COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON TREATIES

Reference: Treaties tabled on 8 and 9 December 1999

MONDAY, 14 FEBRUARY 2000

CANBERRA

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JOINT COMMITTEE ON TREATIES

Monday, 14 February 2000

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

Senators and members in attendance: Senators Cooney and Ludwig and Mr Adams, Mr Baird, Mr Bartlett, Mrs Elson, Mr Hardgrave, Mr Thomson and Mr Wilkie

Terms of reference for the inquiry:

Review of treaties tabled on 8 and 9 December 1999.

WITNESSES

Committee met at 11.03 a.m.

ATWOOD, Mr John, Principal Legal Officer, Environment and Trade Law Branch, Office of International Law, Attorney-General's Department

GLASSER, Dr Robert, Director, Infrastructure and Environment Group, Sectors Branch, Australian Agency for International Development

HILLMAN, Mr Ralph, Ambassador for the Environment, Australian Government

HUNTER, Mr Stephen, Head, Biodiversity Group, Environment Australia

JOLLEY, Mr Lindsay, Manager, Policy and Secretariat, Australian Centre for International Agricultural Research

LAING, Mr Douglas Alan, Executive Officer, Environment Strategies Section, Environment Branch, Department of Foreign Affairs and Trade

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

MENERE, Mr David Leslie, Landcare and NHT Branch, Natural Resource Management Policy Division, Agriculture, Fisheries and Forestry - Australia

NELSON, Ms Rachel Ann, Policy Officer, Sustainable Landscapes Branch, Environment Australia

PICKUP, Dr Geoffrey, Chief Research Scientist, CSIRO Land and Water

PIGGOTT, Ms Rhonda, Director, Environment Strategies Section, Environment Branch, Department of Foreign Affairs and Trade

WATT, Dr Annemarie, Director, Sustainable Landscapes Branch, Environment Australia

WILLCOCKS, Mr George Charles, Assistant Secretary, Landcare and NHT Branch, Natural Resource Management Policy Division, Agriculture, Fisheries and Forestry – Australia

WILSON, Mr Michael Wilson, Acting Assistant Secretary, International and Intergovernmental Branch, Environment Australia

CHAIR—I declare this meeting open, the first one for the year 2000. Welcome to all members of the committee and to those to give evidence this morning. We are going to take evidence on four proposed treaty actions that were tabled in parliament on 8 and 9 December last year. They were: first, the UN Convention to Combat Desertification; second, the scientific and technological cooperation agreement with South Korea; third, the agreement for the establishment of the International Development Law Institute; and, last, the denunciation of the Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface.

We will take evidence on the UN desertification convention first. We are a little constrained by time today, so please keep the introductory statements as short and to the point as possible. We already have a reasonable amount of detailed information about the convention, so we would really like to focus on the major issues. I also ask the representatives of the various government agencies to wait and be available to be recalled to give further evidence, if necessary, after some of the other NGO witnesses before we conclude consideration of that convention today.

I will call a range of witnesses to deal with the UN Convention to Combat Desertification. Before we proceed to the evidence, I have to formally advise you that this hearing is a legal proceeding of the parliament as if it were taking place in the House of Representatives or the Senate, so it requires the same respect as such proceedings. We do not require people to give evidence on oath, but we should advise that the giving of false or misleading evidence is a very serious matter and may be regarded as a contempt of parliament. Mr Hunter, will you begin with your opening statement?

Mr Hunter—Thank you, Mr Chair. On behalf of the government, I am pleased to appear at this hearing of the committee to outline the United Nations Convention to Combat Desertification and to address a number of issues which I believe may be of interest to committee members. As you know, this convention addresses causes and consequences of desertification and encourages sustainable arid land management in developing countries, particularly in Africa. You also know that this is not the first time that this convention has come before the treaties committee. At the conclusion of its inquiry in 1997, the committee agreed that considerable work needed to be done to ensure that the interests of all domestic stakeholders, including the state and territory governments, were adequately represented. The government embarked upon the ratification process last October, contingent upon the resolution of any outstanding stakeholder concerns. I am pleased to inform you that this has been done.

The committee might be interested in the threshold issues which arose during consultations. As they were presented to the government, these were: the need or otherwise for a national action plan; the administration and management of land in Australia in the event of ratification; and our obligations as a party under the convention. I want to briefly explain why these were important issues and how the government wishes to address them. Firstly, I will discuss the national action plan. Under article 9 of the convention, affected developing country parties are required to submit a national action plan to accord with the objectives of the convention. Developed countries such as Australia have the option to prepare a national action plan. Some stakeholders strongly believe that Australia should not agree to a national action plan, simply because current domestic land management programs and policies met, if not exceeded, the requirements of the convention. The government agreed with this view at the time of the committee's 1996-97 inquiry, and this view remains unchanged. There will be no national action plan.

Secondly, there is the issue of land management in Australia. Concerns about whether or not ratification by Australia would require a national action plan also embraced questions on convention jurisdiction over existing domestic arrangements for land management. Quite simply, it would have none. Ratification would not entail amendment to existing legislation, policies or programs, nor would it in any way change the existing relationship between the Commonwealth and the states on land management issues. The existing mix of responsibilities for land management between the Commonwealth, state and local government already provides a sound foundation for sustainable land management. This division of responsibility acknowledges agreements reached under COAG mechanisms that primary responsibility for land management in Australia would continue to rest with the states. It is also the basis on which all state and territory governments have agreed that the ratification should proceed.

The convention does not concern itself with the particulars of land administration in country parties. It is enough that it is done sustainably and well. Australia's system of cooperative federalism is yielding results in stemming the impact of land degradation, as is cooperative community based action focused on landcare, for example. It is these cooperative models that resonate very well with the objectives of the convention and establish Australia as an international pacesetter in this field. That is why we say that the way we manage our land is fully consistent and frequently well in excess of the requirements of the convention. For all these reasons, there is neither the need nor the intention to change the ways in which land is managed in Australia.

Could I just turn now to obligations upon ratification. As I said earlier, the convention focuses on stemming the trend of desertification in developing countries, particularly in Africa, where the problems are most

obvious and acute. In essence, this is an aid or development assistance convention. It is fair to ask if ratification would obligate Australia to increase its aid to developing countries suffering desertification. The answer is no, and the reason is we already do it. There is nothing in this convention that would obligate us to do more than what we do at present. As a party, we would simply be required to assist developing countries, as appropriate, while giving attention to our own land degradation and desertification problems in domestic policies and plans, which, as I have said, we already do and do well.

As for our work with developing countries, Australia has extended assistance in this field for many years. Some of our current work is designed to help developing countries formulate their national action plans, which are very important if future assistance is to be properly targeted. We are, of course, unique amongst OECD countries in sharing with many developing countries a severely drought and desertification prone environment.

Against that background, it is a reasonable question to ask: why should we ratify at this time? The short answer is that it is in our national interest. We are currently spending more than $30 million on desertification related aid – considerably more if the work of the Australian Centre for International Agricultural Research is added. Some of this work – and the volume may be increasing – relates directly to convention obligations.

Australia's capacity to influence the way the convention operates, the delivery of convention related aid and the coordination of the many multilateral bodies involved in this field is limited while ever we remain on the sidelines. In many ways, Australia is an international leader in the field of desertification remediation. There is little doubt that Australia's national interest would benefit from the credibility gains conferred by ratification. The government believes staying away from a convention which has recorded one of the highest numbers of ratifications of any convention – 162 – and one in which Australia had a major hand in drafting precisely with our national interest in mind conveys a negative message.

We are one of only three OECD countries not to have ratified the convention. The other two are New Zealand and the United States. New Zealand has indicated in the past that it is less a priority for them than are other international issues, and obviously they do not confront drought or desertification in the same way as Australia. In the case of the United States, the convention has many supporters. The administration is pro-ratification, and it has been working to establish political support to push it through the US Senate.

Finally, on the question of whether Australia stands to gain commercially from ratification, the government is of the view that there is sufficient evidence to suggest there could be gains, if only modest, at this stage. Consultants and companies contracted during this process – and there were a lot of them – generally agreed that ratification of the convention could increasingly favour country parties. Australia, as a party to the convention, could therefore see resultant flow-on business opportunities. Early ratification was, therefore, strongly supported by the industry sector.

We also need to bear in mind that aid driven partnerships with developing countries can produce commercial spin-offs over time. In summary, the government believes that the time is right for ratification of this convention and that our national interest will be well served by our doing so. Thank you, Mr Chair.

CHAIR—Before we go to questions, can I ask Ambassador Hillman to make some remarks regarding, I suppose, our country or our government's position vis-a-vis his role as Ambassador for the Environment in this.

Mr Hillman—Thanks, Mr Chairman. This is one of three conventions that arose from the Rio 1992 summit – the other two being the climate change convention and the biodiversity convention, both of which we have ratified. In terms of Australia's profile in international environmental negotiations, I think that is very much influenced by the substance of the positions we take. But, of course, in terms of general perceptions, ratification of this convention does improve our environmental credentials, I suppose, in the international negotiating circuit, but I would not wish to place overly much weight on that. It is a small positive.

