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DEFENCE AND TRADE

(UNITED NATIONS SUBCOMMITTEE)

**Reference: Australia's relations with the United Nations in the post Cold War
environment**

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JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

United Nations Subcommittee

Wednesday, 21 March 2001

Members: Senator Ferguson (*Chair*), Senators Bourne, Calvert, Chapman, Cook, Gibbs, Harradine, Hutchins, Sandy Macdonald, O'Brien, Payne and Schacht and Fran Bailey, Mr Baird, Mr Brereton, Mrs Crosio, Mr Laurie Ferguson, Mr Hawker, Mr Hollis, Mr Jull, Mrs De-Anne Kelly, Mr Lieberman, Dr Martin, Mrs Moylan, Mr Nugent, Mr O'Keefe, Mr Price, Mr Prosser, Mr Pyne, Mr Snowdon, Dr Southcott and Mr Andrew Thomson

Subcommittee members: Senator Ferguson (*Chair*), Mr Hollis (*Deputy Chair*), Senators Bourne, Chapman, Harradine, Payne and Schacht and Mr Baird, Mrs Crosio, Mr Jull, Mrs Moylan, Mr Nugent, Mr Price, Mr Snowdon and Dr Southcott

Senators and members in attendance: Senators Bourne and Ferguson and Mr Hollis, Mr Jull, Mr Nugent and Mr Price

Terms of reference for the inquiry:

To inquiry into, and report upon:

- The increasing demand for and provision of peacekeeping operations to address internal disputes within states and the subsequent need for humanitarian relief and support for refugees;
- The role of the United Nations in the period of transition following peacekeeping operations and in the reconstruction of civil societies;
- The implications of increasing intervention in internal disputes for national sovereignty, as defined under Article 2 of the Charter of the UN;
- The suitability of developing a standing army for the United Nations;
- The possible devolution of responsibility for restoring and maintaining peace to regionally based UN operations and coalitions of the willing;
- The capacity of the UN to protect human rights as a basic requirement of the Charter and as preventive diplomacy and to address war crimes and crimes of genocide;
- The viability of the International Criminal Court;
- The proposals for reform of the structure of the UN, in particular the Security Council, the specialised agencies, the supporting bureaucracy and the relationship between the security and humanitarian/human rights arms of the organisation;
- The funding shortfall; and
- Australia's role in and response to the United Nations.

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Subcommittee met at 9.06 a.m.**CHARLESWORTH, Professor Hilary Christiane (Private capacity)**

CHAIR—I declare open the Joint Parliamentary Standing Committee on Foreign Affairs, Defence and Trade. These two days represent the final public hearings in our inquiry into Australia's relationship with the United Nations and the prospects for reform of the United Nations in the post Cold War era. The aim of our inquiry is to consider the role of the United Nations within the changed circumstances of the post Cold War environment and the response of the Australian government to arguments for structural, procedural and financial reform of the United Nations. We anticipate our report will be tabled before the parliament rises for the winter recess in June.

On behalf of the subcommittee, I welcome Professor Hilary Charlesworth. I must advise you that the proceedings today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion and that the deliberate misleading of the subcommittee may be regarded as a contempt of parliament. The subcommittee prefers that all evidence be given in public, but should you at any stage wish to give any evidence in private you may ask to do so and the subcommittee will consider that request. We have received your submission and it has been authorised for publication. Do you wish to make any additions or corrections to that submission?

Prof. Charlesworth—No.

CHAIR—I invite you to make a short opening statement and then we will proceed to questions.

Prof. Charlesworth—My submission was very brief because it was done just after examining had finished and we were winding up for the year. It addressed two major issues. One significant issue facing the United Nations coming into the 21st first century relates to women. The United Nations is generally quite good on rhetoric with respect to women. It has placed the issue of women high on its agenda, but the issue that I raise briefly in my submission and also in the article that I sent was the status of women within the UN secretariat. I think the United Nations, despite its generally grand rhetoric about the position of women, has been very bad in the way it has dealt with the employment, promotion and treatment of women within the UN secretariat.

Australia has been generally a very good watchdog of the UN in this respect and it has sponsored a number of resolutions over the years suggesting that the UN try to cope with the fact that at the professional level there is a distinct minority of women and that almost all of the major positions are held by men. Ambassador Penny Wensley has made this a particular concern of hers and she has done some very important work. But I wanted to raise that as an area where I think the United Nations needs to be constantly encouraged by member states. Particularly within its own secretariat there are issues that constantly emerge of both problems for women being promoted and issues such as sexual harassment within the United Nations that do not seem to be very well dealt with yet. That was the first issue.

The second issue, which more directly concerns Australia, is Australia's relationship with the United Nations. As most people point out, over the years we have had a fairly close and productive relationship with the United Nations right from its formation, and of course there was Australia's involvement with it at that stage. For those in academic positions who, like me, are very interested in the United Nations, I think the issue of Australia's relationship with the human rights treaty bodies last year caused quite a bit of concern. I would respectfully urge the committee to pay this issue some attention in its report.

You will be aware of the press release at the end of August last year, announcing a change in Australia's relationship with the human rights treaty bodies. As I said in my submission, there were a lot of issues raised in the press release, but I guess I have two different forms of concerns. One is the process by which that changed relationship appeared to be arrived at. Since 1996, with the treaty reforms—which, in effect, mean that decisions relating to treaties were not alone in the preserve of the executive and that they needed to have some scrutiny by the legislature—it seemed to me that the way the so-called reforms were announced was quite problematic. There was no open inquiry, and it never came near the Joint Standing Committee on Treaties. Indeed, today the outcomes of the full interdepartmental review are still not available. I think all we have is a two-page press release in large type. When one seeks the full review document to better understand those outcomes, it is simply not available. I see that as very much against the spirit of this government's treaty reforms in 1996, which I for one welcomed. So there is the issue of the process, which I do not think was sufficiently transparent, and there is also the issue of the content going just on the press release. I think it was quite a damaging document, both from the Australian perspective and from an international perspective.

It announced a scaling back of Australia's involvement with these committees. It did say that it was very interested in pushing reforms for the treaty monitoring bodies, and everybody knows that they are in need of reform. The way to reform them, I think, is not by distancing Australia from them. I know from separate discussions with officers from the Department of Foreign Affairs and Trade that there are some high-level diplomatic initiatives going forward about reform of the treaty bodies, and I welcome those. I think those are creative, but the general tone of the press release has caused considerable alarm both within Australia and, as I understand from colleagues overseas, outside Australia. It was read as a statement from a formerly quite engaged member of the United Nations to be one that really was putting the United Nations on notice that, if the United Nations said too much about Australia, Australia would increasingly keep the United Nations at arms length.

I think that not only is very sad, given our proud history of involvement with the UN up till now, but also, from what I have heard from colleagues overseas, it gave quite a lot of comfort to a number of countries that, frankly, we would not want to be in the same group as. A number of countries were delighted that Australia started making statements like this. Somebody I studied with in the United States, who is now a diplomat with a country in the European Union, said to me that it could have been drafted by Cuba—that was his comment about the quotes in the press release that he had read. So I see the press release as a low point really in Australia's relationship with the UN. As I said, I welcome the positive aspects of the press release, the signalling of trying to come with some positive suggestions for reform of the treaty bodies, but I am really concerned by the general tone of the press release and the statements made that Australia is keeping it increasingly at arms length.

If I can just in conclusion refer to a particular aspect of the press release, that was the rather bald statement that Australia would not ratify the optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. I see that as a backward step in substance because Australia has been closely involved with the drafting of that optional protocol. It seems to me, from studying the protocol in some depth, that all it would allow would be, if you like, a safety net for the possibility for complaints if Australian law was inadequate to fulfil the terms of the convention.

To me a more significant problem is the fact that in 1999 the Australian government announced to the United Nations that the Australian government would embark upon a program of consultation with the Australian community about whether or not the optional protocol should be signed and ratified. I am not aware—and I have made a number of inquiries—that that consultation ever took place. So without consultation the Australian government simply announced that it would not sign or ratify that protocol. Again, I see it going very much against the admirable thrust of the 1996 reforms, announcing unilaterally that there would be no involvement in this optional protocol. While Australia continues to have in many areas distinguished relations with the United Nations, at least in this area I see some quite troubling signs.

CHAIR—I would like you to expand a little on a couple of things that you have just said. The three of us here have all spent 3½ months at the United Nations in recent times as parliamentary advisers or observers to the United Nations—Mr Hollis and I up until Christmas last year and Mr Jull about five years ago—so some of the questions might be based on impressions that we gained and whether or not they conflict with some of the statements that you have made. You mentioned sexual harassment. In all the time I was there I cannot ever remember anybody raising the issue of sexual harassment in the United Nations. What evidence or basis do you have for making that statement?

Prof. Charlesworth—The information about significant issues of sexual harassment came to the fore—and I am just trying to think what year it was; I can certainly supply the committee with this information—when quite a senior administrator in the UNDP was accused of sexual harassment by a staff member. I guess my concerns really relate to the way that that particular case was handled and the fact that it indicated that there were no proper systems within the United Nations for handling this. I have this information from press reports and from a particular paper that was given on this. I can supply that to the committee.

As I understand it, basically there is no proper system for dealing with complaints of sexual harassment within the UN Secretariat. There is a rather ad hoc policy—I believe it is dated in the 1980s—and there is no designated office to receive these complaints. This particular case, which involved a rather serious allegation, eventually went through the UN system such as it was without satisfactory resolution. The woman making the complaint was constantly told that her job was on the line if she continued to make these allegations. Eventually, after the *New York Times* took it up as an issue, the Secretary-General appointed an Irish judge to make an inquiry into this particular allegation.

When the Irish judge heard the complaint and found that there was a case of sexual harassment made out, her judgment was not allowed to be given any publicity. Effectively, at the end of the day—and, as I said, I am basing this on the *New York Times* news reports—the

person Judge Carroll, the Irish judge, properly found to have engaged in sexual harassment was given a very large payout and was allowed to leave the United Nations quite gracefully. This was what I had also heard from people working within the United Nations. That was one case that ended with some form of resolution, although not completely satisfactorily.

The major issue there is the fact that, just as with an issue of workplace relations, there is no proper system for making these complaints or for them to be dealt with—compared to my workplace, a university, where there are quite clear procedures. If there is an issue, you have advisers that you go and see and, if it needs to go further, there are quite set issues. I raise this as simply one of the issues within the United Nations for women staff and as something that seems not as yet to have attracted proper organisational attention.

CHAIR—Is this the only case that you know of?

Prof. Charlesworth—No. This is the one case that I know of that has got that far. In the course of researching a book, which I and a co-author, Professor Christine Chinkin from the London School of Economics, finished last year, we visited the United Nations Secretariat in New York and did a number of interviews with women staff members. This is where the general problem emerged: people talking about it and saying it is really something that is extremely hard to raise because there is no system. What is very striking about this case is that it is the one case that has somehow got into the public realm—basically because a newspaper, the *New York Times*, took it up. I am not aware of any other cases getting that far but, to a certain extent, that is actually the problem.

Mr HOLLIS—You mentioned process. What we should do, Chair, is ask our mission or someone to make a formal inquiry into what the process is. You would be aware, Professor Charlesworth, that there have been a whole lot of changes within the UN administration over the last couple of years. If a case gets publicity, usually the way organisations react is to put in place a process. The chair says that this is not an issue that was raised with us—why should it be?—and we were unaware of it. But there are many things we are unaware of.

There are women members in the organisation—the deputy there is a woman—and I must say I was not terribly conscious of a lack of women in organisational positions. One of the real difficulties is that many of these positions are filled on countries' representations. We were involved in a couple of elections while we were there. I thought that wheeling and dealing, doing deals behind the scenes, and meetings and lobbying were exclusively for political parties. I came away from the UN, after being involved in a couple of elections there, thinking that it was the most political process I had ever seen or been involved in in all my life.

CHAIR—That includes his own party.

Mr HOLLIS—The lobbying that went on there for those positions! And they were not always the most senior positions; they were various positions. Then there is the fact that they have got to be filled on a geographic basis and all these things. But that is not to say that there is no room for improvement; I am not trying to justify the system at all. I think we should make an inquiry—which would be better done through our own mission there—into whether a process has now been established to deal with complaints such as the one you have raised.

Prof. Charlesworth—Yes, I completely agree with you, and I am sure that is the right course. I did try to find that out—before I prepared the submission—just from the UN web site. In the case of most public institutions—the ANU, for example—anybody can log in and see our policies on those things, so I tried to do a similar exercise with the pretty good UN web site. I could not track it down that way. I made one inquiry of somebody I know working there, who was unable to point me in that direction. An official inquiry might well produce something, and I would see that as quite valuable.

In response to Mr Hollis's points, obviously it is not just an issue for the UN. It is obviously also an issue for member states because, as you say, many of the professional positions are required under the UN Charter to take into account geographic distribution—that is one element of diversity that has to be taken into account—and sometimes it seems hard to take more than one element of diversity into account. I think that member states certainly need to think more often about putting forward women for those positions, and to think about gender balance in those contexts. The Secretary-General has, at various points, announced goals and aims for the employment of women. But, as I indicate in the article that I sent, they usually do not meet them. Then they say, 'Dear, dear,' but still do not meet them—and the targets are relatively low. Targets are still around 30 per cent rather than higher than that.

CHAIR—You make quite a substantial contribution here in regard to women in positions of significance in the United Nations. After reading this, I was suddenly thinking of people like Mary Robinson, Mrs Ogata, Mrs Rafiq and Louise Freschette—all of the people who have been appointed, some in recent times and some earlier. Then I thought that if you look at the cultural differences between the member states—in fact in the G77, which is now 130-odd countries, the attitude towards gender balance within some of those member states is not what we would see in many European countries or in Australia. So unless the other countries tilt their balance in favour of having more women than men involved in positions, there is never going to be the same sort of gender equity, or near the same, that you would expect from some western countries—simply because of the cultural differences.

As Mr Hollis says, when geographical positioning takes precedence in who shall fill positions it means that automatically some of those positions are never going to be filled by women, because those countries with cultural differences will not promote women or nominate them for those sorts of positions. I share Mr Hollis's view: I actually thought that we met a number of women who were playing quite significant roles—Gillian Sorensen was another one we met when the committee was there—and were all in very senior positions. I am not just picking out names to say that there are some people there. We seemed to meet with a lot of women in senior positions—and a lot of men, of course—so I did not think that it was the problem that you raised in your paper.

Prof. Charlesworth—It is absolutely correct, of course, that there are a number of very high profile women—although I notice that Professor Sadako Ogata has left and been replaced by Mr Ruud Lubbers. Also, I see from this morning's newspaper that Mary Robinson has announced that she will not seek another term. It will be very interesting to see who replaces her. I acknowledge that of course there are a number of high profile women, but if you look across the board at the number of people in those positions, on my last count women were perhaps less than one-fifth of all the people at that level. The current Secretary-General is obviously quite conscious of the issues. I want to acknowledge that. However, you will often find that there will

perhaps be a woman in a very senior position and then many gaps below her until you find the next women. Certainly, I get the sense from career UN staff that it is very difficult to reach senior positions, unless you are parachuted into a top job because you have been a senior politician in your own country, for example. At the career level, as I understand it, the picture is much more bleak.

CHAIR—Would that be partly because traditionally and up until recent times the UN has been a fairly male-dominated work force and so those that are reaching the end or are towards the pinnacle of their career tend to be male rather than female?

