
The Parliament of the Commonwealth of Australia

Report 30

Treaties Tabled on 8 and 9 December 1999 and 15 February 2000

Joint Standing Committee on Treaties

April 2000

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Membership of the Committee

Chair The Hon Andrew Thomson MP

Deputy Chair Senator Barney Cooney

Members	The Hon Dick Adams MP	Senator Andrew Bartlett****
	The Hon Bruce Baird MP	Senator Helen Coonan
	Kerry Bartlett MP	Senator Joe Ludwig
	Anthony Byrne MP**	Senator Brett Mason
	Kay Elson MP	Senator the Hon Chris Schacht
	Gary Hardgrave MP	Senator Natasha Stott Despoja***
	De-Anne Kelly MP	Senator Tsebin Tchen
	The Hon Janice Crosio MBE, MP*	
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* Until February 2000

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Committee Secretariat

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Patrick Regan

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Research Officer Robert Horne

Administrative Officer Elizabeth Halliday



Recommendations

UN Convention to Combat Desertification

The Committee supports ratification of the United Nations' *Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa*, and recommends that binding treaty action be taken as soon as practicable (paragraph 2.75).

The Committee recommends that, at the time of ratification, the Commonwealth Government provides to the United Nations, and to the Australian State and Territory Governments, a statement on land management responsibilities within the Australian Federal system (paragraph 2.76).

Scientific and Technological Cooperation with Korea

The Committee supports the proposed *Agreement between the Government of Australia and the Government of the Republic of Korea on Scientific and Technological Cooperation*, and recommends that binding treaty action be taken (paragraph 3.50).

International Development Law Institute

The Committee supports Australia's proposed accession to the *Agreement for the Establishment of the International Development Law Institute* and recommends that binding treaty action be taken (paragraph 4.42).

The Committee recommends that the Minister for Foreign Affairs actively pursue the suggestion made by the International Development Law Institute that a regional office of the Institute be established in Australia (paragraph 4.44).

Denunciation of Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface

The Committee supports the proposed denunciation by Australia of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface* and recommends that action be taken to denounce the Convention (paragraph 5.21).

Introduction

Purpose of the Report

- 1.1 This Report contains advice to Parliament on the review by the Joint Standing Committee on Treaties (the Committee) of the following, proposed treaty actions, tabled in both Houses of Parliament on 8 and 9 December 1999¹ and on 15 February 2000²:
- ratification of the United Nations *Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa*, in Chapter 2;
 - *Agreement between Australia and the Republic of Korea on Scientific and Technological Cooperation*, in Chapter 3;
 - accession to the *Agreement for the Establishment of the International Development Law Institute*, in Chapter 4;
 - denunciation of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, in Chapter 5;
 - *Agreement between Australia and the United Nations Transitional Administration in East Timor (UNTAET) on the continued operation of the Timor Gap Treaty*, in Chapter 6; and

1 Senate Journal No. 93, 8 December 1999, p. P2199; Senate Journal, No. 94, 9 December, p. P2253; House of Representatives, *Votes and Proceedings*, No 87, 8 December 1999, p. P1068; House of Representatives, *Votes and Proceedings*, No 88, 9 December 1999, p. P1081

2 Senate Journal No. 95, 15 February 2000, p. P2275; House of Representatives, *Votes and Proceedings*, No 89, 15 February 2000, p. P1106

- amendments to the *Convention on the Conservation of Migratory Species of Wild Animals*, also in Chapter 6.

Availability of documents

- 1.2 The advice in this Report refers to, and should be read in conjunction with, the National Interest Analyses (NIAs) prepared for these proposed treaty actions. These analyses were prepared for each proposed treaty action by the Government agency responsible for the administration of Australia's responsibilities under each treaty. The NIAs were tabled in Parliament as aids to Parliamentarians when considering these proposed treaty actions.
- 1.3 Copies of each of the treaty actions and NIAs can be obtained from the Treaties Library maintained on the Internet by the Department of Foreign Affairs and Trade (DFAT). The Treaties library is accessible through the Committee's website at (www.aph.gov.au/house/committee/jsct). Copies of the treaty actions and NIAs can also be obtained from the Committee Secretariat.

Conduct of the Committee's review

Treaties tabled on 8 and 9 December 1999

- 1.4 Our review of each of treaties tabled on 8 and 9 December 1999 was advertised in the national press and on our web site. A total of 45 submissions were received in response to the invitation to comment in the advertisement. A list of those submissions is at Appendix B.³
- 1.5 For these proposed treaty actions we gathered evidence at a public hearing on 14 February 1999. Appendix C lists the witnesses who gave evidence at that hearing.
- 1.6 A transcript of the evidence taken at that hearing can be obtained from the database maintained on the Internet by the Department of the Parliamentary Reporting Staff (www.aph.gov.au/hansard/joint/committee/comjoint.htm), or from the Committee Secretariat.

3 Our review of these proposed treaty actions was advertised in *The Weekend Australian* on 11/12 December 1999, p. 13

- 1.7 We always seek to consider and report on each proposed treaty action within 15 sitting days of it being tabled in Parliament. In the case of these proposed treaty actions tabled on 8 and 9 December 1999, the 15 sitting day periods expire on 5 and 6 April 2000 respectively.

Treaties tabled on 15 February 2000

- 1.8 Usually, treaty actions are tabled in Parliament and reviewed by the Committee before action is taken to bind Australia, at international law, to the terms of the treaty. In relation to both of the treaty actions tabled on 15 February 2000, for different reasons, binding action has already been taken. The background to these treaty actions and the reasons for binding action are explained in Chapter 6.
- 1.9 As Australia is already bound to the terms of these treaty actions, we decided to alter our usual review practices. We did not advertise our review in the national press but limited our review to a consideration of the NIAs proposed in support of the treaty actions. We did, however, place a notice on our web site calling for public submissions. We received 1 submission relating to each treaty.
- 1.10 The 15 sitting day period for these treaties expires on 10 April 2000.

UN Convention to Combat Desertification

Background

- 2.1 The United Nations' *Convention to Combat Desertification in those Countries experiencing Serious Drought and/or Desertification, particularly in Africa* (UNCCD) was concluded in June 1994. It was signed for Australia, subject to ratification, on 14 October 1994. The Convention entered into force generally, but not yet for Australia, on 26 December 1996.
- 2.2 To date, 162 countries have ratified the Convention. The National Interest Analysis (NIA) notes that there are very few international agreements that have more members than this.
- 2.3 The text of UNCCD was tabled in the Senate on 30 November 1994, and in the House of Representatives on 5 December 1994.¹

Previous Committee consideration

- 2.4 On 15 July 1996, the previous Committee agreed to conduct an inquiry into UNCCD. A total of 28 submissions were received from interested organisations and individuals. Hearings were held in Canberra on 2 October 1996, in Brisbane on 1 May 1997 and, in conjunction with inspections of local properties, at Boorowa in NSW on 22 April 1997.²
- 2.5 In its *Eighth Report*, tabled on 23 June 1997, that Committee noted that 'considerable further consultation' was required with the States and

1 Material in this section was drawn from the National Interest Analysis for the United Nations Convention to Combat Desertification (NIA for UNCCD), p. 2

2 Joint Standing Committee on Treaties, *Eighth Report* (June 1997), p. 25

Territories and other organisations before an NIA could be finalised. At that time, it was not clear whether one would be produced. The Committee was also aware that although Australia's decision not to proceed with a National Action Plan had reduced concerns about UNCCD, issues of land management and national sovereignty remain relevant for some organisations and individuals.³

- 2.6 Without making a recommendation, that Committee stated that an NIA could be finalised only after the necessary consultations had taken place with the States and Territories and other organisations. It believed that a decision about ratification of the Convention would only be possible at that time. It therefore concluded that the subject should be kept under review, and the inquiry reopened when and if an NIA was tabled.⁴

This inquiry

- 2.7 Following the tabling of the NIA in both Houses of the Parliament on 9 December 1999, our intention to hold an inquiry into this matter was advertised in the national press and on the Internet. We also wrote to those individuals and organisations listed in the NIA as consulted about UNCCD, seeking submissions. The 24 submissions received are listed in Appendix B.
- 2.8 On 14 February 2000 in Canberra, we held a public hearing at which representatives of Government agencies and other organisations gave evidence on this matter.

The Convention

Background

- 2.9 The NIA states that more than 30 per cent of the earth's surface has been designated as dry or semi-arid by the UN. More than 70 per cent of this area is used for agriculture or pastoral activities. The UN has assessed that land degradation is occurring over most of that area, and that it is increasing. About 15 per cent of the world's population, and 25 per cent of

3 *Eighth Report*, pp. 26, 31; Stephen Hunter (Environment Australia) *Transcript of Evidence*, 14 February 2000, p. TR2

4 *Eighth Report*, p. 31

the total land area of the earth, is directly affected by desertification and land degradation.⁵

- 2.10 The loss of productivity caused by desertification severely undermines sustainable economic growth, limits food security and increases susceptibility, often contributing to the large-scale movement of people. According to the NIA, UN statistics suggest that the failure of marginally productive land to cope with population pressures, together with increasingly variable climate and recurrent drought, may already have displaced 25 million people worldwide from their land.
- 2.11 The consequences of these pressures fall hardest on developing countries, and remediation requires constant, and extensive support, from the international community.
- 2.12 After the 1992 UN Conference on Environment and Development (UNCED), member states recognised that, without coordinated and cooperative responses to desertification and its consequences, the effectiveness of multilateral remedial action would continue to be limited and dominated by competition between donors, lack of coordination and duplication of effort. A cooperative international instrument was considered to be the best way of overcoming such problems.⁶
- 2.13 UNCCD is the third of the conventions that resulted from UNCED. The other two, which Australia has already ratified, were:
- the 1992 *United Nations' Framework Convention on Climate Change*; and
 - the 1992 *Convention on Biological Diversity*.⁷

Features of UNCCD

- 2.14 Briefly, UNCCD has been 'specifically designed to encourage inclusive partnerships and cooperation and coordination', as set out in Article 3. It is seen as a unique international instrument, explicitly stressing partnership rather than aid. This is consistent with Agenda 21, the non-binding framework for action initiated at UNCED in 1992.
- 2.15 This Convention seeks to address the causes and consequences of desertification, and promotes sustainable dryland management in

5 Unless otherwise specified, material in this section was drawn from the NIA for UNCCD, p 3. Although the terms are often used interchangeably, Article 1 of UNCCD includes separate definitions of 'desertification' and 'land degradation', clearly differentiating them.

6 At pp. 6 to 9, the NIA includes a summary of the provisions of UNCCD.

7 Ralph Hillman (Department of Foreign Affairs and Trade (DFAT)), *Transcript of Evidence*, 14 February 2000, p. TR3

developing countries, especially in Africa. It provides a framework for developed countries to assist affected developing countries by providing financial, technology transfer and capacity building support measures.

- 2.16 Under UNCCD, affected developing countries must develop National Action Plans (NAPs). These are guided by Regional Implementation Annexes which focus NAPs on the prevailing socio-economic, geographic and climatic circumstances of affected regions. The Convention is also designed to facilitate better coordination of the development cooperation programs run by such bodies as the World Bank, the International Fund for Agricultural Development and the Global Environmental Facility.⁸

Obligations

- 2.17 As a developed country, ratification of UNCCD would impose three obligations on Australia:
- to assist affected developing countries as appropriate, while combating land degradation and desertification within its own sustainable development plans and policies;
 - some general reporting requirements; and
 - an annual contribution, set by the UN.⁹
- 2.18 The NIA states that Australia's current assistance to developing countries, through its development cooperation program, would meet the first obligation. For many years, Australia has been assisting developing countries affected by land degradation and desertification. AusAID currently supports a range of programs, worth 'upwards of \$A32.5 million', in such countries. Some of this amount is designed to help developing countries with their NAPs.
- 2.19 Because of Australia's expertise in the field, our future obligations could be met by support for scientific and technical cooperation, technology transfer and capacity-building programs.
- 2.20 According to the NIA, the reporting requirements of the Convention are 'very general' and Australia's existing development cooperation programs

8 Material in this section was drawn from the NIA for UNCCD, pp. 2-3

9 NIA for UNCCD, pp. 5, 6, 10

and resource management initiatives would allow it to satisfy these obligations without difficulty.¹⁰

Costs

- 2.21 The only direct and compulsory costs Australia would incur by becoming a Party would be an annual contribution of about \$A149,000 per year. This amount could decrease as other countries ratify the Convention.
- 2.22 The Australian Government may also choose to make voluntary contributions to trust funds, set up to meet some of the specific costs of administering UNCCD. Additional financial support may also be required, from time to time, for expert participation in ad hoc scientific panels not covered by the Core budget, but such costs are expected to be small.
- 2.23 The NIA notes that, if it becomes a Party, Australia will not need to alter its development cooperation program policies, or its spending on desertification programs. UNCCD does not effect the rights of parties to determine funding levels for either domestic or international programs in accordance with their own priorities and circumstances, and does not require additional funding to such programs.¹¹

Implementation

- 2.24 The NIA notes that ratification of this Convention would not require amendment to existing legislation, policies or programs. Moreover, no changes would be necessary to the existing relationship between the Commonwealth and the States and Territories. Each level of government, including local government, has its own programs for sustainable natural resource management that are fully consistent with, and in fact exceed, UNCCD's requirements.
- 2.25 The NIA notes that the Commonwealth 'may choose to exercise limited authority only over matters of national relevance' through such legislation as the *Commonwealth Environment Protection (Impact of Proposals) Act 1972*, or the *Environment Protection and Biodiversity Conservation Act 1999*.
- 2.26 As the NIA also notes, based on agreements reached through the Council of Australian Governments (COAG), 'primary responsibility for land

10 Unless specified otherwise, material in this section was drawn from the NIA for UNCCD, pp. 5-6; Stephen Hunter (Environment Australia), *Transcript of Evidence*, 14 February 2000, p. TR2

11 Unless otherwise specified, material in this section was drawn from the NIA for UNCCD, p. 10

management will continue to reside' with the States and Territories. UNCCD will not require the implementation of any new inter-governmental arrangements, legislation or programs.