Mr BAIRD—Mr Hunter, you made quite a point of the fact that signing the convention would have no impact in terms of Australia's management of its own land areas and that it would not commit us in any way either to aid or in terms of internal land management. What is the strength of signing this, if it has no impact on us? Why would it have any force in terms of the other countries that are signing it? What is the point of it if there is no obligation to meet commitments?

Mr Hunter—Apart from the fact mentioned by the Ambassador for the Environment in terms of our credentials internationally, an aspect of the convention which is important is that it assists in ensuring that the quality of aid that is already provided and its targeting is better worked through, and it may be that my colleagues from AusAID would be able to elaborate on that. It gives us a say in a body which has an important influence on the way aid funds, particularly for desertification and land degradation, are channelled.

The second, I think, is that Australia, as a leader in methods of approaching land degradation, particularly through programs such as Landcare and a number of the programs funded by the Natural Heritage Trust, is in a

position to share knowledge and information with other countries which are parties to the convention. Our capacity to do so and the strength with which we do so would be increased by our ratification of the convention.

Mr BAIRD—If it gives us the ability to question the way in which landcare management is being carried out in other countries, especially those to which aid is given, would the reverse not be true that other countries could question the way in which we are effecting our own landcare management?

Mr Hunter—As I mentioned in my introductory comments, Australia's standards of land management and approach to land degradation issues already meet or exceed those required by the convention. That would, therefore, mean that the capacity to use the convention to influence those would be very limited. It is a convention which is as much about partnership, sharing information and expertise as anything. I would be surprised if another country sought to use it to influence Australia's approach, given the standards that we already meet.

Dr Glasser—Mr Chair, I would be happy to comment from AusAID's perspective, with your permission. One of the major incentives for both developing and developed countries to ratify this convention, at least from the aid program's perspective, is that there is currently no one body that is responsible for desertification issues. There is a biodiversity treaty that addresses some related issues, there are forest groups and there is the climate change convention which has issues that touch on desertification as well.

One of the primary purposes, the primary incentive, is to have a group whose primary responsibility is to deal with desertification and in particular to coordinate to work with the existing conventions – those others that I mentioned: biodiversity and climate change – to ensure that desertification is not slipping through a crack, that the issues are addressed more effectively and more efficiently, that the profile is raised and that there is a forum for donors to get together and coordinate to focus on desertification. So even though there is not a financial obligation, it is still a fairly important role at least from the aid community's perspective and from the developing countries' perspective to have a convention like this.

Mr BAIRD—Thanks, Mr Chairman.

Mr HARDGRAVE—There are a couple of us here this morning who were around on 2 October 1996 when this matter was first brought to the committee. For my money, the only difference I can find from the presentation this morning to that on 2 October 1996 is this overwhelming emphasis on the fact that everyone seems to be happy that there will be no change in the land management structure in Australia's domestic circumstance. Can you guarantee that? Have we got it in writing? Have we got something that says that this is guaranteed?

Mr Hunter—During the consultations with the states and territories, the Commonwealth government made it clear that it would not wish to use this convention to alter those land management arrangements. In particular, I believe during those discussions South Australia proposed that the Commonwealth government make a statement at the time of ratification about the manner in which land management is handled in Australia, particularly the relative roles of the Commonwealth and the states. As mentioned in the National Interest Analysis at page 11, the Commonwealth has indicated that it would be willing to do that.

Senator LUDWIG—Page 15 goes to South Australia and page 14 also talks about your consultations with the Commonwealth government, but I will have a question about that shortly.

Mr HARDGRAVE—Why do you think South Australia want such a statement? Why do you think they believe this is needed?

Mr Hunter—I would not like to speculate on the motivations of the individual jurisdictions. I think, though, the states and territories and the Commonwealth would share the view that the cooperative approach to land management issues, policies and programs that have been developed in Australia over a long period of time, while still facing many challenges in terms of land degradation and so on, works well in the Australian constitutional context.

Mr HARDGRAVE—Sure. What about the timing of this statement that South Australia believes is needed? When will that happen? How will that be done?

Mr Hunter—That would occur at the time of ratification.

Mr HARDGRAVE—So it would be a statement that says that nothing is going to change, the Commonwealth acknowledges the states run the land and the Commonwealth has no intention to make a change in that circumstance?

Mr Hunter—My understanding of the character of the statement would be that it would describe the arrangements as they apply and as the Commonwealth government would intend.

Mr HARDGRAVE—Have you received any legal opinion? I am not a lawyer, but it strikes me that there is a part of our Constitution which leaves it open for that particular statement and arrangement to perhaps be challenged by an outside source who wants to use our external affairs powers to actually have matters such as those arrangements challenged. Have you done any work on that to see if that is a possibility?

Mr Hunter—I am not personally aware of any, Mr Hardgrave.

Mr HARDGRAVE—What I am worried about is that everything is fine here in Australia and we have this nice little agreement that the states run the land and the Commonwealth is going to maintain that arrangement which has been in place for almost 100 years, but somewhere down the track some future Commonwealth government may not be so well disposed or somewhere down the track a couple of state governments may do something that is quite erroneous as far as this agreement is concerned and the Commonwealth may be put under some particular obligation to in fact override that arrangement. Would that be possible?

Mr Hunter—I do not feel qualified to comment on the legalities of it. All I can do, Mr Hardgrave, is repeat the Commonwealth government's commitment both now and at the time of ratification to make a formal statement that the convention would not alter the way in which it wishes to approach the division of land management responsibilities in Australia.

Mr HARDGRAVE—I just get really worried because we keep signing up to conventions and so forth and do not really look at where our Constitution – the thing that supposedly is the set of rules that governs this country – actually plugs in or is plugged into. Time and time again, we sign up because apparently we have to join some international club or, in this case, according to your opening statement, because of expertise. Essentially we are regarded as world leaders in the area of desertification, if I remember evidence from 1996 correctly. Again, the contention is that, unless we are a member of this club, unless we join this convention, our expertise will not be seen, our offers of assistance through AusAID and those other fine instrumentalities will not be accepted. That is one side.

The other side of it is the fact that we have no real understanding of whether or not this convention could be used to change accepted practice about land management in this country. We have assertions, but we do not have it locked up. So nothing has really changed for me in 3¼ years, Mr Chairman.

Mrs ELSON—You have stated that Australia will gain in domestic and international credibility if it ratifies the UNCCD, with 162 countries already a party of it, but what worries me is that there are two major countries which have not ratified it – the US and New Zealand. What are their reasons for not signing?

Mr Hillman—New Zealand just feels that it is not an issue it has an interest in. It has no desertification problem itself. In the case of the United States, as Mr Hunter said before, the administration is very well disposed to ratify this convention and is working on Congress to try to arrange the circumstances where Congress might agree to that, but I do not think they are having a lot of luck although they are still working on it. Similarly with the biodiversity convention, the United States have not ratified that.

Mrs ELSON—Thanks.

Mr BARTLETT—Mr Hunter, the NIA indicates that there should be commercial benefits for Australia. Following on from Mr Hardgrave's question and the fact that we already are widely acknowledged as experts in this area, to what extent will perhaps a marginal enhancement of that reputation lead to commercial benefits for Australia and in what ways? Are there any estimates of the potential of these benefits? What evidence is there that they are already being developed, and in what way might that continue to happen?

Mr Hunter—As I mentioned in my opening statement, we felt that the benefits that might arise from this are likely to be modest, so I would not want to overstate them. The second point is that the indications are that the benefits are likely to grow over time rather than having necessarily been ones we could have obtained retrospectively. An important part of the way in which conventions such as this operate is that they often use a roster of experts, for example, who have particular expertise in particular fields. Normally it would be countries which have ratified the convention which would be eligible to have their experts included on that roster, so that is an opportunity that is not available to parties which have not ratified.

Mr BARTLETT—So that would indicate then that the experts operating in this field – in the US for instance – would be excluded from that roster and thereby from commercial gain?

Mr Hunter—I think exclusion from the process would be too strong a term. They could still be involved in the process if the knowledge of them as experts had been made available through means other than the roster which is held by the convention itself.

Mr BARTLETT—So our reputation as leaders in this field should enable those commercial benefits to accrue anyway, regardless of ratification or not?

Mr Hunter—Certainly our leadership and credentials are known. My point in mentioning this particular aspect was that here was a particular example of the way in which that expertise is known more widely and through an expert roster created under the auspices of the convention, and that would be of some assistance. But as I said before, I would not want to overstate the extent to which that made a large difference. We also have here Dr Geoff Pickup from the CSIRO who might also be able to provide some comments on this particular aspect as someone who has had a more direct involvement.

Dr Pickup—I am a chief research scientist with CSIRO Land and Water. Prior to that I was head of the CSIRO Centre for Arid Zone Research. I have consulted fairly widely in this business, both nationally and internationally. I was also on the negotiating team for the convention.

From what I have heard so far, I am inclined to agree with most of it. The commercial opportunities from the convention are relatively limited in that much of the business in this game is aid funded, and aid money payment is usually tied. AusAID, for example, tends to tie its contracts to using Australian consultants or Australian technology or Australian companies. So to that extent we are recycling our aid dollars. In terms of what is coming in internationally, my own experience is that quite a lot of this work is drying up. In 1998 I did three UN consultancies and was approached about a couple of others; last year there was nothing. Whether desertification has gone off as an international issue or whether it is due to our not ratifying the convention, I could not say.