Prof. Charlesworth—That is absolutely correct—although one would then expect to see a gradual increase in the number of women at all levels as their age increases, and that is not what you see. You actually see, if you like, the famous cap or glass ceiling at a relatively low level in the professional levels. That is what you see when you actually look at the figures that the Secretary-General gives every year—he has made a commitment to publish those figures. When you look at them—much as when you look at Australian public life—you might think that inevitably we have to move towards a more equal system, but we are actually not seeing that in Australia, and the picture is similar at the UN.

CHAIR—Should they do away with the geographical quotas?

Prof. Charlesworth—That would be very problematic in the UN. If one did it on other grounds, you could imagine that many countries would have no possibility at all of having their nationals within the UN. I do not think I could support that, because you would perhaps inevitably end up with the wealthiest countries supplying most of the staff, exacerbating some of the tensions that are there already.

CHAIR—While there is this geographical component, are there going to be a lot of countries that will never nominate women for positions?

Prof. Charlesworth—I think there is some change. We are seeing in countries like Iran some move towards allowing women into parliament. I assume it is countries like that that you are referring to.

CHAIR—Mainly Muslim countries.

Prof. Charlesworth—Yes. There are a number of Islamic countries that have women working in the UN. Even Iran, which has tended to perhaps be one of the harder line countries in this respect, now has women parliamentarians. So there may be some changes. The number of countries that would completely refuse ever to nominate women I think is growing smaller.

Mr HOLLIS—I think you are right there. It is interesting that the new executive director of the UNFPA is a former national of Saudi Arabia. One of the arguments put for welcoming her appointment—and believe you me there was a lot of lobbying and a lot of high profile men from the developing world in for that position—was that it would break down some of these barriers to women from certain geographic areas taking on those top positions.

Prof. Charlesworth—The former head of UNFPA, Nafis Sadik, is an Egyptian, who has had a very distinguished career there. So there are these exceptions.

Mr HOLLIS—Can we move on to the International Criminal Court?

Prof. Charlesworth—Yes.

Mr HOLLIS—I do not know what the latest on the Americans is. One of the last acts that President Clinton did was to commit the United States to the International Criminal Court, and I think this caused quite a lot of outrage in the incoming Bush administration. I do not know whether they have reversed that decision.

Prof. Charlesworth—No, this was on 31 December. It was really the last moment literally at which you could still be a signatory as opposed to later acceding. President Clinton did sign it. I do not think in international law you can undo a signature; I do not believe you can withdraw that. President Clinton's statement at the time of signing was that he would not be recommending ratification, the second step. Certainly, the Bush administration statements that I have seen say it will never support ratification. Even if you had a President very keen on ratification, under the United States system there is another whole step in persuading the Senate to go with you. While Jesse Helms and Strom Thurmond, who have got these very strong views against the International Criminal Court in particular, are still alive, I think it would be very hard.

Last year the United States Congress enacted legislation which really said that the United States should not cooperate with the ICC once it is established. So there is actual legislation on the books, as it were, stopping the US. You can see President Clinton's move as optimistic or pessimistic. On the one hand it was a fairly dramatic Clintonian move right at the end of his presidency which was possibly just designed to annoy the incoming administration. That is perhaps the most cynical interpretation. On the other hand, if a country signs a treaty, even before it is ratified it nevertheless has a legal obligation with respect to the treaty, because article 18 of the Vienna Convention on the Law of Treaties says, if you sign a treaty, you have undertaken the commitment not to do anything in contravention of the object and purpose of the treaty. You are not obviously committed in a full-scale way. I wonder whether President Clinton's signing of it—and I am sure he had the best possible legal advice—was not just a neutral step but actually committing the United States not to do anything that will contravene the object and purpose of the treaty. The legislation enacted last year, saying that the US would not ever cooperate with the ICC in terms of evidence and so on, seems to me to be in direct contravention.

Mr HOLLIS—I have noticed in the last couple of weeks that there has been an increasing number of comments in the Australian media. Frank Devine had an article in one paper I read over the weekend, which was very critical. There is the view that is so often put about by America—we have the courts here, why do we need this extra court? It is all a case of Big Brother interfering yet again. There was quite a lot of debate within this parliament last year—I was not here; Senator Ferguson and I were at the UN when that was taking place—apparently about the role of the foreign minister and the Attorney-General, either committing Australia before the matter went to the treaties committee or indicating Australia's view before it had been approved by the treaties committee.

What do you think? What is really interesting, from my point of view, is that no-one has countered these arguments. When we were at the UN, there was quite a disgusting article published which was totally wrong. I remember the ambassador there and others were outraged by this article and said it had to be answered. No-one answered it. It seems to me that these people who are anti anything are always writing articles about these things. In fact, I was so angry—I am showing my bias here—about the article I read over the weekend that I felt compelled to put pen to paper, but I did not have all the technical knowledge to enable me to answer it. It becomes a very technical argument then. That was more a statement or a comment than a question to you.

Prof. Charlesworth—I will say a few things about it within Australia. It is perfectly true, Mr Hollis. I too have observed a number of letters to the editor and have read the transcripts of the Alan Jones radio program. He seems to have taken on the International Criminal Court as his current stalking horse, if I can put it that way. He has had a number of interviews and he seems to be rousing people to be very concerned about it. I read the transcripts of two of his programs very carefully, but I have to say that I missed Frank Devine's article.

CHAIR—It was in Saturday's *Australian* I think, or one of the weekend papers.

Prof. Charlesworth—Was it? I think I will try to answer that one. I will fish it out.

Mr HOLLIS—I am sure you would answer it much better than I would.

Prof. Charlesworth—One issue is trying to get air time. I know a number of colleagues who have tried to get on to the Alan Jones program to say, 'Look, if you're having this campaign against the International Criminal Court, at least hear from the other side,' and they have been rebuffed. I actually did write something in response to some of these critics in the *Australian* in January, but it is a lot harder to get space in newspapers if you are saying, 'I think the treaty is okay.' Inevitably, newspapers are more interested in publishing other things.

What I am mainly struck by are the comments on this subject. I read a letter from a group of senior ex-servicemen, and I believe one of them was Digger James from the RSL. When I read it, I wondered whether they had actually read the treaty. One very basic criticism of the treaty that is being put around by people, very broadly, is, 'This is very dangerous. It is'—to borrow your words—'Big Brother stepping in telling our good soldiers what they can or cannot do.' What is misunderstood is the absolutely defining feature of the ICC statute, the principle of complementarity, which says that the International Criminal Court will only ever have jurisdiction if all domestic procedures have failed or can be shown to be utterly corrupt and outrageous.

For example, to take a strong case, let us say the statute is in force and there is an Australian soldier in East Timor who massacres civilians. The International Criminal Court statute requires that the country of nationality investigate that instance. One can imagine that in Australia there would be a lot of interest in investigating that instance. If at the end of a full and transparent investigation the investigating authority said, 'We've investigated these allegations and we've discovered that they were absolutely without foundation,' and if they explained that, that is the end of the point. There is no point at which the International Criminal Court can have jurisdiction if it is shown that that inquiry was a fair and open one. If, however, the inquiry took

half an hour and it was conducted in a swimming pool or something that straightaway indicated the inquiry had not been serious, it is only at that point that the International Criminal Court can get a look in. So it acts as a safety net to unsatisfactory national processes. But the primary obligation under the ICC statute is for crimes against humanity, war crimes and any acts of genocide to be investigated. If the investigation is free and open and they decide there is no case to answer, it can stop there. If the investigation says, 'Yes, we do think there was something that went on; we'd better put this person on trial,' that trial has to be an Australian trial. It would only be if you showed that all the jurors were being paid money—something corrupt—and that would be highly unlikely to occur in our justice system.

CHAIR—Who makes that decision as to whether or not it is fair?

Prof. Charlesworth—That is a very good question. At the end of the day it is the prosecutor of the International Criminal Court. But they can be overruled; it cannot be an arbitrary decision. The prosecutor established under the ICC must themselves have a basis to assert that the national investigation or trial was corrupt and improper. You can understand why it would be inappropriate to leave that decision to the national jurisdiction, because a national jurisdiction, if corrupt, would perhaps quite cheerfully certify that it was the most beautiful legal proceedings ever conducted.

CHAIR—What would happen, say, in the case of Gueteres in Indonesia, who may be tried by an Indonesian court? There is a chance that the Indonesian court may find that nothing occurred when in fact we might think that evidence available suggests that atrocities did occur. At what stage could the International Criminal Court become involved in something like that?

Prof. Charlesworth—From the Indonesian perspective, the proceedings would have to be finished. Of course, it is perfectly possible that something that we might think, from what we read in the media, to be a pretty strong case against an individual turns out, when it is actually investigated by a court, to be based on very shoddy or flimsy evidence. We often see this. We say, 'Yes, that person looks incredibly guilty,' and then, when there is actually an investigation, we see that the evidence is much less strong than we thought. If, let us say, an Indonesian court acted with propriety and did not, for example, bar witnesses that could give contrary evidence and so on—if it could be shown to be acting with propriety—that would be the end of the road for that. That could not then be second-guessed by the International Criminal Court, unless there was evidence that the prosecutor could adduce to convince the court that this had been a very problematic investigation.

At the end of the day it is true: the United States, during the negotiation of the International Criminal Court, did fight hard on that. They wanted the country involved to be able to say whether or not the investigation was appropriate. But, to use the Indonesian example, one could see the problems if you said, 'We'll rely on the certification of the country involved.' That may not get you very much further. I think there has to be some independent way of assessing.

CHAIR—There would be a lot of trials in absentia, wouldn't there?

Prof. Charlesworth—There would be. That is why I think you do need the safety net of the International Criminal Court. When people say that good Australians can be popped on trial, that is actually saying that that is only if the Australian legal system loses its current character.

The other issue that I think is not understood by some of the critics of the International Criminal Court with respect to Australia is that without the International Criminal Court it is currently possible for Australian defence personnel, if they were within the jurisdiction of another country, to be put on trial in a show trial way without any hope of redress. For example, let us say Indonesia reinvaded East Timor and let us say they found some Australian soldiers there and decided to put them on trial for a purported massacre and found them guilty, after a very, very quick trial about whose propriety Australia would have doubts, there is nothing at the moment that we could do, internationally, to say, 'Hang on, that was a completely unfair trial. You have put our defence personnel on trial. You have convicted them of this very serious charge.' If you had an International Criminal Court, this would also allow a safety net in those circumstances. Australia then would, presumably, approach the International Criminal Court and say, 'Serious allegations were made against our personnel but we do not believe that the national trial of our personnel in that country was proper. It wasn't due process. There wasn't enough evidence. We want that to be considered by the ICC.' So in a sense, I think if one looked at it from a defence perspective you would see it as a very useful way of ensuring a proper hearing of these matters by an institution that has some integrity.

Mr HOLLIS—I don't suppose in your casual reading you have ever read Dr Spry's evidence before this committee?

Prof. Charlesworth—Dr Spry actually taught me some years ago at the University of Melbourne. In my casual reading or even in my more serious reading I have not read Dr Spry's submission.

Mr HOLLIS—He took the view—not so much on the International Criminal Court, because I do not think it was to the fore then; it was very early in our hearing—that Australians could not be prosecuted for crimes committed abroad, that at the most they would have to be extradited back to Australia. I put to him the case of trial of sex offenders, for which the previous parliament passed legislation saying that an Australian could be prosecuted within Australia for that crime committed abroad. What is the legal view on the International Criminal Court? Are most of the legal profession in favour of it, or not in favour of it, or are they divided?

Prof. Charlesworth—First of all, in response to the particular point you were quoting Dr Spry on, as I understand it you said that he suggested that if Australian service personnel had committed—

Mr HOLLIS—No, he was not talking about service personnel. We were talking about the role of law. I should have refreshed my memory before I came here. He was arguing with me on the matter. I said to him that in certain cases if an Australian had committed a crime abroad, even if the law of that land did not cover that crime, if it was a crime in Australian law that person could be tried in Australia for committing that crime in that country. He said: 'Oh, that is nonsense.' I said that it is not nonsense because sex crimes could be tried in Australia. He then started to argue about how the Australian legal profession did not agree with that legislation anyway. He was more or less arguing that the law in Australia could reach its extreme here and we did not have to rely. It would seem to me that that would be the argument a lot of people would be putting about the International Criminal Court.

Prof. Charlesworth—I understand now. First of all, it is true that internationally the primary basis for jurisdiction is territorial—it is for something that happens on your territory—but also nationality of the alleged offender is another basis for jurisdiction internationally. That is certainly the basis for the sex tourism crimes act to which you are referring. It is utterly legal; there is absolutely no question. A number of countries have very broad extraterritorial legislation. Australia has not yet used its undoubted power to enact such laws very broadly, but a number of countries, European and the Americans, have. Dr Spry taught me tax so I think of him in that capacity. But certainly from an international law perspective there is absolutely no problem at all.

With respect to war crimes, even without the International Criminal Court, what is the current situation? Australia has had legislation since the 1950s: the Geneva Conventions Act. The Geneva Conventions, which govern a less broad range of war crimes, at the moment create what is called ‘universal jurisdiction’. We already have this legislation, and have had since, I believe, 1953, which, if Australia finds anybody, a national or whatever, within its territory who had committed war crimes anywhere in the world, requires Australian courts to have jurisdiction on that person. So there is already legislation allowing some form of jurisdiction over war crimes committed by non-nationals overseas. If we had found Pol Pot—before his demise—in an Australian airport, there is actually under Australian law a duty to put him on trial in an Australian court for his war crimes. That is the Geneva Conventions Act.

On the more general question of what is the attitude of the Australian legal profession to the International Criminal Court statute, I obviously cannot speak on behalf of the profession. From speaking to my colleagues who have an interest in criminal law and international law, I cannot think of one of them who is against the International Criminal Court. A lot of people wish that the International Criminal Court was stronger and regret the fact that during the negotiations some issues were, basically at the behest of the United States, negotiated out of the treaty. I think the only criticism I have heard is that it could have been stronger. Indeed, Australia played an extremely important role in getting many of the safeguards we have. I am not aware of any concern at all. I am not still in touch with Dr Spry and people who might think like him, but I am not aware of any legal concerns. The way that the statute has been drafted and all its concerns for the probity of evidence and so on are very strong. They are state-of-the-art type provisions that are modelled very much on things that we respect within the Australian legal system. I do not think there are any doubts at all from mainstream international lawyers, if I can call them that.

Mr JULL—I would like to move on to some of the human rights issues. How successful has the United Nations, in its 50-year-odd history, been in promoting human rights, if we look at it in a cold, hard, calculating way?

Prof. Charlesworth—Again, one could be an optimist or a pessimist; the glass is half full or half empty. If I were giving you an optimistic account I would say look at the great range of treaties that have been adopted successfully, starting from the universal declaration on genocide and going through to the most recent treaties of the 1990s. They have created a very broad-ranging set of principles that have certainly influenced many national legal systems. We can look at a number of countries that have been established since the founding of the UN and a number of countries that have altered their constitutions. I give the example of Canada. When Canada amended its constitution in 1982, it to a large extent looked at the international human

rights standards and incorporated those, with specific Canadian-type amendments, into its constitution. So you can see that the international standards have had direct national effect. It can also be seen, as I said, in the constitutions of a number of newer countries. For example, it is interesting to look at some of the negotiations that are going on now in East Timor about the nature of the legal order in East Timor. Many of those refer to the UN human rights standard. So they have had that effect.