- 2.27 Any obligations imposed by UNCCD in this regard are more than fulfilled by the work undertaken through the CSIRO, the Land and Water Development Corporation, the Natural Heritage Trust, the National Principles and Guidelines for Rangeland Management, the Murray-Darling Basin Commission, Integrated and Regional Catchment Management Initiatives, and the various State and Territory bodies responsible for soil, water and vegetation management.¹²

Entry into force

- 2.28 Article 36(2) provides that, for a State ratifying this Convention after the 50th ratification, it shall enter into force on the 90th day after the deposit of its instrument of ratification with the Secretary-General of the UN.¹³

Consultation

- 2.29 The NIA details the consultations on UNCCD that have been conducted with 'all stakeholder groups'. These consultations preceded the UNCED in 1992, where work on the Convention was initiated. Consultations on ratification were also conducted right up to the tabling of the NIA. With the conclusion of this process, the Commonwealth has taken the view that ratification is supported 'by all State and Territory Governments and NGOs.'¹⁴
- 2.30 The NIA points out that State and Territory support for ratification was subject to the principles agreed to by the Treaties Council in 1997, that:
- no NAP would be developed;
 - the implementation and development of Commonwealth/State partnership programs and strategies would not be undermined; and

12 Unless specified otherwise, material in this section was drawn from the NIA for UNCCD, pp. 10-11. See also Stephen Hunter (Environment Australia), *Transcript of Evidence*, 14 February 2000, p. TR3

13 NIA for UNCCD, p. 2

14 See the NIA for UNCCD, pp. 11-12. It includes an extensive list of the NGOs and commercial organisations 'specifically consulted, and/or those which provided views on the Convention'. Stephen Hunter (Environment Australia), *Transcript of Evidence*, 14 February 2000, p. TR9

- there would be joint consideration of the means by which Australia's expertise in dryland management could be better used and exchanged with other nations.¹⁵
- 2.31 During those consultations, the Commonwealth made it clear that it did not wish to use UNCCD to alter existing land management arrangements in Australia.¹⁶

Reasons for Australia's ratification

- 2.32 The Government presented four main reasons why Australia should ratify UNCCD:¹⁷
- it will benefit Australia's domestic and international credibility and enhance its international reputation in an area where it has much to show;
 - it may lead to increased commercial opportunities for Australian businesses;
 - it will give Australia influence in improving the effectiveness with which land management assistance is delivered, and in administering the UNCCD Secretariat; and
 - it will not involve any additional Commonwealth action because Australia's obligations are already being fulfilled.¹⁸
- 2.33 The Commonwealth Government's Landcare program has already established an international reputation for excellence in tackling land degradation problems. Government witnesses at our hearing argued that the work of the International Secretariat for Landcare (based in Hamilton, Victoria) has helped promote community-based action as a valuable tool in land management. The program has already been established in South Africa and other countries are showing interest in similar programs. It was claimed that ratification of UNCCD would reinforce international recognition of Australia's capacity and expertise in this area.

15 NIA for UNCCD, p. 12

16 Stephen Hunter (Environment Australia), *Transcript of Evidence*, 14 February 2000, p. TR4; see paragraphs 2.52 to 2.58.

17 Unless specified otherwise, material in this section was drawn from the NIA for UNCCD, pp. 3-5

18 See paragraphs 2.17 to 2.20

- 2.34 Australian consultants and companies have built strong relationships in a number of affected developing countries, which tend to view Australia as a natural partner for dry and semi-arid land management projects. Some of these businesses have gained work from UNCCD-related international funding, and continue to demonstrate a capacity to compete on merit for such work. In the future, these opportunities are likely to favour businesses based in countries that are party to the Convention.¹⁹
- 2.35 Government witnesses were, however, careful not to exaggerate the commercial opportunities that ratification might bring, describing them as 'modest' and 'relatively limited'.²⁰
- 2.36 Ratification would also allow full participation and voting rights, meaning that Australia would be better placed to ensure that UNCCD undertakes its responsibilities effectively. Dr Geoff Pickup, from CSIRO, argued that ratification would allow Australia to influence the allocation of development cooperation funds, a process from which it might otherwise be excluded.²¹
- 2.37 Perhaps the most significant reason advanced in favour of ratification is that Australia would signal to the international community a firm commitment to helping overcome a significant and widespread environmental problem. A witness from AusAID summarised this argument by noting that UNCCD is the only international forum available to ensure that
- the problems of land degradation and desertification are addressed by governments around the world in a coordinated fashion; and
 - that efficient and effective solution are developed and implemented.²²

UNCCD and the Australian Federal system

- 2.38 The issue that attracted most comment both in our review and the review conducted by the former Committee was the potential impact that

19 Stephen Hunter (Environment Australia), *Transcript of Evidence*, 14 February 2000, p. TR3

20 Stephen Hunter (Environment Australia), *Transcript of Evidence*, 14 February 2000, p. TR2; Dr Geoff Pickup (CSIRO), *Transcript of Evidence*, 14 February 2000, p. TR5. See also his evidence to the previous Committee: *Transcript of Evidence*, 2 October 1996, pp. TR32-43, especially at pp. TR34-35

21 Dr Geoff Pickup (CSIRO), *Transcript of Evidence*, 14 February 2000, pp. TR5-6. See also his evidence to the previous Committee: *Transcript of Evidence*, 2 October 1996, pp. TR33-34

22 Dr Robert Glasser (AusAID), *Transcript of Evidence*, 14 February 2000, p. TR3

ratification might have on Commonwealth-State relations in the Australian federation.

State perspectives

- 2.39 State and Territory governments were keen to seek assurances from the Commonwealth that ratification would result neither in any diminution of their responsibility for land management nor in any intrusion of Commonwealth authority into areas that had traditionally been the preserve of State and Territory governments.
- 2.40 In April 1998, the Premier of South Australia wrote to the Minister for Foreign Affairs asking that a statement be made, at the time of ratification of UNCCD, 'to explain the means by which it will be implemented in Australia's federal system.' The Premier proposed that such a statement:
- could outline the current legislation, programs and strategies that meet the requirements of the Convention. It should also provided details of the current division of responsibilities in this area and should be accompanied by a more general statement about the division of responsibilities within Australia's federal system.²³
- 2.41 The Premier sought such a statement in order to highlight an undertaking previously given by the Commonwealth that ratification would not result in any change to the existing relationship between the Commonwealth and the States and Territories on land management.²⁴
- 2.42 The Premier's letter stated that, subject to the Treaties Council's qualifications and 'to the inclusion of a statement at the time of ratification', the SA Government would support ratification. The NIA notes that this request remains current, and that the Commonwealth 'would be able to meet South Australia's request if ratification...is to proceed.' Evidence was given at the public hearing that this statement could be made at the time of ratification.²⁵
- 2.43 Similar comments were made by the Western Australian Government in its submission to our review. It predicated its support for ratification on the principles agreed to by the Treaties Council in November 1997, most notably that a NAP not be developed.²⁶

23 NIA for UNCCD, p. 12; Exhibit No 1

24 Exhibit No 1

25 Exhibit No 1; NIA for UNCCD, p. 12; Stephen Hunter (Environment Australia), *Transcript of Evidence*, 14 February 2000, p. TR7

26 WA Government, *Submission No 17*, p. 1. See paragraph 2.32

- 2.44 The WA Government noted that the NIA refers to the possibility for the Commonwealth to exercise limited authority only over matters of national relevance through the *Commonwealth Environmental Protection (Impact of Proposals Act) 1972* and *Environment Protection and Biodiversity Conservation Act 1999*. WA believes that the Commonwealth needs to clarify further the implications of such actions as they may impact on the State.²⁷
- 2.45 The submission notes that WA is committed to ecologically sustainable development and already contributes significantly to programs in Australia, and around the world. WA believes its leadership in Landcare, which already meets or exceeds UNCCD's requirements, could serve as an example to developing countries seeking to combat land degradation.²⁸
- 2.46 WA concludes by stating that, while there appears to be no environmental reason for opposing ratification, the States and Territories would be keen to receive clarification about the implications of possible Commonwealth legislative actions, and on the constitutional basis for any proposals by the Commonwealth.²⁹
- 2.47 The NSW Government's submission also indicated support for Australia's ratification of UNCCD. Like WA, however, its support was subject to the Commonwealth complying with the principles agreed to by the Treaties Council in 1997.³⁰
- 2.48 The NSW Government was also of the opinion that a 'Federal Statement' should be made which reiterates the principles agreed to by the Treaties Council and sets out the primacy of the States as land managers.

Commonwealth perspective

- 2.49 At our hearing we were assured by witnesses from the Commonwealth Government that ratification of UNCCD would not result in any change to the structure of land management responsibilities within Australia. Existing Commonwealth, State and local government responsibilities would continue unchanged.³¹
- 2.50 Moreover, witnesses from Environment Australia argued that as UNCCD is a framework treaty, and as Australia's land management standards already exceed those required by the Convention, there would be little

27 WA Government, *Submission No 17*, pp.1-2. See paragraph 2.25

28 WA Government, *Submission No 17*, p. 2

29 WA Government, *Submission No 17*, p. 2

30 NSW Government, *Submission No. 21*, p. 1

31 Unless specified otherwise, material in this section was drawn from Stephen Hunter (Environment Australia), *Transcript of Evidence*, 14 February 2000, p. TR2:

capacity to use the Convention to influence domestic land management standards.³²

- 2.51 Nevertheless, we were interested in the general question of the extent to which future Commonwealth Governments could use the Convention to intrude on what are currently understood to be State land management responsibilities.
- 2.52 A witness from the Department of Foreign Affairs and Trade (DFAT) advised, that when Australia ratifies an international instrument, the Commonwealth Government is responsible for carrying out the obligations of that instrument. It then works out the roles of State and Territory Governments in implementing those obligations. Over time, the ways in which these obligations are carried out may change, but no Government can bind later Governments about implementation in the future.³³
- 2.53 Essentially, the way in which this Convention, and all others to which Australia is a party, is implemented is a matter for the Commonwealth Government of the day to determine.

Evidence from non-government sources

- 2.54 The submissions we received from non-government organisations fell, broadly, into two categories:
- those that were strongly supportive of Australia's ratification of UNCCD; and
 - those that were supportive, but with some reservations.

Strongly supportive

- 2.55 The submissions that were strongly supportive of ratification included those from: World Vision Australia; the World Wide Fund For Nature; Richard Ledger (a former consultant to the UNCCD secretariat); the Environment Centre of the Northern Territory; Theo Nabben (an employee of Agriculture Western Australia); Tony O'Brien (an environmental consultant); Environs Kimberley; the Environmental institute of Australia; Peter Dillon (a researcher at the Centre for

32 Stephen Hunter (Environment Australia), *Transcript of Evidence*, 14 February 2000, p. TR2

33 David Mason (DFAT), *Transcript of Evidence*, 14 February 2000, pp. TR8-9

Groundwater Studies); Associate Professor Grant McTainsh; the Australian Centre for International Agricultural Research; Pauline Hanson's One Nation South Australia; Marcus Beresford (environmental lawyer); and Bruce Lloyd (Chairman of the Australian Landcare Council).

