

3.11 Several witnesses nevertheless evidently believe that this absence of a treaty power represents a real weakness in the Canadian system, one that is particularly important in an environmental context.<sup>14</sup> There is, however, a diversity of views on how this gap should be filled. The West Coast Environmental Law Association recommended the creation of a specific external affairs power on environmental matters:

*We recommend that the Government of Canada revise its constitutional proposals by expressly enumerating a federal power to legislate as necessary to implement Canada's international environmental commitments.*<sup>15</sup>

The WCELA recognizes that "This would require a mechanism to assure the provinces of an opportunity to participate in the formulation of Canada's negotiating position regarding such commitments."<sup>16</sup> It is not clear to the Committee how feasible such "special treatment" for environmental commitments would be; as the WCELA itself recognizes,<sup>17</sup> international trade commitments suffer from a similar disability and may have a similar claim to such an external affairs power.

3.12 In the view of a witness from the Canadian Bar Association the problem, though a serious one, should not be addressed through a constitutional amendment.<sup>18</sup> Mr Fairley urged instead that deliberate use should be made of powers that the federal government already possesses.

*I think that there is a very good argument, a good principled argument, that peace, order and good government for the nation is a mandate for implementing international obligations that are clearly of a kind that have a national dimension to them. . .*

*If the federal government wants to take the bull by the horns, it could test it. There have been opportunities to do it. The Justice Department has steadfastly, probably under Cabinet directives, avoided ever doing that.*

*The general trade and commerce power, the resuscitation of that, is another rubric that could be used. . . to have a new principled interpretation of what federal legislative powers should be in relation to international obligations.*<sup>19</sup>

3.13 This issue clearly extends far beyond environmental concerns and the Committee is in no position to prescribe its own solution. However the Committee agrees that ensuring the implementation of international environmental commitments is a real and urgent need. Without it, Canada's negotiating position is unnecessarily constrained by what the federal government believes would be acceptable to all affected provinces; Canada's credibility on the international scene may be called into question; and major opportunities to protect and

<sup>14</sup> See, for example, Issue 16, pp. 24-25.

<sup>15</sup> *Enhancing Environment Protection in the Canadian Constitution. . .*, p. 23.

<sup>16</sup> *Ibid.*, pp. 22-23.

<sup>17</sup> *Ibid.*, p. 23.

<sup>18</sup> Issue 16, p. 38.

<sup>19</sup> Issue 16, p. 36.