The pessimistic side would say, 'Well, look, whatever these grand standards say, we only have to pick up the paper any morning to see massive human rights atrocities going on—and what can the UN do?' The UN has very rarely sent in troops on human rights grounds. These tend to get pushed to the background. I see in speeches that when Kofi Anan is asked a question like that he always reminds people that the UN is the sum of its parts and its parts are member countries, and we are incredibly dependent on the goodwill of member countries and the strength of member countries to push these issues. He would say, I suppose, if he were here, 'You have to understand in the failures of the UN it is not the UN as such; it is the failure of will of member nations.' For example, we know now that when in 1994 word began to get out that there were great atrocities going on in Rwanda, that there were massacres, many of the countries that could have got involved—the United States, Belgium, and so on—seemed to get astonishingly cold feet even when there was news of the massacre, and for a number of reasons did not take very strong action.

I think that, given all the constraints on its action, the UN over the years has done an extremely good job in terms of human rights. Increasingly we are finding, for example in UN involvement in East Timor, the UN and the Security Council willing to take action when only human rights—that is a big 'only'—are at stake. I think in the old days the UN Security Council would never go in just on a human rights platform. They would stay far away from it. But we are increasingly seeing Security Council preparedness to take action when human rights are at stake, and I see that as very positive.

I was interested in the news account this morning—I only read it very briefly—of why Mary Robinson is not standing for a second term. I think her term expires in September. She said she actually felt she could do more good for human rights outside the organisation than inside it. I was thinking about that as I was coming here and thinking: what is that a code for? What does she actually mean? I do not know. Perhaps she means that, if she is around without having to have the diplomatic carefulness of never naming transgressor countries, never referring to them directly, never saying, 'Look, improve your human rights', being absolutely straight forward, if she were in domestic politics or something, she could go back to being more helpful there. It is hard to imagine. If we did away with the human rights system then it seems to me we would then have absolutely no structure and no safety net at all in cases when human rights are clearly being violated. So, at the end of the day, I come down on the optimistic side.

Mr JULL—Can you think of any examples we could use where the development of human rights has helped in terms of economic development or the development of peace and security in a particular country or a particular region?

Prof. Charlesworth—Perhaps the most recent example is the best: I think of East Timor. There were of course a lot of debates within Australia for many years about the status of the territory—was it Indonesian, was it not, and so on. For a long time I think the view was allowed

to hold sway that really, while we knew that the human rights abuses were perhaps going on, we just had to keep talking to Indonesia and try and improve them in that way. Finally, when the situation got very extreme the UN did decide to take action in the name of human rights. It was basically because of the news that was coming out. That was the primary motivator for action there. At the moment of course East Timor is in a state of transition and there are many problems, but I think one could say in that context concern for human rights has been a 'bridge' to issues of development in East Timor and the attempt to create a state from very little and the building up there.

You can also see the human rights concerns leading to improved economic advantages, especially through some work that is done by the Committee on Economic, Social and Cultural Rights that monitors the Covenant on Economic, Social and Cultural Rights. Over the years, when countries are reporting to them, they have really tried to persuade the countries of the close link between observing the economic and social rights of the people within their jurisdiction, particularly, and development. I am thinking of some very useful work done by that committee in relation to a number of African countries, where the committee has actually spoken of benchmarks that the country needs to meet in terms of economic and social indicators. That work was largely spearheaded by an Australian, Professor Philip Alston, who was my predecessor in my current job. He was chair of the Committee on Economic, Social and Cultural Rights for 10 years. He has an economics degree as well as a law degree. You can actually see that during his leadership that committee was really linking economic and social rights very closely with development. As I said, for a number of African countries they developed these quite specific benchmarks that have had quite a lot of impact. I do see human rights as intimately related to the economic wellbeing of the citizens there. It seems to me you cannot separate them.

Mr JULL—Can you think of a couple of examples in terms of peace and security efforts?

CHAIR—We tend to be continuing to use East Timor as the example, when it is the most recent example and it is probably the only time that the United Nations has moved in purely for human rights purposes. There have been lots of cases earlier—and I think this fact was the genesis of this inquiry—where we felt the United Nations was powerless to move into a country until the tragedy had already occurred. We are trying to look at ways and means of getting in earlier. East Timor was one, but I would like to think of some other examples outside of East Timor.

Prof. Charlesworth—I agree. I was about to give you East Timor again on peace and security. But it is true: you do not find the UN, or at least the Security Council, really moving on these issues. The first case I would give would be Somalia, where the Security Council actually sent into troops when you were dealing with a complete collapse and human rights violations. That was effectively a civil war; that was not an international conflict. You see that first of all in Somalia in a number of very interesting resolutions by the Security Council, as far as I am aware for the first time, nominating human rights. I was also going to say Rwanda. You are quite correct that in both those cases the UN came in pretty well after the situation was so dire. In the cases of Somalia and Rwanda, one could say neither country is still properly back on its feet again.

When one looks at why was the UN so slow in Rwanda—and there have been a number of inquiries into that. Kofi Annan himself, I believe, has actually been much criticised for the slowness of the UN during the Rwanda crisis. I have read—only in the media—a couple of his ‘defences’, as it were, to charges that the UN acted very slowly in Rwanda. There was that major report very critical of the UN. When he was responding, he pointed to ‘paralysis’ in the Security Council. The Security Council of course, with its five permanent members, is still dominated by the ghosts of the Cold War even though the Cold War is over. There is no doubt that those politics still influence the Security Council. Kofi Annan in one of his responses pointed to what seemed, at least from his perspective, to be quite anguished attempts by the UN bureaucracy to get the Security Council to agree to troops going in and to actually give them proper terms of engagement. One of the problems, as we have seen in a number of countries, is you send in UN troops and you say, ‘Sit on your thumbs. Just hang around. Chew gum; don’t do anything.’ One of the big issues is getting the proper rules of engagement for the UN. But at least Kofi Annan’s account of those disastrous failures was very much that, for political reasons—the US for its own reasons, Russia for its reasons, China for its reasons—the Security Council members were all slowing down action. Perhaps the way out of it, which one can imagine would be a very controversial way, would be to give more autonomy to the Secretary-General in these matters to allow Secretary-General’s office and the bureaucracy more independent power. That of course would then create great angst within member states, particularly the United States.

Mr HOLLIS—That is being floated at the moment. If any good can come out of those terrible tragedies, it is as Kofi Annan commented recently that there may be a time when state sovereignty is not supreme and it can be overridden when there are acts against humanity. I also think that the success of going into Timor and using chapter 7 to give the troops real authority proves that it can occur. I think that Kofi Annan has made speeches recently flagging the view that in cases where, for narrow reasons, the whole system is paralysed there must be an authority to step over that. As you rightly say, down the track that will bring up questions, but it is up to the sovereign states—the UN can be whatever they want it to be.

CHAIR—But it also raises the issue about who makes the decision and when, in places such as Eastern Europe, Chechnya, the Ivory Coast, the Congo, or in more times Zimbabwe. Unless there is a formal structure in place as to when and what criteria the United Nations should act on, it is always going to be a political decision.

Prof. Charlesworth—It will be. In relation to East Timor, there was a lot of comment when the atrocities were going on in Chechnya: why is the UN in one part of the world and why it is not here? The bitter reality is because Russia is a member of the Security Council. I completely agree that the way forward is to develop some objective criteria. If I can bring the conversation back to the International Criminal Court, although it is only one aspect of this, it seems to me that that would begin to create international institutions that are separated from superpower politics. You may recall that, during the negotiations for the International Criminal Court, the US, for example, sought to have the Security Council as the final arbiter on the jurisdiction of the International Criminal Court. That was one very strong proposal put by the US to say, ‘We want the Security Council built right into that statute as the yea or nay on whether this case should go forward.’

Australia and other countries fought that very bitterly to try to preserve the independence of the ICC. Luckily, they were successful. But it is one of the reasons the United States really dislikes the statute, because they will not have control. It seems to me the more you create those independent institutions, the greater hope you have got of arriving at a more truly independent role in these matters.

CHAIR—In your opening comments you raised the issue of the Australian government's attitude towards treaty bodies. That is one of the issues that have been raised as well as the issue of treaty reform. You talked about reactions from colleagues that you had overseas. I preface my question by saying that if people believed everything they read about the Australian government's decision, they would have thought that Australia was a pariah at the United Nations for the decision it made. Also, I remember reading comments in the Australian media about our nominations to the Human Rights Committee when it was decided not to renominate Dr Elizabeth Evatt. In fact, an erstwhile colleague, the chair of the Australian United Nations Association, suggested that we were nominating a nonentity to fill that position. Yet my experience—and Mr Hollis may wish to make a different comment—was that Australia's standing at the United Nations as a result of that stand was not diminished. In fact, the so-called nonentity, Professor Shearer, gained the fifth highest amount of votes in the election for the Human Rights Committee. While that was due in part to the excellent work of Penny Wensley in our mission—and I think we would be first to admit that, and that he campaigned very strongly for his election—I think the reality is that there are some countries who believe that a stand needed to be taken in order that these bodies might be reformed in some way. I did not have the impression while I was there that other member states of the United Nations were treating Australia any differently because of what it had said than had been the case prior to that press release, which was about a week before we went to the United Nations. Would you would like to comment any further on that issue?

Prof. Charlesworth—With respect to Professor Shearer, those in the international law community know him. He is our senior international lawyer, so it is not any surprise to those of us who know him, or his reputation, that he was elected. He will make a distinguished contribution, and I do not think there is any question there. I think I should preface my answer by saying that I have never worked at the UN—

CHAIR—Some people might suggest that Mr Hollis and I have not either.

Prof. Charlesworth—What I understand in terms of Australia's international perspective is that I do not think Australia would be made a pariah state because of this. As I say, the press release was like the famous parson's egg—it was good in parts. I think one can certainly focus on the statements that I think nobody could disagree with: the treaty bodies system is sort of grinding to a halt; it is enormously late and it is underresourced; if you submit a treaty, it will take three years; and it has backlogs, et cetera. So there is no question that something needs to be done.

I celebrate and support that part of the press release on Australian government policy, and I am very much looking forward to there being more public news about the high level diplomatic initiative that I understand is being launched by the Australians and the role that that will play in the debate. I am sure the debate will be welcomed internationally. It has been going on for a long time. As I said in my submission, Philip Alston, whom I mentioned previously, was

actually commissioned by the Secretary General some years to produce what is known as the Alston report on treaty body reform. We actually have a lot of material out there as to what is critical.

What really concerned me about the press release was that a good initiative was put in a very negative context. The thrust of the press release, the two pages, was that the treaty bodies not only need reform but that they need reform because they are criticising Australia a bit too much. It was not done in a more positive way by saying, 'We note that there are these issues confronting the committee and we are very keen to work with them.' It was done in the context of really withdrawing from the UN. The press release said that there was a need 'to ensure adequate recognition of the primary role of democratically elected governments and the subordinate role of non-government organisations'. That phrase seems to me to be, if you unpack it a bit, quite problematic. It seems to imply that—and I might be reading too much into it, but I am also going on, I suppose, the press conference that was held by the three ministers afterwards and using what they said there to elaborate on the press release—if you are a democratically elected government, essentially that should by and large, except for a bit of fiddling around the edges, be the end of questioning of human rights.

There was also the 'subordinate role of non-government organisations'. I think non-government organisations, as would be widely acknowledged, play a crucial role in bringing to light issues that even democratically elected governments might want swept under the carpet. So we know, for example, within Australia, some human right issues that have hit the headlines have not got there because governments have said, 'We should really be careful now.' To take the controversial issue of treatment of detainees in Port Hedland and Woomera and so on as an example, those issues only became public because of the work of non-government organisations.

So it seems to me that, just to take that one sentence, there was this implication that somehow criticism of democratically elected governments verged on the improper. Indeed, I think there were some quite inaccurate parts of the press release. I do not know whether it was just drafted in a hurry, but there were some pieces—I do not actually have the text here—which seemed to suggest that Australia would not allow members of treaty bodies entry into Australia. I am not aware of any case where they have actually gone into a country and sought information. It is the special rapporteurs of the UN Commission of Human Rights who do that, not the treaty bodies. So there was actually some confusion in my mind as to the technical language of the press release.

Also, the press release said that Australia should take a more economical and selective approach to reporting under human rights treaties. Again, no detail was given of that, and it is possible for that to have a positive spin if they mean we will work smarter or something. But in the general context of the press release I read that in quite a negative way. What does 'economical and selective' mean? Does it mean we won't do our reports or we won't do them on time or that we will send not ministers along but officials, and perhaps lower level officials, and so on? Even though there were parts of the press release that one could only applaud, read in its whole context and ending with, 'If that's not enough, we are also not going to sign the optional protocol to CEDAW,' it seemed to me to be quite a worrying and negative document. I was not suggesting my evidence was at all scientifically gained; I have not gone and done systematic interviews. I am simply referring to comments made by former colleagues, who I know were quite

disturbed, that, since Australia has generally such a positive profile there, this is seen as quite significant.

Mr HOLLIS—My good friend and colleague Senator Ferguson and I take a different view to the reaction. It is true, as you and he said, that we were not the pariah of the international system but, in my view and in discussions I had with people at the UN, we unnecessarily sent wrong messages. It was partly the wording. Everyone says that the treaty system has got to be reviewed—let's put on more staff and do things like that. Us not saying, just for good measure, that we were not going to ratify the optional protocol—when our officials in New York did so much work—was a totally counterproductive spitting the dummy exercise. That is my personal reading of that. But the overall thing was not so much about countries but that we unnecessarily sent wrong messages.

There is the other point about NGOs, that you raised yourself. I attended a conference in New York in August with the NGOs, and they are pushing to have a place at the UN. The government of the day saying, 'Oh well, we are not going to put emphasis on the role of the NGO', seems to be going against the general trend throughout the world. But, as I say, my colleague and I have slightly different views on some interpretations of some of the action Australia takes at the UN.

Prof. Charlesworth—To follow that, one way for the government to have got its view out more fully would be to have published the full review. When I said to people I know who are working in the various departments, 'This reads horribly', they have all said, 'Stop being a scaremonger', or 'You're reading it wrongly', or something. But, if we are not given any more information than two sides—a press release—on really important issues, it seems to me that it not only goes against the government's own commitment to transparency but will allow negative interpretations.

I have heard the Attorney-General and Mr Downer both say, 'You are making too much of this', or 'You characters out there are just beating the bushes', and 'You academics are doing the wrong thing here'. But, if that is all we and the rest of the world have got to go on, that is inevitable with something so brief, cryptic and—I will be impolite enough to say—inaccurately drafted. I mean, there are some parts of it that are inaccurate. It is inevitable that will happen. So one way to get the message out more properly would be to allow the full review to be tabled. I regretted the fact that no submissions were pooled—who knows on what basis. The minimum, it seems to me, would be to release that document. Then we will be able to react with fuller consciousness of the government's motives and ideas.

Mr HOLLIS—That was the point I was going to make. How can they publish it and make it public when the whole thing was conducted in secret and no one knew it was going on?

Prof. Charlesworth—I do understand, though, Mr Hollis, that there is a labelled document with you.

Mr HOLLIS—I know. That was a cynical comment on my behalf.