2.56 Many of those who strongly supported ratification were also of the view that Australian Governments needed to do far more to combat desertification within Australia, as well as internationally.

- The World Wide Fund for Nature (WWF) argued that land degradation is 'extensive and getting worse in Australia's rangelands'. That the actions that Australia is currently undertaking are not effective in halting and reversing desertification, and that Australia needs to adopt a regional implementation annex and a National Action Plan.³⁴
- Richard Ledger argued that there are fundamental flaws in Australia's Landcare program and that a National Action Plan is needed to counter the inability of Landcare and other programs to tackle degradation in rangeland areas.³⁵
- Friends of the Earth Australia (FoEA) affirmed that Landcare is 'very good at involving local communities and raising public awareness' but it had been 'generally unsuccessful in ameliorating serious land degradation trends' in Australia. They cited a number of weaknesses in the Landcare system and called for a National Action Plan to provide some accountability and coordination to Landcare projects.³⁶
- World Vision Australia (WVA) called for support by the Commonwealth Government for the enhanced Heavily Indebted Poor Country initiative by making greater contributions to multilateral debt relief and by, in particular, cancelling remaining debt relief owed by Ethiopia.³⁷
- The Environment Centre of the Northern Territory (ECNT) called for more funding assistance from the Commonwealth Government to non-

34 WWF, *Submission No. 14*, p. 2. For similar views see also: ECNT, *Submission No. 12*, pp. 1-2 and Robert Curgenvin, *Submission No. 13*, p. 1. On a similar line Environs Kimberley, a regional environmental group, emphasised that Australia needed to make a lot more effort to tackle growing arid land problems caused by unsustainable farming practices. See *Submission No. 15*, p. 1

35 Richard Ledger, *Submission No. 9*, pp. 5-6, 10. See Pauline Hanson One Nation, *Submission No. 23*, p. 2

36 FoEA, *Submission No. 7A*, pp. 2-4. FoEA also argued that the Australian Government should inform UNCCD of the problems it is facing with Landcare so that other countries might avoid the same mistakes Australia has made. See also WWF, *Submission No. 14*, p. 2

37 WVA, *Submission No 11*, p. 1-2

government organisations involved in fighting desertification. This, it said, was in line with the UNCCD's emphasis on the non-government sector in fighting desertification.³⁸

- FoEA and Richard Ledger called on Australia to increase the amount of aid funding it provided to regions in developing countries affected by desertification.³⁹
- WVA suggested the acceleration of the recovery, and international promotion, of the use of indigenous knowledge as a key resource for fighting desertification.⁴⁰
- Finally, Marcus Beresford suggested that there needs to be further studies into land degradation in Australia.⁴¹

Qualified support

- 2.57 We received two submissions which, for different reasons, expressed qualified support for Australia's ratification of UNCCD.
- 2.58 The Wildlife Preservation Society of Queensland (WPSQ) was supportive of the principles underpinning the Convention, but argued that land degradation problems in Australia needed priority attention. It supported ratification only if ratification did not result in Australia being pressured into neglecting environmental needs in order to rehabilitate degraded areas in other countries.⁴²
- 2.59 The NSW Farmers Association expressed little enthusiasm for ratification, although it did accept the Government's assurances that there would be no NAP and no domestic action would be required on ratification.
- 2.60 However, the Association did raise some broader concerns about the impact of international environmental treaties.⁴³
- 2.61 Its concerns about such treaties had initially been triggered by the 1972 *Convention for the Protection of the World Cultural and Natural Heritage*. This Convention, according to the Association, had led to the 'disastrous situation' of restrictions being placed on farmers' land management

38 ENCT, *Submission No. 12*, p. 1. For similar views see also WVA, *Submission No 11*, p. 1-2; Richard Ledger, *Submission No. 9*, p. 5

39 FoEA, *Submission No. 7A*, p. 2. Richard Ledger, *Submission No. 9*, p. 5. For a similar view see ENCT, *Submission No. 12*, p. 1

40 WVA, *Submission No 11*, p. 1-2

41 Marcus Beresford, *Submission No. 3*, p. 1

42 WPSQ, *Submission No. 8*, pp. 1-2

43 Mick Keogh (NSW Farmers' Association), *Transcript of Evidence*, 14 February 2000, p. TR10.

practices and difficulties and delays in receiving appropriate compensation as a result of this restriction. The Association was concerned that similar problems might arise from other environmental treaties.⁴⁴

- 2.62 It said that such situations highlighted the bigger issue of the gap between the role of the States and Territories and the Commonwealth in land management, and who should pay when private landholders, or even States or Territories, incurred costs as a result of commitments entered into by the Commonwealth.⁴⁵

Reactions to the NIA

- 2.63 It is also noteworthy that a number of submissions were highly critical of the NIA produced in support of ratification of UNCCD.
- 2.64 Some submissions, for example, claim that the NIA presents a distorted picture of UNCCD and that the Convention seeks to combat desertification 'wherever the problem occurs', not just in developing countries. On this point the World Wide Fund for Nature noted that 43 per cent of the world's desertification is in developed countries.⁴⁶
- 2.65 Friends of the Earth expressed disappointment in the focus on the commercial benefits that might flow from ratification, arguing that the principal motivation for ratification should be to help poverty stricken developing nations.⁴⁷

Conclusions and recommendations

- 2.66 There are strong arguments in favour of ratification of UNCCD.
- 2.67 Land degradation is a serious worldwide environmental problem. It is a problem that we in Australia are unfortunately familiar with. Although there is much we can do to improve the way in which we manage and conserve our land resources, we have developed considerable expertise in combating land degradation. Australia is well placed to assist other countries, particularly developing countries, as they confront similar problems.

44 Mick Keogh (NSW Farmers' Association), *Transcript of Evidence*, 14 February 2000, p. TR10.

45 Mick Keogh (NSW Farmers' Association), *Transcript of Evidence*, 14 February 2000, p. TR10. The assurances referred to are in the NIA at p. 5, no requirement for a NAP, and p. 11, no domestic action required on ratification.

46 See Richard Ledger, *Submission No. 9*, p. 8 and WWF, *Submission No. 14*, p. 2

47 FoEA, *Submission No. 7A*, p. 1

- 2.68 We have been advised by departmental officials that ratifying the Convention will cost us little:
- we will not have to change any of our domestic land management practices – our practices already exceed the requirements of the Convention;
 - we will not have to change the way in which we structure our domestic land management responsibilities – the division of responsibilities between the three tiers of government (Commonwealth, State/Territory and local) is a matter for Australians to decide and will not be altered by ratification of the Convention; and
 - we will have to make an annual contribution of around \$150 000 per year to UNCCD to support its operation programs.
- 2.69 We were also told that ratification will not only allow Australia to participate in environmental restoration programs with other countries experiencing severe land degradation problems, it will allow us to play a role in shaping UNCCD's priorities.
- 2.70 Ratification of the Convention may also help expand the opportunities for Australian businesses with environmental and technical expertise in this area.
- 2.71 We were particularly interested in the views put to Government and to our review by the State and Territory Governments. There is clearly a keen interest in the extent to which ratification might result in Commonwealth intrusion into areas that have traditionally been State government responsibilities.
- 2.72 The proposal, suggested initially by the South Australian Government, that, at the time of ratification, the Commonwealth make a statement noting the division of land management responsibilities in Australia and explaining the means by which UNCCD will be implemented in Australia, is a sensible way of addressing these concerns.
- 2.73 This statement could also address the issue raised by the Western Australian Government about the scope of the Commonwealth Government's power to exercise authority over matters of national environmental relevance.
- 2.74 The statement should not only be issued publicly in Australia but should be formally submitted to the Secretary-General of the United Nations as part of Australia's instrument of ratification. Such an explanation is appropriate given the agreement between the Commonwealth, State and

Territory Governments that a National Action Plan will not be developed for Australia.

Recommendation 1

2.75 The Committee supports ratification of the United Nations' *Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa*, and recommends that binding treaty action be taken as soon as practicable.

Recommendation 2

2.76 The Committee recommends that, at the time of ratification, the Commonwealth Government provides to the United Nations, and to the Australian State and Territory Governments, a statement on land management responsibilities within the Australian Federal system.

2.77 Some of the matters raised in submissions went beyond the scope of our review. Our task is simply to judge whether ratification of UNCCD is in Australia's national interest, not to consider the effectiveness with which governments are tackling the environmental problems we face in Australia. We accept that Australia has serious land degradation problems of its own, but we are not in a position to assess the measures in place to combat these problems. Nevertheless, it is important that ratification of the Convention not result in any less attention being devoted to our own environmental problems.

2.78 Finally, we are concerned that the NIA has been drafted in a manner clearly designed to emphasise some points associated with UNCCD and down-play others.

2.79 We understand the political balancing that has occurred to negotiate support for ratification, but it is important that NIAs contain straightforward descriptions of the purpose, impact and costs of proposed treaty actions. NIAs which present a partial picture of the purpose and advantages of a treaty action suffer a loss of credibility and are open to valid criticism.

Scientific and Technological Cooperation with Korea

Background

- 3.1 In 1994, during a visit to Australia by the then President of the Republic of Korea, Kim Young-Sam, it was announced that the science and technology relationship between the two countries would be enhanced by the signing of a treaty status agreement on scientific and technological cooperation.
- 3.2 To date the science and technology relationship between Australia and the Republic of Korea (Korea) has been based on informal agreements and on direct links between Australian research centres and universities and their Korean counterparts.
- 3.3 While these links have been effective, they have not been comprehensive in their treatment of issues such as intellectual property and mechanisms for inter-governmental cooperation and support.
- 3.4 The proposed Agreement is designed to provide broader coverage for cooperative research efforts and to emphasise the importance of such cooperation for both countries.¹

1 Material in this section was drawn from the National Interest Analysis for the proposed Agreement between the Government of Australia and the Government of the Republic of Korea on Scientific and Technological Cooperation (NIA for the Agreement), p. 1

The proposed Agreement

- 3.5 Australia currently has about twenty agreements with other countries on science and technological cooperation.² They vary in content, although the most recent are along the same lines as the proposed Agreement.³
- 3.6 According to the NIA, the proposed Agreement provides a comprehensive framework for the conducting of 'Cooperative Activities' for peaceful purposes in all fields of science and technology between the two countries.⁴
- 3.7 Cooperative Activities include:
- the conduct of joint workshops and research projects;
 - visits and exchanges of individual scientists, engineers and other appropriate personnel; and
 - the exchange of information on activities, policies, practices, laws and regulations concerning research and development.
- 3.8 The proposed Agreement also provides guidelines on intellectual property for scientists and scientific bodies involved in joint research. These guidelines are aimed at helping those involved in particular Cooperative Activities protect the intellectual property they brought into that Activity and protect the intellectual property that results from that Activity.⁵
- 3.9 Finally, the proposed Agreement establishes a joint Committee on Science and Technology composed of representatives chosen by both Australia and Korea.⁶ It is expected that this Committee will serve as a 'significant symbol' of commitment by Australia and Korea to their science and technology relationship.⁷
- 3.10 The inter-government Committee will enable coordinated discussions between the two countries on relevant matters of science and technology, especially those pertaining to their relationship with one and other. The Committee will also be responsible for choosing, prioritising,

2 Since its establishment in 1996, the Joint Standing Committee on Treaties has reported on two other treaties related to science and technology cooperation: the *Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology* (Tenth Report) and the *Agreement Amending the Agreement Relating to Scientific and Technical Cooperation between Australia and the European Community* (Report 25).

3 Dr Martin Gallagher (DISR), *Transcript of Evidence*, Monday 14 February 2000, p. T14

4 NIA for the Agreement, p. 1

5 NIA for the Agreement, p. 4

6 NIA for the Agreement, p. 3

7 Dr Martin Gallagher (DISR), *Transcript of Evidence*, Monday 14 February 2000, p. T12

coordinating, monitoring, reviewing, and reporting on the progress of Cooperative Activities.

- 3.11 The proposed Agreement also provides for research bodies to write to their respective governments, via the inter-government Committee, expressing their interest in being designated as a Cooperative Activity under the proposed Agreement. Once their application is accepted there would then be the expectation placed on them to enter a formal participants agreement, covering such matters as intellectual property protection.⁸

Reasons for the proposed Agreement

- 3.12 Apart from the benefits implied above, the expansion of collaborative research and development that could result from the proposed Agreement has the potential, in the medium term, to increase the pace of scientific advancement in Australia. It could also lead to more rapid development and commercialisation of technologies.⁹

- 3.13 From Australia's perspective, Korea is a valuable science and technology partner. Its research and development intensity was the third highest in the OECD in 1998. It also has the highest growth rate in the OECD in the knowledge-based industries and services sectors and has expertise in science and technology areas that are complementary to that of Australia.¹⁰ The Korean Government has also committed to increase its research and development spending to five percent of the national budget by 2003.¹¹ The aim of such funding increases is to build Korea up to become one of the world's top ten science powers by the year 2010.¹²

- 3.14 In the words of a witness from the Department of Industry, Science and Resources (DISR):

The Republic of Korea has achieved a remarkable scientific, technological and industrial transformation over the last 40 years. From its relatively limited scientific and technical infrastructure at the beginning of the 1960s, Korea has gone on to establish an impressive array of scientific and technological institutions and has created a very substantial, high-skilled research community...

