COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 26 August 1997

CANBERRA

Monday, 1 September 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Hardgrave
Senator Murphy	Mr Tony Smith
Senator Neal	Mr Truss
Senator O'Chee	Mr Tuckey

For inquiry into and report on:

Treaties tabled on 26 August 1997.

WITNESSES

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Monday, 1 September 1997

Present

Mr Taylor (Chairman)

Senator Abetz	Mr Bartlett
Senator O'Chee	Mr McClelland
	Mr Tony Smith
	Mr Truss

The committee met at 9.05 a.m.

Mr Taylor took the chair.

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory

LENNARD, Mr Michael, Senior Government Lawyer, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory

MARTINIELLO, Ms Nina, Trade and Development Branch, Department of Communications and the Arts, GPO Box 2154, Canberra, Australian Capital Territory

ADAMSON, Ms Frances Jennifer, Director, Services Trade Section, Services and Intellectual Property Branch, Trade Negotiations Division, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

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

MORETTA, Mr Remo, Executive Officer, Services Trade Section, Services and Intellectual Property Branch, Trade Negotiations Division, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

CHAIRMAN—Ladies and gentlemen, I declare open this public hearing. We will be dealing this morning with all the treaties tabled on 26 August, with one exception, that being the maritime delimitation treaty with Indonesia, a treaty which will be the subject of a special inquiry. We do not expect to table a report on that within the 15 sitting days allowed. It will probably be the end of November by the time we finish that. For the remainder, we hope to table our report on 20 October, which just happens to be the 16th sitting day after tabling, but I am sure both the Attorney-General and the foreign minister will not get excited over that. So we have quite a lot of ground to cover in a few hours this morning.

Ms Martiniello, do you have any comments to make on the capacity in which you appear?

Ms Martiniello—My normal branch responsibilities include assisting two senior officers with direct responsibility for the oversight of trade policy in the department. I have been asked to stand in for the two officers, who are, respectively, absent overseas and on leave.

CHAIRMAN—Thank you very much. Would somebody like to make an opening statement for DFAT?

Ms Adamson—Thank you, Mr Chairman. By the end of the Uruguay Round of multilateral trade negotiations in April 1994, agreement had not been reached on the treatment of basic—that is, voice—telecommunications. Recognising that this is an important sector in terms of trade in services, ministers mandated further negotiations. The negotiations were to have concluded on 30 April last year, but members of the World Trade Organisation agreed that they should be extended in order to improve the quantity and quality of offers. On 15 February 1997, an agreement was reached.

A total of 68 countries, including Australia, covering about 93 per cent of world telecommunications trade have made commitments covering access to, and investment in, international and domestic services in the global telecommunications market—estimated, for the purposes of the negotiations, to be worth between $A600 billion and $A900 billion. I would like to correct the figure contained in our national interest analysis. On the top page, towards the bottom of the second last paragraph, we have a figure of $40,000 billion. Could I please correct that? It should in fact read $A600 billion to $A900 billion. These commitments are expected to provide significant opportunities for Australian telecommunications services exporters. Further, market access for trade and investment in telecommunications will now be subject to legally binding World Trade Organisation commitments.

During the negotiations, all Australia's target markets made commitments not to introduce new measures which would restrict further market access—that is, standstill access commitments—and most offered improved access. The European Union, Japan, the United States, Canada, Korea, the Philippines and Singapore, for example, agreed to accelerate the liberalisation process. Australia also offered improved access.

The new commitments made by Australia during the negotiations were consistent with the reforms which had already commenced in our telecommunications sector. Specifically, the commitments made were, firstly, the binding of—that is, the legal commitment to—our 1997 telecommunications regime, secondly, the sale of one-third of the government's equity in Telstra, thirdly, no limits on total foreign equity in Optus and, fourthly, limitations until 30 June 1997 on the primary supply of satellite services to two service providers and on the primary supply of public mobile cellular telecommunications to three service providers—unfettered thereafter.

At the time these commitments were made, Australia maintained certain limits on the share of equity which any individual foreign shareholder could hold in Optus, as well as maintaining a requirement for majority Australian ownership in Vodafone. These restrictions have since been removed. Australia, like most countries, also adopted a set of multilaterally agreed, pro-competitive regulatory principles which will facilitate market access and add transparency and certainty to telecommunications operations. Specifically,

they cover the management of a number of technical areas associated with the provision of telecommunications services. These have been scheduled as additional commitments and, as such, are legally binding. In order to give effect to these commitments, Australia is now required to accept before 1 September the fourth protocol to the general agreement on trade in services.

CHAIR—There is mention of the operative date of 1 January 1998 and the qualifier 'if all members have accepted before 1 December 1997'. What is that looking like at the moment in terms of acceptance or otherwise of the protocol?

Ms Adamson—The agreement was regarded, when it was reached, as a good agreement all around. For that reason we expect countries to move to put in place the necessary procedures to accept the protocol. There is no doubt in our mind at present that that will happen on time but, as you will have noted, there is the fall back provision which will enable the protocol to be implemented in the event that some of them do not. But that is something that the Department of Foreign Affairs and Trade will be monitoring as the deadline nears.

CHAIR—On the legislative coverage, in the NIA it says:

Put in place through the enactment of the *Telecommunications Act 1997*, the *Australian Communications Authority Act 1997* and other related instruments.

Is it a combination of statutory and regulatory coverage or is it all statutory?

Ms Martinello—It is a combination of statutory and regulatory.

CHAIR—So there is nothing that has to be done domestically to implement this protocol?

Ms Martinello—No, all of that came into force on 1 July.

Mr McCLELLAND—I have seen that you have consulted with the industry, and the report indicates that the industry was supportive of ratification. Do they, therefore, assume that they are going to be able to benefit by getting into foreign countries—rather than our industry being swamped by providers from other countries?

Mr Moretta—Yes. Throughout the process we held regular industry consultations to determine from them what their specific interests were and which markets they had a particular interest in. We then sought to make those sorts of requests of our trading partners. So it was very much not only creating an investment environment in Australia but also creating market access opportunities overseas for our exporters.

Mr TONY SMITH—In relation to the schedule, there is a statement there which

says there are:

. . . no limits on equity in Optus, however, foreign investment policy requirements for Optus are such that there are certain limits on the share of equity which any individual foreign shareholder may hold

It goes on to discuss Vodafone. Can you give us some details about those limits?

Mr Moretta—They were limits that applied to Optus and Vodafone, but those have since been removed. There was an announcement made by the Treasurer that foreign investment restrictions applying to both of those would be removed, and they have been.

Mr BARTLETT—Is there any estimate of the potential benefit in terms of trading services for Australia on a dollar basis?

Mr Moretta—Trade in services in general?

Mr BARTLETT—No, in telecommunications. Out of the $600 billion to $900 billion worldwide, is there any estimate of what the potential benefit would be for Australia?

Mr Moretta—During the negotiations, the United States said that they would not be able to accept a deal which did not cover at least 90 per cent of the global revenue. That was estimated to be worth $600 billion to $900 billion. They estimated that Australia contributed two per cent to that global revenue, which grows annually. In terms of the benefits, we would estimate that it was about two per cent and growing.

Mr BARTLETT—That would be our involvement, but what about the net surplus?

Ms Adamson—I do not think we can say at this stage. Our industry is confident that they will benefit. As countries are still moving to implement their commitments, we hope to be able ex post to say what the benefit was, but we are confident that it is there.

Mr BARTLETT—The NIA says that, as part of this deal, our target markets made commitments not to introduce new measures which would restrict further market access. How genuine are they? In the international trade in goods, for instance, we have had those commitments year after year and quite often there have been more informal, more subtle means of restricting market access and very effective means of protection. How certain are we that we will have genuine market access?

Ms Adamson—The fact that Australia, along with most others, agreed to the set of regulatory principles is the underpinning to the value of the market access. You are absolutely right; market access of its own need not necessarily provide the expected

benefits. The set of regulatory principles—and I am sorry, but they are in quite technical language—are intended as much as possible to provide a level playing field and transparency, both of which are important to Australian exporters. In a sense, time will tell. Our feeling was, particularly amongst our key target markets, that the offers were valuable. Australia's was valuable as well. The value of our offer was intended to keep the momentum going in the negotiations. The Americans recognised that. They were essentially the key players in the end game. They also found it valuable as to where some of the offers were made, particularly in the Asia-Pacific region.

