

Joint Standing Committee on Treaties

Thirteenth Report

March 1998

© Commonwealth of Australia

ISBN 0 642 36602 0

Produced by the House of Representatives Printing Service

CONTENTS

COMMITTEE MEMBERS	vii
EXTRACT FROM RESOLUTION OF APPOINTMENT	ix
FINDINGS	xi
CHAPTER 1 CONDUCT OF THE INQUIRIES	1
Treaties tabled on 25 November 1997	1
Treaties tabled on 3 March 1998	2
CHAPTER 2 TREATIES TABLED ON 25 NOVEMBER 1997	5
1996 Protocol to the London Convention on Sea Dumping	5
The London Convention	5
Exclusions from the Convention	5
The Protocol and its provisions	6
Implementation and costs	9
Consultation	10
Involvement of States and Territories	11
Guidance on items which can be dumped	11
Dumping from Australia's islands	12
The Protocol and the Region	12
Provisions for the ADF	13
Construction of artificial reefs	13
Dumping of concrete	14
Views of interested organisations	15
Committee views	17
Amendments to the Schedule to the International Convention for the Regulation of Whaling	19
The Commission and the Convention	19
Australia and the ICRW	20
49th Annual Meeting of the IWC	20
Previous Committee considerations	21
Amendments from IWC 49	22
Obligations, costs and future protocols	23

Committee view	54
Extradition Treaty with Paraguay	54
Background	54
Entry into force	55
Reasons for the Treaty	55
Obligations	55
Costs	56
Implementation	56
Future instruments	57
Consultation	57
Withdrawal	57
Committee view	57
Amendments to the Agreement on Health Services with Malta	58
Background	58
Entry into force	58
The amendments	58
Costs	59
Future instruments	60
Implementation	60
Consultation	60
Withdrawal	60
Committee view	60
Agreement on the Neutral Truce Monitoring Group in Bougainville	61
The need for the Agreement	61
Reasons for Australian involvement	61
Provisions of the Agreement	62
Costs	64
Future protocols	64
Implementation	64
Consultation	65
Withdrawal	65
Previous Parliamentary Committee considerations	65
The Agreement in operation	65
Possible developments	67
Committee view	68

APPENDIX 1	WITNESSES AT PUBLIC HEARINGS	69
APPENDIX 2	LIST OF SUBMISSIONS	75
APPENDIX 3	LIST OF EXHIBITS	77

COMMITTEE MEMBERS

Mr W L Taylor MP (LP, QLD) (Chairman)
Mr R B McClelland MP (ALP, NSW) (Deputy Chairman)
Senator E Abetz (LP, TAS)
Senator V W Bourne (DEM, NSW)
Senator H Coonan (LP, NSW)¹
Senator B Cooney (ALP, VIC)²
Senator S M Murphy (ALP, TAS)³
Senator W G O'Chee (NP, QLD)
Senator the Hon M Reynolds (ALP, QLD)⁴
Hon D G H Adams MP (ALP, TAS)
Mr K J Bartlett MP (LP, NSW)
Mr L D T Ferguson MP (ALP, NSW)
Mr G D Hardgrave MP (LP, QLD)
Ms S B Jeanes MP (LP, SA)⁵
Hon P J McGauran MP (NP, VIC)⁶
Mr A C Smith MP (LP, QLD)

Committee Secretary

Mr Peter Stephens

Inquiry Secretary

Mr Patrick Regan

Executive Assistant

Ms Jodie Williams

¹ Replaced Senator the Hon C Ellison (LP, WA) from 26 February 1997.

² Replaced Senator K Carr (ALP, VIC) from 4 December 1996.

³ Replaced Senator K Denman (ALP, TAS) from 12 December 1996.

⁴ Replaced Senator B J Neal (ALP, NSW) from 5 March 1998.

⁵ Replaced Mr C W Tuckey MP (LP, WA) from 24 September 1997.

⁶ Replaced the Hon W E Truss MP (NP, QLD) from 23 October 1997.

EXTRACT FROM RESOLUTION OF APPOINTMENT

The Joint Standing Committee on Treaties was formed in the 38th Parliament on 30 May 1996. The Committee's Resolution of Appointment allows it to inquire into and report upon:

- (a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- (b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- (c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.

FINDINGS

The Joint Standing Committee on Treaties finds that the following treaties should be ratified as proposed:

the 1996 Protocol to the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* (paragraph 2.66);

amendments made to the Schedule to the *International Convention for the Regulation of Whaling* in October 1997 (paragraph 2.166);

the *Agreement on Judicial Assistance in Civil and Commercial Matters and Cooperation in Arbitration* with the Kingdom of Thailand (paragraph 3.20);

amendments to Annexes I and II to the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* (paragraph 3.40);

the 1997 Protocol to amend the *Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* and the Protocol of 1984 (paragraph 3.61);

the *Treaty on Extradition between Australia and the Republic of Paraguay* (paragraph 3.77);

amendments to the *Agreement on Health Services with the Government of the Republic of Malta* (paragraph 3.95), and

the *Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville* (paragraph 3.133).

CHAPTER 1

CONDUCT OF THE INQUIRIES

Treaties tabled on 25 November 1997

1.1 On 25 November 1997, the following documents, including National Interest Analyses (NIAs), were tabled in both Houses of the Parliament:

- Protocol, done at London on 7 November 1996, to the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* of 29 December 1972, and
- Amendments, done at Monaco in October 1997, to the Schedule to the *International Convention for the Regulation of Whaling* of 2 December 1946.¹

1.2 The '15 sitting day' period for these treaties expired on Thursday, 12 March 1998.

1.3 Submissions and comments on these treaties were called for in an advertisement in a national newspaper, and a number of requests were received for copies of the NIAs and the texts. Several organisations forwarded submissions after giving evidence at the public hearings.²

1.4 A public hearing was held in Canberra on 1 December 1997, at which evidence was taken on both treaties from relevant Commonwealth departments and agencies, and from representatives of a number of non-government organisations (NGOs). Those witnesses who gave evidence are listed in Appendix 1.

1.5 A further public hearing was held in Sydney on 8 December 1997, at which evidence was taken from Mr Chris Puplick, the Chairman of the National Task Force on Whaling, and from representatives of other NGOs interested in these treaties. Those witnesses are also listed in Appendix 1.

1.6 Following that hearing, members visited the Australian National Maritime Museum, at Darling Harbour in Sydney, and inspected its exhibition on whales and whaling.

¹ Senate, *Hansard*, 25 November 1997, p. 9164; House of Representatives, *Hansard*, 25 November 1997, p. 10955.

² See *The Weekend Australian*, 29-30 November 1997, p. 17.

1.7 In the newspaper advertisement, submissions were called for by 30 January 1998, and those which were received are listed in Appendix 2. Additional material received in connection with our inquiry is listed in Appendix 3.

1.8 These treaties are considered in Chapter 2.

Treaties tabled on 3 March 1998

1.9 On 3 March 1998, the following documents together with NIAs were tabled in both Houses of the Parliament:

- *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, done at Paris on 17 December 1997.
- *Agreement on Judicial Assistance in Civil and Commercial Matters and Cooperation in Arbitration between Australia and the Kingdom of Thailand*, done at Canberra on 2 October 1997.
- Amendments (concerning phasing out sea disposal of industrial waste), done at London on 12 November 1993 under Resolution LC.49(16), to Annexes I and II to the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*, of 29 December 1972.
- [Second] Protocol, done at Canberra on 5 November 1997, to amend the *Agreement between Australia and the Government of Finland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* and [First] Protocol, of 12 September 1984.
- *Treaty on Extradition between Australia and the Republic of Paraguay*, done at Buenos Aires on 30 December 1997.

- Exchange of Letters, done at Canberra on 27 August 1997, constituting an Agreement to amend the *Agreement on Health Services between Australia and the Government of the Republic of Malta* of 6 July 1988.
- *Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville*, done at Port Moresby on 5 December 1997.³

1.10 The '15 sitting day' period for these treaties expired on Thursday, 2 April 1998.

1.11 On 19 February 1998, the Minister for Justice, Senator the Hon Amanda Vanstone, had referred the exposure draft of Australia's implementing legislation for the OECD Convention on Combating Bribery to us for consideration with the latter. Her letter stated that our consideration would be 'the focus of consultations on the legislation and the Convention'.

1.12 On 5 March 1998, officials from the Treasury and the Australian Taxation Office (ATO) briefed members on Double Taxation Agreements (DTAs) in connection with the amendments to the DTA with Finland.

1.13 On Friday 6 and Saturday 7 March 1998, the OECD Convention on Combating Bribery was advertised in national newspapers, calling for submissions by Wednesday, 25 March 1998. The other treaties tabled on 3 March 1998 were also advertised in a national newspaper on 7 March 1998, calling for submissions by Friday, 13 March 1998.⁴

1.14 The submissions which were received are listed in Appendix 2, and any additional material received in connection with our inquiry is listed in Appendix 3.

1.15 On Monday, 9 March 1998, a public hearing on these treaties was held, at which evidence was taken from relevant Commonwealth departments and agencies, and from one individual. Those witnesses who gave evidence are listed in Appendix 1.

³ Senate, *Hansard*, 3 March 1998, P161; House of Representatives, *Hansard*, 3 March 1998, PP139-140.

⁴ See *The Australian Financial Review*, 6 March 1998, (Review Section) p. 11 and *The Weekend Australian*, 7-8 March 1998, p. 39; *The Weekend Australian*, 7-8 March 1998, p. 11.

1.16 With the exception of the OECD Convention on Combating Bribery, the treaties tabled on 3 March 1998 are considered in Chapter 3.

1.17 The OECD Convention will be the subject of a separate inquiry and our report will include consideration of the draft of the implementing legislation. This is expected to be tabled by the end of the Budget Session in 1998.

CHAPTER 2

TREATIES TABLED ON 25 NOVEMBER 1997

1996 Protocol to the London Convention on Sea Dumping

The London Convention

2.1 The *International Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter*, known as the 'London Convention', was signed on 29 December 1972 in London, Mexico City, Moscow and Washington. It entered into force generally on 30 August 1975. It was signed for Australia, with a declaration regarding Article VII.1(c), on 10 October 1973. Australia's instrument of ratification was deposited on 21 August 1985, and it entered into force for this country on 20 September 1985.¹

2.2 This Convention was amended in 1978, 1980, 1989 and 1993. It has 77 Contracting Parties.²

2.3 Australia's obligations under the Convention are given effect under the *Environment Protection (Sea Dumping) Act 1981*. This Act operates from the low water mark and does not cover what are called State internal waters: closing bays, estuaries, etc. It applies to Australian territorial waters, our Exclusive Economic Zone (EEZ) and above the area of the Continental Shelf beyond the EEZ, not including areas adjacent to the Australian Antarctic Territory.³

Exclusions from the Convention

2.4 The Convention provides an international framework for the effective control of all sources of marine pollution by dumping of wastes or other matter. It does not apply to wastes resulting from ships' operations or to vessels which actively fish, as these are covered by the *International Convention for the*

¹ Article VII.1(c) deals with the application of measures to implement the Convention to 'all ... vessels and aircraft and fixed or floating platforms under its jurisdiction believed to be engaged in dumping.' Australia's declaration related to the rights of coastal states and, in particular, the right to protect the resources of its continental shelf. In this Report, for convenience, the London Convention will be called 'the Convention'. Similarly, 'waste' will include 'other matter'.

² *Australian Treaty List, Multilateral* (as at 31 December 1997), Department of Foreign Affairs and Trade, p. 421. Exhibit No 1, p. 2. Transcript, 1 December 1997, p. 3. The list of Contracting Parties is at Exhibit No 5.

³ Transcript, 1 December 1997, pp. 3, 20, 21-22. For convenience, the term 'the Act' will be used in this Report.

Prevention of Pollution from Ships and its Protocol which together are known as MARPOL 73/78. Nor does it cover land-based marine pollution, or waste delivered to the sea at the end of a pipe. The latter issues are addressed through the global plan of action for the protection of the marine environment from land-based activities.⁴

The Protocol and its provisions

2.5 The 1996 Protocol to the Convention which is the subject of this consideration seeks to make a major change in the approach to the dumping of materials in the marine environment. It updates that Convention to take account of developments in international environmental law and the Law of the Sea, including the entry into force of Part XI of the *United Nations' Convention on the Law of the Sea* (UNCLOS) in 1994.⁵

2.6 Australia was among 42 Contracting Parties which adopted the Protocol, on 7 November 1996, at a special meeting of the Parties to the Convention. The Protocol was opened for signature from 1 April 1997 to 31 March 1998, after which States may accede to it. Australia was invited to become a Contracting Party. For States which become Parties and which are also Parties to the Convention, the Protocol will supersede that Convention (Article 23 of the Protocol refers).⁶

2.7 Under Article 25.1, the Protocol will enter into force on the 30th day following the date on which:

- at least 26 States have expressed consent to be bound by it, and
- at least 15 Parties to the Convention are included in the 26 States referred to above.

2.8 Given these provisions, it is not likely to come into force 'for two or three years'. Australia has agreed to sign the Protocol subject to ratification but, until

⁴ *ibid.* Australia signed the 1973 MARPOL Convention, which did not enter into force, and has signed and ratified the 1978 Protocol; see *Australian Treaty List, Multilateral* (as at 31 December 1997), pp. 425 and 442 respectively. See Transcripts: 1 December 1997, pp. 10-11; 8 December 1997, pp. 81-82, and Submissions, pp. 5-6, for some discussion of MARPOL.

⁵ Part XI of UNCLOS was signed in New York on 28 July 1994, and came into force provisionally on 16 November 1994 and definitively on 28 July 1996. Australia signed on 29 July 1994, and the instrument of its ratification was deposited on 5 October 1994; see *Australian Treaty List, Multilateral* (as at 31 December 1997), p. 485. The Protocol also takes account of the Rio Declaration on Environment and Development, and of Agenda 21; see Transcript, 1 December 1997, p. 4.

⁶ Transcript, 1 December 1997, pp. 3, 16.

legislation amending the Act has been passed and ratification has occurred, the Convention remains in force.⁷

2.9 Contracting Parties to the Protocol are obliged, individually and collectively, to protect and preserve the marine environment from all sources of pollution and to take effective measures according to their various capabilities to prevent, reduce and eliminate pollution caused by dumping or incineration at sea of wastes or other matter (Article 2).

2.10 The Protocol alters the existing regime regulating the dumping of wastes and other matter from one which states what may not be dumped to one which defines what is permitted to be dumped. This is the key obligation in the Protocol. Its provisions are more rigorous than those of the Convention, in that Article 4.1 obliges States to prohibit the dumping of any material which is not listed in Annex 1 to the Protocol. It will further reduce marine pollution by limiting the types of material to be dumped, by permit under Article 4.2 and Clause 1 of Annex 1, to seven items:

- dredged material;
- sewage sludge;
- fish waste, or material resulting from industrial fish processing operations;
- vessels and platforms or other man-made structures at sea;
- inert, inorganic geological material;
- organic material of natural origin, and
- bulky items primarily comprising iron, steel, concrete and similarly unarmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.⁸

2.11 Port authorities and other applicants for permits to dump the above items will be required to undertake waste prevention audits and to formulate alternative strategies. They will also need to collect and analyse information not previously required under the Convention. This is because of a world-wide

⁷ *ibid*, pp. 5, 10; see Submissions, p. 2, where it stated that entry into force under the provisions of Article 25.1 may not occur 'for 3-5 years'.