CHAIR—It is not like my colleague Mr Hollis to do that! Professor Charlesworth, we have gone well over time. Thank you very much for appearing before us this morning.

Prof. Charlesworth—Thank you.

10.23 a.m.]

BAMSEY, Mr Howard, Deputy Secretary, Department of the Environment and Heritage

WILSON, Mr Michael Eric, Director, International Multilateral Unit, Department of the Environment and Heritage

CHAIR—Welcome. I must advise you that proceedings here today are legal proceedings of the parliament and warrant the same respect as proceedings in the respective houses of parliament. Although we do not require you to give evidence on oath you should be aware that it does not alter the importance of the occasion, and the deliberate misleading of the subcommittee may be regarded as a contempt of parliament. We prefer all evidence in public but should you wish to give evidence in private you may ask to do so and we will consider that request. We have received your submission and it has been authorised for publication. Do you wish to make any additions or corrections to that submission?

Mr Bamsey—No.

CHAIR—In that case I would invite you to make a short opening statement before we proceed to questions.

Mr Bamsey—I will just briefly recapitulate the main points of our submission. We judge from the terms of reference that the focus that the subcommittee would bring to this inquiry would be on issues chiefly relating to peace and security within the United Nations, but the terms of reference did embrace more general points. At the same time as the peace and security institutions and practices in the UN have been evolving and changing, so too have those related to the environment. For Australia, our engagement with the United Nations on environmental matters has been a mutually beneficial one. Our sustainable development and environmental priorities have both contributed to and been influenced by the global agenda.

The UN has been at the core of international efforts to coordinate and build capacity to achieve ecologically sustainable development over the last 30 years. Australia's relationship with the UN, including with the specialised agencies in those efforts, has really been guided over that whole period by two main factors: the first is the recognition—the acknowledgment—in Australia that there are many global environment problems, ones which do not respect national borders, and that we had a role in the international community in helping to solve those; the second is the pursuit of our national interests in the environmental field, of course, and also more broadly in foreign policy, trade and security interests.

In more recent years the institutional focus of our engagement with the UN has principally been through: the United Nations Commission on Sustainable Development, which meets in New York annually; the UN environment program, which is headquartered in Nairobi; a number of related UN organisations including, for example, the World Meteorological Organisation, of which Australian Dr John Zillman is president; and the secretariats and conferences of parties of the various environment related conventions, for example, the Convention on Biodiversity and the Climate Change Convention. In recent years our department has made a significant effort

and, I believe, contributed quite a lot towards the reform of some of these institutions, particularly the UN environment program and the World Heritage Convention.

CHAIR—I ask you first a question on the World Heritage Convention. You say in your submission that issues of concern include the rigour and efficiency of the world heritage nomination and listing processes and the representativeness of the World Heritage List. Could you elaborate on your concerns about nomination and listing?

Mr Bamsey—The processes for nomination listing of world heritage properties have evolved over the years, and some would say in some respects a bit like Topsy. Our feeling was that we needed to go back to the convention to look at its objectives, and to review essentially the operational guidelines—which are a subsidiary guidance that parties have agreed on over the years—to see that those guidelines were sufficiently well refined to allow us to be confident that the nomination process was indeed rigorous, that properties to be considered for listing were indeed ones which embodied world heritage values, and that they were listed for valid world heritage reasons, not for any others. We are presently engaged with other parties to the convention, and particularly with other members of the world heritage committee, in that exercise. It is ongoing and will not be simple or straightforward, but we are quite optimistic that at the end of this renewal process we will have refined the nomination listing processes so that we can be satisfied that they are rigorous and that properties which might be valuable for one reason or another but not necessarily world heritage reasons would not be listed.

That embraces the second issue, which is the representativeness of the world heritage listing. It is sometimes said that the world heritage list very adequately reflects the cultural heritage of Europe—there are many cathedrals and other ancient properties listed—but not, for example, the cultural heritage of the Asia-Pacific region, nor the cultural heritage that is more difficult to describe which is not embodied in large buildings; for example, the cultural landscapes which have now become a part of the world heritage process.

CHAIR—Do you think it is too rigorous or not rigorous enough? You said you have concerns about its rigorousness.

Mr Bamsey—In general, our approach has been that increased rigour would be justified. We would like to see the processes clarified and simplified to the extent that we can be sure that properties are being assessed against the World Heritage values that the convention is designed to preserve.

Mr PRICE—Are there any Australian World Heritage listed sites that spring to mind that perhaps would not pass a more rigorous assessment?

Mr Bamsey—Not in our view, Mr Price. I think the Australian properties reflect the range of World Heritage values very well and they are representative in that respect.

CHAIR—How is the process of listing initiated? Who can initiate it?

Mr Bamsey—A state party.

CHAIR—A state party must?

Mr Bamsey—Yes.

CHAIR—And that could come about because of pressures from individuals or bodies within that state?

Mr Bamsey—Yes. Australia has recently nominated the Blue Mountains as a World Heritage property. That nomination was discussed in Australia for a very long time. Many community bodies and representatives were involved in the process.

CHAIR—If the Blue Mountains is designated a World Heritage area, what practical impact does that have on people living there or on what might or might not be done within that area?

Mr Bamsey—It creates obligations on our government to protect the World Heritage values for which it is being listed.

CHAIR—Are they itemised?

Mr Bamsey—Yes. The values are set out in some detail in the nomination documents. The nomination is supported by an argument on the part of the state party nominating the property.

CHAIR—In the case of the Blue Mountains, obviously there would be some residents living within the World Heritage area. During the process, would they all know the sorts of things that were going to be considered as World Heritage?

Mr Bamsey—I think that was the case in relation to the Blue Mountains. The nomination process was a very public one. There were lobby groups from the Blue Mountains area in Cairns when the nomination was considered at the World Heritage Committee meeting last year that were in favour of the nomination. Although I have not participated in any of those processes, my impression certainly was that the issue was very well ventilated in the region. People generally had quite a good opportunity to contribute to discussion about the nomination. The reactions, so far as I know, to the successful nomination at the committee were all very positive. I have not seen any negative reactions at all.

Mr JULL—I would like to move on to UNESCO. In your introduction, you did not mention UNESCO. Where does it sit in the scheme of things now?

Mr Bamsey—For us in the environment department our main entry into UNESCO is through the World Heritage Convention and the World Heritage Committee. The secretariat for the committee is part of UNESCO—the World Heritage Centre sits within UNESCO—so our involvement has been through that process. Indeed, the current head of UNESCO was previously a chair of the World Heritage Committee.

Mr JULL—There was a great deal of controversy some years ago regarding the appointment of staff to UNESCO. Has that act been cleaned up?

Mr Bamsey—I am not sure of the details, but discussions I have had with other officials suggest that the current head of UNESCO, Mr Matsuura, has made considerable efforts to reform the administrative processes of UNESCO.

Mr JULL—Have you got any idea of how much it costs us to belong?

Mr Bamsey—No. I am sorry, I do not.

Mr JULL—Are the United States and Britain still in?

Mr Bamsey—The United States has not returned; I believe the UK has. The United States does participate in activities under the umbrella of UNESCO. They have recently been, for example, a member of the World Heritage Committee.

CHAIR—Why did they pull out? Or were they never a member?

Mr Bamsey—No, they were. I think they left at about the same time as a number of other countries out of dissatisfaction with a previous regime within UNESCO. They believed that it was not satisfactory.

CHAIR—That does not tell us a lot.

Mr Bamsey—No. I find it a bit difficult to speak for the United States, though, Chairman, and I would not wish to.

CHAIR—There is a fair bit on the public record.

Mr Bamsey—There was plenty on the public record at that time.

CHAIR—Will the environment and heritage legislation amendment bills that are currently before the senate affect the world heritage listing processes in Australia?

Mr Bamsey—They are centred on Australian national heritage processes.

CHAIR—So it is not world heritage?

Mr Bamsey—It is Australian heritage. World heritage provisions are in our new environment protection legislation already.

CHAIR—As an aside, I have driven every day past a facade of an old garage building in Canberra that has been incorporated into some units, and I cannot for the life of me think why it is heritage listed. But I won't ask you to comment on that.

Mr PRICE—You have raised the issue of the heritage listing process. Is your department satisfied with the current UN mechanisms for protecting the environment?

Mr Bamsey—That is a very broad question. We have worked very hard to improve some of those mechanisms—the ones in which we had been principally engaged. We feel that over a period of years we have helped in the quite significant reforms that have taken place in the UN Environment Program. The UN Environment Program is, one has to say, a relatively small program of the United Nations.

Mr PRICE—By UN standards.

Mr Bamsey—It is—by any standards, in fact. It is headquartered in Nairobi. It has been operating for a long time. In fact, it was established soon after the first major international environment meeting, the 1972 United Nations Conference on the Human Environment in Stockholm. Again, there were some questions about the way in which it evolved under the guidance of previous heads of that organisation. But the incumbent, Dr Klaus Töpfer, former environment minister of Germany, has made great strides. We have supported his efforts to make UNEP more efficient and more focused, and I believe that he has been successful so far. Could it be improved further? It certainly could.

Mr PRICE—Is it the same for the environment as for a lot of the areas where we undertake multilateral agreements or push for regional initiatives? What are the regional initiatives in environment that Australia has taken or would like to see?

Mr Bamsey—At present, for example, Mr Price, we are seeking to persuade other countries that they ought to join our efforts to improve the protection of biodiversity on the high seas. At the present time, there is not very much legal authority or capacity to do that, and we have actively engaged other countries in a number of different forums in seeking to develop better instruments to achieve that end.

Mr PRICE—That is aimed at biodiversity—

Mr Bamsey—Biodiversity on the high seas.

Mr PRICE—But wouldn't you agree that in our region we do have some severe environmental problems—

Mr Bamsey—Yes, we do.

Mr PRICE—and that perhaps there is an opportunity for a regional initiative?

Mr Bamsey—We have been active on the haze issue in the region—

Mr PRICE—With Indonesia?

Mr Bamsey—which is a very significant one. We have been active in efforts to improve the management of coastal areas and the seas of the region, again in cooperation with UNEP and other bodies. We have been very active on forestry issues. There is quite a range of regional initiatives that we have been involved in. Some of them have taken place in cooperation with global bodies; some of them are bilateral ones.

Mr PRICE—Can I just say that I think the department and the environment movement deserve a lot of credit for the progress that has been made. I think it is fair enough to say in Australia, particularly with the younger generation, that they are far more environmentally sensitive. However, a lot of the focus has been on the coastline and rural and regional areas. Important as they are, we seem to be lagging dreadfully behind in our own country, and I presume internationally, in urban environmental issues—for example, solar energy, grey water, energy efficient housing and all those sorts of initiatives. The great irony is permaculture is an Australian invention, if you like, and California is the place where it has first been tried out from a town planning point of view. What emphasis do you see Australia pushing in the UN about lifting urban environmental issues higher up the agenda?

Mr Bamsey—That is a very important question and introduces a number of different dimensions. Firstly, I should say that there are, of course, many domestic programs which address those very issues. I will not go into the details. Many of them are funded by the federal government; others are funded by state governments.

Mr PRICE—One of the great ironies is that local government is often the big controller of these issues—

Mr Bamsey—That is quite right.

Mr PRICE—with none of the rewards for implementing them. The direct rewards go to others. It was in the sense not that there have not been initiatives but that it is not uniformly in place. That was the point I was trying to make.

Mr Bamsey—No. One of the international agendas that we have been active on is with local government in the development of Local Agenda 21, which is a worldwide movement to engage local government in achieving ecologically sustainable development. Senator Hill has been involved in that process in Australia. Last year he met with representatives of local governments from right around the country to develop the program. That is just one example. We have seen areas in which we can benefit from, and contribute to, general experience on these issues but, of course, by definition these are local or national issues, so at the international level the scope for action is somewhat limited. Nevertheless, we are open to, and have been active in, exchanging views and ideas on how to promote the urban environment.

Mr PRICE—If the committee were to subsequently make a request to you, would it be possible for you, on a confidential basis, to provide us with some examples of where you felt the world heritage listing was loose?

Mr Bamsey—I would need to consult our minister but I do not see any reason why we could not provide the committee with some views on that. It might be difficult to identify particular properties.

Mr PRICE—It might be easier to identify or clarify—

Mr Bamsey—The rule.

Mr PRICE—what you are making on a confidential basis.

Mr Bamsey—Yes, and on a confidential basis we could probably tell you the sorts of measures we are trying to refine in the operational guidelines.

Mr PRICE—That will not be up to me; it will be up to our illustrious chairman and the committee.

CHAIR—We will consider that.

Mr PRICE—Thank you.

Mr JULL—I will move on to one of the statements you made in your submission. It was pretty strong stuff. You talked about the need to address the environmental agenda because it has the potential for future tension or conflict arising due to the competition for scarce environmental resources, and you talk about greater cooperation between countries on issues of resource management and planning and that that in fact may help prevent some conflict. What anticipated effects do you think that climate change could have on Australia's economic security?

Mr Bamsey—Very recently the three working groups of the intergovernmental panel on climate change released their most recent assessments of the science of climate change, the scope for mitigation of the effects of climate change, the need for adaptation and the consequences and modes of responding to climate change. Until fairly recently, it has been very difficult to assess at a regional level the implications of climate change, because we have not understood well enough how, at other than the global level, the weather and the climate would affect the national economy. I think that, through these latest assessments, the regional implications, if you like, are now becoming a little clearer. I am not an expert on these. Again, we have very recently had the details provided on the public record, and we can assist the committee by bringing those details to you. For example, what is happening is that scientists are now able, with greater confidence, to look at the possibilities of changes in rainfall in Australia. A range of assessments have been made which indicate that rainfall in particular regions in Australia might decline in the next number of years.

When you combine those sorts of individual changes, you could, for example, have more intensive weather events—a potential development from climate change. If there is a drought, it might be more intense; if there is a storm it could be more intense. When you combine a number of these factors you could see quite significant effects on the economy. For example, there is a place in the UK where particularly detailed records have been kept and monitoring has taken place. Having seen the IPCC report, one of the projections that I recall, though not in full detail, is that what have hitherto been events that happen every 40 years—that is, once every 40 years a storm causes major flooding—could become events that happen every two years. There is a very significant economic implication in that, of course. If a city that is now flooded once every 40 years is flooded every two years, it changes the investment climate, the economy, considerably. I mention that just as an example because this is a very complex area. I think almost all scientists would say that it is not well enough understood, but I think these latest assessments bring a good deal more precision to those sorts of questions than we have had in the past. We are certainly looking at them very carefully to try to make our own assessments about what they may mean for Australia.

Mr JULL—You would be keeping your eye on global warming issues as well. We have read reports that a number of the low-lying island states in the South Pacific could well and truly go under. Have you done any work on what that might mean to Australia in security terms?

Mr Bamsey—Some work has been done in the past. I am not sure that I recall the details at the moment. I think, though, it is not absolutely clear in relation to the Pacific Islands that it is inevitable that they will sooner, rather than later, be flooded. It could be that that will happen in some cases, but there are also geological processes taking place which need to be taken account of.

Again, I am not an expert on the details by any means. Australia was recently partly responsible for a meeting which took place in the Pacific. They looked at the effects of climate change and climate variability to help people generally, and particularly the people of the region understand the ways in which these different processes would affect them. Where that leads in terms of Australia's security is not clear to me at the moment, because I am not sure that we are confident yet that we understand just how those processes will work jointly and what is going to happen in the region.