Mr BARTLETT—So you are confident that that access will be real?

Ms Adamson—Yes.

Mr Moretta—It should be stated that those are scheduled as additional commitments and, as such, are legally binding, and it would not be in the interests of members not to honour their commitments because they could be taken to WTO dispute settlement processes.

CHAIRMAN—On the additional WTO measures in the telecommunications area, are we aware of any further initiatives on the horizon?

Ms Adamson—The main future set of negotiations on the horizon, as far as both basic telecommunications and value added services are concerned, are the negotiations scheduled to begin by 1 January in the year 2000 under the General Agreement on Trade in Services. So this agreement should last us until that time. We have been careful not to schedule commitments that are technology sensitive, but we are already preparing within the department, as are other key countries, for the next round of negotiations.

CHAIRMAN—Does this protocol cover the Internet?

Ms Adamson—It covers basic telecommunications, which are things like telephone, fax, data.

CHAIRMAN—There has been a lot of media comment about the access to Internet and, in particular, some domestic comments about the taxation implications of that. Does that come under this or something else?

Mr Moretta—No, those are issues that are still being considered.

Ms Adamson—And we are looking to develop them in the lead-up to the 2000 negotiations, against the background, as you say, of the growing importance of electronic commerce.

CHAIRMAN—The final question that I had was in relation to article 2

exemptions. What are they?

Ms Adamson—They are exemptions from the most favoured nation principle.

CHAIRMAN—Thank you.

[9.21 a.m.]

CARLSON, Mr John, Director of Safeguards, Australian Safeguards Office, Queen Victoria Terrace, Canberra, Australian Capital Territory

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

JACKSON, Ms Roslyn, Desk Officer, Nuclear Safeguards Section, Nuclear Policy Branch, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

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

McGRATH, Mr David, Director, Nuclear Safeguards Section, Nuclear Policy Branch, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

NACHIPO, Mr James, Desk Officer, Nuclear Non-proliferation Policy Section, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

ROLLAND, Mr John, Director, Government and Public Affairs, Australian Nuclear Science and Technology Organisation, Private Mail Bag 1, Menai, New South Wales 2234

CHAIR—Welcome. We are going to cover two topics now. We will start with the Korean retransfer of nuclear material. Would you like to make an opening statement, Les?

Nuclear Retransfer Agreement with Korea

Mr Luck—I will be brief in my opening remarks on this item but would obviously welcome questions afterwards. The proposed treaty action in this case involves a relatively minor adjustment to the way in which Australia's bilateral nuclear safeguards agreement with the Republic of Korea operates. Specifically, it amounts to a change in the way Australia would exercise prior consent rights over the retransfer to a third country of Australian obligated nuclear material exported to the Republic of Korea. This change is fully consistent both with longstanding uranium export policy and practice and with the practice adopted with most others who are Australia's safeguard partners.

The Republic of Korea is a major customer for Australian uranium, and the essential reason for the adjustment in practice is to bring the operation of the Australia-

ROK safeguards agreement into line with that of our other partners and also with the practice of the ROK's other suppliers, Canada and the United States principally. That is all I have to say by way of opening. I welcome questions.

CHAIRMAN—On the generic prior consents and their compatibility with NPT, would you like to say something?

Mr Luck—The NPT lays down a number of rights and obligations upon member states. Essentially, they involve undertakings by non-nuclear weapon states not to acquire nuclear weapons and, in exchange for that undertaking and the agreement to accept safeguards on their peaceful nuclear activities, those non-nuclear weapon states are to receive assistance in their nuclear industry and nuclear cooperation. Of course, the basic agreement we have with the ROK—as with our other safeguard partners—is an expression of all of those things. The agreements specify only peaceful use and they are an expression of our readiness to undertake nuclear cooperation with selected treaty partners.

The way in which we conduct that cooperation is a reflection of specific Australian policy requirements which essentially have been in place since the late 1970s. Those Australian policy conditions did involve the establishment of a number of consent rights. One of those consent rights was over retransfers. The way we have exercised those consent rights has varied over time. Initially, it was seen that they were only possible to exercise on a case-by-case basis. But quite soon after the policy was originally established, it was realised that, at the front end of the fuel cycle, you could actually exercise those rights on a programmatic basis. There is absolute consistency between the programmatic approach and our obligations under the NPT.

CHAIRMAN—What about the commercial dimensions of this?

Mr Luck—Commercially, as I said, the Republic of Korea is an important buyer of Australian uranium. It has a substantial nuclear power program. It has long-term plans to see that reliance on nuclear power remain and perhaps increase. We are hopeful that, in a relatively short period, our share of that market might increase from about 20 per cent over the past year or so to about a third—and there are good prospects for that. That would be more consistent with our share roughly of a third of the world's relatively low-cost uranium reserves. At the moment, I think it has gone up this year. We do not have the figures, but the figure for 1996 was about 550 tonnes of uranium oxide and I think that is worth in the region of $30 million.

Mr McCLELLAND—I gather that prior approval only applies to the Republic of Korea transferring the nuclear material to countries which Australia has otherwise approved as part of the safeguard network. Is that the case?

Mr Luck—Absolutely, yes. We are obliged under this arrangement to keep the Republic of Korea informed as to which other countries we will permit our uranium and

Australian obligated nuclear material to flow to. With each of those countries we have our own separate bilateral arrangements to ensure that safeguards are always in place and so on.

Mr BARTLETT—Are we satisfied that no retransfers occur without approval? Do we monitor that effectively?

Mr Luck—I will ask my colleague John Carlson to answer that.

Mr Carlson—The short answer is yes, absolutely. We have a process of detailed accounting for Australian obligated nuclear material in Korea. We also have a system for reporting of transfers from other countries, so that for any material which is transferred from Korea the receipt would be confirmed by the other country involved. We have had no difficulties of any sort in Korean performance of agreement requirements.

Mr BARTLETT—That is a foolproof system then?

Mr Carlson—Yes.

Mr BARTLETT—How many requests for approval for transfer would occur each year?

Mr Carlson—In fact, none. The Koreans were very keen to obtain this settlement to bring their agreement into line with those of our other treaty partners. But, in practical terms, we do not expect that it would be used very often. It covers the situation where Australian material is in Korea and is then to be transferred to a third country. In fact, most flows of Australian material into Korea are for end use and the material stays in Korea. In practice, we would not expect many requests. The only situation where this has arisen really has been for material left in containers of uranium hexafluoride material used in processing of uranium where residual amounts of Australian material have been left in cylinders which have been returned to the country of origin—say, France or Canada. That technically is a retransfer, although the amounts are very small. This settlement will greatly simplify the paperwork for those but we do not expect that there would be any significant retransfers in the near future.

Mr TONY SMITH—The NIA suggests a proposition that the agreement itself will enhance competitiveness and also that the agreement was regarded as desirable by the Republic of Korea as being consistent with the practice of other major uranium suppliers. Can you expand on that a little in relation to the competitiveness side of things? Also, was the practice of Canada and the United States used as a model for this type of agreement?

Mr Luck—I think the competitiveness argument is a bit at the margin in the sense that what we are trying to do is establish common rules, both within our own system and as between Australia and the countries which are most like-minded about uranium supply,

and that has historically always been the United States and Canada. The fact that the ROK agreement did not have this facility originally just reflects history in the sense that our agreement with the ROK was the first one ever concluded.

It was only a few years after that, as we evolved the policy a bit, that we realised that at the front of the nuclear fuel cycle you could actually have programmatic consent rights. That had become understood in the context of giving reprocessing settlements for a number of customers. It was also something that we worked out in parallel with the other major suppliers at the time. That would have been in the late 1970s to early 1980s. So it is really a correction for something in history. As John has explained, it has not, up to date, had any huge effect as far as we can tell, because there have not been those transfers, but it will put us on a par with the norm.

CHAIRMAN—In the NIA it says:

In early 1997 additional information was provided at the request of the States and Territories . . .

Implicit in that, I suppose, is a question mark as to whether they were happy. Is that true, or was it just additional information that they wanted before finalising it through SCOT?

Mr Biggs—It is a pro forma request that goes out. We circulate the schedule and the states and territories nominate a list of proposed treaties that they are interested in. This was one of those. There was not a follow-up to that.

CHAIRMAN—Okay. So there was nothing major?

Mr Luck—We are not aware of any problem at all from the states and territories.