⁸ *ibid*, pp. 3-4; Submissions, p. 10.

movement to change from purely chemical screening of wastes to testing also for the effects of dumping on marine biota and ecological processes, where warranted. Australia will be obliged to ensure compliance with guidance and waste assessment, and to develop an action list for the screening of candidate wastes as required by Article 4.1.2 and Clause 9 of Annex 2 to the Protocol.⁹

2.12 The Protocol seeks to reduce the amount of and contamination in material dumped at sea. It incorporates the precautionary approach (Article 3.1) and promotes the 'polluter pays' concept (Article 3.2). It also prohibits incineration of waste at sea (Article 5), and the export of waste or other matter to other countries for dumping or incineration at sea (Article 6). These aspects of the Protocol reflect present practice in Australia.¹⁰

2.13 Article 7 imposes a discretionary obligation on Parties to apply the Protocol or other effective measures to control dumping in marine internal waters, and to report to the International Maritime Organisation (IMO). Article 8 does not significantly change the Convention's provisions for emergency dumping and incineration at sea. Article 9 deals with the issue of permits and reporting on their issue to the IMO.

2.14 Under Article 10.3, Contracting Parties agree to cooperate in the development of procedures for the effective application of the Protocol in areas beyond the jurisdiction of any State. Article 11 provides that, not later than two years after its entry into force, the meeting of the Parties shall establish procedures and mechanisms needed to assess and promote compliance with this Protocol.¹¹

2.15 Articles 12 and 13 deal with regional cooperation and technical cooperation and assistance respectively and Article 14 with scientific and technical research. In accordance with international law regarding state responsibility for environmental damage, in Article 15 Parties undertake to develop procedures for liability arising from dumping or incineration of wastes at sea.

2.16 Article 16 relates to the settlement of disputes, Article 17 to cooperation with international organisations and Article 18 to meetings of the Contracting Parties. Article 19 sets out the duties of the IMO and Article 20 states that the Annexes to the Protocol are integral to it.

⁹ *ibid*, pp. 4, 5.

¹⁰ *ibid*, pp. 3, 4, 17, 19.

¹¹ See paragraphs 2.30 to 2.32 below for the guidance to be provided by the IMO on the seven items listed in Clause 1 of Annex 1.

2.17 Articles 21 and 22 deal with amending the text of the Protocol and of its Annexes respectively. Transitional provisions for those States which were not Parties to the Convention have been included in Article 26. Under Article 27, any Party may withdraw from the Protocol two years after it enters into force for that Party. Withdrawal will take effect at least one year after receipt of an instrument of withdrawal by the depositary (under Article 28), the Secretary-General of the IMO. Article 29 specifies the authentic languages for the Protocol.

2.18 Annex 1, in addition to listing in Clause 1 the wastes which may be dumped, sets out general provisions for dumping in Clause 2. Clause 3 deals with the dumping of radioactive material.

2.19 Annex 2 sets out the factors to be used in the assessment of waste or other matter which may be considered for dumping.

2.20 Annex 3 sets out the arbitration procedures under the provisions of Article 16 of the Protocol.

2.21 The Protocol does not make provision for the negotiation of future protocols. There are no provisions for reservations to the text.

Implementation and costs

2.22 Before Australia can ratify the Protocol, amendments will be needed to the Act, and those amendments will enter into force from the time of ratification. It is planned to introduce the amending legislation during the current sittings of the Parliament.¹²

2.23 The costs of administering the amended Act are expected to increase, but it is not possible to estimate that increase which will be met through the Environment Portfolio's budget. Some preliminary studies have been commissioned to provide an estimate of the additional cost but, in the absence of the new procedures which will be required, the figures will remain conjectural.¹³

2.24 Section 40 of the Act provides for regulations to prescribe fees for permits. The current cost of an application for a general permit to dump under the Convention is \$A2500, and \$A5000 for a special permit, depending on the

¹² Transcript, 1 December 1997, pp. 3, 16; Submissions, p. 3. The Act was to have been amended in an overall review of the Commonwealth's environmental protection legislation, but it will now be considered separately.

¹³ *ibid*, p. 19.

basis of the application. Long-term permits require a structured and rigorous monitoring program and are documents which include a great amount of detail. The Protocol allows for only one permit, and fees and penalties will need to be reviewed for the new provisions. Fees have not been adjusted since 1984 when the Act came into force and they are likely to increase. Applicants will also face increased costs to carry out waste audits.¹⁴

Consultation

2.25 All State and Territory Governments were consulted about the development and adoption of the Protocol, and no objections were received about signing and ratifying it. The Queensland Government raised the issue of construction of artificial reefs.¹⁵

2.26 Information was provided also to a range of relevant Australian industry bodies, such as port authorities, permit holders and the oil industry. Greenpeace International and some international industry bodies were observers 'at all relevant' meetings of the Convention which discussed the text of the Protocol. No representations were received against its proposed signature and ratification by Australia.¹⁶

2.27 In addition to sending the Protocol to 'a long list of people', open consultations were also held about it in Sydney, Townsville and Perth. Measures are to be developed to inform remote communities about its provisions.¹⁷

Involvement of States and Territories

2.28 Under the provisions of Clause 1.7 of Annex A to the Protocol, States and Territories will continue to manage their own marine internal waters, and their role in this matter will not be altered. Although some States and Territories have prepared legislation relating to sea dumping, no relevant legislation is currently being implemented. Legislation in Queensland and South Australia has not been proclaimed and Western Australia's has been proclaimed but not

¹⁴ *ibid*, pp. 22, 4, 7, 8, 9. Table 1 in Exhibit No 1, at p. 9, sets out the type and number of variations to permits which have been issued. See Exhibit No 2 for an example of an application for a permit, and Exhibits Nos 3 and 4 for examples of existing general permits.

¹⁵ Transcript, 1 December 1997, pp. 4-5.

¹⁶ *ibid*, p. 5.

¹⁷ *ibid*, p. 13.

implemented. While Tasmanian legislation mirrors the Commonwealth's, the 1988 Memorandum of Understanding (MOU) has been revoked.¹⁸

2.29 It is possible that, following amendment of the Act, arrangements may be made to share the administration of areas outside the territorial sea with the States and Territories, in line with current arrangements under the Offshore Constitutional Settlement.¹⁹

Guidance on items which can be dumped

2.30 Article 11 provides that, not later than two years after entry into force, the Contracting Parties shall establish 'those procedures and mechanisms necessary to assess and promote compliance' with this Protocol.

2.31 Specific guidance on each of the seven items listed in Clause 1 of Annex 1 is being produced by the IMO. While the definitions of these items will not appear in the Protocol, they will be elaborated by that guidance. Australia has developed draft guidance on bulky items, and it has also been developed on inert geological items and fish waste. Work is being done on the other four items for presentation to the scientific group meeting in April 1998, prior to discussion at the consultative meeting. It is expected that it will take 18 months to two years for this guidance to appear.²⁰

2.32 At the same time as work is being done to provide this guidance, procedures are also being developed for the assessment of compliance with various provisions of the Protocol.²¹

Dumping from Australia's islands

2.33 Remote islands such as Cocos (Keeling) and Christmas Islands, with no practical access to other disposal options such as landfills, will be able to continue to dump bulky items at sea. Because islands off the Great Barrier Reef have other options for dumping such waste, further examination will be required. Even in the case of the Cocos (Keeling) Islands, there is a ministerial

¹⁸ Transcript, 1 December 1997, p. 4; Submissions, p. 3.

¹⁹ Submissions, p. 3.

²⁰ Transcript, 1 December 1997, p. 16; Submissions, pp. 8, 6. Thus, there is as yet no definition of 'sewage sludge' although the definition of a London Convention Scientific Group paper can be used. The IMO has also provided some guidance on the subject. See Transcript, 1 December 1997, pp. 16-17; Submissions, p. 6.

²¹ Transcript, 1 December 1997, p. 18.

'preference' for some goods not to be dumped at sea and for ways of returning waste to the mainland or introducing different processing methods.²²

2.34 Considerations such as remoteness from the Australian mainland and the cost of removing waste will be taken into account in determining the means of dealing with waste from the large number of Australia's various islands. Lord Howe Island's World Heritage status would be relevant: whether the way of dealing with waste had the potential to detract from the World Heritage values for which it was nominated.²³

The Protocol and the Region

2.35 A number of South Pacific nations, and nations such as New Zealand, France and the United States of America with an interest in the region, are Contracting Parties to the Convention. Subject to their domestic procedures, they could sign and ratify the Protocol.²⁴

2.36 Australia will be hosting a Regional Workshop on Ship-Based Marine Pollution in April 1998, and this will include a session on the Protocol and sea dumping. Representatives from South Pacific countries and from the South

²² Transcript, 1 December 1997, pp. 4, 8, 12-13. Exhibit No 1, p. 8, gives details of sea dumping off Australia's external territories. During negotiations, Australia had to fight 'very hard' to keep bulky items in the list of items which could be dumped under the Protocol. If they could not be included, this country could not have signed the document: *ibid*, p. 10. Dumping of items such as concrete is considered at paragraphs 2.43 and 2.44 below.

²³ Transcript, 1 December 1997, pp. 12-13.

²⁴ The list of Parties to the Convention is at Exhibit No 5. Submissions, pp. 3-4.

Pacific Regional Environment Program will participate in this Workshop. The latter body may assist countries of the South Pacific in the process of becoming Parties to the Protocol.²⁵

Provisions for the ADF

2.37 The same provisions apply for the Australian Defence Force (ADF) in the Protocol (Article 10.4) as in the Convention (Article VII.4): they do not apply to vessels and aircraft entitled to sovereign immunity under international law.²⁶

2.38 Under Section 7 of the Act, it does not apply to a vessel, aircraft or platform belonging to the ADF or the military forces of a foreign country. The ADF does, however, comply with the Act under an exchange of Ministerial letters. It has been agreed that the ADF will not be exempt from the provisions of the Protocol, except in relation to the entry of a vessel into combat, or an emergency short of war, eg. involvement in a rescue or removal of people from crisis situations.²⁷

Construction of artificial reefs

2.39 During the consultation with State and Territory Governments about the Protocol, Queensland's Environment Minister asked whether it would prohibit the construction of artificial reefs using bulky items. Construction of such reefs is not considered to be dumping, provided it does not contravene the objectives of the Protocol. For example, there is a view against the use of car tyres to form such reefs.²⁸

2.40 Pollution is defined in Article 1.10 of the Protocol as:

the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

2.41 The definition of what is an artificial reef and consistency with the Protocol's provisions are to be investigated further, with the IMO to be the

²⁵ Submissions, p. 4.

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ Transcript, 1 December 1997, pp. 5, 14, 11.

arbiter on that consistency. Artificial reefs can be constructed from materials which do not pass foreign material into the sea. Environment Australia would not look favourably on materials which might be used for such reefs if these could be identified as putting pollutants into the sea. Most existing artificial reefs are in State waters and, although now regulated by the Commonwealth's legislation, some States could probably do so using their own legislation.²⁹

2.42 In dealing with such matters, the amendments to the Act will need to take account of the Protocol's definition in Article 1.4.2 of what is not dumping:

placement of matter for a purpose other than the mere disposal thereof, provided such a placement is not contrary to the aims of this Protocol.³⁰

Dumping of concrete

2.43 Article 4.1 of the Protocol prohibits the dumping of any wastes or other matter with the exception of those items listed in Annex 1. Article 4.2 states that the dumping of wastes and other matter listed in that Annex requires a permit. Clause 1.7 of the Annex includes concrete as one of the 'bulky items' and 'similarly unarmful materials' which may be considered for dumping from small islands with isolated communities which have no practicable access to other options, such as landfills, for disposal of their waste.³¹

2.44 In the past, concrete, and other items such as car tyres, munitions and industrial waste, would have been licensed for sea dumping. Under the Protocol, except for remote islands with disposal problems, dumping such items would not be permitted.³²

²⁹ Transcript, 1 December 1997, pp. 13-15. See paragraphs 2.30 to 2.32 above for the guidance to be provided on a range of matters in the Protocol.

³⁰ Transcript, 1 December 1997, pp. 22-23. See also Article 1.4.3 for more information on what is not dumping, and Article 1.4.1 for the definition of dumping.

³¹ Transcript, 1 December 1997, pp. 8, 18.

³² Submissions, pp. 4-5; Transcript, 1 December 1997, p. 7. See also p. 11 for a reference to the dumping of munitions in the past, and paragraphs 2.33 and 2.34 above for consideration of dumping from Australia's islands.

Views of interested organisations

2.45 The Great Barrier Reef Marine Park Authority supported the Protocol, stating it represented 'a significant improvement' in the management of marine pollution. It commended the precautionary approach in the document, so that, even if conclusive evidence was not available, preventative measures could be taken. The Authority was also encouraged that proponents would be obliged to assess the potential effects of waste management options and to monitor them, if required.³³

2.46 Representatives of a group of Non-Government Organisations (NGOs) welcomed Australia's intention to sign the Protocol and recommended ratification, stating that these actions should occur promptly.³⁴

2.47 They supported the adoption of the precautionary principle and the 'polluter pays' principle entrenched into the Protocol. They drew attention to human involvement with the marine environment, and to the Government's New Oceans Policy which, in terms of sea dumping, they believed should include:

- adoption of the 'polluter pays' principle;
- clean production principles;
- minimisation of waste;
- encouragement of recycling and reuse of resources wherever possible;
- support for zero discharge, or a target of zero discharges, and
- the use of targets to measure progress.³⁵

2.48 They welcomed the cessation of the dumping at sea of industrial waste, asserting that this meant Australia had stopped 'a fairly antiquated practice' and had 'finally caught up with the rest of the world'.³⁶

³³ Submissions, p. 21.

³⁴ Transcript, 1 December 1997, pp. 24, 28.

³⁵ *ibid*, pp. 24-25.

³⁶ *ibid*, p. 25. See also pp. 9 and 15 for references to the cessation of dumping by Pasminco.

2.49 In relation to dumping off the Christmas and Cocos (Keeling) Islands, these NGOs recognised the existence of real waste disposal problems and acknowledged the use of waste minimisation strategies on those islands. The NGOs noted that 'bulky items' had not been clearly defined in Australia's original proposal, and that there was therefore the potential for a number of wastes to be dumped off these islands. An amendment to the original proposal was accepted, so that 'bulky items' in Clause 1.7 of Annex A now refers 'primarily' to iron, steel, concrete and similar materials.³⁷

2.50 Clause 3 of Annex 1 refers to a 25-yearly 'scientific study of all radioactive wastes and other radioactive matter other than high level wastes or matter' to review the prohibition on dumping such substances. The NGOs believed that under no circumstances should the prohibition on dumping of radioactive waste at sea be undermined.³⁸

2.51 The Protocol was seen as evolutionary, and the NGOs believed there should not be a delay in signing it while definitions of the items which could be dumped were agreed.³⁹

2.52 The World Wide Fund for Nature Australia (WWF) believed that the Commonwealth should vigorously pursue the States and Territories for agreement and cooperation on the implementation of the Protocol. In particular, that organisation believed that, within the three mile zone in enclosed bay areas, States and Territories needed to be working in accordance with both the Protocol and the New Oceans Policy.⁴⁰

2.53 The Australian Conservation Foundation (ACF) drew attention to the importance of developing legislation which recognised the various inter-connections of seas, coasts and the marine environment at national and international levels. It was therefore important that the national and the State/Territory regimes on sea dumping were consistent. That organisation also believed that ecological sustainability was an important part of Australia's national interest and should be included in the National Interest Analyses (NIAs) and other material prepared for use in the treaty-making process.⁴¹

³⁷ Transcript, 1 December 1997, p. 26. See Footnote 22 above for the Australian position during negotiation of the Protocol.