8 Dr Martin Gallagher (DISR), *Transcript of Evidence*, Monday 14 February 2000, p. T13

9 NIA for the Agreement, p. 2

10 NIA for the Agreement, p. 2

11 Australia-Korea Foundation, *Submission No. 3*, p. 1

12 Dr Brian Scott (Australia-Korea Foundation), *Transcript of Evidence*, Monday 14 February 2000, p. T13

In this period the policy stance clearly shifted from one of imitation to innovation. Korea is now a newly industrialised country, highly conscious of global competitive pressures and recognising the need to engage in international scientific and technological cooperation.¹³

- 3.15 In addition, Korea is Australia's third largest trading partner and export market. Trade between the two countries now exceeds \$A10 billion and Australia has 'a substantial surplus' in this bilateral trade.¹⁴ Although Korea suffered heavily from the recent Asian financial crisis, the economy is now back to a real rate of growth of between eight to ten per cent.¹⁵

Obligations imposed by the proposed Agreement

- 3.16 The Agreement requires that Australia and Korea conduct their bilateral science and technology relationship according to a range of principles. These principles cover issues such as mutual and equitable contributions and benefits from Cooperative Activities; comparable opportunities for scientists to engage in research and study in the facilities of the other country; shared costs of cooperation; the provision of non-confidential scientific and technological information to the world science community; and the encouragement of the timely application of research results for the economic, social and industrial benefit of both countries.
- 3.17 Each country is also obliged under the proposed Agreement to use their 'best endeavours' to encourage persons participating in Cooperative Activities to enter agreements with the other participants that are legally binding under the domestic law of one of the countries. These participant agreements should take into account things such as intellectual property, the relevant competition laws of Australia and Korea, confidentiality and the promise not to disclose information, materials or equipment requiring protection in the national security interests of either country.
- 3.18 On this matter, the Australia-Korea Business Council noted that in principle such an arrangement would be acceptable, but in practice, there may be concern within the Australian community about the apparent lack of consistency in Korean law, if Korean law was to be the law governing a participant agreement.¹⁶

13 Dr Martin Gallagher (DISR), *Transcript of Evidence*, Monday 14 February 2000, p. T12

14 Australia-Korea Foundation, *Submission No. 3*, p. 1

15 Dr Brian Scott (Australia-Korea Foundation), *Transcript of Evidence*, Monday 14 February 2000, p. T14

16 Australia-Korea Business Council, *Submission No. 4*, p. 3

- 3.19 The Council also indicated that the relevant competition laws of the two countries could present problems in Korea with respect to Cooperative Activity and participants agreements in the field of electronics. To make this point the Council cited the case of *Samsung and Lucky Star*.¹⁷
- 3.20 Another potential area of sensitivity noted by the Council were the provisions in the Agreement and the subsidiary participants agreements relating to the non-disclosure of national security information. The Council suggested that, in view of the political tensions between Korea and the Democratic People's Republic of Korea (North Korea), it is possible that Korea will restrict the free flow of information because of concerns about North Korea gaining access to high value scientific and technical information.¹⁸
- 3.21 Finally, both countries are required, in accordance with its own laws and regulations, to facilitate the entry to and exit from its Territory of personnel, materials and equipment of the other country engaged on, or used in, Cooperative Activities.

Ensuring the Agreement's effectiveness - perspectives

Australia-Korea Foundation

- 3.22 The Australia-Korea Foundation is strongly supportive of the proposed Agreement, arguing that it has the potential to be of 'very considerable importance' in moving the Australia-Korea science and technology relationship onto a new and deeper level.¹⁹
- 3.23 Nevertheless, the Foundation concluded that, for such 'potential to be realised, much needed to be done' and in its view not enough had yet been done by the Australian Government.²⁰
- 3.24 It believed that high-level skilled resources needed to be allocated to identify areas of possible collaborative research. Once opportunities were identified, funding needed to be allocated to put the most appropriate parties in touch with each other.²¹

17 Australia-Korea Business Council, *Submission No. 4*, p. 3

18 Australia-Korea Business Council, *Submission No. 4*, p. 3

19 Australia-Korea Foundation, *Submission No. 3*, p. 1. The Foundation is involved in a wide range of activities designed to broaden Australia's relationship with Korea. See Dr Brian Scott (Australia-Korea Foundation), *Transcript of Evidence*, Monday 14 February 2000, p. T12

20 Australia-Korea Foundation, *Submission No. 3*, p. 2

21 Australia-Korea Foundation, *Submission No. 3*, p. 2

- 3.25 In relation to skilled resources the Foundation noted its ‘amazement and regret’ that DISR had decided to terminate its science and technology Counsellor position at the Australian Embassy in Seoul. In the Foundation’s view, this move represents a significant downgrading of DISR’s presence in Korea.²²
- 3.26 Without the science and technology Counsellor, according to the Foundation, it will be much harder for Australia to realise the science, technology and commercial ‘opportunities inherent in the Korean economy and enhanced by the recently signed Agreement’.
- 3.27 It would also send a negative message to Korea, a country ‘very sensitive to signals of this sort’²³. After raising expectations of a deeper scientific and technological relationship, the message sent by such a decision would be that Australia was not serious about either the Agreement or its scientific relationship with Korea. The Foundation argued that inter-country relations would be damaged if Korea concluded that Australia had not acted in good faith.²⁴

CRC WMPC

- 3.28 The Cooperative Research Centre for Waste Management and Pollution Control (CRC WMPC), a research and development centre working on environmental technologies, expressed similar views to those presented by the Australia-Korea Foundation.²⁵
- 3.29 The CRC WMPC argued that:
- when seeking to establish long term research and business relationships in countries like Korea, Commonwealth Government support is crucial;
 - ratification of the Agreement should be used as an opportunity to maintain, if not enhance and expand, government to government linkages; and
 - Australia should maintain a full time science and technology Counsellor in its embassy in Korea to help Australian based ‘high technology companies with their market entry strategies and business development opportunities.’²⁶

22 Australia-Korea Foundation, *Submission No. 3*, p. 2

23 Dr Brian Scott (Australia-Korea Foundation), *Transcript of Evidence*, Monday 14 February 2000, p. T13

24 Australia-Korea Foundation, *Submission No. 3*, p. 2-3

25 CRC WMPC, *Submission No. 2*, p. 2

26 CRC WMPC, *Submission No. 2*, pp. 2-3

3.30 The CRC WMPC cited a number of examples of successful collaboration between Australian and Korean researchers, noting that in every case Korean government agencies have sought and expected 'equivalent and reciprocal Australian Government support for the initiatives.'²⁷

Australia-Korea Business Council

3.31 The Australia-Korea Business Council has also expressed strong support for the proposed treaty, arguing that the Agreement will enhance the practical and commercial linkages between the two countries.²⁸

3.32 The Council notes that the type of Government support envisaged by the Agreement will be especially helpful to small and medium enterprises in identifying and developing links between the two countries.²⁹

3.33 Like the Australia-Korea Foundation and the CRC WMPC, the Council is concerned about an apparent 'downgrading or lack of commitment in the Department of Industry, Science and Resources' towards scientific and technological cooperation.³⁰

3.34 In the light of this apparent downgrading, the Council argued that it is essential to implement a series of practical measures to pursue the opportunities created by the proposed Agreement. The Council suggested that the inter-country Committee on Science and Technology (set up under the Agreement to establish priorities and select Cooperative Activities) should:

- meet more frequently than once every two years, as currently specified in the Agreement;
- include business representatives as well as representatives from the two Governments; and
- take responsibility for strategic planning, by 'determining and directing the focus of activities implemented under the Agreement.'³¹

Government perspective – science and technology Counsellor

3.35 The Minister for Industry, Science and Resources, the Senator the Hon Nick Minchin, responded to these concerns by explaining that DISR had

27 CRC WMPC, *Submission No. 2*, p. 3

28 Australia-Korea Business Council, *Submission No. 4*, pp. 1-3. Pauline Hanson's One Nation South Australia also expressed its support for the proposed treaty. See *Submission No. 8*, p. 1

29 Australia-Korea Business Council, *Submission No. 4*, pp. 1-3

30 Australia-Korea Business Council, *Submission No. 4*, pp. 1-3

31 Australia-Korea Business Council, *Submission No. 4*, p. 2

decided not to maintain the Counsellor position because, it believed, it was not the most efficient and cost effective means of pursuing science and technology priorities in Korea.³²

3.36 He indicated that the need for a full-time Counsellor in Korea had decreased as a result of:

- developments in communications technology;
- the expansion of Internet resources;
- the minimal time differences between Australia and Korea; and
- the decreased relative cost of travel, which has enabled those Australian officers who are most directly involved in a particular issue or project to consult directly with relevant Korean officials.

3.37 He did acknowledge, however, that there are some matters that cannot be handled well from a distance or by brief visits. To cover such cases, he noted that DISR still has a full-time, well-qualified, and fluent Korean speaking officer at the Australian Embassy in Seoul. This officer, among other things, has particular responsibility for science and technology matters.

3.38 Finally, the Minister mentioned that DISR had informed its major Korean contacts as to why it had decided to withdraw its Counsellor position in Seoul. It had also reassured them that this move should not be viewed as a downgrading by Australia of its science and technology relationship with Korea.

Costs

3.39 The NIA indicated that the activities undertaken by Australia under the proposed Agreement were expected to be funded from existing Government programs. The extent of the future funding call on these programs will depend on the initial success of the Agreement and the subsequent funding decisions of the two Governments.³³

32 Material in this section was drawn from Senator the Hon Nick Minchin (Minister for Industry, Science and Resources), *Submission No. 7*, pp.1-2

33 NIA for the Agreement, p. 5

Consultation

- 3.40 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about this proposed Agreement.
- 3.41 States and Territories were also advised of the proposed Agreement through the SCOT process. No comments were received apart from some brief remarks made by the Governments of Western Australia and South Australia.
- 3.42 Both these States supported the Agreement. WA remarked that its Department of Commerce and Trade, in conjunction with the WA Korean Chamber of Commerce and the Government's Official Representative in Korea, is proposing a number of trade promotion activities in Korea during 2000. The proposed Agreement, it said, would provide WA with 'a framework for building on existing links with Korea and developing new opportunities.'³⁴
- 3.43 Comment was also sought from a number of key scientific institutions, national laboratories, and business and industry groups. Although some groups raised concerns about implementation (see above), no responses indicated any opposition to the purpose and aims of the proposed Agreement.³⁵

Date of proposed binding treaty action

- 3.44 The treaty will enter into force upon exchange of diplomatic notes certifying that all necessary domestic procedures for entry into force have been met. It is proposed that Australia submit its note as soon as practicable in the first half of 2000.³⁶

Other evidence presented

- 3.45 During our review we took evidence on a range of other matters, including:
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34 WA Government, *Submission No. 5*, p. 2; SA Government, *Submission No. 6*, p. 1

35 NIA for the Agreement, pp. 5-6

36 NIA for the Agreement, p. 1

- the fact that Australia and Korea are both on the way to becoming predominantly knowledge-based economies;³⁷
- that Australia's exports to Korea have expanded and diversified in recent years. While raw materials and commodity products are still significant, there has been rapid growth in manufacturing (ie. motor vehicle components) and service industry (ie. tourism and education) exports;³⁸
- that Korea continues to export electronic goods, motor cars and other consumer products at a growing rate to Australia;³⁹
- that Australian research and technology in a number of high technology areas (for example, photonics, biotechnology and environmental technologies) 'are being well received and utilised' within Korea;⁴⁰
- that the importance of a strong Australia-Korea relationship is often underestimated. For example, Korea co-initiated APEC, is a strong Cairns Group supporter and has actively collaborated in the peacekeeping force in East Timor;⁴¹ and
- that it could be expected that in any collaborative research activities Australia primarily would do the research and Korea primarily would do the manufacturing and that manufacturing might result in more commercial advantages.⁴²

Conclusions and recommendation

- 3.46 Over the last 30 years, Korea has undergone an impressive scientific, technological and industrial transformation. Successive Korean Governments have committed themselves to making their country one of the world's top ten science powers.
- 3.47 These developments make Korea a valuable science and technology partner.