CHAIRMAN—All right. We do not have any more questions on that one. We will move on to the regional cooperation agreement.

Regional Nuclear Cooperation Agreement

CHAIRMAN—Les, do you have an opening statement?

Mr Luck—Thank you. I will be even briefer with these opening remarks and then ask my colleague John Rolland from ANSTO to add a couple of words on the substance of this agreement. What is proposed under this treaty action involves Australia's acceptance of the extension of what we know as the RCA agreement. It is a multilateral agreement under which member countries of the International Atomic Energy Agency from the Asian region can participate in technical assistance and cooperation programs administered by the IAEA.

Australia has been a party to the RCA since 1977 and that arrangement has been extended every five years since then. This treaty action is really for a further extension of

five years. I will ask John Rolland to add some words on the substance of the arrangement.

Mr Rolland—The annual budget of the RCA is approximately $US3½ million, of which around 50 per cent is provided by the International Atomic Energy Agency, 25 per cent by RCA member states and 25 per cent by the United Nations Development Program.

The major extrabudgetary donors to the RCA over the years have been Japan, Australia and the UNDP, although I should point out that in the last two years some nine RCA member states in total have provided cash contributions to the RCA. In addition to the cash budget there is extensive in-kind assistance provided to the program by member states to support the various project activities.

The RCA projects encompass four broad areas. They cover the areas of industry, health, radiation protection and a number of general areas. In the area of industry, the types of activities which are undertaken are designed to upgrade the capabilities of key personnel in science and industry in technology and techniques associated with using isotopes and radiation suitable for addressing problems of environmentally sustainable development. These might be in areas such as nucleonic control systems and tracer technology where these techniques are being used to improve and optimise industrial processes. Nuclear analytical techniques and tracer technologies are also being used to study environmental pollution. Radiation technology is being used to treat industrial and municipal wastes, as well as reduce process emissions through new industrial applications. Non-destructive evaluation is being used to minimise the failure of industrial equipment with consequent minimisation of environmental pollution.

In the health area, nuclear techniques are used in medicine in areas such as the maintenance of nuclear medicine equipment, the diagnosis of hepatitis B using radioimmunoassay techniques, the establishment of improved systems for tissue banking using radiation sterilised tissues, the training of nuclear medicine technologists, the use of computers in technetium 99 imaging, and the treatment of hyperthyroidism using iodine 131 therapy.

In the area of radiation protection, the program embraces activities focused on building up radiation protection infrastructure in our regional countries, internal and external dosimetry, emergency response to radiological accidents, and training in radiation protection for industrial users of ionising radiation.

Mr Chairman, the remaining projects would be in areas such as information systems, research, reactor utilisation and energy planning.

Australia's support to the RCA has focused on projects in the areas of the industrial and environmental applications of radioisotopes and radiation along the lines I have indicated, nuclear medicine and the strengthening of radiation protection

infrastructures. We have supported such projects through the sharing of our experience and expertise and in supporting the provision of appropriate resources, such as experts to undertake missions, to participate in regional and national training events, and to assist in the planning and the design of projects.

CHAIRMAN—What would be the impact on RCA if Lucas Heights was not refurbished or replaced?

Mr Rolland—You might be referring to the proposals for an ongoing research reactor capability in this country. Is that correct?

CHAIRMAN—Yes.

Mr Rolland—I believe that would have an impact on Australia's role in the RCA activities. In terms of our ability to interface with our regional countries across the broad face of nuclear science and technology, a research reactor and the expertise which that brings to this country in terms of hands-on experience in nuclear matters is an important component of our ability to interface with countries in our region.

A research reactor really is an essential component of providing that hands-on expertise. I believe that if Australia did not have that ongoing capability then our ability to interact and to have that position of influence in terms of our involvement in activities such as the Regional Cooperative Agreement would be significantly diminished.

CHAIRMAN—Senator Abetz, welcome. You may have the first question.

Senator ABETZ—In fairness to those who have actually been able to listen, they should be given the first question. My apologies for my late arrival.

Mr TRUSS—With reference to the list of participants, how many of those countries actually have a nuclear capability or have a facility? Does New Zealand, for instance, and Burma? I cannot imagine Burma would. I am following up the chairman's question, I guess.

Mr Rolland—If we look at the operation of research reactors in our region as an illustration of that, there are some 30 research reactors with a power of one megawatt or above. The present HIFAR research reactor operated at Lucas Heights has a power of 10 megawatts.

The countries in our region which operate research reactors are: China, which has eight; Japan, which has seven; India, which has four; and Indonesia, which has two. Research reactors are also operated in Bangladesh, the Republic of Korea, Malaysia, Pakistan, the Philippines, Taiwan and Thailand. In addition to that, two countries in particular—the Republic of Korea and Indonesia—have recently commissioned significant

new research reactors with a capability in excess of what Australia has at this point in time.

So, as you can see, 12 of the 17 countries in the RCA operate research reactors.

Mr TRUSS—What role do the countries that do not have research reactors play in this treaty?

Mr Rolland—They play a role in terms of the use of radiation and radioisotopes in industry and medicine. A country like New Zealand, which has a small nuclear program, is still an important member of the RCA. It has expertise in the use of radioisotopes and is an active member of the RCA.

Mr TRUSS—There is concern in Australia about proposals in countries like Indonesia to build substantial nuclear electricity generating facilities. Does Australia's involvement with this agreement give us any capacity to influence Indonesia in siting and design of those facilities?

Mr Rolland—Indonesia is a member of the RCA and it is a country with which we have had bilateral inter-agency cooperation—between ANSTO and their nuclear research organisation, Batan—over a number of years, going back to 1985. There have been exchanges of scientists and collaborative projects on a modest basis over those years, in areas such as the application of radioisotopes in industry and medicine, radiation protection, research reactor safety and personnel training.

The first-hand contacts which are made through the exchange of scientists and experts in a multilateral arrangement such as the RCA are valuable along the lines you indicate because it means we are building up confidence in both directions and we have first-hand knowledge of the nuclear program and activities in countries such as Indonesia. One of the areas of specific interest within the RCA framework—which I have alluded to—is in the building up of expertise in radiation protection infrastructure and safety infrastructure. That is an area where we have contributed significantly.

In addition to that, there are other multilateral arrangements where Australia has taken a lead in this particular area. Another multilateral arrangement called the International Conference on Nuclear Cooperation in Asia, which also includes Indonesia, is another specific activity where Australia has taken a lead—and Australia convened a workshop and we will do so again early next year—in building up enhanced nuclear safety culture in our region. So Australia has taken a lead role in nuclear safety matters, both through the RCA and other areas—

Mr TRUSS—Is this a primary element of it?

Mr Rolland—It is an important element of it. It is one of the important elements

which I alluded to in my opening statement.

Mr TRUSS—This agreement basically extends a current operation for a further five years?

Mr Rolland—Yes.

Mr TRUSS—Do you have any reservations about the way in which it has operated in the last five years?

Mr Rolland—No. I believe it has been a very successful agreement. It is an agreement which Australia has been party to since 1977 so we have had 20 years experience in the agreement. We have taken an active role in it. I believe that it has been very significant in building up contacts and the level of expertise in countries in nuclear science and technology to contribute to the social fabric of the countries and also in terms of enhancing the use of nuclear science and technology to building up industry in those countries.

Mr McCLELLAND—You mentioned that we enhance their facilities: do we also receive worthwhile information from their industries and research laboratories?

Mr Rolland—Yes. Australia has received significant advantages out of our participation in the agreement. Besides the types of areas that I have indicated, it does enhance our commercial position in the region. As a case in point, I might instance an order of $1.5 million which AMDEL received in November 1996 as a direct outcome of Australian involvement in a RCA seminar. So the sort of expertise that is available in Australia certainly does provide the opportunity to be made available to regional countries on a commercial basis as a result of our participation in the RCA activities.

Senator ABETZ—Could I ask a question, not necessarily of the officials that have just addressed us, but in relation to denunciation. I notice that denunciation or withdrawal is on the basis of all parties being in agreement or, of course, at the expiration of five years, which concerns me. Then we are also told that it could occur on one year's notice if such a right could be implied from the agreement's nature.

Mr Biggs—Are you looking through the RCA agreement?