³⁸ Transcript, 1 December 1997, pp. 26-27.

³⁹ *ibid*, pp. 28-29.

⁴⁰ *ibid*, p. 29.

⁴¹ *ibid*, p. 30.

Committee views

2.54 As 1998 has been designated as the International Year of the Oceans, our consideration of this Protocol is particularly appropriate. If the stated outcome for Australia's application of the Protocol is achieved, less waste and less contaminated waste is dumped at sea, biodiversity and the marine environment will be better protected. Achieving this outcome is itself dependent on careful implementation of the provisions of the Protocol.

2.55 This document does not represent a fundamental change from the Convention so much as a change of emphasis and the updating of practices as a result of material which is now available on the marine environment, but was not in the period when the latter was formulated. Additional legal and administrative measures will be required for the Protocol to be effective in Australia. As these measures are introduced, Commonwealth authorities should ensure State and Territory administrations are given the opportunity to adhere to the provisions of the Protocol.

2.56 Thus, States and Territories should be encouraged to pass appropriate legislation, or proclaim and implement existing measures, to assist in making the Protocol effective in this country. The need to re-activate the MOU with Tasmania should be examined with a view to establishing whether a revised version would serve a useful purpose.

2.57 In our 12th Report, dealing with the Australia-Indonesia Maritime Delimitation Treaty, we found that the consultation process about that agreement with the residents of Christmas Island was inadequate. We also re-emphasised the importance of involving all Australians, no matter how remote their locations, in consultations as part of the treaty-making process. Measures need to be taken, therefore, to inform remote and island communities in a thorough and timely fashion about the provisions of this Protocol, and the implications it may have for them.⁴²

2.58 Disposal of waste from Australia's various islands is a serious matter because they have few easy and cheap options. As part of the development of the compliance procedures needed to implement this Protocol, it will be important to involve these communities in discussions about its likely impact on present practices and any changes which will be needed. It is a matter of

⁴² *Australia-Indonesia Maritime Delimitation Treaty: 12th Report*, November 1997, paragraph 7.20, p. 66.

concern that, apart from a visit to Townsville, no evidence was produced of any consultation with any of the island communities before this Protocol was tabled.

2.59 It will be at least two years before the Protocol enters into force for this country. Amendment of the Act will occur shortly, if the current timetable is achieved, but there are a number of other things which need to be done before the Protocol enters into force.

2.60 We see consultation with interested groups and organisations as vital in the treaty-making process, especially where they have not already been involved in the process and where a treaty will have an impact on them.

2.61 A detailed, formal program of consultation with Australia's remote and island communities which deals with all aspects of the implementation of the Protocol is required. It is in the nation's interest, as a good international citizen and as a Party to the Protocol, that this matter be brought to the attention of all of its citizens who might be affected by its provisions. Only such a program of consultation can ensure that this will occur.

2.62 In the time available, Australia has the opportunity to devise its own compliance guidelines. It can continue its contribution to the development of specific guidance on the items which can be dumped under the provisions of Annex 1, as part of the more general entry into force. It can also encourage regional and other countries to sign the Protocol, and may be able to provide assistance in legislative matters or in the more directly practical area of waste disposal.

2.63 The definition of such things as artificial reefs is required. This is another area where the cooperation of the States and Territories will be required, both for conformity with the Protocol and for consistency of approach nationally.

2.64 The ACF's suggestion that NIAs should include reference to the environmental impact of proposed treaty actions is worthy of further consideration.

2.65 We have not made any recommendations in our consideration of this important Protocol. It would be a matter of regret if the suggestions we have made in our consideration were to be ignored.

2.66 The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the 1996 Protocol to the

***Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* when all the necessary legislative and administrative measures have been taken.**

Amendments to the Schedule to the International Convention for the Regulation of Whaling

The Commission and the Convention

2.67 The International Whaling Commission (IWC) was set up under the *International Convention for the Regulation of Whaling* (ICRW) which was signed in Washington on 2 December 1946. The purpose of the Convention is 'to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry'.⁴³

2.68 The ICRW is a multilateral treaty which seeks to regulate the conservation and utilisation of whale stocks. Although negotiated when its focus was to ensure international controls over the post-Second World War development of the commercial whaling industry, the Convention and the IWC have proved to be an effective vehicle for some major conservation measures. These included the 1982 decision on a moratorium on commercial whaling and the establishment of the Southern Ocean Sanctuary for whales in 1994.

2.69 Australia has been a strong advocate of these measures and considers the IWC as the most appropriate forum for the pursuit of improved international efforts to conserve whales.

2.70 The IWC:

- encourages, recommends, and if necessary, organises studies and investigations into whales and whaling;
- collects and analyses statistical information concerning the condition and trend of whale stocks and the effects on them of whaling;

⁴³ Preamble to the ICRW.

- studies, appraises and disseminates information about methods of maintaining and increasing whale populations.⁴⁴

2.71 It keeps under review and revises as necessary the measures laid down in the Schedule to the Convention which governs whaling throughout the world. These measures provide for such things as:

- the complete protection of certain species;
- the designation of specified areas as whale sanctuaries;
- the setting of limits on the numbers and size of whales which may be taken;
- the prescription of open and closed seasons and areas for whaling;
- the prohibition of the capture of suckling calves and female whales accompanied by calves, and
- the compilation of catch reports and other statistical and biological records.⁴⁵

2.72 It also promotes studies into matters such as the 'humaneness' of the methods of killing whales.⁴⁶

Australia and the ICRW

2.73 Australia signed the ICRW on 2 December 1946, and its instrument of ratification was deposited on 1 December 1947. This Convention entered into force generally on 10 November 1948, and its Schedule has been amended each year since entry into force.⁴⁷

49th Annual Meeting of the IWC

2.74 On 18 November 1997, the Minister for the Environment advised the amendments which had been agreed at the 49th Annual Meeting of the IWC (IWC 49) which was held at Monaco from 20 to 24 October 1997. Under

⁴⁴ ICRW, Article IV(1)(a) to (c).

⁴⁵ Exhibit No 5, p. 1.

⁴⁶ *ibid*, p. 2.

⁴⁷ See *Australian Treaty List, Multilateral* (as at 31 December 1997), Department of Foreign Affairs and Trade, p. 342.

Article V(3) of the Convention, for nations which do not express any reservations, amendments to the Schedule to the ICRW automatically come into force 90 days after the date of notification by the Secretary to the IWC. If an objection is lodged, there is a further period of 90 days during which any other government can lodge an objection. Thereafter, an amendment becomes binding on all Contracting Governments, other than those which have lodged objections.

2.75 For the amendments from IWC 49, the date of this notification was 5 November 1997 and the 90 day period elapsed on 3 February 1998. This was some time before the expiration of the 15 sitting day period, on 12 March 1998, from the tabling of these amendments during which we are normally obliged by our Resolution of Appointment to report to the Parliament.

Previous Committee considerations

2.76 In a 1985 report on the natural resources of Australia's Antarctic Territory, the Senate Standing Committee on National Resources dealt briefly with whales, drawing attention to declining stocks and to the moratorium which was to come into effect in Antarctic waters after the 1987/88 season.⁴⁸

2.77 We considered the amendments from IWC 48 in June 1996 in our 2nd Report.⁴⁹

2.78 Prior to the tabling of that Report, we had suggested to the Minister for the Environment a means of dealing with amendments to the Schedule where there could not be compliance with the 15 sitting day rule under which we operate. This process was followed in the case of the amendments from IWC 49.

⁴⁸ Senate Standing Committee on National Resources, *The Natural Resources of the Australian Antarctic Territory*, December 1985, pp. 46-47.

⁴⁹ See *Treaties Tabled on 10 & 11 September 1996: Second Report*, October 1996, pp. 1-3. Formal notification by its Secretariat of the amendments from IWC 48 was dated 4 July 1996 and advised to us by the Minister for the Environment on 19 August 1996. These amendments were tabled in the Parliament on 10 September 1996 and, while the 90 day default period lapsed on 2 October 1996, the 15 sitting day period expired on 28 October 1996. Our Report was tabled on 14 October 1996.

Amendments from IWC 49

2.79 The treaty action arising from IWC 49 involves amendments to paragraph 13(b)(1), (2) and (3) with the associated changes to Table 1 of the Schedule to the IWC, and the substitution of dates in paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule to maintain the current moratorium on commercial whaling.

2.80 The amendment to paragraph 13(b)(1) of the Schedule related to the taking of bowhead whales from the Bering-Chukchi-Beaufort stock by the Chukotka people of the Russian Federation (RF) and Alaskan Eskimos. It provided that no more than 280 whales can be taken for the five years 1998 to 2002 (inclusive), with an average of 67 strikes per year. Any unused portion of a quota from a year, including 15 unused strikes from 1995 to 1997, can be carried forward: provided no more than 15 strikes are added to the quota for any year.⁵⁰

2.81 The United States of America (USA) and the RF agreed bilaterally that the Chukotka people may take up to five whales per year, with the balance to be taken by the Alaskan Eskimos.⁵¹

2.82 The amendments to paragraph 13(b)(2) and Table 1 reduced the quota for the taking of gray whales from the Eastern stock in the North Pacific by the Chukotka peoples and the Makah Indians of the USA 'whose traditional aboriginal subsistence and cultural needs have been recognised'. For the five years 1998 to 2002 (inclusive), only 620 gray whales can be taken and no more than 140 in each of those years. It prohibited also the taking of calves or any gray whale accompanied by a calf.⁵²

2.83 The amendment to paragraph 13(b)(3) dealt with the taking by aborigines of minke whales from the West Greenland and Central stocks and fin whales from West Greenland stock. In brief, it was agreed that:

⁵⁰ Transcript, 1 December 1997, p. 31. The quota for 1996 was 67 strikes.

⁵¹ Transcript, 1 December 1997, p. 31.

⁵² *ibid*, pp. 31-32. Paragraphs 14 and 17 of the Schedule already forbade the taking or killing of some species of 'suckling calves or female whales accompanied by calves'; see Transcript, 1 December 1997, p. 40. See paragraphs 2.82 and 2.129 below for further mentions of this amendment.

- only twelve minke whales from the Central stock can be taken for each of the years 1998 to 2002 (inclusive), with the carry forward to the quota for subsequent years of no more than three from an unused portion of a quota to the quota for any one year, and
- 175 minke whales per year could be taken from West Greenland stock, as opposed to 165 per year for the past three years, could be taken for each of the years 1998 to 2002 (inclusive) with the carry forward to the quota for subsequent years of no more than 15 from an unused portion of a quota to the quota for any one year.⁵³

2.84 Amendments to paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule substituted future years on whale catch limits, all of which are set at zero for commercial catches. These were routine changes which maintain both the moratorium and the currency of the Schedule.⁵⁴

Obligations, costs and future protocols

2.85 These amendments to the Schedule will not add to Australia's existing obligations as a Contracting Party to the Convention, nor are they expected to impose any additional costs in meeting these obligations.

2.86 The Schedule is an integral part of the ICRW and is amended from time to time in accordance with the provisions of Article V. There are no current proposals for the development of additional protocols to the ICRW.

Consultation and implementation

2.87 Prior to each Commission meeting, Environment Australia convenes a meeting of non-government organisations (NGOs) and other Commonwealth Departments to canvas views on IWC issues. These views are taken into account in developing an Australian position on the proposals to be considered at IWC meetings. After each such meeting, a report by the national delegation is sent to NGOs, departments, individuals and relevant institutions.⁵⁵

⁵³ Transcript, 1 December 1997, p. 32.

⁵⁴ *ibid.*, p. 31.

⁵⁵ See Exhibit No 13 for the Australian delegation's report on the 49th Annual Meeting.

2.88 Representatives of two NGOs, Project Jonah and Whales Alive, and Mr Chris Puplick, Chairman of the National Task Force on Whaling, were members of the Australian delegation to IWC 49.⁵⁶

2.89 Because amendments relating to catches for aboriginal subsistence are for whale populations which do not occur in Australian waters, no action is required. The *Whale Protection Act 1980* prohibits the killing of whales, and provides for the preservation, conservation and protection of whales and other cetaceans in Australian waters, including to the outer limits of the Exclusive Economic Zone (EEZ).

Withdrawal

2.90 Under the provisions of Article XI of the Convention, Australia could withdraw from the ICRW by giving notice to the Depositary Government, the USA, on or before 1 January of any year, whereby withdrawal would become effective on 30 June of the same year.

Australia's position on the amendments

2.91 The National Interest Analysis (NIA) for this treaty action states that Australia does not propose to lodge objections to these amendments because:

- to do so would be inconsistent with a long-standing opposition to commercial whaling;
- its policy on aboriginal subsistence whaling recognises the need for some communities to have continued access to whaling for demonstrated cultural and dietary needs;
- current legislation prohibits whaling in waters under Australian jurisdiction, and the amendments to the Schedule therefore have no direct effect, and
- the amendments relating to the aboriginal subsistence catch are for whale populations which do not occur in Australian waters.

Other issues raised in connection with the amendments

⁵⁶ Exhibit No 1. See paragraphs 2.110 to 2.122 below for some consideration of *A Universal Metaphor: Australia's Opposition to Commercial Whaling - Report of the National Task Force on Whaling*, May 1997, and the Minister's response.

2.92 IWC 49 raised a number of other issues, including:

- most importantly, the revised management strategy (RMS);
- the future of the IWC;
- the positions of Japan and Norway in the IWC;
- proposals put to IWC 49 by Ireland, and
- the link between the ICRW and other international conventions.

2.93 **The RMS.** The RMS is a set of protocols around a scientific computer-based model which evaluates whale population levels, and would be used to set quotas for whaling.⁵⁷

2.94 The retiring Australian Commissioner to the IWC, Dr Bridgewater, stated that the key issue at IWC 49 was the RMS which had caused greater differences within that body than any other matter. The majority of members at IWC 49 was 'absolutely solid' in maintaining the moratorium against commercial whaling. He said that it has been obvious, however, over the past few years that rather more countries were interested in advancing the RMS. While Australia was involved in these discussions, it has made its position clear that they would potentially advance the cause of whaling.⁵⁸

2.95 One of the things that the RMS had revealed was that, although most whale stocks were showing some signs of recovery, with the exception of the minke, numbers were still at low and vulnerable levels. There were still concerns about the long-term survival of some species at their current numbers.⁵⁹

2.96 In the past, Australia was involved in discussions about the RMS, but had now made its position clear: it believed that those discussions potentially advanced the cause of whaling. A number of European countries were more interested in completing the RMS. Whaling countries such as Japan and Norway were demanding its completion as soon as possible because it would enable them to continue the whaling they have been undertaking with a greater degree of legitimacy.⁶⁰

⁵⁷ Transcript, 1 December 1997, p. 33.

⁵⁸ Transcript, 1 December 1997, p. 33. Dr Bridgewater was also Chairman of the IWC for three years from 1995.