CHAIR—On behalf of the committee, I thank you for appearing before us this morning and assisting us with our inquiry. If there is any additional material that you want to provide, could you please forward it to the secretary.

[10.55 a.m.]

DAHLSTROM, Mr Timothy Wayne, Coordinator, External Policing, International and Federal Operations, Australian Federal Police

GORDON, Dr Alexander Deuchar Donald, Intelligence Adviser, Australian Federal Police

HUGHES, Mr Andrew Charles, General Manager, International and Federal Operations, Australian Federal Police

CHAIR—I welcome representatives of the Australian Federal Police. Do you have any comments to make on the capacity in which you appear?

Dr Gordon—Besides my position in the AFP, I am Co-Chair of the Working Group on Transnational Crime of the Council for Security Cooperation in the Asia Pacific.

CHAIR—Thank you. I advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect that proceedings of the houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that it does not alter the importance of the evidence that you give on this occasion. Any deliberate misleading of the subcommittee may be regarded as a contempt of parliament. The subcommittee prefers that all evidence be given in public but, should you at any stage wish to give evidence in private, you may ask to do so and we will give consideration to that request.

We have received your submission, and it has been authorised for publication. Are there any additions or corrections that you wish to make to that submission?

Mr Hughes—Firstly, the AFP appreciates the opportunity to appear before the committee this morning. I would like to make a couple of quick points to supplement the submission that we have already prepared.

CHAIR—But you do not want to make any corrections, just some additions?

Mr Hughes—No corrections.

CHAIR—I invite you to make that opening statement.

Mr Hughes—On the top of page 2 of the covering letter to the committee from former Commissioner Mick Palmer, there is reference to the ‘close interrelationship between transnational crime and peacekeeping,’ and the top paragraph covers that point. I wanted to highlight to the subcommittee that the AFP engages with the United Nations in areas other than civilian police peacekeeping. For example, we have a close relationship with the United Nations Drug Control Program, UNDCP, in particular the regional office in Bangkok. We participate in joint in-country training with the UNDCP. The AFP has provided and continues to provide experienced trainers in the delivery of UNDCP programs in the region. We also participate in visits with the UNDCP to key production areas of narcotics.

That leads me to the second point. The subcommittee may be aware that the Convention against Transnational Organized Crime, otherwise known as the Palermo convention, was signed in December 2000 by 88 countries, Australia being one of them. That convention provides a framework for cooperation for countries fighting transnational organised crime and has, of course, particular significance to our own region.

The arc of instability, in which Australia plays a role with our civilian police peacekeepers—which includes East Timor and, more recently, the Solomon Islands, where we have members deployed, not under the auspices of the United Nations but nevertheless to do peace monitoring there—presents us with a challenge not only on the law and order front, through our peacekeepers, but also in our role in combating transnational organised crime.

It is our firm belief that you cannot address the law and order issues involved with civilian peacekeeping and ignore transnational organised crime, a higher level of criminal activity. To do so you open the path for corruption to become an issue, so that it frustrates everything that we are trying to do at a grassroots level. So it is our strong view that we need to tackle both levels. If you ignore the law and order issue, of course, the basic infrastructure to do anything else is almost impossible. So it is necessary to tackle the two levels. To that end, seven out of our nine liaison officers, who we recently deployed globally under an expansion program under the National Illicit Drug Strategy and people smuggling initiatives, have been deployed to our own region. Furthermore, 75 per cent of our law enforcement cooperation program expenditure has occurred in the region. That illustrates how we are trying to focus on the transnational crime level.

I want to go back to my first point. It is through those efforts that we engage the UN, principally the United Nations Drug Control Program's regional office in Bangkok. We thought it might be useful for the committee to understand the broader relationship that the AFP has with the United Nations—other than our civilian peacekeeping role.

CHAIR—Are there any other comments you wish to make from your submission or is that it?

Mr Hughes—That is the AFP's submission.

CHAIR—There has been an issue that has been raised several times, and that is to do with whether or not the Federal Police should be armed or unarmed when serving in peacekeeping operations. Police in Australia are permitted to carry firearms when they are in, what might be termed, a more benign environment at home, yet when they get into a more dangerous environment—which they can be whether it be involved in peacekeeping operations and peacetime operations—they are not armed. Much has been made of the unarmed status of civilian police during operations. Does that mean that they are completely unarmed? Don't they carry with them anything like tear gas, et cetera?

Mr Hughes—That is right. The current deployment to East Timor is, in fact, armed.

CHAIR—I did not realise that.

Mr Hughes—They are now performing effectively a traditional policing role in the absence of an East Timorese police force which, of course, is being established as part of the mandate for the United Nations in East Timor. Our officers deployed, for example, to Cyprus are un-armed.

CHAIR—I am wondering whether or not Cyprus might not be more dangerous than East Timor.

Mr Hughes—The AFP's philosophy and policy on this is that it can frequently be an aggravation to factions in these strife-torn states to see foreign police armed. We do not want to become part of the problem; we see ourselves very much as part of the solution. We rely more on negotiation and engagement with the community rather than being seen as an aggressor. Being armed, in many instances, can present that image.

CHAIR—When you say 'being armed', are you referring to firearms?

Mr Hughes—Firearms.

CHAIR—What about batons, et cetera? Do the police carry them in Cyprus?

Mr Hughes—No weapons whatsoever.

CHAIR—At all?

Mr Hughes—No.

CHAIR—When we are operating in any peace operations other than in East Timor, there is nowhere any of your people carry any non-lethal arms of any sort?

Mr Hughes—Outside of East Timor, no.

Mr JULL—On that, do you have a special pool of officers who are there for UN work? Is there a special training program for them, and does that vary terribly much from what they perhaps would normally get?

Mr Hughes—There is a pre-deployment program. We are currently developing a more extensive program of training, which will be associated with our peacekeeping reserve. At the present time, however, we ensure that anyone being deployed overseas undertakes a specific pre-deployment training program. That builds on the core skills that they learn in other police training programs, particularly in community policing, and it is specific to the mission. It builds on the core skills, but it does relate to the task at hand.

Mr JULL—A fellow on the beat in Civic would not necessarily be automatically in a lottery to go to, say, Cyprus?

Mr Hughes—It is never a lottery; it is always voluntary. That is one key distinction between the AFP and our defence colleagues. It is always through expressions of interest. Being on the

beat in Civic of itself may provide certain skills that may be relevant, but there would be other attributes that we would be looking for as well in the individual before they were deployed.

Mr JULL—Is there much difference between our standards and what the United Nations want? The reason I ask that is that the United Nations have been putting the proposition that there should, in fact, be an international pool that they can call on in an emergency. I would not have a clue how our standards compare with some of the other overseas police forces. I would imagine they would be fairly good. Because of the close association that we have with the UN, have they approached you about the proposition of an international pool or international training?

Mr Dahlstrom—Certainly we responded to the Brahimi report from a civilian policing point of view. We have instigated a number of strategies, as Mr Hughes has pointed out, in terms of our pre-deployment courses and the development of training packages, which we intend to have accredited both nationally, including the AFP, and by the United Nations. That includes having our pre-deployment trainers accredited by the United Nations and then working with syllabuses and objectives within a course that either meet the UN objectives or far exceed them.

Mr Hughes—Australia, being a developed country, has much to offer in the UN peacekeeping efforts in general with civilian policing. It is our view that we can provide far more than simply numbers on the ground, the arms and legs. We have got particular skills, which other developed countries share—we are not unique in that regard—but we see that we can play a far more effective role in certain targeted positions. Examples are training positions, such as in East Timor, where we are trying to develop an East Timorese police force, or in operationally focused positions, intelligence positions and command positions, rather than just providing numbers. So I am talking about targeting key roles.

Mr JULL—From my perspective and from talks I have had around the United Nations, the Australian defence forces and police forces are fairly highly regarded. Is it fair to say that we are almost pivotal in terms of future United Nations programs?

Mr Hughes—I would go so far as to say that we are an important element in that. I am not certain that we are pivotal. One advantage we have, of course, is the neutrality of Australia. Canadians enjoy a similar position. I think the United Nations recognise that, that we can be deployed relatively easily without attracting too much criticism from other countries, for example.

Mr JULL—Can the United Nations be overdemanding on us?

Mr Hughes—That potential is there. Obviously, in consultation with a wide range of other departments, most notably the Department of Foreign Affairs and Trade, we have to be careful that we do not overextend ourselves. To that end, it is preferable that we deploy to our own region, where—to come back to my supplementary comments—we can play a mutually beneficial role in terms of our wider interest in the region, and that is to protect Australia from organised criminal attack.

CHAIR—Following on from what Mr Jull has said, are you structured or financed well enough for international obligations?

Mr Hughes—It is part of our core business. The former commissioners of the AFP stated that the jurisdiction of the AFP is between Australia and the rest of the world. That is very much how we see ourselves, how we are structured and how we operate, both in terms of police peacekeeping and with our liaison officer network, and in our role with Interpol, for example. We do see ourselves very much working in a global environment.

CHAIR—How many serving officers are there in total in the AFP?

Mr Hughes—Just over 2,800.

CHAIR—How many of them would be deployed overseas?

Mr Hughes—There are 99 in East Timor, and one has been with the United Nations in New York associated with our East Timor commitment. It is 133 in total.

CHAIR—That is not a large percentage but it is a significant number, isn't it?

Mr Hughes—Of the 2,800, around 2,000 are what we call sworn members—that is, those who carry a badge and have had training and are actually police officers in the usual meaning of the term. So it is a considerable commitment for peacekeeping out of that pool of 2,000 available officers.

CHAIR—How many are based in the ACT?

Mr Hughes—Just over 700.

CHAIR—I want to get back to the question of transnational crime, because I can clearly remember a statement given to us when we were visiting defence forces a couple of years ago in Northern Command. I will not say who made the statement, but I do remember being told there that in fact Australia was in greater danger from transnational or international crime with people coming in through the north of Australia than from the likelihood of hostile forces attacking Australia. I think that has been reinforced in recent times. Do you see any way, through your contacts and the worldwide network, that we should be combating transnational crime? Firstly, are you and the United Nations well enough resourced to be able to carry out your job successfully or do it in the best way possible? Secondly, are there any other ways that, as Australians, we can look at how the role of the AFP could be changed so that we can combat this northern attack on our borders where, with so much of our landmass, it is very difficult to keep good surveillance? I know it is a roundabout question but I am wondering if you would comment on those issues.

Mr Hughes—It is widely recognised that transnational organised crime is a national security issue not only for Australia but for every developed country. As the new millennium rolls out, this is the new paradigm of what amounts to national security. From our perspective—and it is, I acknowledge, a perspective which is through the prism of law enforcement—we perhaps see the world through different eyes than do others. But we certainly are well aware, and we have the experience to say this with confidence, that transnational organised crime is truly a global threat. How that will develop over the course of the next few years remains to be seen. My view is that we will see increasing threat to developed countries because of that type of activity;

things like globalisation and the free movement of people. The convergence of communications and IT technologies, with the Internet particularly, provides a wide range of avenues not only for law enforcement to capitalise on but also regrettably for criminal elements as well. Attacks on our infrastructure can occur now electronically. Also, drugs degrading society and money laundering affect the economy and the integrity of our financial institutions. There are a wide range of threats under the banner of transnational organised crime.

In terms of whether we are resourced to deal with it, we have a very healthy overseas liaison officer network: 33 officers in 22 cities in 21 countries around the world. That has been growing over the last few years through a range of initiatives. I would like to see that continue but of course that is subject to funding, et cetera. But I think at this present time we are well placed. We have a very strong relationship with Interpol. I sit on the 13-member executive committee of Interpol, so we do play an influential role in that. It is a fundamental policy issue for government as to how the threat from transnational organised crime is perceived against the traditional threats to Australian society via military means. As I said at the outset, we have a particular view which is obviously coloured by our own day-to-day work, but I think those in policy areas who are able to make a more balanced judgment about allocation of resources are probably better placed to comment than us. However, I would point out that we do see a threat now, it is a threat that is likely to grow, and that view is shared by our major allies overseas.

CHAIR—I know this is somewhat of a side issue but the current situation really is that, while the surveillance is being carried out by the armed forces—in many cases along our northern border—the only people who can apprehend offenders are either Customs or the AFP, aren't they?

Mr Hughes—Effectively, that is the case.

CHAIR—Certainly Australian nationals.

Mr Hughes—Yes.

CHAIR—The Defence Force cannot arrest an Australian national.

Mr Hughes—I think that is right, yes.

CHAIR—Is that a problem?

Mr Hughes—It has not presented itself as a problem to date, that I am aware of, in any particular outstanding incident where it has become a glaring issue. We work very cooperatively in that environment administered by Coastwatch and will readily provide our resources to give effect to an arrest situation if the scenario is likely to result in that requirement.

CHAIR—But you can grade a strip along that coastline which is grown over in a couple of weeks. In a fly in-fly out situation, although the surveillance might indicate that there has been a breach of security through transnational crime it may be too difficult for you or Customs to get there to apprehend anybody.

Mr Hughes—That is true: the huge geographical distances in Australia do present a challenge logistically to any exercise of that nature. But we would rather see that operational activity like that is intelligence driven, and this is where our overseas role plays a key part in ensuring that it is not a hit-and-miss exercise and that it is not hide-and-seek with the criminals coming across the border. We have very good intelligence networks in place that we can rely on to give us timely warnings. We are seeing that occurring now with, for example, the arrival off the north-west coast of vessels carrying unlawful arrivals. We do not get them all but we are increasingly getting better at it in cooperation with our Indonesian National Police colleagues.

CHAIR—What is your role in East Timor? Is it a policing operation in the same way that it would be here in Australia?

Mr Hughes—Yes, more or less.

CHAIR—How far advanced is the progress towards East Timor's new civilian police force itself?

Mr Hughes—About 150 East Timorese graduates, I am informed.

CHAIR—Are you training them?

Mr Hughes—There are multinational trainers. We have one or two people there.

Mr JULL—I have a question on the relationship between the civilian police and the military in some of the operations. You made reference to having the capacity to optimise the strength of both military and police to make sure that genuine partnerships exist and that you do not get any duplication and delays. Has that been a real problem and, if so, how far down the track are you in trying to influence the United Nations to get these situations in place?

Mr Hughes—Firstly, I think we enjoy very good cooperation with the Australian military right across the spectrum of our engagement with them, not least of which is in the peacekeeping environment. There are moves afoot to better integrate our training, to leverage off our own experiences and skill sets. On the international environment, we see there are avenues where we can, we think, improve our capacity to undertake the roles that are increasingly being asked of us. We have a presence in New York; one of our officers from our East Timor contingent has been there for a few months. That has proved to be particularly effective and I think it has created a line of thought now that perhaps an AFP presence in the Australian Permanent Mission to the United Nations in New York might be an advantage. That is something that we intend to discuss with DFAT at the appropriate moment. In summary, there are reasons for us to actively explore means whereby we can better cooperate both in our defence and in the international environment, and we are actively pursuing them.

Mr JULL—But it must be horrendous in some of those situations where you are dealing with military from another country. There are probably language problems and the training methods are all different. What I was really trying to get at is: are the United Nations fair dinkum in trying to get their act together to make sure there are some standards that could be met?