Senator ABETZ—Yes—or am I in the wrong one? It would be helpful if we were told what Foreign Affairs or the legal department's actual analysis was as to whether it could be implied. If it could be implied under article 56 of the Vienna Convention on the Law of Treaties, then we might get 12 months to get out. Can it be implied in this case? I suppose that is what we as a committee are looking for rather than being given some advice as to—

Mr Campbell—The short answer to your question is that I do not think it can be implied.

Senator ABETZ—Could I just respectfully suggest this. In that case, in any future NIA, we are told—it may be implied, but the advice is in each case that we do not think it is, or we do think it is?

Mr Campbell—I understand the point.

Mr TRUSS—Are you saying that the NIA is inaccurate?

Mr Campbell—I am not saying the NIA is inaccurate.

Senator ABETZ—Academically it is correct.

Mr Campbell—There was a question left hanging at the end of the NIA as to whether article 56 applied. I am saying that in my view you could not infer that article 56 would apply. I agree that it would have been better had the NIA stated that.

Senator ABETZ—I do not know how often it has been done, but I am not sure that I have noticed reference to article 56 before in the national interest analysis. Therefore it looked to me on first reading that possibly it did and that is why you put it in there. I am not sure that you have mentioned article 56 before. When I read it, I thought, 'No, I cannot necessarily come to that conclusion.' If it can be fixed in the future, that would be helpful.

CHAIRMAN—We will put that in the report just to draw your attention to it, I think. Thank you, gentlemen.

[9.51 a.m.]

KAY, Dr David Graham, Assistant Secretary, Wildlife Australia, Environment Australia, GPO Box 636, Canberra, Australian Capital Territory 2601

MOORE, Mr Robert John, Assistant Director, Invasive Species Program, Environment Australia, Nature Conservation House, Cnr Emu Bank and Benjamin Way, Belconnen, Australian Capital Territory 2617

Treaty—CITES

CHAIRMAN—Would you like to make a short opening statement?

Dr Kay—Yes, Mr Chairman, a very short one. This treaty action deals with amendments to the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora resulting from a conference of parties which was held in Harare, Zimbabwe, in June this year.

A number of amendments to the convention were made at that conference, including the removal from the appendices of five species which are native to Australia. The major issue before the conference was the question of the regulation of trade in elephant products, particularly ivory. As a consequence of the conference, the populations of African elephant in three southern African countries have now been moved from appendix 1 to appendix 2 to permit a recommencement of limited trade in ivory products, subject to a range of conditions and verification that those conditions have been met by the standing committee of the conference. Australia has taken a decision, as it is able to do under the provisions of the convention, to retain its current ban on trade in ivory and elephant products. Thank you, Mr Chairman.

CHAIRMAN—Thank you very much. How does this convention relate to the Bonn convention? They are linked, are they not?

Dr Kay—There is some linkage. The Bonn convention deals only with migratory animals.

CHAIRMAN—Whereas this convention is flora and fauna?

Dr Kay—It is flora and fauna and deals only with flora and fauna in international trade.

CHAIRMAN—All right. In relation to the elephants, can you just give us a little thumbnail sketch of why Australia objected to the re-listing?

Dr Kay—The government's view was that the analysis of the proposals that had been carried out by a panel of experts demonstrated that flaws remained in the control of ivory trade, both in the exporting country and, more significantly, I think, in the importing country. Australia was not prepared to support a reopening of ivory trade until the concerns had been addressed.

The resolution that was adopted by the conference, which went with the decision to down-list, effectively leaves the matter to the standing committee to determine whether the problems have been rectified. Australia's view is that the standing committee is not empowered to take that sort of decision and it would be more appropriate to come back to the next conference of parties in 2½ years time with the controls.

CHAIRMAN—So that 18 months breathing space is there for other countries to have another look.

Dr Kay—Yes.

CHAIRMAN—Are we going to, meanwhile, strengthen our boundary arrangements in terms of the trade? What are we doing; are we just maintaining the status quo?

Dr Kay—We are maintaining the status quo in Australia. The decision is unlikely to have a significant effect on Australia—certainly the ivory trade decision. That provides for single annual shipments from the three South African countries direct to Japan as the sole importer so that, other than tourist souvenirs, there would be no change in the trade to Australia.

The proposal from Zimbabwe dealt not only with ivory but also with hides and other elephant products. So we may see, again, mainly tourist souvenirs—and small leather articles made of elephant hide—coming into the country. The current system where the Customs Service essentially enforces the legislation for us at the boundary will continue.

Mr McCLELLAND—Despite the unfavourable result regarding elephants, nonetheless you feel that it is in Australia's interests to ratify these amendments?

Dr Kay—Yes, I think it is. We are left with little choice on the elephant issue. The options open to us are to lodge an objection to that particular amendment. In the past with this treaty, as with most others of this type, an objection is lodged when control is increased rather than when control is decreased. The impact of lodging an objection is, in this case, to make us effectively a non-party for trade in products of that species, which I think—and certainly the minister has indicated that he thinks—weakens our position rather than strengthens it.

The controls available under the convention which do allow for stricter domestic

measures enable us to continue our current prohibition on elephant products, other than those pre-convention. Antique ivory is still allowed to come in and out of the country.

Australia does not have a significant trade in the other species and there seems no reason for us not to accept those. The controls on sturgeon, which come into place in April next year, may have an impact in that it will be, shall we say, much more difficult to import caviar into Australia. I am not sure that there is a significant trade in real caviar but I suspect that, under the provisions of our legislation, there will be not quite a prohibition, but fairly close to it. The conditions for management of the species that need to be met will require that we be satisfied that effective management programs are in place for those species. At the moment that is not the case.

Mr TONY SMITH—You mentioned that there is a trade in antique ivory in Australia, but not in harvested ivory?

Dr Kay—That is right. The convention came into force for Australia in 1976. Anything that was taken before then is not covered by the convention—it is not retrospective. We have occasions where things like bagpipes which have antique ivory come in as personal effects. I do not think there is a significant trade. It is essentially personal effects that move in and out.

Mr TONY SMITH—Ivory cannot be harvested without killing the beast; is that correct?

Dr Kay—That is the case. It can be taken off animals which naturally die. There is natural mortality in elephant populations, as in any other animal population. Part of the argument which the Africans put was that ivory taken in that way has really no impact on the population and that they should be permitted to trade.

CHAIRMAN—When could we expect the wildlife import legislation to be amended?

Dr Kay—The requirement is that certain schedules to that legislation be amended and the amendments are being prepared currently. We would hope that we would be in a position to have the minister table those prior to the entry into force.

CHAIRMAN—As there are no more questions, thank you.

[10.03 a.m.]

BLEAKLEY, Mr Peter Ward, Director of Agreements, Defence Legal Office, Department of Defence, Constitution Avenue, Canberra, Australian Capital Territory 2600

BONIGHTON, Mr Ronald Bruce, Head of Systems Acquisition (Electronic Systems), Department of Defence, Anzac Park West 2-408, Russell Offices, Canberra, Australian Capital Territory 2600

COTTRELL, Group Captain Macaulay, JORN Product Team Manager, Defence Acquisition Organisation, Department of Defence, APW2-4-26, Constitution Avenue, Canberra, Australian Capital Territory 2600

HEDGES, Air Commodore Richard Peter, Director-General Strategic High Frequency Systems, Defence Acquisition Organisation, Electronics Systems Acquisition Division, Department of Defence, Anzac Park West, Canberra, Australian Capital Territory

LLOYD, Dr David William, Legal Officer, Directorate of Agreements, Defence Legal Office, Department of Defence, National Capital Centre, Civic, Australian Capital Territory

WARD, Dr Bruce Donald, Acting Chief, Wide Area Surveillance Division, Department of Defence, DSTO, Salisbury, South Australia

Treaty—Project Agreements with the US Over-the-Horizon Radar

CHAIRMAN—Welcome. Would you like to make a short opening statement?

Mr Bonighton—I would like to speak briefly about the two proposed project arrangements between the government of Australia and the government of the United States on data fusion for over-the-horizon radar and on detection and tracking of targets in clutter, which were tabled in parliament on Tuesday, 26 August.

The proposed project arrangements are made under the terms of the agreement between the government of Australia and the government of the USA concerning cooperation in radar activities which was signed at Salisbury on 3 March 1992. That is usually known as ‘the radar agreement’. That agreement provides for bilateral cooperation in a wide range of radar related activities. It includes R&D, testing and evaluation, operational analysis, radar network operations and the sharing of knowledge related to the development and operational use of radar. Although the radar agreement potentially covers any form of radar, it was originally created to facilitate cooperation between the US and

Australia in over-the-horizon radar.