⁵⁹ Transcripts: 1 December 1997, p. 40, 8 December 1997, pp. 58, 72-73. The figures discussed by the ICRW's Scientific Committee at IWC 49 are at Exhibit No 4.

⁶⁰ Transcript, 1 December 1997, p. 33.

2.97 **The future of the IWC.** Dr Bridgewater said that there were two scenarios for the future of the IWC:

- unless the whaling nations are somehow given the right to whale they will leave it, so that it would then consist of countries opposed to whaling, or
- while discussions about the RMS would continue, and an RMS will be completed, it will not lead to the ending of the moratorium.⁶¹

2.98 Because the IWC was specifically mentioned in Agenda 21 as the body concerned with the management of cetaceans, it would be difficult for ex-members to set up some other international agreement to give credibility to their position. In practice, Dr Bridgewater believed it would be 'difficult, if not impossible', for the whaling nations to leave the IWC.⁶²

2.99 If an RMS were completed, the whaling and other interested nations would have a scheme which could be used, but one which a majority of the IWC was not in favour of using. He saw, therefore, the Commission surviving into the 21st Century, with the need then for an assessment of its direction.⁶³

2.100 **Japan and Norway in the IWC.** Japan is a member of the IWC and issues permits under Article VIII of the ICRW for 'scientific' whaling. This provision was described as 'quirky', and it was suggested that the Article was never intended to cover size of the current Japanese takes. There are critical motions at each meeting of the IWC about its practices. Norway lodged an objection, which remains in force, to the amendment to paragraph 10(e) of the Schedule to the ICRW which established zero catch limits for commercial whaling. Technically, it is therefore whaling legally, but it 'does suffer odium' because its actions are regarded as otherwise.⁶⁴

2.101 Norway's attitude seems to contrast with what are otherwise 'green' views on a range of matters. Whaling seems to have become a matter of national pride, which contrasts with the strongly anti-whaling stance of the European Community (EU) and its individual countries. Norway has abandoned any pretence of 'scientific' whaling and appears to believe that it operates on an

⁶¹ *ibid*, pp. 33-34.

⁶² *ibid*, p. 34. See Exhibit No 15 for a statement of this position, and Exhibit No 2 for a discussion of the IWC's future.

⁶³ Transcript, 1 December 1997, p. 34.

⁶⁴ Transcripts: 1 December 1997, pp. 34, 35; 8 December 1997, p. 52. The former Union of Soviet Socialist Republics also lodged an objection to paragraph 10(e) of the Schedule to the ICRW, and it remains in force for the Russian Federation; see Transcript, 1 December 1997, p. 36.

estimate of population which, under its annual take, meant there was no issue of stock conservation. Should it seek to enter the EU, it was suggested that a 'significant revision' of Norway's fisheries management program would be required.⁶⁵

2.102 Ireland's proposals to IWC 49. The Irish Government has become increasingly concerned about the ability of the IWC to reach a consensus on fundamental questions about the RMS and other issues. These could lead to the breakup of the IWC, with detrimental effects on the conservation of whales. In its Opening Statement, Ireland drew attention to the fact that, despite the moratorium, the IWC does not control or regulate all whaling in the world. This takes place in accordance with the Convention, through an objection to the moratorium, or under Article VII. Such whaling, Ireland said, has increased from 383 whales in 1992 to 1043 in 1997 and this trend is a cause for concern.⁶⁶

2.103 It recommended the completion and adoption of the RMS, acknowledging that its proposals would not be easy for any of the parties. It hoped for a spirit of compromise which would form the basis of discussions and might lead to a consensus. At IWC 49, it put forward therefore a broad, possible strategy for a change in the present system of regulating whaling:

- a global ocean sanctuary outside national, exclusive EEZs, ie. a ban on pelagic whaling;
- application of the RMS to coastal whaling and any remaining scientific whaling, involving international observers, tracing of whale meat and 'humane killing standards';
- the moratorium would be lifted to allow coastal whaling by nations within their EEZs for local consumption only;
- by agreement with the IWC, no international trade in whale products from coastal whaling;
- agreement that 'lethal scientific whaling' would be phased out;
- introduction of IWC regulations for whale watching to minimise disturbance on whale populations, and

⁶⁵ Transcripts: 1 December 1997, pp. 38, 35, 36; 8 December 1997, p. 61. See a report in *The Daily Telegraph*, 8 December 1997, p. 26, about a reported increase to Norway's take in 1998.

⁶⁶ Exhibit No 16, pp. 1, 2.

- continuation of aboriginal subsistence whaling, with a recognition of the need in some countries for cultural renewal.⁶⁷

2.104 The Irish Government believed that the effect of this strategy would be to limit commercial whaling 'severely' and 'bring scientific whaling under control'. Many other states would be likely to declare sanctuaries and, if there was no possibility of trade, there would be no economic rationale for Norway to continue its present catch levels. New countries which might wish to take up commercial whaling would have only a small demand for domestic whale meat, and catches would be limited to a sustainable level by the RMS. According to the Irish proposal, representatives of 'some of the major NGOs' accept this package. While they would not actively campaign for it, they would not oppose it and would consider it to be 'the best achievable option'.⁶⁸

2.105 Japan and Norway had indicated they would put forward a compromise proposal on the outstanding issues in the RMS. This could lead to acceptance of the RMS by the IWC. The Commission would then have to deal with the question of refusing to allow whaling which would be in accordance with a prescription already agreed to be 'safe, conservative and sustainable'. Ireland believed that this situation gives further impetus to the need to arrive at an acceptable solution to the problems posed by the RMS.⁶⁹

2.106 The Irish Government saw this proposal as an opportunity to achieve a major break through on whaling, as it believed that all major players were at least willing to negotiate the outlines of such an agreement.⁷⁰

2.107 According to the report of the Australian delegation, there were concerns that the solution had been developed before the problem the RMS was supposed to solve had been adequately defined. There were also reservations about the negotiation process envisaged for the RMS, including a suggestion that the suggested changes would 'regularise what is already going on'. Finally, this proposal was seen as a covert way of re-introducing small scale coastal whaling.⁷¹

2.108 While a number of countries were seeking to negotiate a compromise on the RMS, Norway, Japan and its supporters, the United Kingdom, USA, New Zealand and Australia were all 'particularly sceptical'. The Irish Commissioner

⁶⁷ *ibid.*, p. 1 and Exhibit No 15, pp. 1-2. See a report in *The Daily Telegraph*, 23 October 1997, p. 26.

⁶⁸ Exhibit No 15, p. 2.

⁶⁹ *ibid.*

⁷⁰ *ibid.*, p. 3.

⁷¹ Exhibit No 13, p. 1; Transcripts: 1 December 1997, p. 38, 8 December 1997, p. 51.

proposed an inter-sessional meeting of the Commission before IWC 50 in Oman but, although there was some support for this, it was unlikely Commissioners would meet before that meeting in May 1998.⁷²

2.109 The ICRW and other conventions. As a result of its 'scientific' whaling, Japan can provide whale meat for domestic consumption. Although the Norwegians do not eat blubber, they have cold stores filled with the results of their catches which they would like to export to Japan. Such a move would raise the question of the proper control of the trade: the ICRW or the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES). Dr Bridgewater believed that this issue was more likely to cause difficulties in the latter forum than in the IWC.⁷³

Report of the National Task Force on Whaling

2.110 The mandate of Australia's National Task Force on Whaling was to advise the Minister for the Environment on the most practical ways to achieve Australia's policy of bringing about a permanent, world-wide ban on commercial whaling. The principal recommendation of the Task Force was that the best and most practical way of achieving this was working through the IWC to achieve either:

- the establishment of a global whaling sanctuary, or
- as a less-favoured option, a 50 year moratorium on commercial whaling.⁷⁴

2.111 The Task Force believed that nothing should be done to disturb the existing indefinite moratorium provided in the Schedule to the ICRW.

2.112 Its Report also argued for:

- Australia's continued, active participation in the IWC as the best international forum to achieve its aims, and still the best international organisation to lead on whaling issues, and
- amendment of the ICRW to prohibit all forms of commercial whaling.

⁷² Exhibit No 13, p. 2. It is reasonable to suspect that various nations had differing reasons for their scepticism.

⁷³ Transcripts: 1 December 1997, pp. 34, 46, 8 December 1997, pp. 57, 61-62.

⁷⁴ Unless specified otherwise, material in this Section is drawn from Exhibit No 1, pp. vii-viii. Transcript, 8 December 1997, p. 51.

2.113 The latter was seen as 'realistic and achievable', but there were other amendments which the Task Force believed could and should be made easily to the Schedule and/or to the Convention:

- defining 'aboriginal subsistence whaling' more precisely, and
- prohibition of 'special permits' for what is called 'scientific' whaling.

2.114 The Task Force made 13 recommendations and, in arriving at them, examined such issues as:

- Australia's opposition to commercial whaling;
- the history of whaling and its regulation;
- current whaling activities and the potential for the resumption of commercial whaling;
- arguments against commercial whaling, and
- community action and support against whaling.⁷⁵

2.115 Subjects such as special permits, aboriginal subsistence whaling and the cruel ways whales are killed received particular consideration in the Task Force Report.⁷⁶

2.116 As has been pointed out, under the Convention nations may grant special permits for the taking of whales for 'scientific' research. The large majority of IWC members have refrained from issuing such permits. The Task Force stated that such members have supported resolutions which recognised that modern scientific measures made it unnecessary to kill whales to obtain information for use in stock assessment and management.⁷⁷

2.117 Its Report observed that subsistence whaling by Alaskan Eskimos was estimated to have taken place from as early as 1500 BC. Such aboriginal activity has been recognised in international treaties as being different and having a distinctive character, so that it had been exempt from restrictions governing commercial whaling.⁷⁸

⁷⁵ The recommendations of the Task Force are at pp. xi-xiv of its Report.

⁷⁶ The Task Force used the words 'humane' or 'humaneness'.

⁷⁷ *ibid*, p. 28.

⁷⁸ *ibid*, p. 29.

2.118 Aboriginal subsistence whaling has been of concern because some of the species and stocks from which whales have been taken are at 'very low levels'. A continued take could only be justified on such grounds as 'essential local traditional cultural and nutritional needs'. There had been debate about the use of whale products from such takes. Finally, regional and national political and social issues compounded consideration of the biological basis for establishing any catch limits.⁷⁹

2.119 The Task Force noted that Australia had generally accepted the distinctive character and special circumstances which applied to aboriginal subsistence whaling. Continuation of this type of whaling has had to be accommodated within an overall policy of opposition to all whaling, while recognising the special requirements of some communities.⁸⁰

2.120 The Report devoted considerable space to the cruel ways whales are killed. The Task Force found that the methods used 'continue to be unacceptably cruel and inhumane', but saw little prospect of this changing in the foreseeable future. It was convinced that the issue of cruelty continued to be one of the most potent arguments against whaling, and a compelling reason for a world-wide ban on the practice.⁸¹

⁷⁹ *ibid*, pp. 30-31.

⁸⁰ *ibid*, p. 31.

⁸¹ More than eleven pages were devoted to this issue in a report which was only 115 pages long; Transcripts: 1 December 1997, p. 47, 8 December 1997, p. 53.

Response to the Task Force Report

2.121 In his response to the Task Force Report, the Minister for the Environment accepted its recommendations and announced that Australia will push for a global whale sanctuary to secure a permanent international ban on commercial whaling. The Government 'signalled its intention to lead the world in efforts to turn the existing moratorium' into such a permanent ban.⁸²

2.122 The response outlined Australia's long term strategy towards this end, including support for the Task Force's recommendation to pursue a sanctuary covering all EEZs and the high seas. In addition, Australia 'will encourage other nations to ban commercial whaling in all waters under their jurisdiction including territorial waters'. It will continue to address recovery of whales by continuing to promote activities which supported the Southern Ocean sanctuary and its range of whale species, 'so dramatically affected by whaling in the past'.⁸³

Evidence from the Task Force Chairman

2.123 On the question of aboriginal subsistence whaling, the Chairman of the Task Force, Mr Chris Puplick, drew attention to the USA's linkage at IWC 49 of support for the Chukotka people of the RF with the Makah people. He said that, while the case for the former was 'quite overwhelming', the latter case was 'absolutely insupportable' and suggested that this linkage would be a source of ongoing difficulty.⁸⁴

2.124 He also pointed out that some aboriginal whaling continued in a way which inflicts great pain and distress on whales as they are taken. If supervision of the operations of commercial fleets was difficult, it was almost impossible in remote areas where limited numbers of catches were permitted over fairly prolonged periods. It appeared that crude harpooning and shooting were often used, which raised the question of the validity of so-called cultural practices which were cruel and prolonged the agony of whales more than modern methods did.⁸⁵

⁸² Exhibit No 14, p. 1.

⁸³ *ibid*, pp. 1-2.

⁸⁴ Mr Puplick was a member of the Australian Delegation to IWC 49. Transcript, 8 December 1997, pp. 52, 53. For further information on this matter, see paragraph 2.129 below, and Exhibits Nos 8 and 9 for the Australian and USA Delegations' media releases.

⁸⁵ Transcript, 8 December 1997, pp. 53-54. See *ibid*, pp. 60-61, for some further discussion of cruelty.

2.125 He believed that Ireland's proposal would undoubtedly be one of the central items at IWC 50, although he did not think it would make very much progress. The IWC's long-term future would also be considered. More than a simple majority of members would have to vote for a resumption of commercial whaling, or even the Irish proposal, and both sides in this debate had blocking votes on proposals.⁸⁶

2.126 Mr Puplick said that the intellectual and, increasingly, the moral and ethical case for a total ban on whaling was stronger than ever. Among some of the developing countries, there is growing interest in what is regarded as 'sustainable use' of wildlife resources. This issue was reflected in debates at the Tenth Conference of the Parties (COP) to CITES in June 1997 in relation to the conservation of African elephants. He said that the general view was that poorer or developing countries should have sustainable use of wildlife without, as they saw it, being bullied by rich Western countries which were in different situations.⁸⁷

2.127 He added that the flaw in this argument was that of sustainability: even though whale stocks were up, they were not sustainable in the way proponents of this view would argue. He believed that whales would be increasingly protected by such things as the incremental use of sanctuaries, expansions of sanctuaries, and the acceptance of extending sanctuaries within EEZs on a multilateral but regional basis.⁸⁸

2.128 The Task Force Chairman said that, to establish cultural and subsistence needs, there were tests which could be applied. As the Makah had not done any whaling for 71 years, establishing an ongoing cultural tradition in taking whales was 'a bit tenuous'. In terms of subsistence, and compared to the Chukotka people, nothing demonstrated any subsistence, economic or financial need for them to re-commence whaling. He did not believe that the Makah would do any whaling for the next year or so, as they would be tied up in US courts. He also suggested that domestic political considerations were behind moves at IWC 49 and within the USA to allow the Makah a whaling quota.⁸⁹

2.129 He referred to the amendment to paragraph 13(b)(2) to the Schedule to then ICRW which had been the cause of difficulties between the USA and

⁸⁶ *ibid*, pp. 54-55.

⁸⁷ *ibid*, pp. 56. See our *Tenth Report*, September 1997, pp. 27-35, especially p. 32, for consideration of these amendments to CITES, including African elephants.