Let me step back a bit: you are reviewing this treaty in terms of Australia's national interest. This treaty is about aid; it is about organisation; and it is about developing countries helping themselves and getting their own houses in order. To that extent, we certainly have a contribution to make. The Landcare movement is still widely admired. I have had some involvement on the periphery of the Committee of Science and Technology and ad hoc panels largely funded by the UN to provide technical input to some of these things, and I came away with a definite feeling that we are excluded from those areas. In terms of tangible national benefits from contributing to those panels and to that debate, it is limited and it is very hard to quantify. But what I do find when I go to these things is that not being part of the official process is a limitation. We are still getting asked to chair the working groups and so on but very much in an unofficial capacity.

Mr BARTLETT—So if we have established that the benefits for Australia are marginal and, in your words, this is not about benefits to Australia but it is about aid and if we are already showing our commitment to world aid in this area and you are saying it is not going to cost us any more in terms of aid, how then does it enhance our effectiveness in delivering aid in areas of desertification? If it does not and there are no commercial benefits and if our reputation is not going to be particularly enhanced because we already have a solidly won reputation, then what is the real rationale behind ratification for Australia?

Dr Pickup—That was a very long question. Let me try to answer it bit by bit. In terms of what we have to contribute, it is very much a public benefit type of thing in this treaty. In terms of reputation, we are still being invited to national forums, particularly those that exist outside the convention, and we are still being asked to scientific forums, et cetera. In terms of the processes inside the convention having some influence on whether our contributions to the UN or our aid money gets spent wisely, I think we are starting to move away from that. I think we are starting to be excluded from that. If you were to ask me what are the benefits to Australia from this treaty, I think the benefits to us are limited. I think the benefits to others could be substantial provided that we stay in there and provided those other parties and those other countries have the will to deal with their own problems. We cannot solve their problems for them.

Mr BARTLETT—One last question: you said there is a possibility that we could be excluded from the process of ensuring that our aid money is used wisely. Could that not be done just as effectively by our moving towards a greater dependence on bilateral aid and therefore determining through our own decision making processes that it is used wisely rather than going through the United Nations?

Dr Pickup—It is possible, but I guess there are other ramifications if we took that route which I certainly am not qualified to comment on. I am sure there are a few people here who are.

Dr Glasser—Mr Chair, with your permission I would like the chance to respond to some of those questions. At least from the aid program's perspective, the opportunities for the private sector are as they are anywhere else; that is, the private sector is hungry and does the footwork, it is more likely to win the contracts whether they were World Bank contracts or ADB contracts and it is generally quite difficult for small and medium sized firms to invest the time and money to go after those contracts. So in general it is the answer you would expect to that question.

I would like to echo the comments made by my colleagues here at the table that the convention does have benefits for the private sector and the aid program as well with regard to desertification. This is a forum for raising the profile of these issues internationally. As a full member of this convention, Australia has an opportunity to provide information about Australian expertise to make sure that people are reminded that we

have the expertise and to bring experts to meetings and to establish those relationships that are so important in business. More generally in the aid program, the projects we are implementing often provide a foothold for firms that perhaps have not worked in a particular country before to demonstrate expertise which can lead to follow-on business, although obviously there is no guarantee of that. Then there are the broader development benefits for promoting development in the region where we are showing the flag for Australia. More generally we are promoting economic development which is creating other opportunities for other firms. So in a variety of ways I think this does promote private sector involvement. It is not a major issue. What is more fundamental, it seems to me, is how effective the firms themselves are at lobbying and going after business.

Senator COONEY—Can you tell us how the treaty is working now for the 162 countries that it is in? I do not want you to go through every country, of course, but just give us some idea of how the scheme is working. How long has it been going and what sort of effects has it had? You might make mention of how it is working for the United Kingdom and Canada, for example. I would like to have just the overall profile.

Mr Hunter—My colleagues may wish to assist me with more detail on this, but my understanding is that, under the auspices of the convention, there has been a significant amount of activity in the development by various countries which are parties to the convention of their national action plans, for example. In so doing, those countries in particular are positioning themselves much better to combat some of the issues of land degradation that they face, not just in Africa, but Africa obviously being a substantial focus for that. My understanding from the point of view of the developed countries which are members of the convention is that it is operated satisfactorily as a means of assisting the targeting of aid to combat desertification to be better coordinated, particularly through the multilateral bodies. I realise they are very general comments. It may well be that people who have had a more direct involvement in the convention in recent years might want to comment.

Dr Pickup—I cannot comment from the developed country point of view, but I have had some involvement in one developing country in particular, and that is Kenya. In Kenya, they have put together quite an impressive national action program. It is certainly one of the wider consultative processes they have had. They now have what I think are a pretty good set of plans to deal with the problem. Whether those plans will go into action is another story.

Mr BAIRD—Isn't it true that the flavour I get is that this treaty is really about Australia being a good corporate citizen in the world rather than any benefit that we are going to get out of it? From what I hear, our own programs are pretty world standard. So to share that knowledge and to be a part of the program with other countries would seem to be its prime objective. So we are judging not on a commercial basis but in the same way in which we give aid, which I think is very noble.

Senator COONEY—That is the sort of proposition that I would like to put. Is the United Kingdom a member of this treaty? Has anybody asked what it finds good and bad in it?

Mr BAIRD—There is a lot of desert there!

Mr Wilson—At the recent conference of the parties for the convention, both developing and developed countries submitted their first round of national reports under the convention. The convention is also under substantial discussion in other multilateral fora – for instance, the global environment facility. The GEF is essentially treating the desertification convention in the same way in terms of project funding allocation as it treats the conventions on climate change and biological diversity. As far as developed countries are concerned, they are reporting under the convention. In the case of the UK, for example, it would focus very much on its foreign aid policy in the area of remediating desertification in countries where it has partnerships and aid program interests. Other countries, particularly developing affected countries, are using their first national reports to identify for the broader international community what problems they are facing. Those opportunities encourage a dialogue between those developing countries and developed countries in seeking to reach cooperative solutions. That has been the character pretty much up to date.

Senator COONEY—There is no sign that the United Kingdom, any other European country or Canada want to withdraw from the treaty?

Mr Wilson—None at all. In fact I spoke to some of the United Kingdom's delegates in December. They are very supportive of the convention and are already working with selected developing countries to develop their action plans and to see what sort of technical assistance can be provided to them in helping them to achieve that aim.

Senator COONEY—So that was a fairly accurate description that Mr Baird gave that this is the right thing to do as a member of the world community where there are lots of deserts. Do you think that would be at least one major aspect of it?

Mr Wilson—Yes. I guess from the point of view of developing countries which are not affected by desertification, their primary interest again is to do with their relationships with developing affected countries and attempting to get programs in place which will efficiently and effectively address the problems but also to share international experience.

Senator COONEY—Thank you.

Senator LUDWIG—I am told that the numbering is 11 and 12 and that we seem to have a different numbering system at this end of the table, so I correct myself from earlier. If I take you to the National Interest Analysis on your page 11, the penultimate paragraph refers to the 'Commonwealth government is of the view'. We hold that statement 'is of the view' and in the middle of your page 12, it says:

South Australia has previously requested a Commonwealth statement setting out respective Commonwealth and State/Territory responsibilities ....

Two things arise from that. Firstly, you say, 'you are of the view'. Can you assure me that the states have been consulted, that they do agree and that they are happy with the convention to go forth? And, secondly, you indicated that South Australia has requested a document. When was that document requested? And the follow-up question to that is: why was it not done or is it going to be done or is it a matter of timetabling?

Mr Hunter—The Commonwealth's response to the South Australia request is that we will be able to make such a statement at the time of ratification if it proceeds. The date on which South Australia made that request I am not certain of, but we will seek to find that out for you. I have the sense that it might have been relatively late in proceedings, but I will check that for you, Senator. You also asked whether I could assure you that the states and territories were supportive of ratification. I will just mention that towards the top of my page 12 of the National Interest Analysis, it indicates:

All State and Territory heads of government indicated their support for ratification of the Convention, subject to the principles agreed on at the Treaties Council on 7 November 1997.

This is subject to three dot points:

The Commonwealth would not develop a National Action Program ...

And so on.

Senator LUDWIG—Yes, I see that. On the previous page, it talks about the 'Commonwealth is of view' not the 'Commonwealth has the view'. It seems to connate a different meaning or maybe it is just different grammar that is being used. But if you take South Australia as an example, one would have thought that before South Australia would clearly say, 'We support the process,' they would want the assurances that you propose to give them, because you then say at the end of that sentence effectively:

Recent informal contact with the South Australia government confirmed ....

Who was that informal correspondence with or, if it was a telephone call, with whom? I would expect something a bit more concrete than that if I was the South Australia government, but given I am not, are you now satisfied? That is what I am clearly saying: that the South Australia government has been consulted, that they are on side of it going ahead, that they expect those matters will be met and that they are happy they will be met after, not before. Could you give me those assurances?