Perhaps I could briefly describe the over-the-horizon radar concept of operation. We have Dr Bruce Ward here, who can pick up any of the technical points you might want to go into. Basically, a steerable beam of HF—high frequency—radio waves is directed at an ionised region of the earth's atmosphere at altitudes between 100 and 300-plus kilometres above the earth's surface. That is refracted forward to the earth's surface, illuminating a region known usually as the footprint, at ranges in the order of 1,000 to 3,000 kilometres. We are trying to detect things at that sort of range. A small portion of the energy is reflected from the ground and objects within that footprint, and is detected by a sensitive receiver.

The location of the footprint in range can be controlled by changing the radar operating frequency as required. Because it works on the ionosphere it is highly variable, and day-by-day, seasonal and solar cycles can affect the range of it; so a great deal of time and effort has gone into trying to understand the ionosphere and how it actually works. Any targets in the region are detected, and their position and speed are measured. The radar must revisit each footprint at periodic intervals to permit automated tracking of the target as it moves.

Most of our research has gone into aircraft targets. The US has operated a number of OTHR systems since the 1950s, many of which have been directed toward the detection of ballistic missiles rather than aircraft targets. The only system the US now uses is the navy relocatable over-the-horizon radar, deployed in the Caribbean region on surveillance operations against drugs. We in Australia commenced OTHR development in the mid-1970s and since 1992 the Royal Australian Air Force has operated No. 1 Radar Surveillance Unit, 1RSU, at Alice Springs. It has a dual role as an interim operational system and as an R&D testbed.

Specific programs of work for the agreement are defined in project arrangements under the parent agreement, and are treaty status documents. The proposed project arrangements presented here today are the second set developed under that radar agreement. The first two were on spread clutter and radar synoptic performance modelling. They were approved at the time of the radar agreement signature, and they are now complete.

The spread clutter PA in particular produced significant benefits to both countries, providing insights which would not have been possible by either country acting in isolation, so we had a much better understanding of what that meant for our own over-the-horizon radar. The radar performance modelling PA was instrumental in the joint development of the theoretical understanding of some of those environmental factors I talked about which affect OTHR performance.

The proposed data fusion project arrangement will investigate the combination of

data from multiple sensors to provide more information than could be obtained from sensors in isolation, including multiple reports of a single target that might be generated from the layering effect of the ionosphere. Australia has an active program developing fusion algorithms, so there is much to gain from access to data from an operational OTHR system.

In relation to the second project arrangement, there are a number of potential approaches to automated tracking systems, and there are a number of measures of performance of such systems. The Defence Science and Technology Organisation is developing enhancements to the tracking system in use at 1RSU and will need to evaluate the tracking system to be delivered with the Jindalee operational radar network. This PA proposes to use the Australian developed comparison methodology to compare the performance of Jindalee, the relocatable OTHR and advanced US tracking systems, using data recorded by the Australian and USN radars. The benefit to Australia is visibility to the relative merits of several alternative tracking approaches.

In conclusion, Australia stands to gain benefits from both of the new project arrangements. These include access to data from overlapping radars relevant to the development of JORN, and visibility to the merits of alternative approaches to a range of key OTHR technologies. I would welcome any questions you might have.

CHAIRMAN—I refer back to our briefing session the other evening. We have already introduced into the evidence your submission, which does not have a date on it and which was unclassified, and some print-outs of the transparencies that we saw. I just want to confirm: none of those are classified, are they?

Mr Bonighton—No.

CHAIRMAN—It would be handy to use those in our report to the parliament. There are two documents: one is a submission, the other one is an exhibit, both of which we can use.

Just before I ask you to give us a brief history of the project, let me say this: I do not want to get into the detail and all of the rest of it which is currently before the JCPA, but for the *Hansard* record we need to have a thumbnail sketch of the project. I will come back to that in a moment.

First, though, how many other PAs have we already negotiated with the US? Will others be required? And could you also make some comment about the size of the US over-the-horizon radar program?

Mr Bonighton—I will turn to Dr Ward to talk about the project arrangements.

Dr Ward—There were two project arrangements at the time of the agreement.

Shortly thereafter we developed a plan for a series of eight or nine, spaced out over a 10-year program. I might say at the beginning that the first ground rule for Australian participation is that we only agree to enter into project arrangements which match our own R&D program. We do not get any additional funding for doing this work, and so the only reason we would enter into a particular agreement is for our own R&D. There have been several project arrangements which the US has proposed which we have refused to collaborate on because they do not match our own program. So the first driver is that it must be a match to our own program and our own operational requirements. The benefit then, of course, is that we get the additional leverage from access to additional people and resources in the US working on the same problems.

The second question, Mr Chairman?

CHAIRMAN—Was in relation to how many other PAs there were.

Dr Ward—We had two PAs in the original agreement, there are these two additional ones, and there are another three which are not going to be done under the radar agreement, but are going to be done under the Deutch-Ayers agreement. The reason for that is fairly straightforward. The radar agreement has some peculiar terms in it which require all of the project arrangements to be of treaty status.

The Deutch-Ayers agreement is another agreement between Defence and the US Department of Defense. Mr Deutch and Mr Tony Ayers are the relevant secretaries. The radar agreement was developed between two agreements, the Deutch-Ayers agreement and its predecessor, the Clifford-Fairhall agreement, which provided for general R&D between the two countries in defence. At the time when the radar agreement was proposed, the US was quite keen to develop collaborative arrangements on over-the-horizon radar technology, and therefore wanted something in between the two agreements.

The radar agreement unfortunately has two requirements which cause difficulties. One is the fact that unlike all of the other agreements, as I understand them, each of the project arrangements has legal treaty status, which means that even for very small amounts of work we have to go through this process. The second is that the agreement requires equal funding on both sides, unlike other agreements which call for equal contributions. That caused some accounting difficulties in the early days, but we resolved that by the way our contribution is attributed.

Both of those requirements make the use of the radar agreement somewhat more difficult. There are three project arrangements which are being proposed which could have been done under the radar agreement, but which are being done under the Deutch-Ayers agreement purely for administrative reasons, rather than bothering this committee with relatively small amounts of work.

CHAIRMAN—Let us just go back to the chronology of the project. Again, we do

not want to explore territory that the JCPA is covering at the moment. I was vice-chairman of the PWC when we did the site inspection back in 1990, I think it was. Let us just run through chronologically from where it started with the PWC to where we are at the moment, what the key issues are and, in particular, how these two PAs affect that chronology and the aims and objectives of the project.

Mr Bonighton—We just need to know which projects we are talking about here. We have Jindalee which is, of course, the 1RSU/DSTO test bed, which is distinct from the Jindalee operational radar network, which is the subject of current publicity. Would you like us to set out where they all fit together?

CHAIRMAN—Use your discretion; we just want an overall view of the two facilities in Western Australia and Queensland, and at Alice Springs as well.

Mr Bonighton—Given the history of this and how far back it goes, Bruce is probably the best person to address this.

Dr Ward—OTH radar was recognised in the early late 1960s, early 1970s, as a potential surveillance technology which was well matched to Australia's defence needs, given our sparse population in the north and the very large areas involved. That was similar to US air force thinking at the time we saw the US air force system. We developed what was known as the Jindalee stage A system: a very low cost, $3 million prototype which had a fixed beam looking along an air lane to prove that you could see aircraft in the Australian region.

That led to what was then known as Jindalee stage B, which we developed in the early 1980s, and which was deployed in Alice Springs in 1982 as an experimental facility and subsequently underwent upgrades over a four-year period, as we developed the capability culminating a series of joint service evaluation trials—Australian air force and navy trials—of the wide area capability. That led to a decision in the 1987 white paper to adopt OTH technology as a component of the ADF's surveillance capability.

In parallel, 1RSU, the Alice Springs facility, was upgraded and enhanced over several years and, as we have heard just recently, became an operational unit of the air force No. 1 radar surveillance unit in 1992. Since that time, it has operated with a dual role, as an experimental test bed and as an operational training and development unit for the air force to get skills in the application of OTH radar technology.

In parallel with that, the JORN specification was written based on what we had demonstrated in 1987 with some additional requirements in areas which were needed for operational capability. The two projects have gone in parallel. 1RSU has two roles: it trains the RAAF operators in what to expect and how to develop operational doctrine for the JORN system when it comes on line and it develops capability. There was a quite deliberate decision at the time that the JORN contract was made not to ask the contractor to go out on a limb and do a lot of development which required R&D.