⁸⁸ Transcript, 8 December 1997, p. 56. See Exhibit No 4 for figures on whale stocks presented to IWC 49, and paragraph 2.95 above.

⁸⁹ Transcript, 8 December 1997, pp. 57, 56, 57-58.

Australian delegations at IWC 49. As decisions at IWC meetings were generally by consensus, it was agreed that the words 'by the International Whaling Commission' would not be part of the amendment. Press releases from the delegations showed the extent of the disagreement.⁹⁰

2.130 One of the Task Force's observations was that the pro-whaling group consists in large part of Caribbean and Commonwealth countries which have close links to Japan. Mr Puplick wondered whether the Australian Government should be using organisations such as the South Pacific Forum and gatherings of Commonwealth nations to advance its beliefs about a ban on commercial whaling.⁹¹

2.131 The IWC had devoted considerable attention to the economic value of whale watching. In Australia, governments and NGOs had developed guidelines for this activity. There was growing interest in whale watching in Japan and this essentially tourist activity was potentially a means of changing attitudes to whaling. Mr Puplick said that there were a number of other ways the Japanese, young Japanese especially, could be influenced:

- access to information the Task Force wanted to try to get into the public debate on the issue, including its Report, via the Internet;
- use of the sister city program and/or school-to-school contacts to explain the negative view some younger Australians have about Japan because of whaling, and
- links of Australian NGOs to similar Japanese bodies to stress changes in world-wide attitudes and scientific knowledge.⁹²

⁹⁰ *ibid*, p. 60. See Exhibits Nos 8 and 9.

⁹¹ Transcript, 8 December 1997, pp. 55, 62.

⁹² Transcripts: 8 December 1997, pp. 59, 61, 72, 1 December 1997, p. 48. The last suggestion was also made by Greenpeace.

Views of other interested individuals and organisations

2.132 Representatives of a number of NGOs supported the establishment of the Task Force and welcomed Australia's adoption of a strategy to achieve a permanent ban on commercial whaling. They did not oppose aboriginal subsistence whaling where it met strict criteria and where it did not impede the recovery of endangered populations. This type of whaling was poorly defined and the criteria to be met were not clearly set out in the Schedule to the ICRW, which had the potential to undermine a ban on commercial whaling.⁹³

2.133 At IWC 49, NGOs had been concerned about such issues as:

- the lack of information provided to support aboriginal subsistence quotas;
- the further reduction of the gray whale quota, as it was currently substantially under-used;
- the USA's interpretation of the IWC's 'recognition' of the cultural and subsistence needs of the Makah in relation to gray whales, and
- the change to the quota for bowhead whales, removing a reference to landed whales which potentially allowed for kills to increase.⁹⁴

2.134 This group of NGOs recommended that Australia should:

- not oppose the amendments proposed for aboriginal subsistence whaling;
- seek a review of quotas for this whaling at IWC 50, and
- seek to have the following criteria for aboriginal subsistence whaling included in the Schedule to the ICRW:
 - it must be necessary for both cultural and nutritional needs;
 - there must be a 'continuing history' of such whaling by the indigenous peoples concerned, and
 - it must be carried out by the aboriginal people in question, not by others on their behalf.⁹⁵

⁹³ Transcript, 1 December 1997, pp. 41-42.

⁹⁴ *ibid*, p. 42.

2.135 By these means, there would be only two categories of whaling: aboriginal subsistence or commercial. It would also mean clarification of what was actually aboriginal subsistence whaling.⁹⁶

2.136 These NGOs supported the IWC as the most appropriate body through which to work for a world-wide ban on whaling. This support was conditional in that they did not accord a higher priority to preserving the IWC over maintenance of the moratorium and the institution of a ban on whaling. They believed the Commission was more robust than some suggested, and that the probability of Japan leaving it was low.⁹⁷

2.137 As a major strategy for achieving a ban, they urged retention of the current moratorium and the adoption of a global sanctuary encompassing all waters, including EEZs and territorial seas. Whaling via special permits and allowing commercial whaling by means of an objection to provisions in the Schedule must be addressed and such loopholes closed. Resources would be required to implement agreed strategies, and coordinated actions would be required. As a first step, Australia must develop a core group of like-minded nations dedicated to achieving the same goal.⁹⁸

2.138 These NGOs would reject any package which included resumption of commercial whaling, whether in coastal waters or on the high seas.⁹⁹

2.139 In additional comments, Greenpeace Australia was encouraged by Australia's continued and strong opposition to commercial whaling. It was disappointed, however, at the current lack of action to prevent a near commercial take of whales through Japan's 'scientific' program in the Southern Ocean Sanctuary. It would like to see Australia and like-minded countries close this loophole and treat this Sanctuary as a sanctuary and end whaling there.¹⁰⁰

2.140 Greenpeace was curious that the use of Australian ports by a Japanese re-supply vessel 'has been known' when its purpose was to assist a whaling fleet to

⁹⁵ *ibid*, pp. 42, 44.

⁹⁶ *ibid*, p. 45.

⁹⁷ *ibid*, p. 42.

⁹⁸ *ibid*, pp. 42-43.

⁹⁹ *ibid*, p. 43.

¹⁰⁰ *ibid*, pp. 43, 47.

stay at sea for longer periods. Ways should be sought to encourage Japan to respect the moratorium, and one of the suggested options was trade sanctions.¹⁰¹

2.141 World Wildlife Fund for Nature Australia (WWF) did not want international trade in whale meat, or rights which could be traded. It was in favour of a strong, precautionary RMS as an insurance policy to prevent the taking of endangered species. It did not oppose aboriginal subsistence whaling in principle, but believed that it must be clearly defined and a transparent process put in place.¹⁰²

2.142 Humane Society International (HSI) supported using the IWC as a means of furthering long-term conservation of cetaceans. It also supported the outcomes of the National Task Force and their endorsement by the Government.¹⁰³

2.143 HSI provided studies prepared on aboriginal, Russian and Makah, whaling for IWC 49. It also provided another study, presented to IWC 48, proposing modifications to the ICRW and dealing with adjudication and enforcement under the RMS. It expressed concern that the Makah may intend to make commercial use of the results of kills, providing a document which asserted that historically they had hunted for commercial reasons. Some Makah had argued that the Treaty of Neah Bay gave the right to whale for commercial and subsistence purposes. Under the ICRW, the results of a kill can only be used for nutritional, cultural and subsistence needs. Any commercial exploitation following aboriginal whaling is illegal under the ICRW.¹⁰⁴

2.144 HSI referred to competition with Japan in its demands to use resources in all forms and in every forum. It said that it was urgent for the anti-whaling states to devise a means to combat Japanese global actions which seek to use all wildlife resources. This organisation tabled an analysis of Japanese proposals for coastal whaling which, it asserted, were 'no more than economic regimes in disguise'. This study stressed that these proposals for coastal whaling were long-term commercial ventures, and how dangerous it would be to open this whaling to the world. It gave details of all the whales which would be under threat should coastal whaling regimes begin again. As most coastal zone whales

¹⁰¹ *ibid*, p. 47. See Transcript, 8 December 1997, pp. 52-53. The number and frequency of these visits was not given. The use of trade sanctions in the manner proposed would be contrary to current Australian Government policy; see Transcript, 1 December 1997, pp. 37-38. See also paragraph 2.149 below.

¹⁰² Transcript, 1 December 1997, pp. 43-44, 46.

¹⁰³ Transcript, 8 December 1997, p. 64.

¹⁰⁴ *ibid*, p. 69. See Exhibits Nos 6 (p. 3), 7 and 10 respectively, and a report in *The Australian*, 21 October 1997, p. 10.

were still threatened, resumption of such whaling would be the end for most of those species.¹⁰⁵

2.145 Finally, HSI believed that a major goal for a long-term conservation solution ought to be the universal sanctuary proposal. Such a campaign would need resources to be effective.¹⁰⁶

2.146 Australians for Animals has initiated a law suit against the USA Government because of various breaches to that nation's legislation. It would take out an injunction against the Makah if, as seemed likely to this organisation, they attempted to whale before the suit was heard. It also asserted that 'at least 13 or 14 tribes' were waiting to follow the precedent set by the Makah. Deletion of the words 'by the International Whaling Commission' from the amendment proposed for paragraph 13(b)(2) of the Schedule therefore created 'an extremely serious legal precedent'. Finally, it believed that any support for the IWC amendments was 'completely and utterly inconsistent' with Australia's stated position opposing whaling.¹⁰⁷

2.147 It asserted that the IWC's definition of aboriginal subsistence whaling was quite clear and that the Makah's practices did not fit into that definition. Thus, no amendment to the Schedule now specified what process the Commission would use to recognise aboriginal whaling. Given Australia's opposition to whaling, the words above should not have been deleted.¹⁰⁸

2.148 This organisation stated that there was 'absolutely no enforcement' under the IWC. It was therefore absurd for the Australian Government to support an amendment which claimed to forbid the striking, taking or killing of calves when there was no boat able to enforce the Convention.¹⁰⁹

2.149 Australians for Animals also believed that trade sanctions should be used to protect the ICRW. It saw this Convention as the first international treaty to be targeted by free traders within the World Trade Organisation (WTO), and believed that CITES would be next. HSI agreed that trade sanctions could be used usefully to penalise nations which do not abide by global conservation rules, and suggested that the IWC could impose a regime whereby, if a rule was

¹⁰⁵ Transcript, 8 December 1997, pp. 72-73. See Exhibit No 11.

¹⁰⁶ *ibid*, p. 77.

¹⁰⁷ Transcript, 8 December 1997, pp. 65, 68-69, 70, 66, 74. See paragraphs 2.82 and 2.129 above.

¹⁰⁸ Transcript, 8 December 1997, p. 68.

¹⁰⁹ *ibid*, pp. 65, 71.

broken, the quota for the next year would be reduced. The IWC could usefully examine such an approach.¹¹⁰

2.150 The Australian Marine Conservation Society (AMCS) (NSW) was concerned about the transfer of the unused portion of a year's quota to the following year.¹¹¹

2.151 Dr W H Dawbin, a researcher with over 50 years' experience in whaling, stated that there was no 'humane' way of killing whales, saying how disturbed he was by the various means he had seen over many years or which he understood were used now. He said also that not enough was known about the social structure and habits of whales to say with any certainty what impact killing members of a group or family had on the survivors.¹¹²

Committee views

2.152 The 50th annual meeting of the Commission will take place in Oman in early May 1998. Our consideration of the 1997 amendments to the Schedule to the ICRW is therefore timely. Many of the issues at IWC 49, and set out above, were technical. As our prime concern must be those amendments, it would not be appropriate for us to offer comments or advice in those areas.

2.153 Australia's position on whaling has been clear since before the passing of the *Whale Protection Act 1980*. By then, the last shore-based whaling operation in this country had closed. Whale watching is used as an attraction for tourists, and the stranding of whales receives considerable media coverage on a regular basis. Even IWC 49, a meeting of an organisation which would not be well known to most Australians, was well reported in our newspapers.¹¹³

2.154 Continuation of whaling, in any form and by any nation or group, is also clearly repugnant to many Australians, as the evidence to this inquiry made clear. Prompt acceptance by the Minister of the recommendations of the Task Force on Whaling supported this position.

¹¹⁰ *ibid*, pp. 70-71. See Footnote 101 above for a reference to the Australian Government's position on the use of trade sanctions.

¹¹¹ Transcript, 8 December 1997, p. 65.

¹¹² *ibid*, pp. 65-66, 76. See also pp. 60-61.

¹¹³ See, for example, *The Sydney Morning Herald*, 11 September 1997, p. 11 and *The Sun Herald*, 12 October 1997, p. 40. The release of the public version of the report of the Task Force on Whaling was also reported: see, for example, *The West Australian*, 12 September 1997, p. 24 and *The Weekend Australian*, 13-14 September 1997, p. 3.

2.155 It must be recognised also that, as set out in the ICRW, the IWC was established in 1946 to conserve whale stocks and make the orderly development of the whaling industry possible. Fifty years later, the context in which the Commission operates has changed significantly: for example, while some whale stocks have recovered, many are still threatened. Most nations do not kill whales now and most of the world's whaling fleets have rusted away.¹¹⁴

2.156 In 1946, the balance of interests among members of the IWC was on the side of the whaling industry, so that it nearly always received the benefit of disagreements on the size of quotas. In the past 25 years or so, there has been a heightened awareness of the vulnerability of whales to over-exploitation, demonstrated by better scientific understanding and more exact mathematical analysis. There is also a greater degree of environmental conservation, in which the whale has both a symbolic and an actual role.¹¹⁵

2.157 The IWC's work is currently seen by many individuals and some nations to be hampered by countries, such as Japan and Norway, which continue to kill whales. Should there be agreement on the RMS, the IWC could find itself in the situation of approving an approach to whaling with which most, or at least a substantial number, of its members do not agree. This would not be the best way for the Commission to proceed into the 21st Century, nor would it provide an effective solution to the problem posed by the possible resumption of some forms of commercial whaling. While it is easy to find fault with its actions, it is difficult to see how the conservation of whales would be advanced without the IWC.

2.158 Australia should continue to support this body and do all in its power to influence countries, such as Japan and Norway, to abandon whaling. Consideration should be given to mounting a campaign in both these countries, aimed particularly at their youthful populations, stressing scientific evidence about whaling and the growing repugnance from which it suffers. Efforts should also be made to influence Commonwealth nations from the Caribbean to take up and act on anti-whaling views.

2.159 Concerns about the future of the IWC motivated the Irish Government to bring forward its proposals to IWC 49. There were many facets to these proposals and many could not be resolved at that meeting. They represent a well-intentioned attempt to deal with a range of problems and deserve serious consideration at IWC 50. There can be no doubt that, if the matter is not

¹¹⁴ Transcript, 1 December 1997, p. 38.

¹¹⁵ Exhibit No 17, p. 106. Dr Gambell is the Secretary to the IWC.

resolved and the RMS is not accepted in some form, there will be further difficulties for and within the Commission.

2.160 There can be no doubt that the definitions of 'aboriginal' and 'subsistence' whaling need to be refined with a view to ensuring, as far as possible, the inclusion of groups which genuinely conform to traditional methods and have specific cultural needs. The Schedule to the ICRW contains a number of paragraphs about aboriginal subsistence whaling, clearly indicating that it is identifiably different from commercial operations. These provisions have been developed and added to over the years, as the need arose, and generally in response to specific situations. The current regulations 'unfortunately' seek scientific inputs which cannot be provided. They also put undue weight on perceived subsistence needs, rather than on the biological capacity of whale stocks to sustain the rate of catches.¹¹⁶

2.161 During this inquiry, concerns were raised about the methods and the amount of aboriginal whaling which could be occurring. The Australian Government should keep this matter under review at future IWC meetings, and particularly at IWC 50.

2.162 Attention needs also to be given to closing existing loopholes in the Convention which allow 'scientific' whaling and allow commercial whaling via blanket objections to provisions in the Schedule. Finally, if the Commission is to retain credibility, it needs to be on guard lest coastal whaling is resumed by default or stratagem.

2.163 It is unlikely that these things will be achieved quickly or easily but, unless some action is taken before IWC 50, the present unhappy situation will continue indefinitely.