Mr Hunter—I believe South Australia made this request on 24 April 1998. The request was made by the Premier of South Australia to the Minister for Foreign Affairs. You ask whether South Australia is satisfied with the current sequence of events which I have outlined in the fact that the Commonwealth would make the statement that it has referred to at the time of ratification. That is my understanding, but I have not asked the precise question that you have asked. One of my colleagues can answer the question more directly than that.

Mr Laing—I am an officer of the Department of Foreign Affairs and Trade and have been dealing with a good deal of the liaison with the state governments and other stakeholders since I have been involved with this ratification process. I may just recall a number of the questions that were asked a moment ago. As was mentioned, the Premier of South Australia confirmed the request for a statement in the letter that was written in April 1998 in response to a letter seeking concurrence with the process of ratification from the Minister for Foreign Affairs to all state premiers and chief ministers. There were several telephone conversations between me and the Cabinet Office in South Australia in November last year seeking confirmation that the matters

referred to in the correspondence between Premier Olsen and Mr Downer were still current, and that was confirmed to be the case. So the currency of the April 1998 letter has been confirmed.

Senator LUDWIG—I put it in reverse, then. Do you expect South Australia is waiting for that reply before or after the concurrence of the treaty – in other words, would they be surprised if the treaty were done first or would they accept the process? Are they of the understanding that that would then follow?

Mr Laing—They understand that a statement would follow ratification.

Senator LUDWIG—What information do you have at hand to demonstrate that?

Mr Laing—I can say to you that the advice that I have received verbally from the Cabinet Office in South Australia confirms that it is agreed by the government of South Australia that ratification will occur, to be followed by a statement as to the relative responsibilities of the state and Commonwealth in relation to land management in Australia. These issues, by the way, were revisited in November last year at the meeting of the states and territories and the Commonwealth, the standing committee on treaties. I was not at that meeting but, as I understand it, all senior officials confirmed that the process under way was agreeable to the states. The representative of the Victorian government joined with the representative from South Australia in confirming that they too would appreciate the kind of statement that had been discussed between the Commonwealth and South Australia.

Mr Hunter—Senator Ludwig, perhaps I can add to that. The terms of Premier Olsen's original request to the Minister for Foreign Affairs were to suggest that a statement be made at the time of ratification, so the South Australian suggestion was for that sequence and for that timing.

Senator LUDWIG—Thanks very much.

Mr HARDGRAVE—Can I intervene here. I have a question that has been burning at me since I asked my questions, listening to Mr Bartlett and Senator Ludwig in particular. Mr Mason from A-G's may be able to clarify whether any statement made by a Commonwealth government today has any binding effect on a future Commonwealth government. Is there a view on that from Attorney-General's?

Senator LUDWIG—I could give you a view.

Mr HARDGRAVE—I am not paying for this advice either.

Mr Mason—You will have to get it from me, then!

Mr HARDGRAVE—Whoever is from Attorney-General's at the moment, I do not mind.

Mr Mason—I am happy to respond to that in the following terms. When Australia signs and ratifies a convention, the Commonwealth government is responsible for carrying out the obligations under that convention. The Commonwealth government works out its own way, in terms of roles of state governments and roles of the federal government, of implementing the obligations and is held liable for that. Over time, the way in which the implementing of those obligations is carried out can and will change and vary, depending on what government is in power or, even if the same government is in power, on whether its views change about the way to implement it. So, in this particular case, we have a convention which specifically allows that there can be no reservations to it. Article 37 sets that out. The implementation of this convention, as with all other conventions Australia signs, will depend on the way the Commonwealth government of the day determines it should happen. So the short answer to Mr Hardgrave's question is no. It cannot bind.

Senator LUDWIG—Picking up on that issue, given the interplay of external affairs power, if the state were acting inconsistently with the convention – and this is an internal matter rather than an external matter – and the Commonwealth government was of the view that it should then enact legislation to ensure that the state acts in conformity with the convention, that is possible, isn't it?

Mr Mason—Yes, legally that would be possible. But that is a political decision.

Senator LUDWIG—It is a political decision at the time. But I was curious about where the convention sits with the areas of both the concurrent powers of the Constitution, the powers that are distinctly Commonwealth and the powers that are distinctly state. Any examination of the issue has been dealt with so that when the people – the states – are consulted, they presumably understand it, and the Commonwealth understands it, but nothing has been put to this committee – as I understand it – that sheds some light on that area. Although we have the states saying yes, they are happy with it, I am not sure whether the current Victorian government has been consulted, but that might be a moot point. The point is that we need to be satisfied about those sorts of issues, and I am not sure whether they have been addressed sufficiently.

CHAIR—Rather than going into a great debate on this, you had better deal with it on notice.

Senator LUDWIG—Take it on notice.

CHAIR—If the officers from the Attorney-General's Department would reply in writing, it might help. We could debate this for ages.

Mr ADAMS—Mr Pickup, the convention was held to get some focus on desertification in the world. The ratification of 160 countries has done that. I want to know whether it is working and whether the focus has come around to that. Am I right in my assumption that that is what we set out to do?

Dr Pickup—I think you are right in your assumption. In terms of what is happening, a whole series of international processes have been put in place and there has been a certain amount of publicity – I think there has been a World Desertification Day, et cetera. In terms of focusing attention on the question, I think it has been successful in that sphere but, if you look at what is occupying the attention of the international community at the moment, it is not desertification.

Mr ADAMS—I take it that the aid money goes into a bucket and companies then apply and draw out of that. It seems to apply that, if you have ratification – if you are a part of the convention or a part of that process – and you put a certain amount in, your country can expect to get a certain number of contractual arrangements. Is that a loose way of describing how things work?

Dr Pickup—There are probably other people here who are a bit better qualified to answer that question but, from my experience, bilateral aid is frequently tied, and then there is multilateral aid which goes to major international organisations like the UN, the World Bank and so on. Some of that is sometimes tied to using the consultancy services of the donor country and some of it is also open to international competition.

Mr ADAMS—The only other issue is whether there is no need to put an action plan in place, which was the original 1986 decision of this committee. In sitting on the subcommittee and being the only member left from that time, the concern was that we would be locking in expenditure, the states would have expenditure and certain things would be expected to happen. I guess that, as the chairman said, we could go on debating this for some time. I think most of the committee members regard what we have done with the convention and with everything else from there on as probably a good thing as far as getting the focus on vocation, but the concern within Australia is on whether this is going to be used as a head of power to that Commonwealth government imposing its will on the constitutional situation, which presently applies. I guess I have only to be satisfied that the states are saying that they give it a tick and, if the farmers organisations have also given it a tick – I think they had some concerns about those things as well – then I do not think I have too many issues. I guess that the minister will include this in his statement when he ratifies it with the parliament. Is that the process that was going to happen?

Mr Hunter—That was the intention – that is, that the statement of the character proposed by South Australia would be made at the time of ratification – and, yes, it is true that the states have been consulted and are happy that ratification proceed, subject to those points that I made earlier.

Mr ADAMS—Thank you.

CHAIR—Thank you for your contribution. I would now ask representatives from the New South Wales Farmers Association and World Vision Australia to move to the table.

[12.04 p.m.]

CROZIER, Mr Matthew, Director, Conservation Research, NSW Farmers Association

KEOGH, Mr Mick, Director, Policy, NSW Farmers Association

RINAUDO, Mr Anthony, Program Officer, International and Indigenous Program, Africa Team, World Vision Australia

CHAIR—I welcome representatives from the New South Wales Farmers Association and World Vision Australia. We only have some 10 minutes, so I invite you to make your introductory remarks and then we will turn to questions.

Mr Keogh—I think, having listened to the proceedings, that we have canvassed – as have you – quite a few of the issues that have been at the core of rural land-holders' concerns about where this convention and other similar conventions were taking us in terms of the responsibilities of various government agencies in land use management. We note that 70 to 80 per cent of the Australian landmass is classified as arid or semiarid and would therefore potentially fall under the auspices of this convention. The concern of the farm sector was initially triggered for these sorts of things by the World Heritage Convention. Some of you may remember that the Willandra Lakes World Heritage Area was declared in 1983. I think it was only last year that the farmers who were included in that area, and who had their land management practices severely restricted and in some cases stopped by the designation of that area as a World Heritage Area, received their compensation. So 17 years later they received some recompense for the losses they incurred as a result of that. I think that highlights the gap in the situation where the Commonwealth – through its external affairs powers and as a result, I suppose, in some cases, of the Tasmanian dams case – has had some responsibilities and powers in this area. But when it comes down to who pays, it seems to end up being a slanging match between the states and the Commonwealth, and the land-holders in between fall through the crack. Certainly in that Willandra Lakes World Heritage situation, 17 years – by anyone's estimation – was a bit of a disastrous situation that we need to avoid. We see the same potential possibly arising out of climate change and biodiversity conventions. Both – and climate change more particularly – have the potential for the Commonwealth to have signed up to some targets. The only way that some elements of those targets will be met is by imposing some requirements on the states. I suspect that we are going to have the same argument there.