So it was always seen that the 1RSU radar would be the test bed for developing that and that is where we basically test new concepts out with a view to adding them as retrofits to the JORN once it becomes on the ground. They will become part of the JORN enhancement program in due course. The radar agreement with the US is basically that R&D side of the development, the development of new capabilities which would subsequently be added as an enhancement to JORN.

Mr Bonighton—I guess the last thing we would want to do is deliver JORN as a capability which is static and expected to stay so from day one.

CHAIRMAN—Okay. Could we continue on then for the *Hansard* record starting with the PWC and where we are at the moment with the aims, objectives, time scales and all the rest of it.

Air Cdre Hedges—I cannot pick it up from the PWC but I can certainly pick it up from the point at which we signed the contract with Telstra on 13 June 1991 to a base price of about $680 million. Telstra was contracted to provide two radars, a 180 degree radar in Western Australia and a 90 degree radar in Queensland, and a JORN coordination centre based at RAAF Base Edinburgh near Adelaide. Both those radars were to be networked into the JCC. It is on the public record that Telstra has had a great deal of difficulty in meeting the requirements for this particular contract, with the result that we do not expect to see JORN delivered until about the year 2001.

Along the way, Telstra made a decision in about February last year that they wanted to disengage themselves from any further defence business. Their motive, I guess, was the fact that they were going to be partly privatised and they wanted to get out of a losing business, and JORN was certainly that at that particular point. They have been negotiating over the last year and a half to get out of the JORN business. In fact, they have been negotiating with the joint venture company of Transfield Defence Systems and Lockheed Corporation, a fifty-fifty joint venture company, to arrive at a price to exit JORN.

In February this year, an agreement was struck between the Commonwealth, Telstra and RLM Management Company, the joint venture company, under which Telstra would give full rights of management of JORN to the joint venture company. Since that date, RLM have been managing JORN and, at the same time, carrying out what is called rebaselining or due diligence of the project to ascertain the further cost to finish the project and a new delivery schedule.

On 2 July, RLM presented their rebaseline report to Telstra and, since that time, there have been very close negotiations to try to agree a price at which Telstra will pay RLM to depart the JORN project. Those negotiations are now coming to a head. As you would have observed in the media on the weekend, Telstra have closed their accounts for last year and declared a write down of $394 million against the JORN project. The

settlement agreement that will be the vehicle under which Telstra will formally hand the project over to RLM, at the agreed estimate to complete, is imminent and I would expect that to be resolved in the next week.

Telstra, for tax reasons, will not novate the contract. The legal entity of the contract will not be passed across to RLM for some time into the future. But, to all intents and purposes, RLM will have full authority to continue to manage the contract as Telstra's manager. So the agency that we will be dealing with on a day-to-day basis will be RLM Management Company.

The project itself, as you know, is under review by the JCPA. Until the new performance measurement baseline is established—that is the full cost of JORN and the allocation of costs within the project—it is a little difficult to say just what the actual progress is in terms of dollars spent against the project to dollars still to be spent. But we expect that to be somewhere between 50 and 60 per cent. That is a reasonable measure, I believe, of where the project currently stands at the moment.

There are still a number of technical challenges to get over but we believe that they are not insurmountable. They include some difficulty to do with the Marconi hardware and some of the software. But they are issues that we know about; certainly RLM are well aware of them and they are working very hard to try to get over those hurdles. But I do not believe there is any impediment at this stage to this project moving forward under the new management regime, to be delivered in 2001.

CHAIRMAN—On the costs, that little over $US13½ million for the two PAs is under a defence head, under DSTO; it is quite separate from the project?

Dr Ward—It is quite separate from the project. There are two components, DSTO and the operating cost of the 1RSU facility. One of the problems we have is that, on the US side, money goes purely to paying salaries and their contractors. Because of the disparity in the number of people—we have about equal numbers of people—they pay salaries which in dollar terms are more than double ours for equal amounts of effort. So what we do is attribute the cost of when we run the 1RSU radar specifically for data collection and things like that; the operating costs that the air force pay to maintain that system are also attributed to the cost of this. So it is a combination of DSTO salaries and operating costs and air force operating costs in terms of the 1RSU facility.

CHAIRMAN—So that $A8 million to $A9 million, or thereabouts, is spread over four years within the general DSTO element of the Defence budget.

Dr Ward—That is correct. 1RSU is actually funded out of the operational arm of the air force with the requirement to have dual roles. So we have access to the facility for a certain proportion of the time but air force actually pays the bill.

Senator O'CHEE—I can imagine that the research would cover a range of areas—things like resolution, accuracy, range and operability. Who, under these two PAs, will determine the experimental objectives on which both countries will work?

Dr Ward—That is undertaken in terms of two things. It is undertaken firstly in the terms of the agreement. The agreement spells out the broad areas in which the collaboration takes place. There is a management structure and a steering group which provides oversight and gets a biannual report of progress. I, and a counterpart in the US, provide technical oversight of the program. Then in each individual project arrangement, there is a project manager, who is responsible for the delivery of the project. It is subject to six-monthly reviews of progress and direction.

Senator O'CHEE—Who is on the steering group?

Dr Ward—The steering group from the US has a Mr Marty Ischinger from International Policy in OSD. Until recently, Group Captain Cottrell was the Australian co-chairman of the steering group and it is now Group Captain Biddington in development division. The other members of the steering group are the US Navy project manager; a US air force colonel from Hanscom Air Force Base, Electronic Systems Command; myself, as chief of the wide area surveillance division; and a scientist from the naval research laboratory.

Senator O'CHEE—You mentioned a number of project areas. Do you have a number of project managers and they each take responsibility?

Dr Ward—Each project arrangement has one project manager who is responsible for each project arrangement. There is one responsible for data fusion. In the case of data fusion, there is a scientist from the naval research and development laboratory in San Diego. One of my scientists is responsible for that one. Another of my scientists is responsible for tracking and a scientist in a corporation in the US is responsible for the tracking on the US side.

Senator O'CHEE—When we talk about data fusion, we talk about the possibility of networking over-the-horizon radars. That is in the paper, is it not?

Dr Ward—That is correct.

Senator O'CHEE—Which over-the-horizon radars are we networking with?

Dr Ward—The US is only interested in overlapping over-the-horizon radars. We have an interest beyond that and the US is starting to develop an interest beyond that. Basically, the US interest is in two overlapping over-the-horizon radars tracking the same target. You only want to report a single target from those two radars. You do not want to report two tracks. Because of the vagaries of the ionosphere on both sides, those track

positions may not be necessarily located. You have to combine those two to get your best estimate of the target position.

Senator O'CHEE—So we are not talking about a network of our radars and those of the Americans, which is what I understood from the briefing papers.

Dr Ward—No.

Senator O'CHEE—So are we talking about the fact that we have overlapping beams?

Dr Ward—We have overlapping coverage from our two radars and the US has overlapping coverage of their two radars in the Caribbean. We are interested in and have had some discussions with them about combining our radars with microwave radars in our area—the No 2 Control and Reporting Unit, 2CRU radar operated by the air force for example, or radars on ships or aircraft. The US is interested in fusion with OTHR and the Caribbean Radar Network, but it is not included in the scope of the contract at this time. It would be a subject for separate discussion if it were to become so.

Senator O'CHEE—When we talk about, for example, the data fusion—I do not want to get into stuff that might be classified—we are talking about particular project objectives, about developing algorithms.

Dr Ward—From the Australian side, we are talking about developing algorithms. The US already has an algorithm, which was inherent in the original radar they built and which they have modified to do overlapping radar coverage. We and the US do not necessarily agree, for example, on the degree of the performance of their algorithm. We do not believe their algorithm is adequate and we have work going on developing more robust algorithms. What the US is very interested in is methodologies for actually quantifying the performance of these algorithms. They are interested in the algorithms we are developing and what the performance is compared to what they already have in place. What we are interested in is the fact that they already have in place two overlapping radars from which we can get data; otherwise we would be forced to use models, and models are not as good as the real vagaries of the real world.

Senator O'CHEE—That makes it a lot clearer than the briefing paper.

CHAIRMAN—You are right. We have to be careful that we do not get into classified areas.

Senator O'CHEE—Obviously. That was absent from the briefing paper.