2.164 The ICRW and the IWC have been sufficiently flexible to change from 1946 attitudes to accommodate current approaches to the management and protection of whales. There are clearly problems about a number of issues. Rather than dealing with them in isolation, the Commission may have to face the possibility of a complete revision of the ICRW to deal with these take account of them. Whether it could do this and survive in a form which would be acceptable to all those currently involved is another matter.¹¹⁷

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*

2.165 If Australia wants to retain its credentials as an anti-whaling nation, the policy of allowing access to resupply vessels for the Japanese whaling fleet needs to be examined.

2.166 The Joint Standing Committee on Treaties notes the information it has received, and supports endorsement of the amendments made to the Schedule to the *International Convention for the Regulation of Whaling* in October 1997 as proposed.

CHAPTER 3

TREATIES TABLED ON 3 MARCH 1998

Agreement on Judicial Assistance and Cooperation with Thailand

Reasons for the Agreement

3.1 The Agreement, signed on 2 October 1997, seeks to facilitate cooperation between Australian and Thai courts in civil legal proceedings. It is envisaged that it will contribute to the reduction of litigants' costs, and to the more effective conduct of litigation.

3.2 Its objective is to overcome some of the difficulties which can arise when a party in one country attempts to pursue civil legal action in the other. These difficulties can be substantial in a civil law country like Thailand which regards unauthorised acts by or for foreign courts within its territory as a breach of its sovereignty. It is particularly useful for Australian practitioners to have an agreement which sets out agreed procedures for courts in each country to assist courts in the other with service of documents and taking of evidence. This Agreement also sets out the grounds on which requests can be refused.¹

3.3 It is similar in many respects to a number of bilateral agreements on service and evidence to which Australia is a party. It is also the first Agreement of this kind between Australia and another country in the Asia-Pacific region.²

Obligations

3.4 Each Party undertakes to provide the following assistance:

- identifying and locating persons;
- serving documents;
- examining witnesses;
- obtaining documents;

¹ Transcript, 9 March 1998, p. 2.

² *ibid*, pp. 2, 3.

- inspecting properties; and
- providing other necessary information.

3.5 These requests must be executed unless:

- it is impossible because of absence or inability to locate the person requested to be served or whose testimony is to be taken; or
- execution would be contrary to public policy or prejudicial to the sovereignty or security of the requested party, or
- in the case of requests for taking of evidence, the request does not fall within the competence of the judiciary of the requested country.

3.6 Each country must provide certificates about the execution of requests for service and requests for the taking of evidence.

3.7 The Agreement provides for direct cooperation between Australian and Thai authorities. It establishes a Central Authority in each country to receive and transmit requests for service and letters of request to obtain evidence. In Australia, the Central Authority will be the Commonwealth Attorney-General's Department. It is also proposed that each Australian State/Territory will nominate an agency to act as additional Central Authorities. In Thailand, the Central Authority will be the Office of Judicial Affairs, Ministry of Justice.³

3.8 The Agreement also accords Australian nationals access to courts, reduction of or exemption from costs and rights to legal aid in Thailand on the same terms as Thai nationals. This reflects existing Australian policy about the rights of foreign nationals under its legal system. Given the state of the Thai legal aid system, the Agreement will probably guarantee more to Thai nationals here than to Australians in Thailand.⁴

3.9 Agreements such as this provide clear legal procedures for lawyers in each country so that they can understand what is required if they want to serve documents or have evidence taken in the other country. It will also guarantee that Australian nationals will have access to Thai courts and be excused from posting bonds in the same way as Thai nationals are treated.⁵

³ *ibid*, pp. 2, 3.

⁴ *ibid*, pp. 3-4.

⁵ *ibid*, pp. 2, 4.

3.10 Australia and Thailand also agreed to promote cooperation in the field of arbitration by encouraging arbitration organisations in their respective countries to provide facilities for arbitration proceedings, exchanging information and exchanging lists of arbitrators.

Costs

3.11 The National Interest Analysis (NIA) states that there will be no financial costs to government authorities in complying with the Agreement. Under it, Australia accepts no liability for lawyer's fees and expenses resulting from the execution of requests for service for process or the taking of evidence. In practice, these fees and expenses will be paid by the litigant in Thailand requesting the assistance. Language translation costs will also be met by such parties.

3.12 During the consultation process, the South Australian Attorney-General questioned whether State/Territory authorities could impose charges for the service of process under the Agreement. Article 6 states that execution of service of service and taking of evidence shall be free of charge except for 'expert fees, lawyer's fees and expenses, and expenses for translation.'⁶

3.13 There is an understanding between Australia and the Thai Justice Ministry that the term 'lawyer's expenses' in Article 6 enables Australian authorities to impose charges for service of process.

Implementation

3.14 The Agreement will be binding on an exchange of notes through which each country notifies the other that its requirements for entry into force have been complied with. The NIA indicates that it will come into force between 3 April and 30 June 1998.

3.15 This Agreement will be implemented under existing Commonwealth, State and Territory legislation on service and evidence. At the Federal level, it will be implemented under the *Foreign Evidence Act 1994* and the Rules of the High Court, Federal Court and Family Court. At the State/Territory level, implementation will be through the relevant State/Territory Evidence Acts and the Supreme Court Rules.

⁶ *ibid*, p. 3.

3.16 There will be no changes to existing Commonwealth/State/Territory roles as a consequence of implementation, except that requests will be transmitted through the various Central Authorities rather than through diplomatic channels.

Consultation

3.17 Information on the Agreement was provided to the States/Territories through the SCOT process. State/Territory Attorneys-General were also consulted directly in January 1996. The Law Council of Australia was also consulted in 1996 and responded, stating that the Agreement would be useful and should be implemented.⁷

Withdrawal

3.18 Either Party may terminate the Agreement by giving one years' written notice through diplomatic channels. Termination will not prejudice any proceedings commenced prior to the date of termination.

Committee view

3.19 We regard this type of bilateral treaty as useful to nationals of both Thailand and Australia and support its introduction with as many countries as possible. The introduction of a multilateral convention on access to justice would do much to ensure greater cooperation between different legal systems, to the potential benefit of the nationals of all the countries involved.

3.20 The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the *Agreement on Judicial Assistance in Civil and Commercial Matters and Cooperation in Arbitration with the Kingdom of Thailand* as proposed.

⁷ *ibid*, pp. 2-3.

Amendments to the London Convention on Sea Dumping

The Convention

3.21 The *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* is known as the London Convention (the Convention). It is aimed at the promotion of effective control of all sources of pollution of the marine environment, and the prevention of pollution of the sea by dumping of waste liable to create hazards to human health, to harm living resources and marine life, to damage amenities or interfere with other legitimate uses of the sea.

3.22 In Chapter 2, we have already considered the 1996 Protocol which will enter into force on the 30th day after at least 26 States including 15 Parties to the Convention have expressed consent to be bound by it.⁸

Proposed treaty action

3.23 The proposed treaty action involves the substitution of an instrument of acceptance for Australia's previous declaration of objection to the 12 November 1993 amendments to Annexes I and II to the Convention of 29 December 1972.⁹

3.24 Article XV of the Convention provides a Party may at any time substitute an instrument of acceptance in place of a previous declaration of objection to an amendment.

3.25 Australia's objection related to the disposal of jarosite by Pasminco.

3.26 Lodging an instrument of acceptance will demonstrate that Australia now intends fully to comply with the amendments to Annexes I and II. In the International Year of the Ocean, Australia will be seen to have taken a major step in reducing marine pollution. Its southern ocean will no longer receive continuous tonnages of industrial waste.¹⁰

Background

⁸ See pp. 5 to 19 above, especially pp. 6-7 for details of the entry into force of the 1996 Protocol.

⁹ Transcript, 9 March 1998, p. 6.

¹⁰ *ibid*, pp. 6-7.

3.27 In 1993, Parties to the Convention agreed to amendments to these Annexes to phase out sea disposal of industrial waste and were binding from 1 January 1996 upon acceptance by a Party.¹¹

3.28 On 15 February 1994, Australia deposited a declaration with the International Maritime Organisation (IMO) which excepted jarosite waste, considered necessary 'for technical reasons'. Under no circumstances was this dumping to continue beyond 31 December 1997.

3.29 The IMO interpreted this declaration as non-acceptance of the amendments as a whole because there is no provision in the Convention for partial non-acceptance of amendments. Treaty action is therefore required to bring the 1993 amendments into force for Australia.¹²

Dumping of jarosite

3.30 Jarosite is an hydrous sulphate of iron and potassium, generated as a by-product of zinc smelting. Dumping at sea has now ceased, as Pasminco has processes to recycle it, and its sea dumping permit has been surrendered. There is now no reason for Australia not to accept the 1993 amendments without reservation.¹³

Obligations

3.31 Acceptance of the amendments will require Australia to ban the dumping of all industrial wastes by its vessels, or in our waters or of wastes loaded onto our ships in Australian ports.¹⁴

Costs

3.32 Costs of administering the *Environment Protection (Sea Dumping) Act 1981* (the Act) will decrease, as there will be no need to issue special permits for sea dumping of jarosite, or to oversee the monitoring operations at the dump site.

¹¹ *ibid*, p. 6.

¹² *ibid*.

¹³ *ibid*, pp. 6, 7.

¹⁴ *ibid*, p. 6.

Future protocols

3.33 There is no provision for future protocols to the 1993 amendments.

Implementation

3.34 Australia has already given domestic effect to the Convention and the 1993 amendments under the Act. It will require minor amendment to remove spent references to permits to enable dumping of jarosite.¹⁵

3.35 Further steps to implement the treaty action are not required, as sea dumping of all types of industrial waste has ceased and no further permits will be issued for jarosite.

Consultation

3.36 The Minister for the Environment wrote to the States and Territories about the proposed treaty action, and only NSW and Queensland have not replied.

3.37 A variety of professional and environmental organisations has been kept informed of Australia's disposal of jarosite on a regular basis through participation in relevant meetings of the Convention.¹⁶

Withdrawal

3.38 Parties may withdraw from the Convention, with withdrawal taking effect six months after notice is given to the IMO.

¹⁵ *ibid*, p. 7.

¹⁶ *ibid*, p. 7.

Committee view

3.39 The issues raised by the 1996 Protocol which will replace the Convention have already been considered in some detail in this Report. It is gratifying that the sea dumping of jarosite has been discontinued and, in the International Year of the Ocean, this Agreement is particularly appropriate.

3.40 **The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the amendments to Annexes I and II to the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* as proposed.**

Amendments to the Double Taxation Agreement with Finland

Double Taxation Agreements

3.41 A key objective of a bilateral double taxation agreement (DTA) is the promotion of economic cooperation between the parties by eliminating possible barriers to trade and investment, caused by the overlapping tax jurisdictions of the countries. This provides a reasonable element of legal and fiscal certainty within which cross-border trade and investment can take place. Another key objective is to create a framework to assist the tax regimes of both countries to combat international fiscal evasion.

3.42 Australia has DTAs with 36 countries, including Vietnam, France, West Germany, New Zealand, the United States, China, Papua New Guinea and the United Kingdom.

Previous consideration

3.43 In our 7th Report, we considered amendments to the 1992 DTA with Vietnam.¹⁷

¹⁷ See *Australia's Withdrawal from UNIDO & Treaties Tabled on 11 February 1997*, 7th Report, March 1997, pp. 15-27.

Relationship with Finland

3.44 The entry into force of the 1984 Agreement and its protocol was seen as another step in advancing the foreign and trade policy objective of strengthening ties with Europe by:

- expanding commercial relations;
- increasing two-way trade;
- ensuring a favourable environment for Australian joint venture partners and wholly owned investments, and
- encouraging Australian exporters to break into rich and sophisticated markets.¹⁸

3.45 Bilateral trade between Australia and Finland stood at \$A908 million in 1996/97, in Australia's favour with about \$A600 million in exports and about \$A300 million in imports from Finland. Australia imports paper and paper board and telecommunications, civil engineering and mechanical handling equipment. It exports nickel ores, inorganic chemicals, telecommunications equipment and alcoholic beverages. In 1996, while there are no figures on Australian investment in Finland, direct Finnish investment in Australia totalled \$A17 million.¹⁹

The Agreement and the amendments

3.46 The 1984 DTA and its (First) Protocol with Finland was concluded in 1984 and only applies to the income taxes of each country. Together, they are typical of the tax treaties concluded with European countries in the 1970s and 1980s. Their texts appear as Schedule 25 to the *International Tax Agreements Act 1953*.²⁰

3.47 Amendments to the 1984 Agreement and its Protocol are required in the 1997 (Second) Protocol:

- to update Finland's list of existing taxes to which the Agreement and its Protocol apply;

¹⁸ Transcript, 9 March 1998, p. 10.

¹⁹ *ibid*, p. 11.

²⁰ *ibid*, p. 10.

- to make provision for a reciprocal dividend withholding tax (DWT) exemption for fully franked dividends (FFDs) as Australian and Finland have both introduced dividend imputation systems since 1984; and
- to include the latest methods adopted by Finland to eliminate international double taxation.

3.48 The 1997 Protocol deals with four areas:

- it updates the list of taxes covered by the original Agreement;
- it deals with the 'most favoured nation' clause;
- it updates, for Finland's purposes, the elimination of the double tax article, and
- it deals with taxation of dividends.

3.49 Two taxes were added to the list of those covered by the 1997 Protocol: corporate income tax and tax withheld from interest at source. With the removal of dividend withholding tax in Article II, there is no longer a need for the 'most favoured nation' clause. Because Finland has changed the way it taxes incoming dividends, there is no need for the elimination of the double tax article.²¹

3.50 In 1987, Australia introduced an imputation system to remove one level of tax on company tax payments for shareholders in companies and, in 1990, Finland introduced a similar reform. Inclusion in Article II of the 1997 Protocol benefits Australian firms operating in Finland by removing a level of taxation at shareholder level.²²

Obligations

3.51 The 1997 Protocol does not impose any greater obligations on Australian residents than its domestic tax laws would otherwise require. Once in force, the revised Dividends Article will provide for each country to exempt from withholding tax FFDs paid by their resident companies to residents of the other country. Unfranked dividends will continue to be subject to a source country withholding tax rate limit of 15 per cent.

²¹ *ibid.*

²² *ibid.*

Costs

3.52 Australia's domestic taxation laws allow DWT and foreign dividend exemptions. Therefore, the measures included in the 1997 Protocol are not expected to increase administration or compliance costs from those experienced under the 1984 Agreement and its Protocol.

Future protocols

3.53 The 1997 Protocol does not provide for any future instruments. This does not preclude the two countries from agreeing to further amendments to the 1984 Agreement and its Protocol, as already amended.

Implementation

3.54 The text of the 1997 Protocol will need to be incorporated in the *International Tax Agreements Act 1953* prior to coming into force in Australia. No action is required by the States/Territories, and there will be no change in the role of the Commonwealth or State/Territories in tax matters as a result of its implementation.

Consultation

3.55 The Australian Tax Office has re-established an Advisory Committee with wide representation to review proposed tax treaty actions. The NIA indicates that the Advisory Committee was consulted on the 1997 Protocol and supported its signature and ratification.

3.56 The Institute of Chartered Accountants in Australia (ICA) advised that its representative had participated in consultations with the Australian taxation office (ATO) on the 1997 Protocol. It did not make any submissions or recommendations to this inquiry about that document.²³

3.57 The States/Territories were also consulted on the 1997 Protocol through SCOT process.

Withdrawal

²³ Submission, p. 1.