Mr Hughes—I think operating in that environment is character building for our people. We are interested in the training that the United Nations is providing. We are seeking to have one of our officers accredited through a training program in Nepal in the near future so we can synchronise our training with the wider UN civilian-police peacekeeping training. That is one example which might answer your question.

CHAIR—Your participation in the UN peacekeeping operations: is it funded from within your existing budget or do you get supplementary funding for it.

Mr Hughes—We have had supplementary funding for East Timor. We have \$25 million per year appropriated for East Timor.

CHAIR—What about Cyprus and those other ongoing ones: are they out of your existing budget?

Mr Hughes—Yes, Cyprus funding is absorbed into our own budget so we have it as part of our core budget.

CHAIR—Do we seek reimbursement from the United Nations for providing officers for peacekeeping operations?

Mr Hughes—No. They get a daily allowance from the United Nations—a mission-subsistence allowance, I think it is called. We do not, as an organisation, seek any compensation or any payment from the UN.

CHAIR—Are there any delays in receiving those payments from the United Nations?

Mr Hughes—There can be a delay of a couple of months, I am informed, with the MSA allowance. We did experience some delay in East Timor.

CHAIR—A couple of months is pretty good when you consider how far behind they are in spending on military operations when we foot the bill for a number of years. I wondered whether they actually made good their payments.

Mr Hughes—They have, yes.

CHAIR—What is the total annual cost of the AFP's participation in UN peacekeeping operations around the world and your other positions external of Australia? Do you have any idea?

Mr Hughes—It would be a very rough one. Could I take that on notice and reply to that in writing?

CHAIR—Do you know what a rough estimate would be?

Mr Hughes—In very broad terms, in the order of \$20 to \$21 million.

CHAIR—That is for your international operations, and you have a \$25 million grant, or extra funding, for the East Timor operations?

Mr Hughes—Yes. There were some elements in that that allowed us a capacity to backfill, for training, et cetera. There are some infrastructure costs associated with the provision. The actual operational costs are around the \$20 million to \$21 million.

CHAIR—Are you always able to meet any requests that are made by the UN? In other words, could more officers be made available to assist in UN peacekeeping operations if the AFP had greater funding? I want to know whether you always provide what you are asked for or whether, in fact, you could actually supply more officers if there was funding?

Mr Hughes—We have been asked to participate in other missions in other regions of the world. We have strongly opposed AFP participation. We see our role being primarily in the region. Cyprus is a bit of an enigma in that regard but there are historical reasons that we are in Cyprus. Certainly, contemporary thinking is that we should be concentrating on the region. We are reluctant to become engaged in distant peacekeeping missions when we have so much on our own doorstep.

CHAIR—What redress is there, for instance, for East Timorese civilians—or any other individuals for that matter—who have complaints about the conduct of any UN civilian police?

Mr Hughes—The United Nations transitional administration in East Timor has a professional standards team attached to it. Furthermore, our people deployed over there are still subject to the AFP's internal rules and governance arrangements in respect of their conduct and behaviour.

CHAIR—There are no further questions. Thank you for very much for appearing before the committee this morning. If there is any additional material that you might like to provide, for instance, like that question of the total cost, would you please forward it to the secretary? Thank you very much.

Mr Hughes—Certainly. Thank you, Mr Chair.

[11.29 a.m.]

DACEY, Mr Paul, Assistant Commissioner, Elections and Enrolment, Australian Electoral Commission

MALEY, Mr Michael Charles, Director, Research and International Services, Australian Electoral Commission

ACTING CHAIR (Mr Hollis)—Welcome. The proceedings, as you would be aware, are legal proceedings of the parliament and warrant the same respect. Although the subcommittee does not require you to give evidence on oath you should be aware that this does not alter the importance of the occasion. The deliberate misleading of the subcommittee may be regarded as a contempt of parliament. The subcommittee prefers that all evidence is given in public, but should you at any stage wish to give any evidence in private you may ask to do so and the subcommittee will give consideration to your request. We have received your submission and it has been authorised for publication. Would you like to make any additions or corrections to that submission?

Mr Dacey—No, Mr Chairman, but I would like to make an opening statement.

ACTING CHAIR—Yes. And at this time I will now invite you to make a short opening statement before we proceed with questions.

Mr Dacey—On behalf of the AEC we wish to thank the committee for affording us the opportunity to appear before it today. The committee would understand that it is now some time since we lodged the submission and we have increased our activities since then. We would be happy to provide further information to the committee on issues dealt within, or arising from, the submission. We also think it might be useful to provide the committee with an update on a number of areas in which the AEC's cooperation with the UN has developed since the submission was lodged in February last year.

At paragraph 20 of its submission, it was noted that at present the AEC is considering, in conjunction with the UN Electoral Assistance Division, the possibility of imaging the registration forms used in the East Timor consultation ballot. The data included in these forms provide a record of registration and could form the basis of any future electoral roll in East Timor. The imaging of the forms referred to in the submission has now taken place and CDs containing the images have been now handed over to the United Nations.

Detailed discussions were held with the UN Electoral Assistance Division to determine the most suitable imaging format and methodology. Funding for the project was provided to us by AusAID. Although current indications are that the electoral register for East Timor will, at least in the short term, be based not on the 1999 register but on a civil register currently being compiled by the UN transitional administration in East Timor, the 1999 registration forms still constitute an important historical record providing insights, not only into the 1999 electorate, but also into the broader structure of the East Timorese population.

We also noted in paragraph 20 of our submission that the AEC stands ready, subject to funding and to the approval of the Minister for Foreign Affairs, to explore how the AEC might be able to assist the United Nations Transitional Authority in East Timor with the implementation of its electoral mandate in the coming years. At paragraph 29 of the submission, which addressed broader opportunities for joint work with the UN, it was noted that one area of possible cooperation relates to a project currently being pursued by the AEC to develop a short course in electoral administration. This is designed, among other things, to give newly appointed electoral administrators from developing countries a thorough introduction to electoral administration and electoral systems. The AEC recently organised an Expert Advisory Group meeting at which the content of the proposed course was discussed in detail and the UN Electoral Assistance Division at its own expense contributed a highly experienced officer to take part. The AEC greatly valued that contribution and will be looking at ways in which the cooperation already thereby initiated can be consolidated.

The opportunities for cooperation noted in paragraphs 20 and 29 of our submission have been able to be taken up in a complementary way. The joint AEC-UN capacity building project in East Timor, based on this course that the AEC is developing, has now commenced. This has happened in the last eight months and the main developments has been as follows: firstly, in August and September 2000 the AEC had two sustained meetings in Canberra with the Director of the UN Electoral Assistance Division, Dr Carina Perelli, to discuss the sorts of assistance which the AEC might be able to provide to UNTAET in its preparations for elections to be held in 2001. On the second of her visits Dr Perelli was accompanied by, amongst others, Mr Carlos Valenzuela who represented the UN at the December 1999 Expert Advisory Group meeting which had supported the AEC's course project and who in September 2000 was designated to play a leading role in the design of the election processes in East Timor.

UNTAET's mandate, set out in UN Security Council resolution 1272 of 25 October 1999, requires it to support capacity building for self-government. It immediately became apparent to both the AEC and the UN that the course under development had the potential to be a most useful tool for such capacity building. The opportunity to see elements of the course implemented in a challenging live environment such as that of East Timor was also seen as being of considerable importance as it would assist in the identification of particular difficulties associated with implementing a generic course in a specific territory. The AEC accordingly worked with the UN over a period of weeks in August and September 2000 to develop a proposal for an AEC capacity building project based on the course to be implemented in East Timor in 2001 in the closest cooperation with UNTAET. AusAID indicated at an early stage that it was interested in funding the proposal and such funding was subsequently approved by the Minister for Foreign Affairs.

The conduct of such capacity building has been made a critical element of the planning for this year's elections in East Timor. This in itself marks a strong contrast with the way in which the United Nations has previously been forced to address the conduct of elections as part of a peace operation. From November 2000 until February this year, the UN official who had been chosen to lead the capacity building unit in the electoral component of UNTAET, Mr Paul Guerin, was deployed to Melbourne to continue curriculum development work with a team of AEC officers.

The AEC UN capacity building project in East Timor commenced in February this year with the deployment of an AEC team leader and an AEC field coordinator. These staff are working in the closest cooperation with the capacity building unit of the electoral component of UNTAET and are physically located in that unit's offices. Short-term tasks include recruitment of East Timorese staff to maintain the resource centre and to serve as district electoral capacity building officers working out of UN district electoral offices throughout East Timor. It is anticipated that in the next few weeks UN electoral staff from East Timor will start taking modules of the AEC electoral administrators course which will be taught in the languages of East Timor.

ACTING CHAIR—Here or there?

Mr Dacey—There. The work which has brought the current East Timor project this far has been marked by close and effective cooperation between the AEC and the UN, and the AEC sees it as a model for future cooperation. A second meeting of the expert advisory group for the electoral administrators course is to be held in Darwin next weekend and will be chaired by Mr Maley, who is here today, and attended by, among others, Mr Valenzuela and Mr Guerin from UNTAET.

As will be clear to the members of the committee from what I have just said, the AEC's relationship with the UN in the electoral area is on a very strong footing and is becoming a more and more significant aspect of our international program. We will be very happy to provide any other information arising from the submission or from this opening statement should the committee wish. Thank you.

ACTING CHAIR—I suppose, like many of us, you do not comment on the timing; you just do the work being presented. I have been reading various things in the media recently saying that it is too soon to hold an election there in August. Do you have any view on that? Do you think that everything will be in place?

Mr Maley—You can approach that question from a number of different angles, because I think that, if you sweep sufficiently widely across statements that people have made both in the press here and in East Timor, for every statement you read that says the election is being held too early you see others that say it is not being held early enough. The question of the choice of timing for a poll as part of a broader political development process which has been going on in East Timor now for much of the time that UNTAET has been deployed is really a very ticklish one. It reflects not just the mechanics of running an election but also how they see it fitting into a timetable for constitutional development, and for having developed the administrative structures of the East Timor transitional administration that has been set up to the point where they will be ready for some sort of handover from the UN to the domestic authorities once an election has taken place.

We are really only in a position to comment on it from a very narrow perspective, which is that of the mechanics of the process. What I would say on that is that we need to bear in mind that the ballot in 1999 was conducted under an even tighter timetable than the one we are looking at now. Although the date of the ballot was 30 August 1999, it was really only in May-June that the UN, together with UNAMET, was able to deploy substantial numbers in Timor.

With additional time, one gets additional opportunities to engage in capacity building, as distinct from just doing the thing with international resources as quickly as possible. From the AEC's perspective, we are glad that we have been able to get people on the ground as early as February, that we have been able to start recruiting Timorese local staff who are going to be the backbone of our operation there as early as March. We think it will be possible to achieve significant things, not just in the conduct of the ballot but also in developing the capacity of the local Timorese people to run future electoral operations themselves with diminished international involvement. That is our objective, and I think it is AusAID's objective when we are looking at this particular part of the project.

ACTING CHAIR—And in relation to cooperation and so forth, there are no criticisms of the role of the UN? Do you work well with them?

Mr Maley—We have had an excellent relationship with the UN over the years, but we have also had a particularly good relationship with the Electoral Assistance Division in New York and then subsequently with the teams that they have deployed on the ground in East Timor. A lot of the people who are working there now were also part of the UNAMET operation, and we got to know them extremely well. We have the highest regard for them as professional electoral officers. There is no reason why they cannot do a particularly effective job in the coming operation.

Mr JULL—The reality is that they probably would not be able to operate without us anyway in these difficult matters, would they? Is it not a fact that Australia is probably making a great contribution in this area of United Nations activity than any other country?

Mr Maley—It is a little difficult to say. There is an assessed peacekeeping budget that the election is operating on, as we understand it, and there are different contributions made in different ways. We have people on the ground, which some other countries do not have. On the other hand, other countries are making contributions through their normal contribution to the UN peacekeeping budget.

We have benefited in being able to work in an expeditious and effective way from having had the contacts and relationships that we have built up with the UN officials who were with UNAMET in 1999. Our involvement this year is going to be of a different character to that of 1999 and will have different objectives. In 1999, it was a very challenging task that the UN faced in trying to run a referendum in a few months with people who had just arrived in the country. We gave every form of assistance that we could think of to the UNAMET operation, and we have spelt that out in the attachment to the submission that we have provided to the committee in detail of just what we did.

This time I think we are conscious of the fact that it would not be helpful to the Timorese in the long run if international people were to come in and actually do all of the electoral and related tasks, because then the Timorese people themselves are not going to have the experience of running an election and learning how to do it themselves. Our focus this time is not so much on providing direct support to the election process. They are supporting this capacity building, which they will get the Timorese themselves involved in.

I might add that, although this is something that we have been interested in for quite some time within the AEC, the UN has also been interested in it. The meetings that we had in August and September last year really reflected a complete meeting of minds of those of the AEC and the relevant UN people, that capacity building had to be built into the electoral operation in Timor this year and that we could do this in a cooperative way. It is not us pushing a reluctant UN to engage in capacity building. They are just as keen to do it as we are, and that forms the basis for a really good operation.

Mr Dacey—In summary, the resources from Australia and the AEC are, firstly, factors of our location and—I say with some pride—of the AEC's expertise, and of the relationship we have built up over the years with the people from the electoral assistance division of the UN.

Mr JULL—How far does that cooperation go? One of the things that always amazed me about our officers undertaking their tasks with some of these elections is that the military presence, the pressures that are being put on by rebel forces, all of that, must come into play. Is there any special training that your officers get or that you give so they are able to conduct some of these ballots in these pressure points?

Mr Maley—You can approach it from a number of different angles. Before people are deployed, we brief them to a greater or lesser extent depending on the amount of information we have and the amount of support they will have on the ground. If, for example, we are sending someone off to a country where there is no resident Australian mission, we would probably give them a more comprehensive briefing on the country than if they are going into an operation like a UN operation which has a well-developed support infrastructure such as in East Timor.

Over the years we have sought to document some of the expertise that we have developed in these missions by also conducting debriefings of people when they get back, so that we can look at lessons to be learned, what difficulties were encountered and how we can better prepare people in the future for that sort of thing. So we approach it in those sorts of ways. We have been looking at dealing with broader issues of security risk areas. For example, we have got people in Papua New Guinea at the moment, which has the odd issue. We have people in Timor, which has had the odd issue recently. The nature of our work is that you are not going into countries where everything is hunky-dory. If a country has a problem with running its elections, that suggests that there has been some sort of breakdown of normal governance, and you need to prepare people for that.

We have also had a practice over the last few years of working rather closely with the Australian Defence Force Peacekeeping Centre up at Williamstown, which runs what used to be twice a year and now once a year a seminar for people who want to learn about peacekeeping operations from go to whoa. We have consistently provided input to those seminars. Also, as much as possible we have taken up the opportunity which the ADF has given us to send our officers along as participants in those seminars so that they can learn about peacekeeping. My current acting deputy did the seminar in October last year; another one of my colleagues will be going on that later this year. So we do try to take advantage of those opportunities.

Mr PRICE—Firstly, I do not want to be provocative or argumentative but I need your assurance that the counting in Ryan has not been held up by your appearance here before us today!

Mr Dacey—I can assure you that the two of us at the table did not hold up the counting in Ryan.

Mr PRICE—I sincerely thank you for that assurance. I might also comment that, following the US presidential election and the Israeli election with a 40 per cent voter turnout, I felt immense pride in our system of voting here in Australia. I am very interested in this international stuff and I notice that, other than South Africa, it has all been UN related. Do you get called in or have you recently been called in outside of UN peacekeeping operations?