Mr McCLELLAND—Quite clearly, it is a very important project for Australia. Obviously, the treaties are a means of developing it more rapidly and in a more

sophisticated fashion.

Mr Bonighton—Yes, indeed.

CHAIRMAN—On the denunciation aspects of these two, they may be extended by written agreement but shall not extend beyond the expiration of the head agreement, that is, 3 March 2002. Is that related to the project target of 2001?

Dr Ward—No. The radar agreement has a 10-year life from March 1992 when it was signed. So the project arrangements cannot be extended beyond the life of the agreement—unless the agreement, of course, is extended in its own right. It is really relating to the fact that the agreement is due to expire in 2002, unless it is extended, and so the project arrangements cannot extend beyond that date.

CHAIRMAN—What is the number of people involved in the administration of these two PAs?

Dr Ward—Very light from our end. Basically, I provide oversight as chief of the division. As part of the division's management responsibilities, it requires relatively little time. The steering committee meets twice a year for a half-day meeting. Beyond that, the oversight is primarily by monitoring correspondence, by e-mail between the participating parties. One of the things we had problems with is visibility of collaboration and so basically all correspondence is copied to all steering group members and they can therefore keep a finger on the pulse.

CHAIRMAN—First of all, let me thank the group formally for the briefing we had the other night. That filled in a few gaps. I think the committee finds the NIAs a little inadequate. They needed to be expanded substantially to cover some of the stuff that we did get in the briefing. The observation that I suspect we will make in the report is that the NIAs were less than satisfactory. I know it is a difficult technical area. It is very difficult for people like ourselves to digest some of these things, but I have to say, Ian, that I think the NIAs could have been a little better. Thank you very much indeed, and thank you again for those briefings. I suspect in the report—and that is why I asked about the classification—we will almost certainly use one or two of these to explain what it is all about.

[10.34 a.m.]

BARNES, Mr Andrew, Desk Officer, Russia, CIS and South-Eastern Europe Section, Department of Foreign Affairs and Trade, Casey Building, Barton, Australian Capital Territory 0221

Treaty—Agreement on Economic and Commercial Cooperation with Kazakhstan

CHAIRMAN—Welcome. Would you like to make a short opening statement?

Mr Barnes—I would like to say that the agreement really provides an institutional framework for our bilateral commercial relations with Kazakhstan. It is an important agreement. For a country that is moving from a centrally planned economy into an independent market economy, Kazakhstan's domestic regulatory environment is not as complete as it could be and this agreement will go some way towards filling the gaps.

CHAIRMAN—This committee has dealt with a number of trade agreements—Peru, Chile and Mexico come to mind. Does this vary much from those?

Mr Barnes—No, it is a very straightforward standard trade and commercial agreement.

CHAIRMAN—Are we likely to have a double taxation agreement in place with Kazakhstan?

Mr Barnes—A meeting was held between Kazakhstan officials and officials from the Australian Taxation Office in June this year. But proper negotiations will not start until next year at the earliest.

CHAIRMAN—So it is ongoing?

Mr Barnes—It is on the cards, yes.

Mr McCLELLAND—There is a lot for Australia to gain. Equally, obviously Kazakhstan can gain from the treaty. It is not one way or the other; it is mutual.

Mr Barnes—Most of the trade and investment is in our favour, so potentially we stand to gain more than the Kazakhstan government people.

Senator ABETZ—Is that why—

Mr Barnes—It is important for Kazakhstan—partly symbolically. As they became an independent country they wanted to move into the world, integrate with the world. Signing agreements is an important part of that.

Senator ABETZ—What motivated this agreement? Who initiated it? Were there some Australian businesses clamouring for this or—

Mr Barnes—Australian business is very interested in it, and we have had some companies monitoring how it is going and asking about the progress of it.

Senator ABETZ—Are you able to disclose those companies or not?

Mr Barnes—Some of it is commercial in confidence, but there are some companies that have established offices in Almaty, the capital. I could give you their names.

CHAIRMAN—This is an extract from the *Australian Financial Review* of 28 August which deals with this question specifically. Perhaps you could take Senator Abetz's question on notice and provide something to us.

Mr Barnes—Yes.

Senator ABETZ—I have another question. Does the term 'most favoured nation' have some special international meaning? It now seems that we have most favoured nation status with a whole range of nations, which takes the gloss off the meaning. It would seem that you could only have most favoured nation status, one would have imagined, with one or two or possibly a handful. But it seems that we now have it with every country in the world that we enter into a relatively bland agreement with. I was wondering what it means in international legal terms.

Mr Biggs—I will take that one. You are absolutely right: it does have a special meaning. It is effectively our obligation under the World Trade Organisation agreements that we accord most favoured nation status to all the other countries of the world. It is no longer what the dictionary definition might imply. It is indeed a term of art in the international trade framework. Most favoured nation status is what we agreed to accord to all our trading partners.

Senator ABETZ—Is there some international law, definition, of most favoured nation or—

Mr Biggs—There is a definition in the GATT documents.

CHAIRMAN—I agree with Senator Abetz: it is a misnomer in many ways. It seems to me that it would more appropriately be 'acceptable status' or something like that. In other words, it is the exception rather than the norm that you are 'non-MFN'.

Mr Biggs—Exactly.

Senator ABETZ—Yes.

CHAIRMAN—That is the point that I am getting at.

Mr Biggs—What it is saying is that we have joined the international system of giving all countries, all our trading partners, equal access.

Senator ABETZ—It sounds a bit like 'Geoff Kennett loves you all', so it does not mean much.

Mr Lennard—Basically, it is saying that we are not giving them better treatment than any other country gets. It is saying, 'We'll give you the most favoured nation treatment that we give to any other country. The top level treatment that we give to other countries is what we will give to you.' In that sense, it is really not saying, 'We will give you the best treatment that we give anybody.' It is saying, 'We will give you the equal best treatment.' It derives from article 1 of the GATT, which is essentially the definition of 'most favoured nation treatment' in those terms, although there are all sorts of nuances.

CHAIRMAN—How long is that? What does article 1 say?

Mr Lennard—Article 1 basically says with respect to various things that any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in, or destined for, the territories of any other contracting parties. Essentially, if you can point to another country getting better treatment, you immediately get that same treatment. That is how it works. You can point to the best treatment that any other country's product is receiving.

Senator ABETZ—Can I ask for an A4-page summary of the most favoured nation idea, if you can so reduce it? Where did the term come from? Undoubtedly, it is in article 1 of GATT that you have just told us about. What are its implications? I must say that I have been labouring through some of these and thinking that it is a special type of agreement; but, now they have come up so often, I do not think they are so special any more. This is basically for my education, but chances are that other members of the committee will be educated as well, if we could get that information—and not only this committee but also, hopefully, many others to come.

CHAIRMAN—It seems to fly in the face of literal interpretation of MFN. Could somebody take that on notice from DFAT or A-G's?

Mr Lennard—We can sort it out between us.

Senator ABETZ—You will not have a demarcation dispute over this?

CHAIRMAN—A case of 'most favoured department'!

Senator ABETZ—Under contact details, we contacted Russia. How did that happen? How discrete was it? Why, when we are dealing with an independent nation, would we be contacting Russia when it used to be part of, for want of a better term, the Russian empire?

Mr Barnes—That is simply the address in the department. I am the desk officer in the Russia, CIS and south-east Europe section.

Senator ABETZ—I see: I understand that now, thank you.

Senator O'CHEE—There is a political advantage to the Kazakh government in signing this agreement, is there? Is that what you intimated in your opening comments?

Mr Barnes—Domestically, it is certainly an advantage for the Kazakh government to demonstrate that it is accepted and is integrating itself into the broad economy of the community of nations, yes.

Senator O'CHEE—Forgive my knowledge of central Asia being a little deficient: it ends at about the time of the Mongols! What sort of government are we dealing with here? Are we dealing with a democracy?

Mr Barnes—This is a presidential democracy. The president holds a great deal of power. There is a bicameral parliament, with 47 members in the Senate—seven of whom are appointed by the president—and 67 deputies in the lower house. The latest parliament was elected in December 1995, and it serves a four-year term.

CHAIRMAN—They are members of the Inter-Parliamentary Union, if that is any benchmark.

Senator O'CHEE—Maybe, Mr Chairman, maybe!

Mr McCLELLAND—I gather from the answer that it is not a democracy, because it has got a Senate.

