unique problem that you think they will have with this particular treaty?

Mr Heyward—In fact, this treaty, by creating a central information repository, should make things easier for smaller jurisdictions in general.

Mr MARTYN EVANS—Good.

Mr Hyman—It might be worth commenting that small countries like the Pacific islands countries are in some ways the major beneficiaries of this kind of treaty.

Mr ADAMS—As long as they get the information.

Mr Hyman—Precisely because it gives them access to information and enables them to make an informed decision; it would have been quite difficult for them to do so otherwise.

Mr MARTYN EVANS—There are a number of states that have been slow to ratify. Indonesia, the Philippines, Japan and New Zealand have signed but not yet ratified. Is that just because they are going through the normal procedures?

Mr Hyman—To the best of my knowledge, there is no particular impediment to any of these countries ratifying.

Mr MARTYN EVANS—Thank you.

CHAIR—Thank you very much for being here this morning. We appreciate your appearance before the committee.

[11.58 a.m.]

Amendments done at Berlin, Germany, on 19 June 2003 to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

SPYROU, Mr Arthur, Executive Officer, Environment Strategies Section, Environment Branch, Department of Foreign Affairs and Trade

WHITE, Mr Damian Craig, Executive Officer, Legal Branch, Department of Foreign Affairs and Trade

WYNTER, Dr Marie Catherine Paula, Acting Principal Legal Officer, Office of International Law, Attorney-General's Department

O'CONNELL, Dr Conall, Acting Deputy Secretary, Department of the Environment and Heritage; and Commissioner, International Whaling Commission

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Dr O'Connell, do you wish to make some introductory remarks?

Dr O'Connell—In essence, this is a technical amendment which occurs to formally keep the Schedule to the International Convention for the Regulation of Whaling up to date. It is a formal annual technical amendment which maintains the moratorium on commercial whaling. There is very little more to say about it in substance.

CHAIR—Thank you. I appreciate that this technical amendment comes before the committee. If we are able to arrange another format for dealing with this type of convention, I am sure we will. Perhaps you could advise the committee of how Australia enforces the convention in Australian waters. How is it actually enforced?

Dr O'Connell—Under the Environment Protection and Biodiversity Conservation Act, Australian waters are a whale sanctuary and full protection is given to cetaceans.

CHAIR—As this comes up before us on a regular basis, could you comment on the progress being made in implementing a permanent international ban on commercial whaling?

Dr O'Connell—There has probably been no further formal progress under the IWC, the International Whaling Commission, than you would have heard on a previous occasion. At the commission's last meeting, in Berlin, some additional progress was made on the conservation

agenda to be pursued under the commission. A conservation committee was established which would specifically be used to pursue conservation initiatives through the commission. Again, that made no formal change to the convention structure.

Mr ADAMS—Wasn't it a bit of a bunfight?

Dr O'Connell—Alas, every year it is a bunfight. It was a difficult meeting but, I must say, not the most difficult meeting we have had.

Mr ADAMS—The argument is that whales are not moving towards extinction and that some of the rhetoric used in the moratorium years ago has run out of substance. The states with a tradition of eating whale meat—blubber at one end and meat at the other—are now asking why we have a moratorium on whaling when, in terms of a conservation ideal, these whales are readily available.

Dr O'Connell—It is certainly Australian government policy to pursue the absolute protection of cetaceans.

Mr ADAMS—I understand that, and I support that concept. I do not want us to go back into whaling, but the world perspective is that there are plenty of whales, including minkes, that were hunted in the past. Isn't that the argument being used by those states?

Dr O'Connell—To date, there has been no assessment from the scientific committee of the International Whaling Commission that whaling could yet take place on a sustainable basis. Almost all the stocks that were hunted were very significantly depleted to mere percentages of their former numbers, and in no case would the scientific committee have reached a conclusion that those numbers have recovered sufficiently to manage a sustainable whaling take, nor have they agreed on what that take would be. At that point, I would appeal to the scientific committee of the Whaling Commission.

Mr ADAMS—I did not quite understand exactly what you said there. Has the scientific committee reached a conclusion that there are sustainable numbers?

Dr O'Connell—No. There has been no conclusion by the scientific committee that there are sufficient numbers of the target species to pursue whaling at this stage.

Mr ADAMS—So what was Japan's argument?

Dr O'Connell—Japan is interested in seeking agreement to undertake what would effectively be localised coastal whaling. They already take 400-plus minke whales in high seas areas under so-called scientific permits but, primarily, they seek agreement under the commission to pursue localised coastal whaling. They have said that they will pursue scientific whaling within coastal regions regardless.

Mr ADAMS—What do the Norwegians say?

Dr O'Connell—The Norwegians had a reservation to the moratorium, so they quite legally pursue a whaling policy.