37 Dr Martin Gallagher (DISR), *Transcript of Evidence*, Monday 14 February 2000, p. T12

38 Australia-Korea Foundation, *Submission No. 3*, p. 1

39 Australia-Korea Foundation, *Submission No. 3*, p. 1

40 Australia-Korea Business Council, *Submission No. 4*, p. 1

41 Dr Brian Scott (Australia-Korea Foundation), *Transcript of Evidence*, Monday 14 February 2000, p. T13

42 Australia-Korea Business Council, *Submission No. 4*, p. 2

- 3.48 The proposed Agreement will expand the opportunities for collaborative research, potentially resulting in rapid scientific advances and the commercialisation of emerging technologies.
- 3.49 More broadly, the Agreement will also contribute to the strength of an important bilateral relationship.

Recommendation 3

- 3.50 **The Committee supports the proposed *Agreement between the Government of Australia and the Government of the Republic of Korea on Scientific and Technological Cooperation*, and recommends that binding treaty action be taken.**
- 3.51 We are conscious of the risk that the Agreement may not live up to its potential. It is up to the Governments in both countries to ensure that the potential is realised by committing themselves, and their resources, to the task.
- 3.52 The Australian Government must take tangible steps to implement the Agreement:
- the inter-country Committee on Science and Technology must be charged with a clear mandate to ensure that the Agreement is effective;
 - the Government should ensure that research priorities sponsored by the Committee are supported in a way that matches their needs; and
 - the Government should ensure that the withdrawal of DISR's science and technology Counsellor in Korea does not lead to a decline in the Australia-Korea science and technology relationship.

International Development Law Institute

The Agreement

- 4.1 The *Agreement for the Establishment of the International Development Law Institute* ('the Agreement') was done in Rome on 5 February 1988. The Agreement and the International Development Law Institute (IDLI) it established are both already in operation. There are fourteen countries party to the Agreement.¹
- 4.2 The Agreement establishes the IDLI as an international organisation with the necessary governance, juridical personality and status it needs to properly fulfil its purposes.
- 4.3 According to the Agreement, the IDLI has three main purposes:
- to encourage and facilitate the improvement and use of legal resources in the development process;
 - to encourage adherence to the rule of law in international transactions; and
 - to improve the negotiating capability of developing countries in the fields of development cooperation, foreign investment, international trade and other international business transactions.
- 4.4 IDLI seeks to accomplish its purposes through training, research, the provision of technical assistance, publications, the operation of a legal documentation centre and any other relevant activity.

¹ Material in this section was drawn from the National Interest Analysis for Australia's proposed accedence to the *Agreement for the Establishment of the International Development Law Institute* (NIA for IDLI), pp. 1-3

- 4.5 IDLI runs courses in Rome, where it is based and regional and national workshops in developing countries. These courses and workshops cover topics such as international commercial transactions, economic law reform, governance, the role of the judiciary, international contracting and legal skills.
- 4.6 The Agreement also allows IDLI to establish cooperative relationships with other institutions and programs and conduct personnel exchanges or secondments to or from these institutions.
- 4.7 The Agreement requires that IDLI not be influenced by political considerations in its activities, management and staffing.

The IDLI structure

- 4.8 IDLI consists of an Assembly of the Parties to the Agreement, a Board of Directors and an Institute Director and staff.²
- 4.9 The Assembly of IDLI is made up of one representative from each country party to the Agreement. It meets at the invitation of the Board or upon the initiative of one third of its members. It has the power to review IDLI activities, ratify appointments to the Board and ratify IDLI's work plans and budget.
- 4.10 The Board consists of between 10 and 16 people, one is a permanent representative from the host country, Italy. All members on the board, other than the host country member, are selected on the basis of professional accomplishments in the fields of law or development and are required to serve in their personal capacities and not as representatives of governments or other organisations.
- 4.11 The Board of Directors has a number of tasks including approving IDLI policies, annual work programs and budgets and appointing the IDLI Director. The IDLI Director is then responsible for running IDLI and its activities.

Reasons for acceding to the Agreement

- 4.12 There are three main reasons why the Government proposes to become a party to the Agreement.

2 Material in this section was drawn from the NIA for IDLI, p. 4

- 4.13 Firstly, Australia would become a member of the IDLI Assembly and thus be in a position to directly contribute to the development of IDLI priorities and programs in line with its own interests.³
- 4.14 Secondly, IDLI legal training, workshops and technical assistance in the Asia-Pacific region, particularly in the field of economic law and good governance, are consistent with Australian foreign policy and aid objectives.⁴ This is shown by the fact that, between 1988 to 1990, AusAid contributed to the core funding of IDLI and since then has provided funding for specific IDLI projects on an ad-hoc basis.⁵
- 4.15 These projects have helped develop robust legal and judicial institutions and promote good governance and the rule of law in our region.⁶
- 4.16 Thirdly, accession may benefit the Australian legal profession both financially and non-financially. Australian legal professionals have a history of involvement in IDLI activities and are becoming increasingly involved in running IDLI training courses in the Asia-Pacific region. Their involvement is helping them gain knowledge and experience of the region and promoting better awareness of the quality of Australian legal service providers.⁷
- 4.17 Some examples of the involvement of Australian legal professionals in IDLI projects include:
- IDLI's work in 1998 with the law firm Minter Ellison. Together they implemented an Asian Development Bank-funded project on financing public sector infrastructure projects in India, Indonesia and China. This year IDLI will again bid with Minter Ellison for the second phase of this project involving Bangladesh, China (Shanghai) and Vietnam;

3 NIA for IDLI, p. 2

4 See Appendix E for a list of IDLI's work in the Asia-Pacific region.

5 NIA for IDLI, p. 2 and International Development Law Institute, *Submission No. 2*, p. 3. AusAid discontinued this core funding in 1990 as a result of budget cuts to AusAid's funding program for international organisations. A recent example of ad hoc funding for an IDLI project by AusAid is the project on 'Asia-Pacific Approaches to Combating Corruption: Legal and Judicial Methods'. AusAid has committed A\$90 000 to this project. This project is currently being implemented in Cambodia, the Philippines and Papua New Guinea. See DFAT, *Submission, No. 7*, p. 2

6 International Development Law Institute, *Submission No. 2*, p. 1. The Institute emphasised the importance of this type of work by citing a communique issued by an inter-country Meeting on Development Cooperation held in March 1999, in the wake of the Asian currency crisis. The communique emphasised the need to 'strengthen financial, legal and corporate regulatory systems and institutions (with an emphasis on openness, transparency and accountability)'; and to 'invest in human skills development and build policy-making and institutional capacity'. See International Development Law Institute, *Submission No. 2*, p. 1

7 NIA for IDLI, p. 2, International Development Law Institute, *Submission No. 2*, p. 2; Robyn Stern (DFAT), *Transcript of Evidence*, 14 February 2000, p. T16

- IDLI's work in 1999 with the Centre for Democratic Institutions to implement an AusAID/USAID co-financed regional project on 'Asia-Pacific Approaches to Combating Corruption'. The Australian National University and the NSW Independent Commission Against Corruption assisted the implementation of this project in the Philippines, Cambodia and Papua New Guinea; and
 - IDLI's proposed Asia-Pacific regional course. This will be run in Australia with the support of AusAID. It will be an International Trade Lawyers Course and will draw on Australian expertise in the trade law field.⁸
- 4.18 IDLI has also indicated that the establishment of a regional IDLI office in Australia may be pursued in order to conduct some operations of the Asia Regional Training Office.⁹ We have been advised that this office would not be established unless Australia ratifies the Agreement.¹⁰
- 4.19 The NIA argues that the establishment of a regional IDLI office in Australia would bring with it a number of benefits:
- it would lead to a greater use of Australian legal professionals in IDLI projects and provide scope for the broader utilisation of Australian legal expertise in the Asia-Pacific region;
 - it would allow regional training programs to be offered in Australia on a sustained basis;
 - it would lead to increased contact by IDLI with Australian Government agencies, which would lead to the development of projects further reflecting Australian interests; and
 - IDLI's physical presence in Australia would bring with it certain economic advantages.¹¹
- 4.20 The Australian office of the international law firm Baker & McKenzie has committed itself to making cash contributions to such a regional office should it be established by IDLI in Australia.¹²

8 International Development Law Institute, *Submission No. 2*, p. 2. See also Appendix F which lists the Australian institutions with which IDLI has worked.

9 NIA for IDLI, pp. 2-3

10 Robyn Stern (DFAT), *Transcript of Evidence*, 14 February 2000, p. T17

11 NIA for IDLI, pp. 2-3

12 Baker & McKenzie, *Submission No. 1*, p. 1

Obligations

4.21 If Australia chooses to accede to the Agreement it must agree with the IDLI's stated purposes and structure as set out above and in the Agreement itself.

Costs

4.22 In becoming a party to the Agreement, Australia would not be obliged to provide any financial support to IDLI. Nor would Australia be responsible for any debts, liabilities or obligations that IDLI may incur.¹³

4.23 IDLI is required to obtain its financial support only through such means as voluntary contributions and fees associated with the training and other services it provides.¹⁴

4.24 The Australian Government would, however, have to meet the costs associated with attending the IDLI Assembly meetings held once every three years in Rome. It is common practice for countries party to the Agreement to send representatives from their embassy in Rome to such conferences. It is likely that the Australian Government will follow this practice.¹⁵

Consultation

4.25 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about this Agreement.

4.26 States and Territories were also advised of the Agreement through the SCOT process. No comments were received apart from some brief remarks made by the Governments of Western Australia and South Australia indicating their support for the proposed Agreement.¹⁶

13 NIA for IDLI, p. 4

14 NIA for IDLI, p. 4

15 Robyn Stern (DFAT), *Transcript of Evidence*, 14 February 2000, p. T16

16 WA Government, *Submission No. 5*, pp. 2-3; SA Government, *Submission No. 6*, p. 1

- 4.27 Various stakeholders including private law firms, legal practitioners and non-governmental organisations were also contacted for their views on the proposed accession. All responses supported accession to the Agreement.¹⁷
- 4.28 The Centre for Legal Education at the University of Newcastle commented that it had worked closely with IDLI for a number of years and that they had found IDLI's work 'to be invaluable in developing the rule of law and legal institutions in our region and beyond'. That IDLI had:
- a high and respected profile in Asia and access to a range of valuable resources, both funding and expertise. It is a well run organisation and very sympathetic to Australia's involvement in its work.¹⁸
- 4.29 Ezekial Solomon, a Partner at the law firm Allen Allen & Hemsley, gave similar praise:
- I have the highest regard for...[IDLI]...The work of IDLI is, I believe, of considerable importance in strengthening legal skills and institutions in the developing world. This effort is of particular importance in Asia in the current situation.¹⁹
- 4.30 Australian Legal Resources International (ALRI), a non-government organisation which undertakes programs similar to IDLI, while supporting accession, did however raise the possibility that IDLI may become a competitor for Australian government funding for these activities following the establishment of an IDLI office in Australia.²⁰

Date of proposed binding treaty action

- 4.31 The Agreement would enter into force for Australia following approval by a simple majority of the IDLI Assembly and on deposit of Australia's instrument of accession with the Depository, the Government of Italy. The NIA does not indicate precisely when the Government proposes to take binding treaty action.