Mr Barnes—No comment.

Senator O'CHEE—It is an enlightened democracy.

Mr TONY SMITH—In relation to the reference to service sectors and legal service providers, can you give us some example of what is going on there?

Mr Barnes—Some Australian firms have been looking at the Kazakh market in

terms of transport and legal services to different areas—

Mr TONY SMITH—As in—

Mr Barnes—Setting up legal offices and offices offering services in the transport sector.

CHAIRMAN—Thank you very much.

[10.46 a.m.]

JENNINGS, Mr Mark Brandon, Acting Assistant Secretary, International Branch, Criminal Law Division, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

MANNING, Mr Michael Grant, Government Lawyer, International Branch, Criminal Law Division, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

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

SMITH, Mr Paul, Director, Consular Policy Section, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

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Agreement with the USA re Mutual Legal Assistance on Criminal Matters

Extradition Treaties—Turkey and Uruguay

CHAIRMAN—Would you like to make a short opening statement or statements? How big are the opening statements?

Mr Meaney—As brief as you would like them.

CHAIRMAN—Let's deal with the US one—the criminal matters one—first.

Mr Meaney—Briefly, the treaty with the United States on mutual assistance on criminal matters had been on the drawing board for some time. It took some time to resolve because of the government policy articulated in last year's amendments to the Mutual Assistance in Criminal Matters Act in relation to certain safeguards in relation to the death penalty. As you are probably aware, the United States has the death penalty. It took some time to resolve but we think we have an adequate resolution of that issue in the exchange of notes which you will note have been tabled, together with that particular treaty. As soon as we had resolved that, I think we were the first cab off the rank for Ambassador Peacock—the first treaty that he signed after taking up his post.

CHAIRMAN—I think that is a fairly straightforward one; but just moving from a non-treaty to a treaty status, have the non-treaty arrangements been inadequate? Who pushed which?

Mr Meaney—We had it on the drawing board for quite some time, consistent with the position taken by the then government when we opened negotiations—

CHAIRMAN—When you say 'we', do you mean both countries or Australia?

Mr Meaney—Australia had a very proactive approach to negotiating both extradition and mutual assistance treaties, particularly in the late 1980s and early 1990s. The US, of course, is a key partner with whom we have a longstanding, good relationship in relation to law enforcement matters. We were keen to have that articulated in a treaty, for two purposes. One is that where you have continual dealings with another country, it is good to have the extra detail that goes with the treaty because you have traversed the issues. Each country has had an in-depth look at the other's legal system and understands its mechanisms so, for process purposes, it is desirable to have as much detail as possible elaborated in the treaties.

Secondly, according to the US advisers, for US domestic law purposes they are able to provide a wider range of assistance once a treaty is in place than they can pursuant to a non-treaty arrangement.

CHAIRMAN—And there are no difficulties foreseen with the US Senate on this?

Mr Meaney—No. Our last advice is that, like here, the US Senate is resuming its sittings today, and we understand that the treaty should go forward to be tabled in a package sometime this week. It should have gone forward earlier but there was some change of tactic in relation to the exchange of notes. Apparently, it was first thought in the United States that they would not table that together with the treaty, but they rethought their position and decided to do so. So that held up the tabling slightly but we would hope that, as we speak, it is being considered.

CHAIRMAN—I think it is fairly straightforward.

Mr TONY SMITH—Just on the death penalty one, I am not quite sure how that has been resolved.

Mr Meaney—We are somewhat at odds with the United States in that the United States does have the death penalty. As you are probably aware, it reintroduced the death penalty for certain federal offences early in the Clinton administration, particularly in relation to the murder of federal law enforcement officers. The US Senate is very concerned about the sort of message that that would send. There are powerful members of the US Senate who are very pro the death penalty and push that point of view. We had to

reach a position that Australia needed for the purposes of its own legislation, and for the purposes of being able to negotiate treaties with our northern neighbours where the first thing they would ask is, 'What accommodation did you reach with the US?' Of course, if you fold with the US, everybody would expect you to fold with them. So you would then not be able to negotiate a death penalty agreement.

Last year, as you are all aware, the government amended the Mutual Assistance in Criminal Matters Act. There is basically a scheme in the Mutual Assistance in Criminal Matters Act that says there is a presumption you will get assistance in relation to matters generally, but that there is a reverse presumption in relation to the death penalty. There is a presumption you will not get assistance in death penalty matters unless it is specifically approved by the Attorney-General, and there are special circumstances for so doing.

Having put that into our legislation, that then became a very overt sign of the policy of the government about our position, and that is what is recognised in the notes. Whilst there is no reference to the death penalty, there are specific references to the provisions of our legislation that, if you look at them, clearly spell out our death penalty policy.

Mr TONY SMITH—Does that mean that we do not give assistance except with the Attorney-General's imprimatur? Does that mean that a situation could arise where a person could go unpunished if the only evidence that we can provide—

Mr Meaney—In relation to the death penalty it provides that there is no assistance unless the Attorney-General specifically authorises it. That is not a delegated power; that is specifically for the Attorney to decide. All cases would go to him on a case-by-case basis.

The circumstances where he would be likely to approve assistance would be, firstly, where perhaps the evidence might be exculpatory. That might be something that he would take into account in his consideration. Secondly, it might be in cases similar to the scheme in the Extradition Act where the other government provides an undertaking—in this case it is the US—that if the assistance is provided they will not seek or carry out the death penalty. That is, they undertake they will put in a plea for commutation or whatever.

That provides the scheme. If you get to the stage where the policies clash and the other country decides to stand on its dig and say, 'We will not give you any undertaking', then it is possible that—

Mr TONY SMITH—So, in effect, that is taking administration of justice as far as it can go without us getting into the death penalty area. But that person can get life imprisonment and so forth.

Mr Meaney—Yes, that is right. As I say, all cases are on a cases-by-case basis and these would be brought to the Attorney-General or, under current arrangements, before Senator Ellison.

CHAIRMAN—Let's move on to the extradition treaties. I suppose they are similar. Did you want to deal with the two together?

Mr Meaney—Mr Chairman, as you are aware from all the previous dissertations we have given your committee, all treaties start off with the Australian model treaty. The Australian model treaty is the basis for the negotiation of extradition treaties. We do make accommodations to allow for differences in legal systems and nuances, but there are certain fundamentals that are not negotiable. All the fundamentals are in these two treaties that you have before you.

There is also an exchange of notes in relation to the Turkish treaty. Copies of the particular notes have been provided. There was a word 'only' in one of the clauses which provided an ambiguity. I will elaborate on that for the committee. It talked about offences 'only' punishable by one year's imprisonment or a longer deprivation of liberty. There were two circumstances that might not be caught—that is, that would narrow the ambit of the extradition treaty.

The first of these was where there might be alternate sentences available—for example, a fine, a bond, a community service order or something like that. Arguably, that was not covered. And because we talk about a deprivation of liberty, arguably also it could have been that, whilst Australia does not have the death penalty, we might not have been able to ask for extradition from somebody from Turkey if that offence was punishable by death over there, again, because of the way 'only' was situated. In order to clarify that, we have had the 'only' removed, which is the effect of the exchange of notes.

CHAIRMAN—In the one with Uruguay, you make mention of modern extradition treaties: what is the difference between that and the Extradition Act?

Mr Meaney—Extradition arrangements are basically threefold. I will take a few moments of the committee's time to explain. We have what are called inherited treaties, which are treaties we have succeeded to under succession that were in fact entered into by the United Kingdom prior to 1900. We have succeeded to those by virtue of common law succession. They are what we term old or not modern bilateral treaties, and then we have the modern treaties.

The modern treaties, in particular, are those that postdate the 1988 Extradition Act which had, as one of its fundamental reforms, a move towards the no-evidence basis of extradition. Under the so-called rubric of modern treaties, we still have certain treaties where we still have the prima facie case—for example, with the United Kingdom and with Canada. That is not by our choice but by virtue of the way their legal systems work and

the basis on which they will do business. But with most of the modern ones, where we can, we try to move towards a no-evidence basis as well.

CHAIRMAN—That is a matter of history with British common law and that sort of stuff.

Mr Meaney—Yes. For example, we have a number of very old inherited treaties with countries that we have not updated.

CHAIRMAN—As there are no other questions, thank you.

Resolved (on motion by Mr McClelland):

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

Committee adjourned at 10.57 a.m.