We have had some discussions with Senator Hill's office on this treaty and received some assurances. These assurances are the ones that were outlined on page 5 and page 11 of the National Interest Analysis. We have accepted that, but we believe the opportunity arises with this to highlight the bigger issue, which is that gap between the role of the states and the role of the Commonwealth in land management and in trying to sort out, in situations where private land-holders or indeed states incur a cost as a result of Commonwealth commitments, who should pay. Obviously we are more interested from the perspective of the individual land-holders who are impacted. I suspect that the state governments are interested from their own perspective as well. We believe there is a major gap there, now that external affairs powers have been used in a way that results in them bringing the Commonwealth into land use management issues. We will be seeking for that particular issue to be the subject of a parliamentary inquiry to try to ascertain a better way to deal with these issues over the longer term in the future. Certainly, biodiversity, climate change and world heritage are all treaties that carry the implication of that same problem arising and they need, we believe, some sort of serious consideration about how to deal with that into the future.

CHAIR—Thank you.

Mr Rinaudo—I would like to introduce the major points of the World Vision submission. World Vision urges the Australian government to sign the convention and appeals to the Australian government to make more funding available. This submission draws attention to the human face of desertification and shows how desertification affects so many of today's realities. The paper shows various works that World Vision is doing to combat desertification, with a grassroots approach by which people are empowered to take charge of their own situation and to act. I have personally invested 18 years of my own life to combating desertification and serving people affected by that in the Niger Republic, one of the world's most affected countries. I have seen people living on bran and bitter leaves and women walking for 12 hours in order to collect poisonous berries which, once they return home, they have then had to boil for six hours to detoxify them. I have also seen husbands abandoning wives and families, and wives having to walk up to 200 kilometres to the nearest city to get help. Desertification drives poverty and poverty drives desertification. When people are hungry, they are desperate. They chop down the trees and they dig up the roots to sell the wood. Eventually they sell their land and move into slums. Eventually absentee landowners take over and the abuse continues.

On the strengths and weaknesses of the convention, World Vision believes that it is only as strong as the determination of each signatory country and its people to take it seriously. It is obvious that there has been a lot

of mistrust of the convention. I think it is up to the United Nations and countries supporting the convention to do a better PR job. To succeed, it must win the confidence of the people on the land, working with them and not against them. For 40 years, the people in the Niger Republic believed that it was in their best interest to exploit the land. The trees disappeared, the land eroded, crops failed and people went hungry. For 40 years, laws were passed, projects implemented, incentives given and policing carried out, but it did not stop the desertification. It has been my experience that, when we work with people, enable people living on the land and show them that it is in their best interest to manage it sustainably, then nothing can stop these people from taking care of it.

Regarding the implications for Australia, World Vision basically agrees with the national interest analysis. Australia has the opportunity to lead the way. Instead of fearing government sanctions and control, Australians should be proactive. Through grassroots movements such as Landcare, land-holders have the opportunity to take control and apply sustainable and ecologically sound management strategies in a non-threatening manner. Then we can share these experiences. I believe that the treaty would give such movements greater impetus, and World Vision is encouraged by the wording of the convention. I will quote briefly from article 3:

... the Parties should ensure that decisions ... are taken with the participation of populations and local communities and that an enabling environment is created at higher levels to facilitate action ...

Overhead transparencies were then shown—

Mr Rinaudo—Desertification is affecting millions of people daily. People are abandoning their homes and their land, and in the process they are destroying the land. They have become environmental refugees. They move to cities that already have unlivable conditions. They are also contributing to the growing problem of illegal migration. The Australian government often responds to famine generously. Grain is provided and lives are saved, but the deserts continue to expand. Desertification and drought-driven famine are increasing in frequency and severity. World Vision urges the Australian government, rather than simply giving grain and not addressing underlying causes, to be more proactive in preventing desertification and famine in the first place.

World Vision is actively helping people to increase their standard of living and, by doing that, indirectly taking pressure off the land. It is not just an issue of land and trees. We have to work with the people living there. Many people look at desertification and think the problem is impossible and too large. It has been my experience that desertification can be slowed and even reversed, but it takes time, coordinated effort and funds.

This is an Australian acacia. The seeds contain 40 per cent carbohydrate, 25 per cent protein and 16 per cent fats. Australia has much to offer through our indigenous knowledge, our scientific community and farmers, and the genetic resources of this country. The convention gives the opportunity to give our expertise a higher profile. I believe the potential benefits to the world and to Australia are significant.

In my closing statement, the message that I would like to leave from World Vision is that, with the international backing of the convention and with greater education and collaboration, it is possible to make progress in the fight against desertification. This is an international problem; it needs international coordination. By tackling desertification and drought head-on, we simultaneously address other issues of national interest, such as rural decline, poverty, relief, regional security, health and migration. Thank you.

CHAIR—Thank you very kindly. We will proceed to consider the next of the treaties on our agenda, which is the Proposed Agreement on Scientific and Technological Cooperation with Korea.

[12.15 p.m.]

CONROY, Mr Glenn Oliver, Executive Officer, Australia-Korea Foundation, Department of Foreign Affairs and Trade

SCOTT, Dr Brian Walter, Chairman, Australia-Korea Foundation, Department of Foreign Affairs and Trade

TILEMANN, Mr John Alexander, Director, Korea Section, Department of Foreign Affairs and Trade

ARGALL, Ms Mary, Assistant Manager, APEC and North Asia Section, Department of Industry, Science and Resources

GALLAGHER, Dr Martin, Manager, APEC and North Asia Section, Department of Industry, Science and Resources

CHAIR—Welcome. Can we ask one of you to make a brief opening statement, and then we will proceed to questions.

Dr Gallagher—The Republic of Korea has achieved a remarkable scientific, technological and industrial transformation over the last 40 years. From its relatively limited scientific and technical infrastructure at the beginning of the 1960s, Korea has gone on to establish an impressive array of scientific and technological institutions and has created a very substantial, high-skilled research community. In the past, research and development activities in Korea were primarily aimed at imitating and absorbing technologies from abroad. However, the 1990s saw science and technology in the forefront of Korean economic policy, with Korea strengthening its international linkages and aiming clearly to join the ranks of the most technologically advanced economies. In this period, the policy stance clearly shifted from one of imitation to innovation. Korea is now a newly industrialised country, highly conscious of global competitive pressures and recognising the need to engage in international scientific and technological cooperation.

Korea is actively seeking bilateral and multilateral cooperation to build on the existing major science and technology relationships with the United States, the United Kingdom, Japan, China, Germany and Russia. Overall, the Republic of Korea has a strong and growing scientific and technological capacity, offering substantial opportunities for mutually beneficial collaboration. Australia already has a reasonably comprehensive range of collaborative scientific and technological links with Korea. The Australian Academy of Science, the Academy of Technological Sciences and Engineering, the Australian Research Council, the Australian Geological Survey Organisation and public sector research agencies such as CSIRO and ANSTO have formal links with Korean counterpart agencies. In addition, there are well-established links involving our cooperative research centres and universities. The Australian-Korea Foundation, amongst a broad range of bilateral activities, also fosters science and technology cooperation.

The proposed agreement promises to consolidate and strengthen these linkages, notably through the proposed bilateral consultative process and through the intellectual property provisions. The proposed joint committee on science and technology offers a valuable, high level coordination mechanism between the research communities of Australia and Korea. With both countries displaying a rich and complex range of relevant departments and institutions, this committee can play a very useful integrating role, bringing together a wide range of representatives from key institutions, monitoring the overall relationship and setting broad priorities.

In addition, the joint committee can be expected to serve as a significant symbol of bilateral commitment to the Australia-Korea S and T relationship. The proposed intellectual property provisions encourage Australian and Korean participants to enter into comprehensive, equitable agreements. Such agreements have significant potential to facilitate collaboration by providing a clear, mutually understood basis for intellectual property management. The Department of Industry, Science and Resources intends to play an active role in encouraging the use of such intellectual property agreements. Australia and the Republic of Korea are both moving towards becoming predominantly knowledge based economies. Both countries clearly recognise that, in addition to building strong national innovation systems, it is imperative to build strong linkages to the global innovation system. For Australia and Korea, the proposed agreement represents a significant mutually beneficial step in that direction.

CHAIR—Dr Scott, would you like to add something from the perspective of the foundation?

Dr Scott—We appreciate the opportunity to make these comments. First, we strongly support what has just been said by the representative of the department. We think that this is an excellent initiative and an excellent move, and we strongly support its ratification. We as a foundation, since our establishment in 1992, have been associated with a wide range of activities involved with a very substantial broadening of the relationship

between Australia and Korea. There has been a lot of development in the bilateral relationships, not just in geopolitical terms but also in public diplomacy and people-to-people contact. A lot of that has taken place between universities, and there has been a deal of interesting science and technology interchange. The importance of the Korea-Australia relationship is often underestimated. In geopolitical terms, Korea was the co-initiator of the APEC initiative, they have been a strong Cairns Group supporter and, more recently, they have been a very active collaborator in the East Timor peace force.

Korea is now Australia's third largest trading partner. There is over $10 billion in two-way trade, with Australia having a substantial trade surplus. There is a complementarity between the two economies, which has been reflected in this rapid growth in trade. We export much iron and coal, and we import many steel based finished products in consumer and electronic areas as well as steel product itself. We import many cars, but Korea is also our largest market for auto components – the largest car parts export market that we have. But there has been comparatively little direct investment in either direction.