Mr Dacey—We certainly have. One example, which Mr Maley just mentioned, is that we have a very large program currently under way in partnership with AusAID in Papua New Guinea. That is not UN related at all. It is a several million dollar program where we are involved in capacity building of the Papua New Guinea Electoral Commission, firstly, to undertake its role in conducting the general elections due next year, but also looking further out to the elections in 2007, when it appears they will be changing their system from first past the post to preferential voting. That is one example, but we certainly get involved with organisations such as International IDEA, operating out of Stockholm; the International Foundation for Election Systems, in the USA; and the Commonwealth Secretariat. There are also some other bilateral programs that we have undertaken.

Mr Maley—I should mention that we specifically addressed in our submission our relationship with the UN because we did not interpret the terms of reference as being more broad than that. But in fact we have a lot of bilateral activity. We had a major program in Indonesia in 1999 with the run-up to the elections there. We had people working in Fiji in the run-up to the last elections there.

Mr PRICE—I trust that did not cause the overthrow, your work there!

Mr Maley—I trust not. We have had people in numerous countries in Africa on bilateral programs that are funded by AusAID.

Mr PRICE—Our Human Rights Commission set up a regional framework for activities and often they are hosted here in Australia. Do you have anything of that nature in our region?

Mr Dacey—We have, and we were instrumental in establishing in 1997 a Pacific Islands, Australia and New Zealand Electoral Administrators network, PIANZEA, which we basically were instrumental in establishing. It covers all of the Pacific nations from Papua New Guinea east to French Polynesia. That is an active network. That network has met twice. The inaugural meeting was in Fiji, with the second meeting in Brisbane last year. We have a secretariat—of one person, admittedly—in the AEC which sponsors a newsletter and an ongoing maintenance of that network.

Mr PRICE—What about Indonesia, Malaysia, Borneo, Singapore and Thailand?

Mr Dacey—We have certainly had bilateral rather than completely networked arrangements. We have done some study tours from Indonesia to here, from Malaysia to here. We have the network and the contacts, but there is no formal establishment in South-East Asia at this stage that the AEC is part of.

Mr Maley—There was an association of Asian electoral authorities convened some years ago at the instigation of the International Foundation for Election Systems based in Washington. It does similar work to the work we do, but with a lot of funding from the US Agency for International Development. That association ran into a problem in that Taiwan joined as Taiwan Republic of China, as a result of which significant numbers of other countries, including Australia, were not able to join because of One China policies. So there is already this organisation which is taking up some of the space in South-East Asia. It makes it a little bit difficult to try to initiate alternative arrangements, but at the same time we have worked pretty solidly on developing our links with quite a number of the authorities in Asia. We run a visitor program at each general election and referendum for our counterparts in other countries, which is typically pretty well subscribed. At the last referendum we had people here from Sri Lanka, Bangladesh and Thailand; the Malaysians had to drop out at the last minute. At different times we have had people here from Indonesia, though the Indonesian electoral authority has itself been going through something of a transition and does not exist at the moment. We pursue these sorts of opportunities as they arise where they are seen by DFAT and AusAID as being congruent with current foreign policy and aid program interest.

Mr PRICE—Has the Minister for Foreign Affairs exercised his veto in relation to a request?

Mr Dacey—No.

Mr Maley—No.

ACTING CHAIR—The AEC has built up a very good reputation for assistance with elections. Have you any breakdown of the costs of this, the financial costs and the costs of personnel?

Mr Maley—Those sorts of figures are part of the AEC's annual budget.

Mr Dacey—Most of the expenditure of the AEC, in relation to these sorts of exercises, does not come from AEC funding. It usually comes—thankfully—from AusAID, because it meets foreign policy requirements, or from UN or from COMSEC or from other agencies.

ACTING CHAIR—So when you are approached by, say, the UN to make a contribution, it is not the UN; it is AusAID. What do you do then? Do you then approach AusAID? If it come from Foreign Affairs, I suppose they would go through them.

Mr Dacey—That is right. There are some small programs that the AEC has self-funded for, but we are not appropriated to run an international assistance program. The section that Mr Maley heads looks after our program, so we are appropriated for the salary for those people. For major programs, the money comes, in the main, from AusAID.

ACTING CHAIR—It is not a major drain on AEC funds?

Mr Dacey—It has not been in the main, although it would be nice to be able to make some more contributions, but we do rely to a fair extent on AusAID funding.

Mr JULL—On the issue of Western Sahara, we got a submission and they have been to see us. We have heard the Moroccan ambassador and goodness knows whom else on what is happening there at the moment. Has the AEC got any involvement in the Western Sahara at the moment?

Mr Maley—Not since 1990. In 1990 I took part in a UN survey mission on loan to the UN and went to Western Sahara, but that was before MINURSO was first deployed as a peacekeeping operation. We have not been further involved, and I do not anticipate we would be at this stage. We have watched what is happening from a distance. To be quite blunt about it, I think the lack of developments that have been the hallmark of the Western Sahara operation represent a fundamental lack of agreement between the parties. I downloaded from the Internet this morning—and I can provide it to the secretariat—the latest report of the Secretary-General to the security council on the situation concerning Western Sahara and also the latest security council resolution that extended the mandate of MINURSO to the end of April this year. The Secretary General told the Council that there were continuing fundamental problems with the operation, which reflect fundamental differences between the parties on the interpretations of the settlement plan. You could probably go so far as to say that there is no longer a settlement plan in any serious sense.

ACTING CHAIR—Recently the Moroccan ambassador addressed one of the foreign affairs, defence and trade committees. So you have no ongoing commitment in Western Sahara?

Mr Maley—None at all.

Mr Dacey—That is right.

ACTING CHAIR—There being no further questions, thank you very much for appearing before the committee today. We appreciate your time. I think we will decline your kind offer on the business of the ongoing situation in Morocco or Western Sahara, but if you have any further information we would appreciate you forwarding it to the secretariat.

Proceedings suspended from 11.59 a.m. to 1.49 p.m.

BEDLINGTON, Ms Jenny, First Assistant Secretary, Refugee and Humanitarian Division, Department of Immigration and Multicultural Affairs

METCALFE, Mr Andrew, Acting Secretary, Department of Immigration and Multicultural Affairs

OKELY, Mr John, Assistant Secretary, International Cooperation Branch, Department of Immigration and Multicultural Affairs

CHAIR—Welcome. I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings of the houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that it does not alter the importance of the occasion and any deliberate misleading of the subcommittee may be regarded as a contempt of parliament. We prefer all evidence to be given in public but should you at any stage wish to give evidence in private you may ask to do so and the subcommittee will consider that request. We authorised your submission this morning. Do you wish to make any alterations or additions to your submission?

Mr Metcalfe—No.

CHAIR—I invite you to make a short opening statement and then we will have questions afterwards.

Mr Metcalfe—Thank you, Mr Chair and members of the committee. The department welcomes this opportunity to appear before the committee today in relation to its reference on the United Nations. As members of the committee would be aware, one of the department's primary responsibilities is the administration of the Migration Act, which sets out who can enter and who can remain in Australia. We have made a comprehensive submission covering our main interests and interaction with the United Nations, which is particularly via the United Nations High Commissioner for Refugees, a major instrumentality of the UN. In relation to the committee's terms of reference, the key issue that has particular relevance to this portfolio in our view is the role and funding of UNHCR in managing the global response to refugee movements.

The international protection system is the outcome of states' acceptance of cooperative responsibility for resolving refugee problems. It depends on burden sharing and the orderly resolution of refugee problems. UNHCR is the crucial catalyst in guiding the international protection system's response to refugees. It is the Australian government's view that UNHCR is currently failing to effectively deal with a number of key caseloads that are having a direct impact on Australia, namely, the displaced persons from Afghanistan and Iraq. In part UNHCR's difficulties can be attributed to funding shortfalls. For example, the annual budget for the year 2000 was set at \$933.6 million but was revised downwards to \$824.3 million, resulting in a reduction in programs globally. Australia is UNHCR's twelfth largest donor and I am pleased to advise that Australia was the earliest donor to UNHCR's 2001 programs with a core contribution of \$A14.3 million, an increase of \$400,000 over the year 2000 contribution.

UNHCR's across-the-board cuts to operations as a result of its budget difficulties have not appeared to have regard to global priority setting and have the potential to impact adversely on Australia. For example, if funding for repatriation programs is removed, the likelihood of secondary movements to countries like Australia increases. Australia has urged UNHCR to undertake a global strategic planning exercise that would focus the organisation's efforts on core functions, set priorities across regions and sectors and reduce activities strategically according to need on a global basis.

We understand that the new High Commissioner, Professor Lubbers, has set up three teams to review the budgetary situation. These teams will address structural, operational and fundraising issues. Even if fully funded, UNHCR's annual budget of less than \$US1 billion is to look after over 22 million refugees and people of concern, the vast majority of whom are in developing countries. This approximates to \$US50 per person per year. In contrast, globally about \$US10 billion is spent every year on processing asylum seekers who arrived in developed countries such as Australia. That is approximately \$US20,000 per person, or \$US150,000 per refugee accepted under the convention. As the Minister for Immigration and Multicultural Affairs, Mr Ruddock, indicated at the 51st meeting of UNHCR's executive committee and as indicated elsewhere, this inequity must be addressed if the neediest refugees are not to be marginalised and the capacity of countries such as Australia to respond effectively to protection demands is not to be impaired.

It is partly in this context that Australia, as part of the broader government UN treaty body reform agenda, has been pursuing reform of the UNHCR and its executive committee. The government would like to see UNHCR assist countries in providing protection to refugees while combating people smuggling and is seeking a re-exertion of states' control, enhanced leadership from the High Commissioner and greater leadership and direction from a reinvigorated executive committee.

It is also in this context that the government has initiated a review of the Refugees Convention. The review is not aimed at our withdrawing from our commitment to or support for the convention, but rather it aims to articulate the intended principles and objectives of the convention, identify areas where international and/or domestic interpretations have departed from those principles and identify our obligations to refugees and asylum seekers and recommend remedial action if and where necessary.

We understand that the committee is interested in the movement of refugees within the context of global people movement and people smuggling. We believe that irregular people movements pose the greatest threat to the international protection system. People smuggling not only undermines the fundamental principle that each nation state has a right to determine who can enter and remain in its territory but also puts at risk the lives of asylum seekers. It also undermines the capacity of the international community to support the UNHCR and the system of international protection. The creation within the department of the International Cooperation Branch last year provides a focus for us in developing cooperation with other countries on these issues. It is an institutional response that indicates the seriousness with which the government views this issue.

Our anti-people smuggling strategy is based on three key elements set within a framework of international cooperation. The first element of the strategy is prevention, which includes

providing assistance to countries of origin and first asylum; addressing the root causes of refugee flows, such as poverty, through targeted aid funding; promoting participation of the international protection framework; and conducting an international information campaign to improve the level of information currently available about the risks and consequences of people smuggling and the availability of lawful avenues of migration.

The second element of the strategy is disruption of smuggling routes and activities, which includes placing additional compliance and airline liaison officers to investigate people smuggling operations and to advise airlines on the admissibility of passengers on flights to Australia; imposing penalties on carriers who bring unauthorised or inadequately documented passengers to Australia; interception, through cooperative arrangements with transit countries; entering into bilateral information exchange arrangements; and substantially increasing penalties for people smugglers, including imprisonment of up to 20 years and over \$220,000 in fines.

The third element of the strategy is reception. This includes the new temporary protection visa system, anti-forum shopping legislation and the development of return and readmission agreements for non-refugees.

Have these strategies worked? It is still early days. There are some hopeful signs. The number of unauthorised boat arrivals from July to December 2000 was down 40 per cent from the same period in 1999. It is our view that the most significant factor causing asylum seekers to resort to people smugglers is the failure of the international community to properly support countries, such as Pakistan and Iran, which have been hosting very large refugee populations for very long periods of time and to provide durable solutions for refugees.

Australia has repeatedly urged the UNHCR and the international community to increase their support to countries of first asylum and to work together to find durable solutions for those refugees. It is in this context that Australia proposed a joint meeting of the Inter-governmental Consultations and Asia Pacific Consultations to take place on 5 April in Bangkok—in a couple of weeks time. Australia also welcomes UNHCR's global consultations as an opportunity for states and UNHCR in cooperation with non-government organisations, refugee protection experts and refugees themselves to strengthen the international protection system.

In conclusion, Australia is proud that it is one of the small proportion of refugee convention signatory countries that extend their protection obligations outside the strict boundaries of convention obligations by offering resettlement. Per capita, Australia maintains one of the largest refugee resettlement programs in the world. Of the 5.7 million migrants to come to Australia since the end of World War II, almost 600,000 have entered under humanitarian programs. Australia has a border management and visa control system that is the envy of many countries, and constant vigilance is required to ensure its continued integrity.

We consider that we have a good package of responses to the protection and people smuggling issues facing us, but we need to persist with the comprehensive approach, particularly to seeking international cooperation, if we are to be successful in the long term. If we are to achieve the outcomes we have outlined, we need UNHCR to give priority to the issues, generate donor contributions and work with countries of origin and first asylum to generate solutions. From UNHCR we will continue to require increasing levels of accountability, clearer priority setting, improved cooperative working arrangements with us to

address the abuse of asylum systems, and closer attention to resolving the intractable case loads of refugees. Mr Chair, we are very happy to answer any questions that the committee has.

CHAIR—How effective is the international cooperation now? We talk about what has been done under the auspices of UNHCR, but how effective is it? What else can be done to improve it?

Mr Metcalfe—I will make some broad introductory comments and Ms Bedlington, who is immersed in this issue, and Mr Okely will probably add some detail. I think we probably need to approach the question from two levels. The first one is multilateral cooperation—cooperation that exists within the UNHCR ambit and through other relevant bodies such as the intergovernmental consultations—Ms Bedlington will talk about that—and also in relation to bilateral work that is under way.

In terms of bilateral arrangements, we have had close contact with a number of refugee producing countries, or transit countries—countries which produce outflows of people—for some period of time. That is particularly true in the case of China, where we have seen reasonable numbers of unauthorised arrivals coming to Australia by boat over the last 10 years or so. We have not seen any for a little while. The department and the government pursued a very engaged approach to this particular issue. Essentially we were dealing with a caseload not of refugees but of economic migrants seeking to travel illegally. Australia has developed approaches with the Chinese government on returns of non-refugees and ways of dealing with those issues, which are, frankly, the envy of many other countries. That has been a direct result of engagement by ministers through the 1990s, including the current minister, his predecessors and senior officials, to ensure that we understand each other's systems and that we are able to work on these issues together. There have been similar types of bilateral arrangements in place elsewhere, but this is perhaps the most significant.

Something that is now a very high priority for us—essentially, the work of Mr Okely's branch—is to engage in similar levels of cooperation and contact with other countries of relevance, particularly countries of first asylum and transit for the caseload that we are now seeing. As the committee would be aware, in the last couple of years the caseload of unauthorised arrivals has largely changed and now comes from the Middle East and South Asia. There has been a need to develop a whole new range of contacts with countries in those regions. That is operating across a series of levels. There is a good deal of work to be done in establishing initial contact and trust. The minister has visited the region on at least two occasions in the last couple of years. Ms Bedlington and others have followed that up with detailed technical work. Similarly, we have hosted a number of delegations from those countries to build on the understandings, and we have been able to achieve a number of memorandums of understanding and other forms of written evidence of the cooperation.