Mr ADAMS—Do they argue that they have been hunting whales for hundreds of years? Is that their argument?

Dr O'Connell—They certainly claim that it is traditional, but it is not simply on the basis of tradition. They have a reservation to the moratorium, so they continue to pursue it on the basis that they believe their take is sustainable.

Mr ADAMS—So they argue that their take is sustainable?

Dr O'Connell—They argue that, yes.

Mr ADAMS—Where do the Japanese and the Norwegians hunt for whales?

Dr O'Connell—Japan's scientific whaling is done in the Southern Ocean region and the Northern Pacific region. Offhand I do not precisely know where the Norwegians hunt, but it is in northern waters—the North Atlantic.

Mr ADAMS—They do not fish in the Southern Ocean?

Dr O'Connell—No, it is localised to the North Atlantic.

Senator TCHEN—Earlier you advised the committee of how Australia enforces the convention in Australian waters through the Environment Protection and Biodiversity Conservation Act. Can you tell me exactly what you mean by 'Australian waters'? Is that the 12 nautical miles?

Dr O'Connell—No, that is the 200 nautical mile limit.

Senator TCHEN—So it is the economic zone?

Dr O'Connell—Yes, the exclusive economic zone.

Senator TCHEN—Is that internationally recognised?

Dr O'Connell—Yes.

Senator TCHEN—I suppose other signatories to the convention enforce it in the same way?

Dr O'Connell—I do not know the details of how other countries would generally pursue it but I would assume that predominantly they would use their EEZs.

Mr Spyrou—Under international law there is the Convention on the Law of the Sea. Within the 200 nautical miles, or what Dr O'Connell has called Australian waters, there is the potential for environmental protection. Under this head all countries which are parties to the United Nations Convention on the Law of the Sea can extend that type of protection. Given that there are over 150 countries that are parties to the Law of the Sea Convention, I would think that quite a number make use of this provision.

Senator TCHEN—I understand that under article 8 of the convention any contracting government can grant a citizen a permit that authorises them to kill, take or treat whales for the purpose of scientific research, subject to certain restrictions. I am not quite sure what 'treat' means. As far as I can see, 'treat' means cutting the whale up into small white bits. Are these contracting governments that are undertaking the scientific research obliged to share the scientific information with other countries?

Dr O'Connell—They are not, as I understand it, obliged to share the scientific information. I could take it on notice and clarify that precisely for you, but I am pretty certain they are not. At present, for example, Japan does not share all the information that comes from its scientific whaling. It shares what it considers to be legitimately required but what it certainly does not share is some of the biological information and other components. So it certainly does not share all the information that comes from its whaling program.

Senator TCHEN—Is there anything in the convention that would enable other contracting parties to ask for additional scientific information or scientific outcomes?

Dr O'Connell—To my knowledge, there is nothing in the convention that requires that. Japan has made it clear that it will consider providing any further information that a party wants on a bilateral basis, but it does not wish to do so as a matter of right under the convention. It very clearly delineates what it must do under the convention to meet its obligations and what it is willing to do on a bilateral basis.

Senator TCHEN—My last question is not germane to this particular convention but it relates to it. Madam Chair, may I ask it?

CHAIR—We will see.

Senator TCHEN—Have the Japanese ever indicated any information relating to the stomach contents of the whales they capture?

Dr O'Connell—Yes, on regular occasions at International Whaling Commission meetings, Japan has made presentations on the stomach contents of selected whales that they have captured and would provide information from those surveys on the average stomach contents of the whales they have caught. Part of their interest is to—

Senator TCHEN—Could you tell me how I can get access to that information. It may not be of interest to this committee.

CHAIR—Are you about to make an adjournment speech on the stomach contents of whales?

Senator TCHEN—No, it is not so much that; it is because I am also a member of a Senate committee which is looking into plastic bag legislation, and some of the evidence that has come before us alleges that whales were being killed by the ingestion of plastic bags.

CHAIR—Perhaps Dr O'Connell will be an expert before your other committee.

Senator TCHEN—I am wondering whether information is available.

Dr O'Connell—I can certainly separately follow that up for you and provide you with anything that is useful, in terms of either contact with the Japanese fisheries, who I think would be quite happy to provide you with information, or whatever we have within the department.

CHAIR—Dr O'Connell, you are a commissioner, aren't you?

Dr O'Connell—Yes, I am the Australian commissioner on the Whaling Commission.

CHAIR—So you have asked the right man, Senator Tchen.

Senator TCHEN—Yes. You could send any information to my standard email address.

Dr O'Connell—Yes, no problem.

Senator TCHEN—Thank you.

CHAIR—Dr O'Connell, thank you for appearing before us today. We appreciate your attendance.

Resolved (on motion by **Mr Wilkie**):

That this committee authorises publication, including publication on the electronic parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.12 p.m.