The complementarity also exists in science and technology. At the broadest level, Australia is stronger in basic research, but Korea has proven itself to be very effective and productive particularly in applied research. Examples of complementarity have been developing in recent years. The agreement is not at all, in our view, controversial, and it is of considerable importance to Australia; but for its potential to be realised much needs to be done. The agreement highlights a number of areas of mutual interest and real opportunity, but it will not just happen. Australia needs to identify specific priority areas for collaborative work. Just over a year ago there was an Australia-Korea forum, a high level group which met in Seoul and which was chaired by Sir Ninian Stephen. One of the key features of the forum was to identify the potential importance and the attractiveness, mutually, of the two countries advancing scientific and research work. We do need to identify priority areas.

Funding support from both governments will be needed to kick-start, initiate and support collaborative research, and government demonstration of support through public representation work will be needed. Several weeks ago, Korea announced a major increase in the Ministry of Science and Technology's spending on specific research and development projects. Seventeen per cent was the increase over the previous year, and the explicitly stated aim was to elevate the nation to among the top 10 science powers by the year 2010.

In that context, I feel compelled to make one perhaps controversial statement, and that is that the foundation regrets greatly the recent decision by the Department of Industry, Science and Resources to withdraw the position of counsellor on science and technology, Korea. We think that leaving this position vacant at this time sends a wrong message to the Korean people and that it could cause us to miss out on opportunities for development. In a country which is very sensitive to signals of this sort, we think it is a mistake, and we would urge you to not only recommend ratification but press the government to reconsider and reverse this decision to withdraw the counsellor, Korea position without delay.

CHAIR—Are there any questions from members?

Mrs ELSON—I would like to ask one question: what is the estimated cost of this agreement?

Dr Gallagher—There would be a very small increase in cost. The only additional costs would arise from the meeting of the joint consultative committee, which would be a relatively minor cost. The funding for collaboration would come from existing government programs.

Mr BAIRD—How do we plan to protect intellectual property aspects in this agreement? You mentioned it has been addressed, but in what way?

Dr Gallagher—In our view, the provisions for intellectual property are one of the distinguishing characteristics of the proposed agreement. The basic mechanism is composed of a number of elements. One element is that the agreement specifies, in what might be reasonably regarded as almost a best practice approach, the elements of intellectual property which should be taken account of in any agreement between participants. It goes through issues such as the importance of having clear provisions for the treatment of so-called background intellectual property – that is to say, the intellectual property which exists prior to the particular collaboration. It points to the need to develop clear provisions for the accommodation of the so-called foreground intellectual property – that is to say, the intellectual property which arises as a consequence of the work – and it also points to the importance of properly accommodating third party intellectual property.

The first point I would convey to you is that the coverage of issues is comprehensive. The question is: how would we encourage participants to establish agreements which accommodate all of these issues? The answer is that it is a best endeavours approach. The agreement provides for participants to indicate in writing to the parties to the agreement – that is to say, the respective governments – through the consultative committee that they wish to be regarded in a formal sense as a cooperative activity. Once regarded as a cooperative activity, there would be an expectation that the parties to any piece of work would enter into a comprehensive agreement along the lines that I have sketched. As a department, we propose to engineer a strategy whereby we inform all potential Australian participants of the structure of such an agreement and encourage them to adhere

to one. We would also expect, through the consultative committee, to encourage our Korean counterparts to take the same approach.

Mr BAIRD—The second question is: how many other countries do we have such an agreement with?

Dr Gallagher—I could not respond exactly, but I am sure it must be in the order of 20.

Mr WILKIE—Are those agreements pretty much along the same lines as this?

Dr Gallagher—They vary, but I think it is fair to say that the most recent agreements are along these lines. There are older agreements which have given rise to some difficulty because they have not included the provisions which exist in this proposed agreement.

Senator COONEY—Have you ascertained why we have not appointed the member to the council? Have you sought any reason?

Dr Scott—The position has been filled in the past, but in the last couple of years it has been reduced to a visiting position. My understanding is that there is a proposal to discontinue it, but that is the information I have from the department.

Mr BAIRD—Is it a counsellor position?

Dr Scott—It is that of a counsellor, science and technology, at the Australian embassy in Seoul that has been discontinued.

Senator COONEY—Were you given any reason, or did you gather that it is just a matter of preserving finance?

Dr Scott—Clearly, I do not know the departmental reason. The information that I was given informally suggested that it was a cost and judgment factor – that it was not an expenditure that should be continued. What I am saying is that the totality of the situation here is that it is not only the cost factor but the way in which the Koreans will pick it up. We believe that it will send a seriously disinterested message which we hope will be avoided.

Mr HARDGRAVE—Surely that message is overridden by the signing of this agreement – surely, if the whole of government is going to sign up on this, that in itself must send a very strong signal of commitment to the Koreans.

Dr Scott—It does, but at the same time the agreement is a start. There are plenty of agreements that we all know are largely inert or that fail to recognise their potential. To get something like this going will require quite a lot of collaborative exploration. If it is successful, it will be because of the wit and the collaboration of people from both sides. The Koreans rely quite heavily on governmental initiative and support in this sort of area. We have several prominent science representatives on our board, and it is our view that this is a regrettable step backwards which does not give momentum to this new agreement.

Mr HARDGRAVE—Seen in isolation that might be right, but in concert with a whole of government agreement, the dropping of one Public Service position for a whole of government agreement sounds to me like there have been a hell of a lot of big pluses for one small setback.

Dr Scott—I appreciate the point, but I have to say that there is a symbolism about this.

Mr HARDGRAVE—To put it another way, are you saying that the departure of one Public Service position makes this particular convention pale into insignificance? I find that extraordinary.

Dr Scott—Not at all. What I am saying is that this is potentially a very important arrangement. We have developed a really good relationship with Korea. They have been moving ahead over 30 years and have a real rate of growth of eight per cent to nine per cent per annum. They have gone from being one of the poorest countries of the world in the late 1960s to being, with us, one of only two middle-sized economies in the Asia-Pacific region. We have collaborated and developed in a remarkable way over the last 10 years. Korea went through the dip of the financial crisis and is now back to a real rate of growth of eight, nine or 10 per cent again.

Mr HARDGRAVE—But you are saying that all of this does not matter if we lose one Public Service position in the embassy.

Senator COONEY—He's not saying that!

CHAIR—It is not so much one Public Service position – frankly, it is the only one in the embassy that can cruise around the university departments and all that sort of thing. Seoul is a tough town to do business in.

Mr HARDGRAVE—I do not mind testing Dr Scott's resolve on this. That is all I am trying to do. There must be a bigger set of circumstances as to why that position has gone than is obvious from what we have heard this morning. That is all I am trying to get at.

CHAIR—Dr Gallagher, perhaps you could provide us with a letter, from an official point of view, giving us the department's reasons for not filling the position and whether it has been abolished.

Dr Gallagher—Mr Chairman, I could happily provide you with a letter, but in perhaps two or three moments, I could –

CHAIR—No, we want a ministerial letter to committee. This is important business, and we ought to have something from the minister about it. If the Australia-Korea Foundation – this is as high as you go in these matters – and Dr Scott have put something to it, then we can ask Nick Minchin tomorrow in the party meeting and twist his arm. There being no further questions, we will see you at the next episode.

[12.36 p.m.]

MANING-CAMPBELL, Ms Nicoli, Department of Foreign Affairs and Trade, International Law Section, Legal Branch

STERN, Ms Robyn, Director, Department of Foreign Affairs and Trade, International Law Section, Legal Branch

CHAIR—Would you like to make a brief statement before we go to questions?

Ms Stern—I have come to address the proposal that Australia accede to the agreement for the establishment of the International Development Law Institute, or IDLI. It is a long title, and I will refer to it as IDLI in the rest of my remarks. The purpose of the agreement is set out in article 2 and is dealt with in more detail in the National Interest Analysis. In summary, IDLI provides legal training and technical assistance for economic development, governance and the rule of law in developing and transition economy countries.

As an example, in recent years it has been involved in the provision of training and technical assistance in the fields of corporate law, international trade law, the negotiating and drafting of international contracts, and training for the judiciary. It focuses on the strengthening of regulatory systems and institutions, skills development for policy making and the development of institutional capacity. Accession to the agreement would involve Australia agreeing to the purposes and activities of IDLI and will allow Australia to contribute to the overall governance and broad directions of the institute in line with Australian interests and priorities.

Australian membership of IDLI, as set out in the National Interest Analysis, does not carry an obligation to provide financial support beyond voluntary contributions. There are some minimal costs of membership which are associated with the attendance at meetings of the IDLI assembly, but common practice is for member states to send Rome based officials, and that is what the Australian government is likely to do. So those costs would be kept to a minimum.

I would like to briefly address the advantages of membership of the agreement and therefore of the organisation. Australia has over a number of years supported institution building and rule of law programs in the Asia-Pacific region as a key foreign policy objective and as an objective of the aid program. Membership of IDLI would be a further concrete reflection of the government's commitment to promoting governance and the development of robust judicial and other institutions in the Asia-Pacific region. It would enhance access to the region's legal and policy decision makers.