3.58 The 1997 Protocol does not alter the arrangements for withdrawal from and in the 1984 Agreement. It may be terminated in writing on or before 30 June in any calendar year. Following that notice, the Agreement and the 1997 Protocol would cease to have effect from 1 July in the calendar year next following the year in which the notice of termination is given.

Committee view

3.59 Our 7th Report was quite critical of a number of aspects of the approach taken by the ATO in relation to the DTA with Vietnam. Since then, the ATO gave us a most useful briefing on the 1997 Protocol, prior to the public hearing on 9 March 1998.

3.60 More importantly, the consultative mechanism referred to be the ICA has been re-activated. It appears to be serving a worthwhile purpose for the ATO and other bodies with interests in tax law and DTAs particularly.

3.61 The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the 1997 Protocol to amend the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Protocol of 1984 as proposed.

Extradition Treaty with Paraguay

Background

3.62 Extradition treaties provide a number of benefits to Australia. Principally, they enable return to Australia of persons wanted for criminal prosecution, and they ensure that Australia is a less attractive haven for foreign criminals fleeing their own justice system. Australia uses a 'template' treaty as the basis for negotiation of new extradition arrangements.²⁴

3.63 This Treaty will replace the *Treaty between Great Britain and Paraguay for the Extradition of Criminals*, done at Asunción on 12 September 1908.

²⁴ Transcript, 9 March 1998, p. 13.

3.64 We have already reported on a number of Extradition Treaties, including those with South Africa, Hungary, Brazil, Uruguay and Turkey.²⁵

Entry into force

3.65 The Treaty will enter into force 30 days after each country has notified the other in writing that their respective requirements for its implementation are in place.

Reasons for the Treaty

3.66 The proposed Treaty differs from the 1908 Treaty in two main respects:

- it replaces a specific list of extraditable offences with the understanding that an act is extraditable if it constitutes an offence in both countries and is subject to a maximum penalty of at least two years' imprisonment, and
- it replaces a clause in the 1908 Treaty which permits extradition only where there is evidence sufficient to justify the fugitive's committal for trial. Under the new Treaty, extradition will be permitted if there is a warrant or similar legal document for the arrest of the person.

Obligations

3.67 The Treaty obliges both countries to extradite to each other persons wanted for prosecution or the imposition or enforcement of a sentence. It creates an obligation to extradite to the other country persons accused or convicted of an extraditable offence: conduct punishable under the laws of both countries by imprisonment for a maximum period of at least two years.

3.68 The obligation to extradite is qualified by numerous internationally accepted exceptions. Chief among these are that it will not be granted for political or military offences, or for purposes connected with race, religion, nationality or political opinions. Extradition may be refused for offences for which the death penalty may be imposed or carried out, unless the Requesting State undertakes that that penalty will not be imposed or, if imposed, will not be

²⁵ See *First Report*, August 1996, pp. 7-9 (*passim*), and *Tenth Report*, September 1997, pp. 45-48. Transcript, 9 March 1998, p. 13.

carried out. The NIA sets out a number of other obligations which must be adhered to for an extradition request to be successful.

Costs

3.69 The Treaty states that each party must meet the costs of extradition of a person to the other country. Australia will be obliged to meet arrest and detainment costs of persons being extradited to Paraguay. Australia will hand over custody at a point of departure, at which point costs of returning the person to Paraguay are to be met by the Paraguay Government.

3.70 Costs incurred in extradition cases will be met through existing budgets of the Attorney-General's Department and the Commonwealth's Director of Public Prosecutions.

Implementation

3.71 In Australia, regulations must be made under the *Extradition Act 1988* to implement the Treaty. Under this Act, Australia is able to give effect to bilateral extradition treaties with other countries. The regulations will be made after receiving Paraguay's Note advising that it has met the requirements for the Treaty's entry into force. It is likely it will be some time before this occurs.²⁶

3.72 There will be no change to the existing roles of the Commonwealth or the States/Territories as a result of implementing this Treaty.

²⁶ Transcript, 9 March 1998, p. 14.

Future instruments

3.73 This Treaty has taken 11 years to negotiate and it does not provide for the negotiation of future instruments.²⁷

Consultation

3.74 The States and Territories were provided with information on the Treaty through the SCOT process.

Withdrawal

3.75 Either Party to the Treaty may terminate it by notice in writing, and it shall cease to be in force six months after the day on which that notice is received.

Committee view

3.76 This is the latest of a number of extradition treaties which have been tabled. Among the things which distinguish it are the length of time taken to negotiate the document and the likelihood it will be 'some time' before it enters into force.

3.77 The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the *Treaty on Extradition between Australia and the Republic of Paraguay* as proposed.

²⁷ *ibid*, pp. 13, 14.

Amendments to the Agreement on Health Services with Malta

Background

3.78 Australia and Malta entered a Health Agreement in July 1988. This is one of a number of bilateral agreements Australia has with other countries, such as New Zealand, UK, Ireland, Italy, Sweden, the Netherlands and Finland, which have health systems of an equivalent standard to Australia and which can provide a high level of health care.

3.79 The purpose of the bilateral health agreements is to provide reciprocal access to public health facilities for residents of either country travelling, or otherwise temporarily, in a country where such an agreement exists.

3.80 The Agreement needs to be amended to clarify the specific entitlements which it provides to Australian and Maltese visitors to the other country.

3.81 The Committee considered the introduction of a similar Agreement with Ireland in its 11th Report.²⁸

Entry into force

3.82 The amendments to the Agreement were done by an Exchange of Letters on 27 August 1997. The amendments will take effect on a date advised by Australia, when domestic implementation is complete. Australia hopes to provide that notification as soon as practicable after 3 April 1998.

The amendments

3.83 The 1988 Agreement requires each country to provide visitors from the other with any immediately necessary treatment as a public patient in its public hospitals, both in-patient and out-patient care. It is intended to cover ill health arising during the stay which requires treatment before returning home. It does not cover medical treatment which is planned or elective, or for which there is no immediate medical necessity.

3.84 The amendments to the Agreement are technical and cover two main areas:

²⁸ See *Eleventh Report*, November 1997, pp. 37-40. Transcript, 9 March 1998, p. 16.

- defining the status of Maltese visitors in the Australian health care system as public patients in a public hospital; and
- excluding foreign students from the Agreement.²⁹

3.85 Under an amendment to Article 2(1) of the Agreement, all Maltese citizens wishing to study in Australia will not be covered by the Agreement, and must take out Overseas Student Health Cover (OSHC) to ensure medical treatment in Australia. When a visa is approved, an accompanying document sets out entry requirements, including health cover which has to be obtained and paid for in Malta.³⁰

3.86 The changes to Article 2(1) of the Agreement mean that Australian students studying in Malta will no longer be eligible for free health treatment in Malta and will need to take out private health insurance to cover their health needs adequately.

3.87 The 1988 Agreement provides diplomats, consular officials and their families with a broader range of health treatment than other visitors covered by the Agreement. The amendments do not affect the health cover available to diplomats, their staff and families.

Costs

3.88 In 1996, the latest year for which statistics are available 8,555 Australians visited Malta and 8,547 Maltese visited Australia. In 1997, the cost to Australia of providing health treatment to Maltese visitors was \$18,238. As the number of visitors to and from Malta are very similar, it is expected that, on average, the costs borne by each country's health system as a result of this Agreement will be similar.³¹

3.89 The Agreement was negotiated on the basis that it would be 'cost neutral', and states that neither Party would be liable to make any payment to the other for the treatment provided. These amendments to this Agreement will not lead to any additional costs being incurred.

Future instruments

²⁹ Transcript, 9 March 1998, p. 16.

³⁰ *ibid*, pp. 16-17.

³¹ *ibid*, p. 17.

3.90 Neither the 1988 Agreement or these amendments provide for negotiation of any future legally binding documents.

Implementation

3.91 The *Health Insurance Act 1973* gives a visitor, of the type provided for in the Agreement as amended, status under that Act. No further action is required at Commonwealth or State/Territory level.

Consultation

3.92 State/Territory health authorities were advised of the amendments to the Agreement through the SCOT process. The Commonwealth Department of Health and Family Services received no representations from States/Territories regarding the amendments.

Withdrawal

3.93 The Agreement may be terminated by notice in writing, by either party, of that intention. In that case, it would cease 12 months after the notice of termination. Medical and hospital treatment would continue to be provided to patients receiving treatment prior to, or at the expiration of, the period of notice.

Committee view

3.94 While these agreements are reciprocal, and the total number of people who are likely to use this particular Agreement is relatively small, the fact that it is the States and Territories which provide services must not be overlooked.

3.95 The Joint Standing Committee on Treaties notes the information it has received, and supports amendments to the *Agreement on Health Services with the Government of the Republic of Malta* as proposed.

Agreement on the Neutral Truce Monitoring Group in Bougainville

The need for the Agreement

3.96 As a result of the decisions of colonial administrators, the island of Bougainville is a part of Papua New Guinea (PNG). Since 1989, Bougainville has been the scene of fighting between separatists, many of whom support secession from PNG, and the PNG Defence Force (PNGDF). Many innocent people of all ages have lost their lives, countless others have gone into Government care centres or left the island and many valuable facilities have been destroyed.

3.97 The *Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville* (the Agreement) was signed in between PNG, New Zealand and Australia on 5 December 1997. The main body of the group was deployed to Bougainville on 6 December 1998.³²

3.98 The Agreement was preceded by the signature of the Burnham Truce in New Zealand (NZ), on 10 October 1997, in which the Parties 'agreed to immediate positive measures to cease armed conflict, for peace and reconciliation and for a return of normalcy and restoration of services in Bougainville'.³³

3.99 This Agreement fulfils the spirit of the Burnham Truce which needs a chance to succeed to bring peace to this sad place and its people.

Reasons for Australian involvement

3.100 PNG and other signatories to the Burnham Truce requested that South Pacific nations contribute to a Neutral Truce Monitoring Group (TMG) for Bougainville. Australia advised that it could contribute Australian Defence

³² *ibid*, p. 19.

³³ Preamble to the Agreement. Where no other authority is cited, it should be assumed that the source of material is either the Agreement or the covering National Interest Analysis (NIA). See the discussion at Supplementary Estimates by the Senate Foreign Affairs, Defence and Trade Legislation Committee, *Hansard*, 26 February 1998, pp. FADT 89-90, for some background to the current negotiations and Australian involvement in the process.

Force (ADF) and non-military personnel and logistics support to the TMG, which also had representatives from NZ, Fiji and Vanuatu.³⁴

3.101 The Agreement was required to provide a legal framework for the TMG's activities and for the participation of personnel. It was finalised and entered into force as soon as possible to provide the legal basis for the activities of its members. It was seen as an important step in the peace process and Australia has been actively involved, helping to facilitate a negotiated settlement.

3.102 Australia considered that the Agreement was not only in the interests of PNG and the people of Bougainville, but also served Australian interests, in particular the maintenance of strategic stability within the Pacific region. It believed the Agreement had the potential to contribute to bringing stability and order to Bougainville, and it believes that it has been proved correct. It sees the Agreement as 'a major step in the Bougainville peace process', bringing a measure of stability and order which has not been experienced for many years.³⁵

Provisions of the Agreement

3.103 Article 1 defines the terms used in the Agreement. Article 2 provides for the Peace Consultative Committee (PCC) to receive regular reports from the Commander of the TMG on the implementation of the Burnham Truce. Under this, the PCC has no direct involvement in the command of the TMG or in the decisions of its Commander.

3.104 Article 3 states that there will be a Truce Steering Committee, comprising the Commander and a representative of each participating State. NZ would provide the chairman of this Committee, and it shall consult regularly on issues arising from the TMG's activities. It will have no direct involvement in the command of the TMG or decisions of its commander.

3.105 The Agreement only applies (Article 4) in the Area of Operations (AO), which is defined as 'all areas' of PNG where the TMG or any member of it is deployed in the performance of its functions. It includes military installations or other premises and lines of communication and supply used by the TMG.

³⁴ Transcript, 9 March 1998, p. 18.

³⁵ *ibid*, pp. 18, 19.

3.106 The TMG's mandate is defined in Article 5:

- to monitor and report on compliance with the Burnham Truce;
- to promote and instil confidence in the peace process, and
- to provide people on Bougainville with information on the truce and the peace process.

3.107 Each participating State shall be responsible for funding its own participation in the TMG (Article 6) and, during their assignment to it, its military members remain under their national commands but are under the operational control of the Commander (Article 7). This Article also deals with the Commander's authority over the TMG and the withdrawal of personnel by a participating State.

3.108 In Article 8, conditions of entry into and exit from PNG are set out, and respect for local law and maintenance of strict neutrality are prescribed in Article 9. Arrangements about criminal and civil jurisdiction are set out in Article 10, while measures for the maintenance of discipline and good order by the TMG are set out in Article 11. The premises it requires are dealt with in Article 13, its uniforms, emblems and flags in Article 13 and the granting of registration, licensing and other permissions in Article 15.

3.109 Article 16 sets out rights to import and export goods for the use of the TMG, Article 17 with exemptions from taxation and duty and Article 18 with the establishment of communications. Article 19 deals with freedom of movement throughout PNG and Article 20 with the use of roads and other facilities without payment of tolls. Under Article 21, the TMG shall have the right to use public utilities, such as water and electricity, free of charge. Assistance will be given by PNG on request to obtain these utilities as if they were 'essential Government services'. The TMG also has the right to generate its own electricity free from regulation, licensing or charges.

3.110 The TMG may employ local personnel following prevailing practices in the local area (Article 22). It may also take charge of the remains of any TMG member who died in PNG (Article 23).

3.111 Provisions for dealing with claims against the TMG are set out in Article 24. Supplementary arrangements for carrying out the Agreement may be made between PNG and participating States under Article 25. The TMG shall use PNG currency (Article 26) at the most favourable exchange rate allowed by PNG, and may import amounts of currency into the area of operations as are required for the effective performance of its mandate.

3.112 Negotiation and consultation shall be used to settle any matters arising under the Agreement, and these shall not be referred to any other party or tribunal for resolution (Article 27). PNG or any of the Parties may agree to the variation or suspension of this Agreement or any part of it (Article 28). Article 29 sets out signature arrangements for, the entry into force and duration of the Agreement and, under Article 30, New Zealand will be the depositary for the document.

3.113 Article 29(3) provided that, unless mutually determined by the Parties, the TMG would be withdrawn by 31 January 1998, and the Agreement would expire on the withdrawal of the TMG from the AO. This provision was used, at the request of the Prime Minister of PNG, to extend the Agreement until 'no later than 30 April 1998'.³⁶

Costs

3.114 Article 6 makes each participating State responsible for funding its commitment to the TMG. Other provisions exempt participating States and TMG members from a range of PNG taxes, fees and charges for services.

Future protocols

3.115 Australian participation was extended from 31 January until 30 April 1998, via the exchange of letters between the Prime Ministers referred to above. In late January 1998, the *Lincoln Agreement on Peace, Security and Development on Bougainville* made provision for a 'permanent and irrevocable' ceasefire to take effect on 30 April, and foreshadowed a Peace Monitoring Group to replace the TMG.³⁷

Implementation

3.116 All TMG activities take place within PNG, and Article 25 makes provision for supplementary details about the implementation of the Agreement to be made between the PNG Government and those of participating States. No Australian legislation, or State/Territory action, was required.