17 NIA for IDLI, p. 5. Pauline Hanson's One Nation South Australia also expressed its support for Australia's proposed accession. See *Submission No. 8*, p. 1

18 Centre for Legal Education, *Submission No. 3*, p. 1

19 Ezekial Solomon (Allen Allen & Hemsley), *Submission No. 4*, p. 1

20 NIA for IDLI, p. 5. Witnesses from DFAT acknowledged this possibility. See Robyn Stern (DFAT), *Transcript of Evidence*, 14 February 2000, p. T18

Other evidence collected

4.32 During our hearings the financial operations of IDLI were discussed. Witnesses from the Department of Foreign Affairs and Trade (DFAT) confirmed that:

- parties to the Agreement are not required to provide financial support beyond any voluntary contributions a party may decide to make;
- IDLI generates much of its own revenue through courses and seminar fees, sale of publications and interest on trusts, endowments and bank accounts; and
- IDLI, like any non-government aid organisation, bids for project funding from international development agencies like AusAid.²¹

4.33 Ms Stern, from DFAT, explained IDLI's project funding arrangements in the following terms:

They [IDLI] submit a request for funding, say, to AusAID and other development agencies. If the project meets the hoops that AusAID sets for it in terms of project requirements they may well get a grant of AusAID funding.²²

4.34 Finally, evidence was provided that IDLI aims to tailor its development projects to fulfil the requirements of the country in which it is working. For instance, if a civil law country required help from IDLI to enhance the skills of its legal profession IDLI would provide that country with civil law expertise to do this rather than common law expertise.²³

4.35 DFAT did note, however, that:

While utilising the skills and expertise of professionals drawn from both common law and civil law jurisdictions is important for an understanding of the legal system which prevails in a given country, it is becoming increasingly clear to practitioners working in the area of trade, economic and financial law that the distinctions between common law and civil law traditions are breaking down.²⁴

4.36 On this point, DFAT stated that:

increasingly, new laws that are being passed in various jurisdictions in the region, regarding for example, matters such as

21 Robyn Stern (DFAT), *Transcript of Evidence*, 14 February 2000, p. T17

22 Robyn Stern (DFAT), *Transcript of Evidence*, 14 February 2000, p. T17

23 Robyn Stern (DFAT), *Transcript of Evidence*, 14 February 2000, pp. T17-18

24 DFAT, *Submission No. 7*, p. 2

insolvency and laws governing the implementation of private sector infrastructure development, reflect principles that transcend civil or common law systems.²⁵

- 4.37 DFAT also clarified that IDLI is not involved in the provision of legal technical assistance in relation to the changing of a country's law.²⁶

Conclusion and recommendations

- 4.38 We have reservations about supporting Australia's membership of yet another international organisation based in Europe. It is particularly incongruous that an organisation purporting to help developing countries should have its head office in Rome. We are somewhat reassured by the fact that IDLI has established a regional office in Manila. This may go some way toward overcoming the perception that IDLI is a Euro-centric organisation.
- 4.39 We do, however, accept that IDLI's aims are well directed. Helping developing countries to improve their legal and governmental systems is a laudable objective. So too is the aim of encouraging adherence to the rule of law in international transactions.
- 4.40 These aims match Australia's interests as a good global citizen and as a country in a region that has experienced considerable financial and political upheaval in recent years.
- 4.41 Australian membership of IDLI would help ensure that IDLI projects are directed towards priorities that reflect our interests and the needs of developing countries in our region. Membership may also help open further business opportunities for Australian legal service providers.

Recommendation 4

- 4.42 **The Committee supports Australia's proposed accession to the *Agreement for the Establishment of the International Development Law Institute* and recommends that binding treaty action be taken.**
- 4.43 It has been suggested by IDLI that Australian membership of the organisation may result in the establishment of a regional office in

25 DFAT, *Submission No. 7*, p. 2

26 DFAT, *Submission No. 7*, p. 2

Australia. The Australian Government should actively pursue this suggestion. The establishment of such an office would help maintain IDLI's focus on projects of interest and relevance to Australia, and further diminish the perceived Euro-centric nature of the organisation.

Recommendation 5

- 4.44 The Committee recommends that the Minister for Foreign Affairs actively pursue the suggestion made by the International Development Law Institute that a regional office of the Institute be established in Australia.**

Denunciation of Convention on Damage Caused by Foreign Aircraft

The Convention

- 5.1 The *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface* ('the Convention') was developed in 1952 to provide internationally uniform arrangements to ensure adequate compensation for persons who suffer damage on the ground caused by foreign aircraft. The Convention, however, puts limits on the extent of liability that can be incurred by an airline for such damage. This was a consequence of the view at the time that imposing no limit on liability would hinder the development of the international civil air transport industry.¹
- 5.2 The Convention also sets out the jurisdiction in which claims by third parties should be brought, how such claims are to be made and deals with insurance against the liabilities imposed by the Convention.
- 5.3 The Convention applies to damage caused to third parties in the territory of one contracting country by aircraft registered in another contracting country. With respect to Australia its scope is, therefore, limited to aircraft of another contracting country in Australian territory and Australian aircraft flying in the territory of another contracting country.

1 Material in this section was drawn from the National Interest Analysis (NIA) for the proposed denunciation of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface* (NIA for Denunciation), pp. 1-2

Reasons for denunciation

- 5.4 Australia has been a party to the Convention since 1959. The Government has now decided to denounce the Convention.
- 5.5 It wishes to do this for three reasons. Firstly, because the Convention has failed to meet its objective of international uniformity in the treatment of claims by third parties. Only 43 of the 185 members of the International Civil Aviation Organization are party to the Convention.²
- 5.6 Secondly, it wishes to denounce the Convention because it believes the limits on airline liability imposed by the Convention are too restrictive, outdated and inappropriate.³
- 5.7 Limited liability could lead to inadequate levels of compensation for third parties injured on the ground by planes. For instance, the total liability limit under the Convention is AU\$36 million. This is likely to be an insufficient level of compensation if a Boeing 747 crashed in a densely populated area in Australia.⁴ Incidents of this nature could inflict damages of up to \$100 million and beyond.⁵
- 5.8 Both Qantas and Ansett, while benefiting from the limited liability regime under the Convention, have acknowledged that the level of compensation provided is inadequate.⁶
- 5.9 The limitation on liability mandated by the Convention also leads to some unfair disparities in how airlines are treated under Australian law. Due to Australia's adherence to the Convention, the aircraft of other contracting countries are subject to only limited (although strict)⁷ liability if they have an accident in Australian territory that causes damage to third parties. Whereas the aircraft of countries not party to the Convention (which

2 Robyn Beetham (DFAT), *Transcript of Evidence*, 14 February 2000, p. T20

3 NIA for Denunciation, p. 1

4 NIA for Denunciation, p. 3

5 Robyn Beetham (DFAT), *Transcript of Evidence*, 14 February 2000, p. T20

6 NIA for Denunciation, p. 2

7 Strict liability means the injured party does not have to prove fault (ie. intent or negligence) on behalf of the defendant. They simply have to prove that the defendant's actions caused the damage. Under the Convention and the Commonwealth Act implementing it, however, the defendant can argue that the injured party's negligence contributed to the damages occurring, and thereby reduce the level of damages they might otherwise be required to pay. There is no provision for contributory negligence, however, under the *Damage by Aircraft Act 1999* (see below), which upon denunciation will replace the Convention and original Act. In this sense, liability under the 1999 Act is 'absolute' rather than 'strict'. See Department of Transport and Regional Services, *Submission No. 2*, p. 1

makes up the majority of foreign aircraft flying in Australian territory) are subject to unlimited (and strict) liability.⁸

- 5.10 The Government believes that the maintenance of a limited liability regime 'is inappropriate when prompt and adequate compensation for the innocent victims of air accidents is being considered'.⁹ The original need to protect an infant international airline industry is no longer valid.
- 5.11 Finally, the Government wishes to denounce the Convention because there is little likelihood that the Convention will be renegotiated to adequately address its shortcomings.¹⁰
- 5.12 It should be noted here that Canada denounced this Convention in 1976 for the same reasons that Australia is now itself proposing to denounce.¹¹

Legislative changes

- 5.13 The Government believes that the fairest approach to take is to make all international aircraft, Australian and foreign, flying in Australia subject to an unlimited and strict liability regime for any damage they cause to third parties on the ground. In order to ensure, upon denunciation, that this will occur, the Commonwealth has enacted the *Damage by Aircraft Act 1999*. This Act will replace the *Civil Aviation (Damage to Aircraft) Act 1958*, which currently gives the Convention force of law in Australia. The 1999 Act provides for a strict and unlimited liability regime for compensating third parties on the ground who suffer death, injury or damage from any aircraft that come within the Commonwealth's jurisdiction.¹² However, section 2 of this Act states the Act cannot commence operation until after Australia's denunciation of the Convention takes effect. If Australia were to proclaim this Act while still a Party to the Convention, it would be in breach of its obligations under the Convention.¹³
- 5.14 These changes will affect only foreign and Australian international aircraft flying within Australian territory. Australian aircraft flying in the territory of other countries will be subject to the domestic laws of those countries.¹⁴

8 NIA for Denunciation, pp. 2-3

9 NIA for Denunciation, p. 3

10 NIA for Denunciation, p. 2

11 NIA for Denunciation, pp. 2-3

12 Which includes foreign and Australian international aircraft flying in Australian territory.

13 NIA for Denunciation, pp. 1-2

14 NIA for Denunciation, p. 4. The compensation arrangements for domestic airlines flying within Australia varies from State to State. A supplementary submission from DTRS, which is

Costs

- 5.15 Denunciation will not have any impact on the Commonwealth budget. It is not expected to result in significant increases in insurance costs for Australian international airlines and therefore there is likely to be no, or only very minimal, increases in fares for international aircraft passengers.¹⁵

Consultation

- 5.16 As part of our review, we sought comments from State/Territory Premiers/Chief Ministers and also from the Presiding Officers of State/Territory Parliaments or, where appropriate, specific Committees of those Parliaments. No adverse comments were received about the proposed denunciation of the Convention.
- 5.17 States and Territories were also advised of the proposed denunciation through the SCOT process. No comments were received apart from some brief remarks, made by the Governments of Western Australia and South Australia, supporting the proposed denunciation.¹⁶
- 5.18 All other major affected parties have also been notified of the proposal. The proposal to replace the Convention with a national regime of strict and unlimited liability has strong support from all parties, including the Australian aviation industry.¹⁷

Date of proposed binding treaty action

- 5.19 It is proposed that Australia denounce the Convention as soon as possible. Denunciation will take effect six months after the date of receipt by the International Civil Aviation Organization of Australia's notification of denunciation.¹⁸

available from the Committee secretariat, describes the arrangements in each State and Territory.

15 NIA for Denunciation, p. 4

16 WA Government, *Submission No. 1*, p. 2; SA Government, *Submission No. 3*, p. 1

17 NIA for Denunciation, p. 4. Pauline Hanson's One Nation South Australia also expressed its support for the proposed denunciation. See *Submission No. 4*, p. 1

18 NIA for Denunciation, p. 1

Conclusions and recommendation

- 5.20 It is clear that the Convention has failed to meet its objectives of providing international uniformity and adequate levels of compensation. In light of this, the Government's proposal to denounce the Convention and establish an Australia wide unlimited strict liability regime for international aircraft is a sound and appropriate response. Such action, while not creating uniformity in compensation throughout the world, will at least ensure that an appropriate level of compensation is paid to residents of Australia on the ground injured by international aircraft flying within Australian territory.

Recommendation 6

- 5.21 **The Committee supports the proposed denunciation by Australia of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface* and recommends that action be taken to denounce the Convention.**

Treaties tabled on 15 February 2000

Introduction

- 6.1 On 15 February 2000 the NIAs for two treaty actions were tabled in the Parliament:
- an *Agreement between Australia and the United Nations Transitional Administration in East Timor (UNTAET) on the continued operation of the Timor Gap Treaty*; and
 - amendments to Appendices I and II of the *Convention on the Conservation of Migratory Species of Wild Animals*.
- 6.2 In both cases, action had already been taken which bound Australia at international law to the terms of the treaties.
- 6.3 In the case of the UNTAET Agreement, the Minister of Foreign Affairs had previously written to us advising that, in his assessment, it was necessary to take urgent action to give effect to the treaty before it was tabled in Parliament. The Exchange of Notes between Australia and UNTAET occurred on 10 February 2000 and the treaty will have effect from 25 October 1999.¹
- 6.4 In the case of the *Convention on the Conservation of Migratory Species of Wild Animals*, the Minister for the Environment and Heritage had previously advised us that the Convention contained provisions that resulted in
-

1 See the letter to the Committee Chairman from the Minister for Foreign Affairs, dated 28 January 2000, and reproduced at Appendix G.

amendments agreed by all parties automatically coming into force within 90 days of the parties agreeing to the amendments.² These particular amendments were agreed to at a Conference of Parties at Cape Town in November 1999 and entered into force on 14 February 2000.

- 6.5 In these circumstances we decided not to conduct a full review of the treaty actions, but simply to assure ourselves that the reasons for the treaty actions and for their early entry into force, were sound.