IDLI has a history of engaging Australian legal professionals and organisations to assist it in carrying out its programs in the region. Membership would consolidate this relationship with the Australian legal profession. It would widen the Australian legal professional's knowledge and experience of the region, and it is likely to lead to greater use of Australian legal professionals in IDLI projects. Over time it will enhance the region's utilisation of Australian legal expertise and services. As the National Interest Analysis indicates, the Australian legal profession, peak legal bodies and related organisations support membership and Australia's taking this step to accede to the agreement.

I just want to address briefly the issue of the possible establishment of an IDLI presence in Australia. This is alluded to in the National Interest Analysis. The decision to establish an office is obviously a matter for IDLI, but we understand that it is certainly a possibility. The establishment of some sort of presence would likely lead to greater use of Australian legal professionals by IDLI in the region, thereby assisting in the promotion of Australian legal services. A base here would allow training programs to be offered in Australia, would provide exposure of those coming here for training to Australian legal and other institutions and expertise and there could be economic spin-offs such as procurement opportunities. The issue of the establishment of an office and the negotiation of an agreement for its establishment to cover privileges and immunities would need to be the subject of further discussion and consultation in due course.

CHAIR—I was just going to remark on the fact that IDLI is in Italy. It is a long way from our part of the developing world. Our aid budget goes into the Pacific and China and really not much further away. So it is a shame to see another such outfit set up in the Via Venito. It is all very well that they want to have something here in Australia, but there is the FAO in Rome and there are a few other things. Once again, it is all very Eurocentric. Why shouldn't there be an Asia-Pacific LI? We had such trouble with the IMF and the World Bank mucking up everything in this part of the world in the currency crisis – another example of a multilateral institution just sitting up there in the Via Venito. Why not Pitt Street?

Mr HARDGRAVE—Queen Street, Brisbane.

CHAIR—I should say Brisbane.

Ms Stern—I should mention that IDLI has an office in Manila. So it is also firmly established in the region. Certainly from what I have seen of the list of training courses and assistance that it has provided in the last few years, the focus has been very much on the region – Cambodia, Vietnam, Mongolia, Philippines, Papua New Guinea. So, while they may be based in Rome – and I simply cannot give you a reason why that is the case except, presumably, the Italian government offered premises – their focus is very much on developing countries and, within that, they certainly have a focus on our region.

Mr BAIRD—What is our contribution?

Ms Stern—There is no obligation to provide a core contribution. The agreement says that parties may provide voluntary contributions.

Mr BAIRD—How much are we expected to voluntarily contribute?

Ms Stern—My understanding is that there is no expectation that there is a quantum or that, in fact, there is an obligation to provide a contribution beyond that which the government might decide to provide.

Mr BAIRD—How many times a year are we sending people across there?

Ms Stern—As I understand it, the government is not.

CHAIR—It is Marcus Einfeld and all that lot.

Mrs ELSON—Sorry?

CHAIR—I assume it is Marcus Einfeld – a judge in Sydney who gets involved in all this.

Ms Stern—Marcus Einfeld, as I understand it, is involved with ALRI – Australian Legal Resources International.

CHAIR—But not this?

Ms Stern—Not that I am aware of.

CHAIR—Have you told him?

Ms Stern—I think there has been some discussion and some collaborative work. Basically, my understanding is that IDLI operates through project funding. They submit a request for funding, say, to AusAID and other development agencies. If the project meets the hoops that AusAID sets for it in terms of project requirements they may well get a grant of AusAID funding. But there are no core contributions from the Australian government required for membership.

Mr HARDGRAVE—Do we have to sign up to this agreement to get a regional office of IDLI here?

Ms Stern—My understanding is that that is the way it has been expressed to us. Italy and the Philippines are parties to the agreement. Both those countries have what are called 'headquarters agreements' with IDLI for the establishment of their offices.

Mr HARDGRAVE—I would have thought that Australia's legal system was the very best in the world.

Mr BAIRD—That is a very parochial comment.

Mr HARDGRAVE—Yes, it is a very parochial comment, as the member for Cook has suggested. But I would have thought that ours was the very best system in the world. I have a concern that organisations such as this set up where they do. I cannot name one great Italian lawyer off the top of my head, but I am sure there was one. Do we end up with a 'when in Rome do as the Romans do' kind of dissemination of legal practice as a result of this particular place?

Ms Stern—My understanding is that IDLI operates in different ways. In some cases it will do the training in a particular project or provide the assistance itself. On other occasions, it will use the assistance of expertise – and what we are talking about is Australian legal expertise. So it actually draws on people from Australian law firms and bar associations. One of the examples given to you in the NIA is a project involving Australia's own Centre for Democratic Institutions based here at the ANU. So it actually taps into that expertise, gets those individuals and organisations to go wherever the training course or technical assistance project is – whether it is Cambodia or the Philippines – and provides that assistance there. I know that IDLI runs training programs in Rome, to which it brings people from developing countries, but it also works in the developing countries themselves.

Senator COONEY—A number of law schools in Australia already have specific departments that look into, for example, Asia. How is this going to dovetail into them? One that you would know is the Asia-Pacific Law School at Melbourne University.

Ms Stern—My understanding is that this would complement them. There is no reason why, for instance, IDLI might not draw on the expertise coming out of those institutions as well for some of its projects.

Senator COONEY—I cannot quite see how they would complement. Say you are taking commercial law into Asia, how would this also teach you commercial law and, if so, would it be a common law? I would have thought it would be more likely to be a European system.

Ms Stern—IDLI is developing projects that will fulfil the requirements of the countries in which they are working. So if you have a country in the Asia-Pacific that has a common law system but wants to upgrade it – boost the skills of the judges, for instance, the legal profession or whatever – obviously they will get expertise that assists them to do that. If it is a developing country whose legal basis is the civil law system, they would presumably then have to turn to civil law expertise.

Mr HARDGRAVE—I have two quick questions. Would this organisation have as an aim to try to smooth out some of these differences between civil and common law? It strikes me that, as the world keeps trading and getting smaller and legalmart.com.au based in my electorate keeps getting more and more clients from all around the world and so forth, we must be looking at some sort of smoothing out of these differences in the legal systems.

Ms Stern—My personal view would be that countries would cling to the traditions and the systems that they already have. But I think if you have exposure across the systems, that will help one system to understand the other and understand its differences and therefore work better together.

Mr HARDGRAVE—I have one quick housekeeping matter. Who is going to be responsible for any debts or liabilities that IDLI clocks up as people fly in from Rome to save the people of Botswana or Cambodia from themselves – the air travel and other costs associated with it?

Ms Stern—If individuals are travelling on business because they have been contracted by IDLI –

Mr HARDGRAVE—What I am saying is that if we sign up to this are we going to be one of 15 members of a board of directors that ultimately will be bailed out if there is a collapse or something or have to bail it out if it collapses?

Ms Stern—No. My understanding is that member states are not responsible for the liabilities of the organisation if it is wound up.

Mr HARDGRAVE—Who is?

Ms Stern—It is an international organisation. It has its own sources of funds from contributions, from interest on income and other endowments and presumably would have to use that income to finance or to pay for any liabilities or debts that it might incur.

Mr HARDGRAVE—So we are sure that if we sign up to this and someone spends a squillion with Italy we do not get the bill?

Ms Stern—That would be my understanding. Article V, paragraph 2 says:

Nor shall they –

that is, the parties –

be responsible, individually or collectively, for any debts, liabilities or obligations of the Institute.

Mr WILKIE—It seems like a reasonable agreement, but why aren't there more countries involved?

Ms Stern—That is a good question. I cannot answer that.

Mr WILKIE—Can you speculate?

Ms Stern—The agreement itself dates only from the late 1980s. I think that is right. I imagine that the management of IDLI is trying to encourage more participation. These things perhaps take some time to get off the ground and need to develop a reputation and a track record. But I think it is worth noting that other major Western countries like France, the United States and the Netherlands are parties. So there is some support out there for Italy. I guess each additional party is a further spur for IDLI to say, 'We have a broadening base of support out there in the world.'

Senator COONEY—Why isn't the United Kingdom or Canada in there? United Kingdom is the origin of the sort of law we might be interested in. I cannot get a picture of how it fits in. Each country exports, if you like, legal teaching and legal systems to all sorts of places and, in particular, as far as Australia is concerned, around Asia. You said it complements but I cannot get a picture. Could you give us some more on that, perhaps not now but by written response, to see how it fits in with the various law schools in Australia?

Ms Stern—We could do that. In terms of the UK and Canada, I do not know for a fact why they are not parties. They may, for all I know, be considering membership at this very minute. I do know that Canada at least has provided funding to IDLI projects in the past few years. The UK may well have done as well.

Mr HARDGRAVE—Do we run a risk of having this Italy organisation competing with the Australian Legal Resources International, which is running programs in the Caribbean, Africa, Asia and other places?

Ms Stern—My understanding is that the concern of Australian Legal Resources International is that arguably you have a certain size pie for provision of funding for organisations like ALRI to go out and do its work. It was expressing, as reflected in the NIA, some slight degree of concern that the size of the pie might not grow and therefore it might be competing with IDLI. As a practical matter, that might well be the case, but I guess ALRI is competing with other organisations as well currently.

CHAIR—A bit of competition never hurt. Many thanks. We will consider the agreement in due course. I now welcome representatives from the Department of Transport and Regional Services to deal with the proposed denunciation of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface.