³⁶ *ibid*, p. 19. See also Exhibit No 1.

³⁷ *ibid*, pp. 19, 21.

Consultation

3.117 The TMG's mandate called for deployment as soon as practicable, and the Agreement was finalised in such a way as to provide a legal basis for the activities of its members. The Agreement was notified to the States and Territories through the SCOT process.³⁸

Withdrawal

3.118 Article 28 provides that the Parties can agree to a variation or suspension of the Agreement 'on reasonable notice'. Article 29 also provides for the expiration of the Agreement on the withdrawal of the TMG from the area of operations, and its operations have now been extended to 30 April 1998.³⁹

Previous Parliamentary Committee considerations

3.119 The conflict in Bougainville has been the subject of a number of mentions in reports, including an update of an earlier report, by Parliamentary committees, principally by the Joint Standing Committee on Foreign Affairs, Defence and Trade and its predecessor. In April 1994, a delegation from the Parliament visited the island. It has also been the subject of speeches and questions by a number of members of the Parliament.⁴⁰

The Agreement in operation

3.120 In the view of its former chief of staff, the TMG performed its task 'very well'. At the height of its numbers, there were 378 personnel: 271 New Zealanders, 124 ADF members, 20 non-military Australian monitors, 10 Fijians and seven from Vanuatu. These figures were reduced over the first six weeks of the TMG's mandate, to 251, because the required engineering support had been provided.⁴¹

³⁸ *ibid*, pp. 18-19.

³⁹ *ibid*, p. 19. See paragraph 3.113 above.

⁴⁰ In particular, see *Australia's Relations with Papua New Guinea*, December 1991, especially Chapter Eleven, pp. 183-199; *Papua New Guinea Update: Report on Proceedings of a Seminar, 11 & 12 November 1996*, February 1997, Section 4, pp. 31-42; *A Review of Australia's Efforts to Promote and Protect Human Rights*, December 1992, pp. 79-81; *A Review of Australia's Efforts to Promote and Protect Human Rights*, November 1994, pp. 236-237. See also *Bougainville: A Pacific Solution-Report of the Visit of the Australian Parliamentary Delegation to Bougainville, 18-22 April 1994*.

⁴¹ Transcript, 9 March 1998, pp. 19, 25.

3.121 The Australian Department of Defence has been involved on both the negotiation and implementation of the Agreement, and in the provision of logistic support, particularly through the Royal Australian Air Force's (RAAF) airlift capability. Discussions will take place with NZ officials about the various contributions which could be made after 30 April.⁴²

3.122 Australia's overseas development assistance program has been supporting the process, and the ability to undertake rehabilitation work on the island is 'infinitely better' than it was 12 months' ago.⁴³

3.123 Of the 85 non-military monitors, about 20 were women, including the deputy leader of that group. The Australians in this group came from a number of agencies including DFAT, AusAID and Defence. There was some resistance to the use of women as monitors but, because Bougainville is a matriarchal society, they were invited into villages to talk to their women about peace and proved to be very successful.⁴⁴

3.124 The decision for personnel on the TMG to be unarmed was 'the best' which could have been made. This was seen as the most powerful gesture of peace which could have been offered to the Bougainvillean people because they made it their responsibility to protect the TMG. Great progress was made in the three months of the operation in reducing fear and uncertainty, mistrust and suspicion, so that public opinion is now putting leaders under pressure.⁴⁵

3.125 As seen by its former chief of staff and the commander of Australia's first contingent, the TMG's tasks were:

- to establish the environment of peace by gaining the confidence of the people;
- to establish and maintain the people's confidence, and this was done by establishing four truce monitoring teams around the island;
- to conduct an information campaign about the TMG, and
- to shape the minds of the Bougainvillean leaders.⁴⁶

⁴² *ibid*, pp. 19-20.

⁴³ *ibid*, p. 26.

⁴⁴ *ibid*.

⁴⁵ *ibid*, pp. 23, 25. At the same time, the Loloho site, north of Arawa, was secured in case it was necessary to extract the TMG.

⁴⁶ *ibid*, p. 24.

3.126 Morale was extremely high because of professionalism and high levels of training. There were few tactical problems, but it was felt that establishing the PCC earlier could have made the process work more effectively.⁴⁷

Possible developments

3.127 While the Lincoln Agreement Parties decided to cement the truce with a ceasefire, there are a number of difficult issues which are to be negotiated, leading to a second leaders' meeting before the end of June on Bougainville. They would like to have United Nations' (UN) endorsement of the peace process. The Parties would also like a small number UN monitors who can keep track of the process and report to the Secretary-General from time to time.⁴⁸

3.128 Discussions were held in Canberra in the week beginning 9 March 1998 about the replacement for the TMG. The Agreement will probably have to be modified and amended for the peace monitoring group which will take over after 30 April 1998, but this is very much in the hands of the various parties directly involved in the process of making peace on and for Bougainville.⁴⁹

3.129 Those who have been involved do not underestimate the difficulty or the importance of the job still to be done. In the first month of the TMG, there was a feeling that this was yet another false start for peace on Bougainville. In a Melanesian time-frame, three or four months are not a significant period and a long-term focus is required. Pressure needs to be maintained on the leaders to ensure that they deliver what their people want. It is hoped that the TMG-type presence can be reduced as local authorities and services are established.⁵⁰

3.130 A recent press report suggested that Australia may replace New Zealand as the leader of the TMG, subject to the agreement of all Parties. Another report suggested that Australia 'could be forced' to double the number of its personnel, ADF and non-military, on Bougainville because 'NZ has complained' it can no longer afford to pay the rapidly increasing cost of the operation there.⁵¹

Committee view

⁴⁷ *ibid*, pp. 24, 25. The TMG was 'dry', and no disciplinary actions were required against the ADF and NZ personnel; see *ibid*, p. 24.

⁴⁸ *ibid*, pp. 21-22. 'Four or five' UN monitors were mentioned.

⁴⁹ *ibid*, p. 20.

⁵⁰ *ibid*, p. 27.

⁵¹ See *The Weekend Australian*, 21-22 March 1998, p. 12, and *The Australian*, 26 March 1998, p. 4.

3.131 It is very important that Australians were involved in the TMG. Bougainville is an important part of our closest neighbour to the north, and this country has been involved in the peace process for some time. The ADF and other non-military personnel performed and worked well with personnel from other nations and have acquitted themselves in ways of which we can be proud. The professionalism of the Australian effort is to be applauded, and we commend the number of women who have been part of the TMG.

3.132 It is to be hoped that the peace process will continue and lead to reconstruction of Bougainville. In any event, it will be to Australia's credit that the TMG included a number of its people. Should the TMG become a peace monitoring group after 30 April, we believe that Australians should continue to be involved. Any such change must, of course, be acceptable to the other Parties in the process.

3.133 The Joint Standing Committee on Treaties notes the information it has received, and supports Australian involvement in the *Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville*.

W L Taylor MP
Chairman

APPENDIX 1

WITNESSES AT PUBLIC HEARINGS

1996 Protocol to the London Convention on Sea Dumping

Monday, 1 December 1997, Canberra

Department of Foreign Affairs and Trade

Mr I Biggs, Executive Director, Treaties Secretariat

Attorney-General's Department

Mr M Zanker, Assistant Secretary, International Trade and Environment Law Branch, Office of International Law

Environment Australia

Mrs L Emmett, Director, Water Pollution Prevention Section, Environment Protection Group

Dr H Stevens, Policy Officer, Environment Protection Group

Mr M Tucker, Assistant Secretary, Environmentally Sustainable Industry Branch, Environment Protection Group

Department of Defence

Mrs G Beasley, Assistant Director, Environment and Heritage

Department of Primary Industries and Energy

Mr P Smith, Director, Legislation and Environment Section

Australian Fisheries Management Authority

Ms K Maguire, Environment Manager

Australian Maritime Safety Authority

Mr Paul Nelson, Senior Policy Adviser

Australian Marine Conservation Society

Ms P Eiser, Member

Australian Conservation Foundation

Mr M Horstman, Research Coordinator

Greenpeace Australia

Mr S McRae, Campaigner, Ocean Dumping

World Wide Fund for Nature Australia

Ms M Moore, Senior Conservation Officer

Monday, 8 December 1997, Sydney

Australian Marine Conservation Society (NSW)

Mrs S Adam, Government Liaison Officer

Environment Australia

Mrs L Emmett, Director, Water Pollution Prevention Section, Environment Protection Group

Amendments to the Schedule to the International Convention for the Regulation of Whaling

Monday, 1 December 1997, Canberra

Environment Australia

Dr P Bridgewater, International Whaling Commission Commissioner and Chief Scientific Adviser

Dr D Kay, Assistant Secretary, Wildlife Branch, Biodiversity Group

Ms D Thiele, Senior Project officer, Biodiversity Group

Greenpeace Australia

Ms D Boyd, Campaigner

Australian Marine Conservation Society

Ms P Eiser, Member

World Wide Fund for Nature Australia

Ms M Moore, Senior Conservation Officer

Monday, 8 December 1997, Sydney

Interested Individuals

Mr C Puplick, Chairman, National Task Force on Whaling

Dr W Dawbin, Research Associate (Honorary), Australian Museum, Sydney

Australian Marine Conservation Society (NSW)

Ms S Adam, Government Liaison Officer

Australians for Animals

Ms S Arnold, Coordinator

Humane Society International

Mr M Kennedy, Director

Monday, 9 March 1998, Canberra

Department of Foreign Affairs and Trade

Mr J Hart, Executive Director Treaties Secretariat

Attorney-General's Department

Mr W Campbell, First Assistant Secretary, Office of International Law

OECD Convention on Combating Bribery

Senator the Hon Amanda Vanstone, Minister for Justice

Attorney-General's Department

Mr G McDonald, Senior Adviser, Criminal Law Reform

Mr C Meaney, Assistant Secretary, International Branch, Criminal Law Division

Department of Foreign Affairs and Trade

Mr J Woods, Manager, OECD Resources and Coordination, Trade Negotiations Division

Treaties tabled on 3 March 1998

Agreement on Judicial Assistance and Cooperation with Thailand

Mr J MC Guinness, Principal Legal Counsel, International Civil Procedure

Amendments to the London Convention on Sea Dumping

Environment Australia

Mrs L Emmett, Director, Marine Section Environment Protection Group

Mr M Tucker, Assistant Secretary, Sustainable Industries Branch

Amendments to the Double Taxation Agreement with Finland

Australian Taxation Office

Mr K Allen, Assistant Commissioner, International Tax Division

Mr G Trigg, Senior Taxation Adviser

Department of Foreign Affairs and Trade

Mr G Beardsley, Executive Officer

Extradition Treaty with Paraguay

Mr C Meaney, Assistant Secretary, International Branch, Criminal Division,
Attorney General's Department

Amendments to the Health Services Agreement with Malta

Mr M Burness, Director, Medicare Eligibility, Department of Health and Family Services

Agreement on the Neutral Truce Monitoring Group in Bougainville**Department of Foreign Affairs and Trade**

Mr D Ritchie, First Assistant Secretary, South Pacific, Africa and Middle East Division

Australian Agency for International Development

Mr M Proctor, Assistant Director-General, Papua New Guinea Branch

Department of Defence

Mr A Behm, Head, International Policy, International Policy Division

Colonel S Joske, Former Chief of Staff, Truce Monitoring Group

APPENDIX 2

SUBMISSIONS RECEIVED

Protocol to the Convention on the Prevention of Marine Pollution by Dumping Waste and Other Matter

1. Environment Australia, Environment Protection Group
2. Attorney-General's Department
3. Great Barrier Reef Marine Park Authority

Amendments to the Double Taxation Agreement with Finland

1. Institute of Chartered Accountants in Australia

LIST OF EXHIBITS

1996 Protocol to the London Convention on Sea Dumping

1. *A History of Sea Dumping off Australia and its Territories*, by Geoff Plunkett, Environment Protection Group, Department of the Environment, 1997.
2. Copy of Application for a Permit under the *Environment Protection (Sea Dumping) Act 1981*.
3. Copy of General Permit (May 1997) for the Townsville Port Authority under the *Environment Protection (Sea Dumping) Act 1981*.
4. Copy of General Permit (November 1997) for the Mackay Port Authority under the *Environment Protection (Sea Dumping) Act 1981*.
5. List of the Contracting Parties to the London Convention.

Amendments to the Schedule to the International Convention for the Regulation of Whaling

1. *A Universal Metaphor: Australia's Opposition to Commercial Whaling - Report of the National Task Force on Whaling*, May 1997.
2. 'The International Whaling Commission - Its Past and Possible Future', by John A Knauss in *Ocean Development & International Law*, 28, 1997, pp. 79-87.
3. 'WWF to push for Global Oceans Whale sanctuary', by Dr Ray Nias in *Wildlife News*, No 81, October-December 1997, p. 15.
4. Whale Abundance Estimates (provided by Wildlife Australia, Biodiversity Group, Environment Australia).
5. International Whaling Commission (information paper).

6. *Makah Whaling: A Stepping Stone to undermining Commercial Whaling Moratorium?* A Report by Humane Society International to the 49th Annual Meeting of the IWC, October 1997.
7. *A Report on Russian Aboriginal Whaling.* A Report by Humane Society International to the 49th Annual Meeting of the IWC, October 1997.
8. *Statement on Aboriginal Subsistence Whaling.* Statement by the Australian Delegation to the 49th Annual Meeting of the IWC, Monaco, 23 October 1997.
9. *Whaling Commission Approves Combined Russian-Makah Gray Whale Quota, Russian-Alaskan Native Bowhead Quota Also Approved.* United States Delegation News Release at the 49th Annual Meeting of the IWC, Monaco, 23 October 1997.
10. *Proposed Modifications to the International Convention for the Regulation of Whaling - Abdication and Enforcement under the RMS: Minimum Requirements for an International Regime.* A Report by the Humane Society International to the 48th Meeting of the IWC, June 1996.
11. *Vulnerability of large whale stocks to 'Small-Type Coastal Whaling'*, by Tara M Cox and Andrew J Read, September 1997. Final Report to the Humane Society of the United States.
12. *Japan's Action Plan for Small-Type Coastal Whaling is a Disguised Commercial Enterprise*, Prepared for Humane Society International and the Humane Society of the United States for presentation to the 48th Meeting of the IWC, June 1996, by American Economics Group, Inc.
13. *IWC 49 - Delegation Report.*
14. Media Release, Senator the Hon Robert Hill: *Hill to Push for Global Whale Sanctuary*, 20 October 1997.
15. *Proposal to Manage Whaling for the Future.*
16. Opening Statement of the Government of Ireland: IWC 49 Meeting at Monaco 1997.
17. 'International Management of Whales and Whaling: An Historical Review of the Regulation of Commercial and Aboriginal Subsistence Whaling', by Ray Gambell, *Arctic*, Vol 46, No 2 June 1993, pp. 97-107.

Agreement on the Neutral Truce Monitoring Group in Bougainville

1. Minister for Foreign Affairs Media Release FA17 of 19 February 1998: 'Australia's Support for the Bougainville Peace Process'.
2. 'Pacific Island Peacekeeping: Some Preliminary Answers to Past Questions in the Light of Recent Experiences', by John Henderson. Paper prepared for the Second Wellington Conference on World Affairs, Victoria University of Wellington, 6-7 March 1998.