Agreement on the continued operation of the Timor Gap Treaty

Purpose, obligations and duration of the treaty

- 6.6 This agreement continues Australia's rights and obligations under the Timor Gap Treaty (May 1990) agreed between Indonesia and Australia. The *Agreement on the continued operation of the Timor Gap Treaty* provides for UNTAET to act on behalf of East Timor and assume all rights and obligations under the Timor Gap Treaty previously exercised by Indonesia.
- 6.7 The 1990 Treaty set up a regime for joint development of an area in the Timor Sea between northern Australia and East Timor, then a province of Indonesia. The provision of a workable legal framework under the Agreement has helped effective exploitation of the proven petroleum resources in the Timor Gap Zone of Cooperation.
- 6.8 The original Agreement functioned well through the Ministerial Council and the Joint Authority set up under its provisions. Production sharing contracts were entered into with petroleum companies for the exploration and exploitation of the resources in the zone.
- 6.9 The present Agreement contains detailed provisions governing the conduct of petroleum operations; employment terms and conditions; customs; migration and quarantine; search and rescue; environmental protection and pollution control; criminal jurisdiction; and scientific research in the Timor Gap Zone of Cooperation.
- 6.10 The new Agreement does not create any new international rights or obligations for Australia. It continues a regime for the joint development

2 Letter to the Committee Chairman from the Minister for the Environment and Heritage, dated 1 January 2000.

of petroleum resources in the Timor Gap Zone of Cooperation. It is a provisional regime subject to permanent delimitation of the seabed boundary.

- 6.11 The Agreement will have effect for the duration of the transition period from 25 October 1999 until the date of independence of East Timor. This is expected to occur in two to three years' time.³

Submission from Western Australia

- 6.12 We received a submission from the Western Australian Government welcoming the treaty and highlighting benefits that may flow to Western Australia as a result of the smooth transition of the Agreement from Indonesia to UNTAET. The submission noted that:

- Western Australia stands to benefit from the heightened profile of Australia as a destination for investment in the oil and gas sector;
- much of the detailed design work for the Bayu/Undan gas/condensate field development is being done in Perth;
- Western Australian companies are expected to provide equipment, services and supplies for the project; and
- Western Australia is well placed to become a training base for East Timorese personnel involved in this and future projects.⁴

Conclusion

- 6.13 Following the Indonesian Government's agreement to transfer sovereign rights in East Timor to UNTAET, it was plainly necessary to renegotiate the original Timor Gap Treaty.
- 6.14 Given the scale of exploitation and development activities being undertaken in the Timor Gap Zone of Cooperation; the potential benefits to Australia, East Timor and the commercial enterprises involved; and the pressing timeframes involved (both geo-political and commercial), we accept that it was appropriate for the Government to take urgent treaty action.
- 6.15 We note that following this treaty action, a consortium of six companies led by the United States based Philips Petroleum, has committed itself to a

3 Material in this section is drawn from the NIA for the *Agreement on the continued operation of the Timor Gap Treaty*.

4 Ministry of Premier and Cabinet (WA), *Submission No. 2*, p. 1

\$2.9 billion gas exploration program in the Zone of Cooperation. The program is expected to result in the recovery of 400 million barrels of liquefied petroleum gas and produce significant economic and employment opportunities for Australia and East Timor.⁵

Amendments to the Convention on the Conservation of Migratory Species of Wild Animals

The Convention

- 6.16 The *Convention on the Conservation of Migratory Species of Wild Animals* (known as the Bonn Convention) was established in 1979 to encourage the conservation of migratory species of wild animals and their habitats. The Convention recognises that wild animals are an irreplaceable part of the earth's natural system and compels governments to take action, individually or collectively, to conserve and undertake research into species which migrate across or outside national boundaries. The Convention also encourages members States to conclude regional agreements to conserve endangered species.⁶
- 6.17 At present, 65 nations are members of the Convention, ten having acceded to the Convention during 1999.
- 6.18 The amendments, tabled in Parliament on 15 February 2000, led to the addition of seven new species to the list of endangered species⁷ described in Appendix I and thirty-one new species to the list of animals with an 'unfavourable conservation status'⁸ described in Appendix II of the Convention.

5 In a press release, dated 28 February 2000, the Minister for Industry, Science and Resources, Senator the Hon Nick Minchin said that the decision by the consortium represents a 'clear demonstration of industry confidence in the Timor Gap Treaty arrangements'.

6 A number of such regional agreements are currently being negotiated, including agreements on Southern Hemisphere albatrosses and petrels and on the Asian population of Houbara Bustard. A similar regional focus is evident in Australia's membership of the Valdivia Group, a group comprising South Africa, Argentina, Brazil, Chile, New Zealand and Uruguay which promotes a southern hemisphere perspective on major environmental issues at international fora. Senator the Hon Robert Hill, Minister for the Environment and Heritage, *Submission No. 1- Amendments to the Bonn Convention*, p. 2

7 In relation to a particular migratory species, 'endangered' means that the species is 'in danger of extinction throughout all or a significant part portion of its range'. Senator the Hon Robert Hill, Minister for the Environment and Heritage, *Submission No. 1 - Amendments to the Bonn Convention*, p. 1

8 'Unfavourable conservation status' in relation to a particular migratory species occurs

- 6.19 Eight of the species added to the list of animals with unfavourable conservation status are of particular interest to Australia, as they range through Australian territory. These are:
- the Indian Ocean bottle-nosed dolphin, which was nominated for inclusion by Australia;
 - six species of petrel which were nominated by South Africa; and
 - the whale shark, nominated by the Philippines.⁹

Reasons for amendments

- 6.20 Populations of the Indian Ocean bottle-nosed dolphin have been severely depleted in recent times, mainly as a result of incidental by-catch from Taiwanese drift gillnet fishing. Australia took action in 1985 to stop this type of fishing in northern Australian waters and in 1986 the Taiwanese licence was surrendered. However, since that time, the fishery has moved into the Indonesian sector of the Arafura Sea and it is believed that high numbers of dolphins are still being taken as a result of these fishing practices.
- 6.21 Six of the seven species of petrels added to Appendix II range through Australian territory.¹⁰ The majority of petrel species have declining populations. Threats to petrel species include long-line fishing; incidental catch in trawl fisheries; intentional killing; entanglement in or ingestion of marine debris; breeding habitat modification; pollution; and disease.
- 6.22 Australia is also a range state for the whale shark, a highly migratory species ranging over thousands of kilometres. An international trade has developed out of what was originally a harvest for subsistence and local commercial use. The species is now threatened by direct commercial take, for fins and meat, in a number of countries in Asia.

where the conditions for a favourable conservation status are not being met. This is measured through population dynamics; size of the range; amount of habitat available to the species; and current abundance related to historical numbers. See NIA for *Amendments to the Bonn Convention*, p. 2

9 NIA for *Amendments to the Bonn Convention*, p. 7

10 The nominated species that range through Australian waters include Northern Giant Petrel, Southern Giant Petrel, White-chinned Petrel, Grey Petrel, Black Petrel and Westland Petrel. See NIA for *Amendments to the Bonn Convention*, Appendix 2

Australia's obligations

- 6.23 The inclusion of these species in the Appendices to the Bonn Convention means that Australia, along with other parties to the Convention, is bound to take the necessary steps, alone or in cooperation with others, to conserve these species and their habitats.
- 6.24 While existing legislation enables Australia to give effect to its domestic obligations arising from these amendments the *Environment Protection and Biodiversity Conservation Act 1999* comes into force on 16 July 2000. The Act will further strengthen domestic protection for these migratory species and help Australia meet its obligations under the Bonn Convention.¹¹

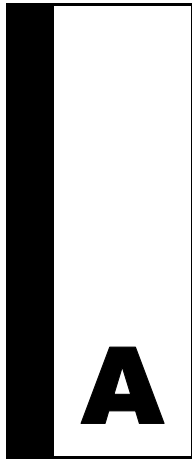
Conclusion

- 6.25 We remain of the view that the Bonn Convention provides a valuable framework for worldwide efforts to conserve and protect migratory species of wild animals.
- 6.26 The general obligations that the Convention imposes on Australia are reasonable and well within our capacity. The specific requirements arising from these amendments are likewise reasonable and achievable. We encourage the Government to continue:
- its support for the negotiation of inter-country/regional agreements to protect endangered species and their habitat; and
 - to review the scope and effectiveness of Australia's domestic regimes for the protection of endangered species of migratory animals.
- 6.27 We acknowledge the operation of the 90-day default period for amendments to the Appendices of the Bonn Convention. We are grateful to the Minister of Environment and Heritage for his early advice about the impact of the 90-day default period on this occasion. We commend to him a similar approach on future occasions.

ANDREW THOMSON MP

Committee Chairman

15 March 2000

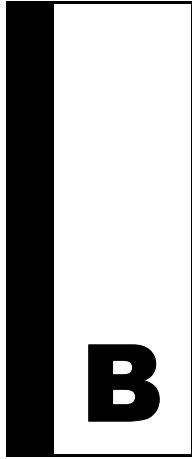


Appendix A - Extract from Resolution of Appointment

In the 39th Parliament, the Joint Standing Committee on Treaties was reconstituted on 9 December 1998.

The Committee's Resolution of Appointment allows it to inquire into and report on:

- (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.



Appendix B - Submissions

Proposed UN Convention on Desertification

Submission No.	Organisation/Individual
1	Water Reclamation Research Project, CSIRO
2	Australian Landcare Council
3	Marcus Beresford
4	Australian Centre for International Agricultural Research
5	AusAID
6	Eileen Kelly
7	Friends of the Earth, Southern Tablelands, NSW
7A	Friends of the Earth, Southern Tablelands, NSW
8	Wildlife Preservation Society of Qld
9	Richard Ledger
10	Environment Institute of Australia
11	World Vision Australia
12	The Environment Centre NT Inc
13	Robert Curgenvin
14	World Wide Fund for Nature Australia
15	Environs Kimberley Inc
16	Tony O'Brien International Consultants Pty Ltd
17	Western Australian Government

18	Associate Professor Grant McTainsh
19	Theo Nabben
20	Department of Foreign Affairs and Trade
21	New South Wales Government
22	South Australian Government
23	Pauline Hanson's One Nation South Australia

Proposed Scientific and Technological Cooperation Agreement with the Republic of Korea

Submission No.	Organisation/Individual
1	Eileen Kelly
2	CRC for Waste Management and Pollution Control Ltd
3	Australia-Korea Foundation
4	Australia-Korea Business Council
5	Western Australian Government
6	South Australian Government
7	Senator the Hon Nick Minchin, Minister for Industry, Science and Resources
8	Pauline Hanson's One Nation South Australia

Proposed accedence to the International Development Law Institute Agreement

Submission No.	Organisation/Individual
1	Baker & McKenzie
2	International Development Law Institute
3	Centre for Legal Education, University of Newcastle
4	Ezekiel Solomon
5	Western Australian Government
6	South Australian Government
7	Department of Foreign Affairs and Trade
8	Pauline Hanson's One Nation South Australia

Proposed denunciation of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface

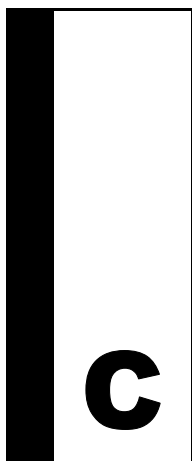
Submission No.	Organisation/Individual
1	Western Australian Government
2	Department of Transport and Regional Services
2A	Department of Transport and Regional Services
3	South Australian Government
4	Pauline Hanson's One Nation South Australia

Agreement on the continued operation of the Timor Gap Treaty

Submission No.	Organisation/Individual
1	Ministry of Premier and Cabinet (WA)

Amendments to the Convention on the Conservation of Migratory Species of Wild Animals

Submission No.	Organisation/Individual
1	Senator the Hon Robert Hill, Minister of Environment and Heritage



Appendix C - Witnesses at Public Hearings

Monday, 14 February 2000, Canberra

Department of Foreign Affairs and Trade

David Mason, Executive Director, Treaties Secretariat, International Organisations and Legal Division

Attorney-General's Department

John Atwood, Principal Legal Officer, Environment and Trade Law Branch, Office of International Law

Proposed UN Convention on Desertification

Environment Australia

Stephen Hunter, Head, Biodiversity Group

Michael Wilson, Acting Assistant Secretary, International and Inter-Governmental Branch

Department of Foreign Affairs and Trade

Ralph Hillman, Ambassador for the Environment

Doug Laing, Executive Officer, Environment Strategies Section, Environment Branch

AusAID

Dr Robert Glasser, Director, Infrastructure and Environment Group, Sectors Group

CSIRO

Dr Geoff Pickup, Chief Research Scientist, CSIRO Land and Water

NSW Farmers' Association

Mick Keogh, Director, Policy

World Vision Australia

Tony Rinaudo, Program Officer, International and Indigenous Program, Africa Team

Proposed Scientific and Technological Cooperation Agreement with the Republic of Korea**Department of Industry, Science and Resources**

Dr Martin Gallagher, Manager, APEC and North Asia Section

Australia-Korea Foundation, Department of Foreign Affairs and Trade

Dr Brian Scott AO, Chairman

Proposed Establishment of the International Development Law Institute**Department of Foreign Affairs and Trade**

Robyn Stern, Director, International Law Section, Legal Branch

Proposed Denunciation of the Convention relating to Damage Caused by Foreign Aircraft to Third Parties on the Surface**Department of Transport and Regional Services**

Robyn Beetham, Assistant Secretary, Aviation Industry Branch

Jim Manning, Director, Aviation Industry Policy

Jill Chorazy, Assistant Director, Aviation Industry Policy



Appendix D - Exhibits

Proposed UN Convention on Desertification

Exhibit No.