[12.54 p.m.]

BEETHAM, Ms Robyn, Assistant Secretary, Aviation Industry Branch, Department of Transport and Regional Services

CHORAZY, Ms Jill, Assistant Director, Aviation Industry Policy, Department of Transport and Regional Services

MANNING, Mr Jim, Director, Aviation Industry Policy, Department of Transport and Regional Services

CHAIR—There is no need to swear an oath but you are to treat these as serious proceedings of the parliament, as if they were taking place in the House of Representatives or the Senate. I invite one of you make an opening statement and then we will proceed to questions.

Ms Beetham—Thank you. I would like to make a very few brief remarks to describe what the proposal is here. We have a more detailed summary statement, which I would be happy to table for the committee if you would find that helpful.

Basically the concern here is the denunciation of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface. This convention was agreed to in Rome in October 1952. The purpose in denouncing the convention is to facilitate the adoption of a new regime to replace it. The reason for denunciation is that the Rome convention is now quite outdated and inappropriate in that it limits liability to sums of funding that we think are far too low. In particular, the convention has not achieved the uniformity it promised – only 43 of the 185 members of the International Civil Aviation Organisation have in fact ratified the treaty, thus it provides limited effect in any case. Secondly, the limits, as I mentioned, are too low in that the maximum damage liability is currently only $36 million. In the circumstances where a 747 may crash, it could in fact inflict damages up to $100 million and beyond.

The new arrangements to be put in place under the Civil Aviation (Damage by Aircraft) Act 1999 provide for a strict and specifically unlimited liability for compensating third parties injured because of some incident involving foreign aircraft. The key impact will be on Australian international airlines and airlines of states who are parties to the convention and their insurers.

In terms of the Australian international airlines, mostly they carry sufficient insurance to meet the high liabilities that might ensue from an incident but, because of our signature of that convention back in 1952, there are legal liabilities only up to $36 million and we are looking to remove that and to bring Australia into line with international practice where in most instances it is unlimited liability.

In terms of the development of this proposal, we have consulted widely with industry, with the states, with the insurance industry and with the aviation legal community. Qantas and Ansett both are supportive of the move. It is really a tidying up in some senses in terms of what actually applies to them. The cost for them, as I mentioned earlier, given that they have insurance that already covers liabilities they might incur, should be insignificant because they would not have to take out any additional cover.

In terms of the timing, the process is that we notify ICAO, the International Civil Aviation Organisation, and once they have received our notification the denunciation takes effect about six months after that. I think with those few remarks I will invite any comment that you have.

Mr WILKIE—The act really covers bits falling off planes and planes falling onto things. The legislation does not actually cover other damage by aircraft, does it, such as fuel dumping or if the aircraft is losing fuel as it is going over residential areas and that causes problems on the ground?

Mr BAIRD—That has been the case with one particular airline. It has twice been caught dumping fuel illegally over Sydney.

Ms Beetham—This is really about third party damage. So unless it was provable I guess it does not, but that sort of incident would probably come more within environmental legislation.

Mr WILKIE—So it would not come under this act and the convention?

Ms Beetham—No, I do not believe it does.

Mr Manning—I do not think it is a problem in the sense that, if it is not covered by this act, it is covered by the common law, so this act removes the protection airlines currently have in respect of certain things. They have no limit to liability. In the case of fuel, if that is not currently covered by the existing legislation, then it is covered by common law, which is proven damages.

Senator COONEY—Regarding the one we are about to denounce, I thought you said that was strict liability. I was looking at it – it did not seem to be a strict liability one. As far as liability is concerned, is the new one exactly like that or not?

Ms Beetham—The current one is strict but limited. The proposed one is strict but unlimited.

Senator COONEY—The current one is not strict. I was just reading it here – that is if I am reading the right one. It worries me a bit when you say the new one is strict. If you look at article 6 of the one we are about to denounce, you can see it does not seem to involve strict liability at all. Could you have a look at that? If the new one is just the same as that, you can hardly describe it as strict liability.

Mr Manning—We are denouncing the convention.

Senator COONEY—I know. But you are bringing in a new convention, aren't you?

Mr Manning—No, a new act.

Ms Beetham—It is just a parliamentary act which has already been passed.

Senator COONEY—I see. It is a bit of a worry. Does the new one make it absolutely strict?

Mr Manning—Yes, the new legislation means that damage caused on the surface would be strict and unlimited liability.

Senator COONEY—You also describe the one you have just replaced as strict, when it is clearly not.

Mr Manning—Perhaps the convention may be not be clear in that respect, but my understanding is that the Commonwealth legislation that put it into effect is strict and limited.

Senator COONEY—So there is no way you can have any of your damages taken from you under any circumstances?

Mr Manning—Sorry?

Senator COONEY—The chairman was just saying to me, 'Unless you have contributory negligence.' But if you have contributory negligence, it is clearly not strict. I am just a bit worried about the basis upon which we are going forward.

Mr Manning—There is no contributory negligence provided for in the new legislation.

Senator COONEY—And the operator cannot prove negligence on the part of the person that suffered the injury or damage?

Mr Manning—It would be pretty hard to prove negligence on the part of the third party on the ground.

Senator COONEY—But is that available? I just want to know.

Mr Manning—No, it is not available in the legislation.

CHAIR—It would be like saying that, if they dumped a whole lot of fuel on you and you had your windows open so it came in the window and poisoned you, you are to blame.

Senator COONEY—There is nothing in the act that allows that, is there?

Mr Manning—No. There is no provision for contributory negligence in this new legislation, the Damage by Aircraft Act.

Senator COONEY—And no possibility of proving negligence on the part of the victim?

Mr Manning—I think it would be very hard to do that.

Senator COONEY—I know it would be hard to prove, but is there any law that says that you can?

Mr Manning—Not in the legislation.

Senator COONEY—Thank you.

Mr HARDGRAVE—I have a question on a timetable matter. You mentioned that in South Australia and Queensland there needs to be further legislation introduced by the state jurisdictions there. Do you have a timetable for action, particularly – from my point of view – from the Queensland government? I am interested to know what set of circumstances an injured third party faces in Queensland, as a result of this lack of uniformity with national legislation, if they are hurt by something falling from an aircraft flying over the state.

Ms Beetham—My understanding is that South Australia is expected to have its in place by March. Queensland is a bit behind. I cannot give you a precise time on that.

Mr HARDGRAVE—Sorry, I missed that part. My colleagues are trying to say that it is traditional and that I will deal with them later.

Ms Chorazy—Queensland aims to have its legislation in place by 1 July, but that is probably optimistic. It probably will not be in place by then, but it should be in place some time soon after that.

Mr HARDGRAVE—What happens in the interim?

Ms Chorazy—The current regime applies.

Mr HARDGRAVE—So they would have a limited liability. If someone finds a Pratt and Whitney coming through the roof of their house –

Ms Chorazy—No, in Queensland they are subject to common law at present.

Mr HARDGRAVE—Which means? What does that mean for those of us who are not of legal training? They can sue the airline?

Ms Chorazy—They would have to argue in a court of law that damage had occurred to them.

Mr Manning—We do not have strict liability, but it would be pretty hard to say that the aircraft operator was not at fault if they dropped an engine through your front door.

Mr HARDGRAVE—I accept that, but how do you make claims against a foreign carrier? Touch wood, there is no problem with Qantas and Ansett. What happens with an airline that maybe has had a practice in the past of landing on highways, like Garuda or something – I would not have a clue – or some airline that may not necessarily care whether somebody decides to sue them in this country? How far do you take it? Does the system support people? If you are a citizen and somebody from a foreign carrier drops an engine in your house and you go to sue, what happens?

Ms Beetham—I do not know that we have any examples of that.

Mr HARDGRAVE—We do not want any either.

Ms Beetham—Fortunately, we do not have too many incidents like that. But one assumes that it is a matter for the aggrieved party to make a judgment as to how far they take it. I would imagine that most responsible airlines, if they did something like that, would be fairly receptive to a claim because of their own vested interests in handling it properly. But that is not a guarantee.

Mr HARDGRAVE—Would it be a breach of any other operating arrangements into Australia if they basically said, 'We are not going to settle' or if there was a problem within the court system? Perhaps this is going beyond the agenda? I do not know. I am just trying to work out what would currently happen if, God forbid, anybody had to put in a claim like that.

Mr Manning—I think a foreign airline operating in our country is required to abide by our laws. The same would apply to Australian airlines operating in other countries. I think that is the answer.

Mr WILKIE—You do not have to give me an answer on this now, but I wonder if you could prepare something for me on it. If damage on the ground has occurred by fuel, specifically – if it is not damage by aircraft, I do not know what it is – what redress is there for people who are on the ground and have suffered that, and what penalties are there available for the airlines responsible? I know it has been a problem in Sydney and I continually get complaints in Perth, so I want to find out what action we can take.

Mr Manning—We will do that.

Mr WILKIE—As somebody whose electorate has more aircraft flying over it than any other, I want to congratulate you for putting this in place. My constituents, particularly those in Kurnell, will be very pleased.

CHAIR—He is a great friend to the airlines, our Bruce Baird – sometimes too much so. Thank you kindly for appearing here today.

Resolved (on motion by **Mrs Elson**):

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