1. Copy of the Centre for Groundwater Studies Bulletin, 16 December 1999, attached to the submission of Peter Dillon (a researcher at the Centre for Groundwater Studies)
2. Copy of letter dated 24 April 1998 from the Premier of South Australia to the Minister for Foreign Affairs

Proposed Scientific and Technological Cooperation Agreement with the Republic of Korea

Exhibit No.

1. Various documents, including letters and organisational background materials, attached to submission of the CRC for Waste Management and Pollution Control

Proposed Establishment of the International Development Law Institute

Exhibit No.

1. Letter dated 18 October 1999 from the Director, Centre for Democratic Institutions



Appendix E – IDLI’s programs in the Asia-Pacific region

1986
<ul style="list-style-type: none">• Beijing, People’s Republic of China: ‘Company Law’• Jakarta, Indonesia: ‘Legal Aspects of International Law’
1987
<ul style="list-style-type: none">• Karachi, Pakistan: ‘Transfer of Technology’• Jakarta, Indonesia: ‘Key Issues in Indonesian Corporate Law’
1988
<ul style="list-style-type: none">• Jakarta, Indonesia: ‘Business Contracts’
1990
<ul style="list-style-type: none">• Hanoi, Viet Nam: ‘Contracts and Fiscal Legislation for Joint Venture Enterprise’
1991
<ul style="list-style-type: none">• Vientiane, PDR Lao: ‘Negotiating and Drafting International Contracts’• Ho Chi Minh City, Viet Nam: ‘Negotiating and Arbitrating International Contracts’• Hong Kong: ‘International Purchase Contracts in the Electrical Sector’ (Training Intervention)
1992
<ul style="list-style-type: none">• Talisay, Philippines: ‘Negotiating, Arbitrating and Drafting International Contracts’• Phnom Penh, Cambodia: ‘Negotiating and Drafting International Contracts’

<ul style="list-style-type: none"> • Bangkok, Thailand: 'Enforcement of Pollution Control Legislation in Urban Areas' • Chiang Mai, Thailand: 'Law in Transition Conference' (Technical Assistance)
1993
<ul style="list-style-type: none"> • Sydney, Australia: 'Mediation Skills' (Training intervention) • Hanoi, Viet Nam: 'Export Costing, Pricing and Financing' (Training Intervention) • Phnom Penh, Cambodia: 'Mediation and Conciliation Techniques: Alternative Dispute Resolution Methods for International Contracts' • Hanoi, Viet Nam: 'Negotiation and Legal Management of International Investment Contracts' • Beijing, China: 'Legal Issues of Foreign Investments' • Vientiane, PDR Lao: 'Negotiating and Managing International Contracts' • Nongkhai, Thailand: 'Mekong Region Law Center' (Technical Assistance) • Ulaanbaatar, Mongolia: 'Legal Skills for International Sales Contracts'
1994
<ul style="list-style-type: none"> • Hanoi, Viet Nam: 'International Purchase Contracts' • Katmandu, Nepal: 'Private Sector Reform: Privatization Issues and Methods' • Phnom Penh, Cambodia: 'Legal Aspects of Banking Techniques' • Vientiane, PDR Lao: 'Legal Aspects of Banking Techniques' • Hanoi, Viet Nam: 'Drafting Techniques and Dispute Settlement of International Contracts' • Port Vila, Vanuatu: 'Negotiating International Contracts and Loan Agreements' • Phnom Penh, Cambodia: 'Mekong Region Law Center' (Technical Assistance) • Hanoi, Viet Nam: 'Legal Aspects of Banking Techniques' • Beijing, China: 'Training for Legal Trainers' • Sydney, Australia: 'Mediation Skills' (Training Intervention)
1995
<ul style="list-style-type: none"> • Ulaanbaatar, Mongolia: 'Training of Trainers' • Beijing, China: 'Cross-Cultural Business Negotiations' (Training Intervention) • Beijing, China: 'Technical Assistance Needs Assessment' (Technical Assistance)

<ul style="list-style-type: none"> • Hanoi, Viet Nam: 'Legal Training Needs Assessment' (Technical Assistance) • Ulaanbaatar, Mongolia: 'Training Needs Assessment' (Technical Assistance)
1996
<ul style="list-style-type: none"> • Hanoi, Ho Chi Minh City, Danang, Viet Nam: 'Legal Training Needs Assessment' (Technical Assistance) • Hanoi, Viet Nam: 'Training of Trainers' • Ulaanbaatar, Mongolia: 'Training Needs Assessment' (Technical Assistance) • Ho Chi Minh City, Viet Nam: 'International Trade Negotiations' (Training Intervention)
1997
<ul style="list-style-type: none"> • Phnom Penh, Cambodia: 'Training Needs Assessment' (Technical Assistance) • Ulaanbaatar, Mongolia: 'Providing Training and Resources to the Mongolian Judiciary' (Technical Assistance) • Hanoi, Ho Chi Minh City and Tuyen Quang, Viet Nam: 'Technical Assistance to the Viet Nam Lawyers' Association: Providing Legal Aid to Viet Nam' (Technical Assistance Project Formulation) • Hanoi, Viet Nam: 'Negotiation Techniques' (Training Intervention) • Beijing, China: 'Training Needs Assessment' (Technical Assistance)
1998
<ul style="list-style-type: none"> • New Delhi, India: 'Legal Training in BOT/BOOT Infrastructure Development' • Jakarta, Indonesia: 'Legal Training in BOT/BOOT Infrastructure Development' • Phnom Penh, Cambodia: 'Legal Aspects of Membership and Participation in International Organizations' • Vientiane, PDR Lao: 'Enhancing Governance in Laos: Practical Training for the Judiciary' (Technical Assistance) • Beijing, China: 'Legal Training in BOT/BOOT Infrastructure Development' • Colombo, Sri Lanka: 'WTO Implementation' (Training Intervention) • Uvurkhangai, Mongolia: 'Training on the Mongolian Benchmark I' • Uvurkhangai, Mongolia: 'Training on the Mongolian Benchmark II' • Zavkhan/Govi-Altai, Mongolia: 'Training on the Mongolian Benchmark III' • Khuvsigul/Arkhangai, Mongolia: 'Training on the Mongolian Benchmark IV' • Khentii, Mongolia: 'Training on the Mongolian Benchmark V'

- Umnugovi/Dundgovi, Mongolia: ‘Training on the Mongolian Benchmark VI’
- Ulaanbaatar, Mongolia: ‘Training on the Mongolian Benchmark VII’
- Orkhon/Selenge/Erdenet, Mongolia: ‘Training on the Mongolian Benchmark VIII’
- Darkhan/Bulgan, Mongolia: ‘Training on the Mongolian Benchmark IX’

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- Ulaanbaatar, Mongolia: ‘Training on the Mongolian Benchmark X’
- Delhi, Gujarat, Madhya Pradesh, India: ‘Training Needs Assessment’
- Vientiane, PDR Lao: ‘Enhancing Governance in Laos: Practical Training for the Judiciary (Technical Assistance)’
- Dorngobi & Khovd, Mongolia: ‘Training on the Mongolian Benchmark XI & XII’
- China: ‘Institutionalizing Legal Training in Cambodia, People’s Republic of China, Mongolia and Viet Nam’ (Technical Assistance)
- Phnom Penh, Cambodia; Jakarta, Indonesia; Port Moresby, Papua New Guinea; and Manila, Philippines: ‘Asian Perspectives on Combating Corruption: Legal and Judicial Methods’ (ongoing Technical Assistance)
- Vientiane, PDR Lao: ‘Training of Trainers’
- Vientiane, PDR Lao: ‘Training on the Lao Benchmark I’
- Phnom Penh, Cambodia: ‘National Action Plan on Anti-Corruption’
- Manila, Philippines: ‘National Anti-Corruption Action Plan’
- Luang Prabang, PDR Lao: ‘Training on the Lao Benchmark II’
- Luang Prabang, PDR Lao: ‘Training on the Lao Benchmark III’
- Seoul, Korea: ‘Corporate Governance Reform’ (Technical Assistance)
- Port Moresby, Papua New Guinea: ‘National Anti-Corruption Action Plan’

Source: IDLI, *Submission No. 2*, pp. 4-6

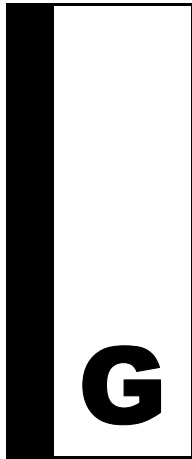


Appendix F - Australian institutions IDLI worked with in 1997-2000

Name of Institution/Individual	Nature of Work
Australian Legal Resources International	AusAid bid, 'Legal Capacity Building Project', Papua New Guinea, Jan 2000
Australian National University - National Centre for Development Studies - Research School of Pacific and Asian Studies	AusAid/United States Agency for International Development, 'Asia-Pacific Perspectives on Combating Corruption: Drafting National Anti-Corruption Action Plans', Cambodia, Papua New Guinea, Philippines, 1999-2000
Blake Dawson & Waldron	AusAid, 'Insolvency Law Training', Thailand, 2000
Centre for Democratic Institutions	AusAid/United States Agency for International Development, 'Asia-Pacific Perspectives on Combating Corruption: Drafting National Anti-Corruption Action Plans', Cambodia, Papua New Guinea, Philippines, 1999-2000
Centre for Judicial Studies	United States Agency for International Development, 'Enhancing Governance in Mongolia: Providing Resources and Training to the Judiciary', October 1997-June 1999

Centre for Judicial Studies	AusAid bid, 'Legal Capacity Building Project', Papua New Guinea, January 2000
Law Society of New South Wales	UNDP, 'Assistance to the Viet Nam Lawyers Association', 1997
Minter Ellison	Asian Development Bank, 'Regional Technical Assistance: Legal Training in BOT/BOOT Infrastructure Development', India, Indonesia, People's Republic of China, 1998-2000
New South Wales Independent Commission Against Corruption	AusAid/United States Agency for International Development, 'Asia-Pacific Perspectives on Combating Corruption: Drafting National Anti-Corruption Action Plans', Cambodia, Papua New Guinea, Philippines, 1999-2000
Television Education Network	AusAid, 'Judicial Technical Assistance: Drafting Benchbooks for Judges and Training on Their Use', Philippines, 2000

Source: IDLI, *Submission No. 2*, pp. 7-8



Appendix G - Letter from the Minister of Foreign Affairs relating to continued operation of the Timor Gap Treaty

Mr Andrew Thomson MP
Committee Chairman
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Andrew

I am writing to inform you of the proposed agreement, by way of Exchange of Notes between the Australian Mission in East Timor and the United Nations Transitional Administration in East Timor to allow for the continued operation of the Timor Gap Treaty.

The Timor Gap Treaty provides a legal framework for hydrocarbon exploration and exploitation in an area where agreement could not be reached on a "classic" seabed boundary. With the separation of East Timor from Indonesia, Indonesia no longer has a role to play in the Treaty, as the area to which the Treaty applies (the Timor Gap Zone of Cooperation) is no longer subject to Indonesian sovereign rights or jurisdiction. Under the proposed agreement UNTAET will assume, until the date of independence of East Timor, those rights and obligations under the Treaty previously exercised by Indonesia.

The Notes constituting the agreement will be exchanged as soon as practicable and will have effect from 25 October 1999, the date of the establishment of UNTAET by Security Council resolution 1272 (1999). This urgent treaty action is necessary to overcome the legal hiatus as to the status of the Zone of Cooperation which has

existed since 25 October 1999. It is particularly urgent because the Joint Authority of the Timor Gap Zone of Cooperation is required to consider for approval a large development application by mid February. The effect of the Exchange of Notes is not to extend or diminish Australia's treaty rights and obligations in any way, but simply to shift the Timor Gap Treaty Relationship from Indonesia to UNTAET acting on behalf of East Timor.

In these circumstances and given the urgent need to reconstitute the Timor Gap Joint Authority after an hiatus of over three months. I have decided to invoke the national interest exception to treaty making processes and to seek your cooperation in accepting its application. I will, of course, ensure that the agreement is tabled in Parliament with a National Interest Analysis at the next available opportunity, and a copy of the Notes to be exchanged is attached for your Committee's preliminary consideration.

Yours sincerely

Alexander Downer