Those issues work through a number of layers—initial understanding, information and other operational exchange and capacity building where necessary. The ultimate objective, of course, is to secure agreement for the return of non-refugees to countries of long-term residence. That issue remains, and I suspect will continue to remain, a very significant and difficult issue, particularly, when one considers the circumstances of some of those countries. Having made those general comments, I will ask Ms Bedlington to speak in more detail.

Ms Bedlington—I will preface the comments that I am going to make with a couple more general observations. I think, internationally, there is an increased recognition of the fact that flows of people—whether they be refugee flows, or lawful flows, or irregular flows, or smuggle flows—are truly global in nature. It is not something that can be looked solely as a bilateral issue between two countries or, indeed, even regionally. If you look at the activities of people smugglers, we see people moving from the Middle East and South-West Asia through countries of Asia through to Australia. It takes in a lot of the globe.

I think that increased recognition is actually the start of a much more sensible approach and a much more international approach to cooperation on these issues. I think that is an important context. Cooperation in the past has also been characterised by its segmentation. There has been cooperation, at varying levels of effectiveness, on refugee issues, for example. Over here you have cooperation on irregular migration and people smuggling issues. I think what is now happening is that there is an increasing realisation that these two issues cannot be separated.

CHAIR—Was this done under the auspices of the UNHCR or was it done on a government to government level regardless of the United Nations' position? I am trying to see what tie-up there is with the United Nations and what is going on between governments.

Ms Bedlington—Unfortunately the answer is yes and no. I think that the links between refugee flows and irregular migration are not only being recognised by governments but it is partly at the urging of governments, particularly this government. The UNHCR is accepting that they can no longer say, 'We are just a protection agency, we are concerned only with refugees.' Part of the global consultations that the UNHCR launched in the middle of last year is to look at this asylum-migration nexus: the impact that regular and irregular migration have on asylum systems and on the delivery of protection and, conversely, the impact of the existence of the need to honour protection obligations and the impact that has on the state's capacity to manage people flows. It is a very complex issue but I think that is part of this developing understanding that the cooperation needs to be much more comprehensive, integrated and sophisticated. You cannot manage the systems separately; you have to look at their interaction and try to manage the systems simultaneously. I think that is an important backdrop to both the UNHCR's and the UN's attitudes and the way in which they are trying to work with states to deal with these issues.

The other general comment I would make is that when we are looking at the effectiveness and preparedness of other states to cooperate, the perspectives of states and their national interests obviously diverge considerably. If you think about countries like Pakistan and Iran, as Mr Metcalfe mentioned, their views about the international community are going to be largely coloured by the fact that they have been hosting millions of refugees with relatively little, and decreasing, support from the international community. When they are faced with requests from us to cooperate, for example in relation to readmission, or to work with us to fight people smuggling, quite understandably their reaction is, 'Where were you when we needed you—and still need you? You are asking us to do this and expecting us to continue to shoulder this incredible burden.'

Having said that, I think it could be said that national interests are converging in relation to people smuggling. It does not matter whether you are a developing country, a source country, a transit country or a destination country; there is a considerable convergence of the will to fight

organised crime, to fight the exploitation of people, whether they are refugees or not, and to try to do whatever we can in cooperation to fight the people smugglers. Importantly, the only way we are going to have any chance of fighting such a global operation as people smuggling is by very effective international cooperation.

Mr JULL—What is the nature of your relationship with the UNHCR? Is it formal? Is it informal? Are you in constant contact? Do you share intelligence? How does it all work?

Ms Bedlington—We have both a formal and informal relationship with UNHCR, which certainly includes continual contact. I will come to the sharing of intelligence later. The formal relationship with UNHCR is by virtue of the fact that we are one of the signatory states to the Refugees Convention and Protocol and also by the fact that we are a member of UNHCR's executive committee. We can participate actively in that forum, providing direction and guidance to the high commissioner in the exercise of his mandate. That is the formal relationship. Informally, we have ongoing contact with the regional representative, who is based here in Canberra. The relationship is primarily one of consultation and an advisory function from them. They have been, over many years, quite closely involved in talking about policy changes, how we do our asylum determination, matters of refugee law, and so on. It is a close consultative relationship and works very well at that informal level.

We also have considerable contact with UNHCR's headquarters in Geneva. We have an immigration counsellor who is based in the Australian mission in Geneva. She has very close working relationships with all the relevant bureaus of UNHCR's headquarters, including the Department of International Protection and most particularly with the resettlement section of the Department of International Protection. We are one of the key resettlement countries. I think the view generally is that Australia does very well in the settlement and integration of refugees. I think we make a major contribution to the consideration of resettlement policies.

CHAIR—Is there a textbook definition of 'refugee'? We have economic refugees and political refugees.

Mr Metcalfe—The true definition of a refugee flows from the refugees convention. It is in article 1 of that convention. Essentially, it is a person who has a well-founded fear of persecution for certain reasons. There are a number of reasons: their political beliefs, membership of a particular social group or whatever. Behind that question are numerous High Court decisions and an enormous developing international jurisprudence as to what is a refugee. One of the issues that I alluded to earlier is a concern within government—and the minister has articulated this concern—that the definition of a refugee has been interpreted, reinterpreted, defined and worked through over 50 years, and perhaps it is headed in directions that were never originally intended. Reviewing the refugee's convention is ongoing work. The vernacular is, 'He's not a real refugee; he's an economic refugee.' Essentially, there are some terms of art around this issue. A refugee is a person who is recognised as having a fear of persecution and where a state that is a party to the convention has committed not to return that person to where they would be persecuted—not to refole that person.

Economic refugees are essentially people who are migrants but are illegal migrants. As we have seen classically in the Australian situation, many are people have arrived on boats from China. They have not come here saying that they are fleeing persecution; they have come here

saying that they want a job. They have heard there might be an amnesty for the Olympics or for the republic or whatever it might happen to be—whatever the latest rumour is spread by the people smugglers. They have come here for economic reasons. Clearly, they do not engage our obligations under the convention. They are not refugees in any sense of the word; they are illegal immigrants.

CHAIR—How does the UNHCR arrive at the figure of 22 million?

Ms Bedlington—It is through its work in countries that are hosting refugees. There are refugees who have been mandated refugees, whom the UNHCR says meet the definition in the refugees convention that Mr Metcalfe just outlined, or they are persons of concern—*prima facie*, they appear to be a refugee outflow, they are being provided with asylum as though they were refugees, but they have not been given the formal mandate status of a refugee. They do not include irregular migrants in the sense that we were just talking about.

CHAIR—That is the point I was coming to. If there are 22 million genuine refugees and we have this enormous movement of irregular migration—which is a wonderful term to use—who knows how many people are actually seeking to move from wherever they are now to a country which they think is going to provide them with a better opportunity.

Mr Metcalfe—I think that we may have covered this in our submission, Mr Chair, but the International Organisation for Migration—which is, as its name implies, an international organisation that deals with the movement of people, and it has been very active since the end of World War II—estimates that there are about 100 million people who are outside their country of normal residence and are looking for permanent stay options elsewhere. If I did not read it in our submission I read it in some other material recently. One of the other important figures that IOM has arrived at is that the global profits from people smuggling are now at the \$US4 billion or \$US5 billion level. It is a big business.

Mr HOLLIS—I do not think it is going to decline, is it? This is one of the challenges that all governments are facing today and frankly I do not think any government has come up with an adequate solution. Whether or not it is through people smuggling, there are waves and waves of people moving, for all sorts of reasons, from one country to another or from one part of the world to the other. I do not think governments *per se* have come up with an adequate response to this new phenomena that we are facing in this new millennium.

Mr Metcalfe—I certainly agree. Massive movement of people around the globe was certainly an emerging theme at the end of the last century and I think it will be one of the huge issues, together with environmental and other issues, in the 21st century. The role of governments and of international organisations in attempting to regulate that movement is a key issue, and we as a department are intimately involved in it. Australia has some unique advantages, of course, in that although recent events have proved that we are not immune from massive people movements, we certainly do have some geographic advantages. Also the fact that Australia has got strong border controls indicates that there is a very good understanding of the dimensions of the issue in Australia. In relative terms, the numbers of people we have seen are not large but they are certainly very large by Australian historical standards.

The government has very comprehensively looked at what its response should be, and I articulated that earlier. Issues such as aid, the ability of people to live in their own country, global conflict and drought—as well as pure economics and an understanding that life in developed western countries may be more attractive than in other countries—are going to motivate people, and I think you are absolutely right in saying that the people smugglers are going to operate in that environment and are going to provide people with opportunities. And business has now entered this particular set of dynamics in a way that we have not seen it before. Criminal business is now involved.

That does not mean that we should do nothing and say it is all too hard. I think we would rapidly find that Australia would be a very different place to what it is now. Therefore the strategies that we have adopted are certainly not set in concrete in the sense that that is what we are going to do and we are never going to do anything else. This is an evolving issue and we will continue to look for solutions. As Ms Bedlington said earlier, the root of many of these issues lies in countries around the world. We can do a lot ourselves, but at the end of the day it is the international community which has to address this issue. I think we are seeing signs of that. Certainly the UK and Europe have become much more fixated on the issue in recent times. There have been some fairly dramatic events in Europe, and certainly the UK home minister and the Prime Minister have been talking about the issue a lot. I think the French have become very focused on the issue because of the dramatic arrival of a boat a few weeks ago.

Mr HOLLIS—But the French do not care; they just move them on somewhere else. If you go to any of those French ports today you see huge waves of refugees, and all the French want is to get them away. They do not care where they are going and they will assist them, and that is one of the problems that the Brits and others are facing. That latest boat may have given the French a wake-up call but up until then the French attitude was: move them on anywhere but France.

Mr Metcalfe—One of the other dynamics as well is the availability of lawful mechanisms. I mentioned that in my opening comments. There is no way in the world that there are going to be lawful mechanisms provided to deal with the push factors or the demand factors from all of those people. Certainly Australia, and to an extent the US and Canada, are fairly unique in that we do have strong and positive migration programs and there are opportunities for lawful migration that to a certain extent blunt the desire of people to simply bypass those systems.

I think there is a growing recognition—and Germany is one example, and I think the UK as well—of countries saying, ‘In order to manage migration, we need to ensure that there are opportunities for people to come through the front door rather than simply climb in through the back window.’ That comprehensive understanding of the issues and set of policies is something that is becoming more open to governments to deal with. I think we all agree with you very much that this is a major international issue and it needs major international responses.

CHAIR—Has there been any change of approach with Mrs Ogata’s departure? Is there any obvious or current change of approach from UNHCR of the changeover?

Ms Bedlington—Yes. I think it would be fair to say that the new High Commissioner has taken quite aggressive early moves to try to put UNHCR’s budget on a better footing. The problem has been—

CHAIR—Does that mean seeking more funds or making better use of what they have?

Ms Bedlington—Both. One of the major problems that UNHCR has faced has been the difference between the amount that states have pledged to contribute and the amount that they finally do contribute and, also, importantly, the timing of that contribution. The UNHCR cash flow at various times has really been outrageous. If you were a business you would be bankrupt. They have people working all around the world providing humanitarian relief and they have a day's funding just because the actual donor contributions have not come through. The new High Commissioner has said that this just cannot continue. It does not enable them to plan properly and to set priorities, and always at the end of the year, because of this shortfall of actual contributions, they make drastic cuts to their activities that are not necessarily related to the level of refugee need.

CHAIR—Do we directly fund UNHCR, or is it part of the UN's budget?

Ms Bedlington—We directly fund UNHCR.

CHAIR—What is our contribution?

Ms Bedlington—UNHCR does not operate on the same assessed contribution basis as the UN. It is a voluntary contribution, and that is the other aspect of it that the High Commissioner is concerned about. I was told in Geneva last week that one of the things that he is actually thinking about is whether an assessed contribution would provide more surety of funding and a higher level of funding.

CHAIR—That is debatable when you see the other assessments.

Ms Bedlington—That is correct, and I think it is more problematic as well because UNHCR is in a unique business. If you think about the international states' contribution to refugee protection around the world, it is not only in cash contributions to the UN body. For example, Iran claims to be spending \$US1 billion a year on the refugees that it posts. It does not go to UNHCR; that is a cost that the state incurs because they are hosting the largest refugee population in the world. If you are doing an assessed contribution it seems to me that you would have to give some credit for the contribution the host country makes in terms of contributions in kind. It is a much more complex issue.

Mr HOLLIS—One hopes that the new high commissioner, with his 'more aggressive approach' is successful. I sat in the Security Council when Mrs Ogata made her final speech—her summing up. Everything you have said, and everything the new high commissioner has said, she said then. She made a very strong statement identifying all these problems after 10 years in the job. She pulled absolutely no punches at all. She more or less she threw it back, as always happens in the UN system, and said the remedy is in the individual state members and they should take this responsibility. I fear that people like the Director-General and the executive director will continue to make these speeches and that states will make all the wonderful speeches. Everyone around the Security Council said what a wonderful job Mrs Ogata had done and did nothing to solve the problems that were created—it was just words, words, words.

Ms Bedlington—The other comment I would make about change follows on directly from those comments but in another context, which is in relation to the fact that the resolution of many refugee situations lies in the political will of concerned states to restore peace and stability and to contribute to repatriation programs. It is not just a monetary issue; it is resources sometimes of people who are prepared to go out there in the field and work. Madam Ogata used to place particular store on the fact that things like the Great Lakes crisis would not have happened if there had been political will on the part of the UN and the international community to go in there and protect refugees' lives. It seems like Professor Lubbers is just as strong, if not stronger, on this issue as well.

CHAIR—But that is why a scale of assessment probably would not be any more effective than voluntary contributions, because for some people, the scale of assessment is voluntary anyway for some countries, it seems.

Mr Metcalfe—We have a document here that I think comes from UNHCR. It is off their web site, and it provides details of funding and donor relations. We can let the committee have that. In saying that, I repeat what Ms Bedlington said—that this is about contributions to UNHCR; it may not reflect a full costing of a particular country's contribution to the issue. In Australia's case, we resettle 4,000 refugees every year as part of a humanitarian program of around 12,000 people, so there is a significant expenditure on that. In addition, as I mentioned in my opening remarks, there is an expenditure of tens of millions of dollars on people who arrive and seek asylum directly in Australia and who are required to be processed and considered. While Australia is a significant donor, its contribution comes in many other ways as well.

Senator BOURNE—I want to ask about something that is in the submission you have given us. We heard a little bit about it in New York. In your submission, under the heading of 'Australian government review of UNHCR, ExCom and the Refugees Convention' you said:

... the government is undertaking a high level diplomatic initiative to work on the reform of UNHCR and ExCom.

When we heard a bit about that when we were in New York, it was a lot less startlingly shocking than I had originally thought. Can you give us a few details of what is happening with that?

Ms Bedlington—In terms of what it is covering, how we are doing it or both?

Senator BOURNE—The last time we heard it was in October or November, so I imagine it has gone on since then. It would be interesting to have it on the record how we are going about it and where we are up to as well.

Ms Bedlington—Perhaps I just give you a bit of detail about the sorts of things that we are trying to achieve out of the reform of UNHCR and its executive committee. We are hoping particularly to re-exert states' control over priorities and the way they operate. Part of what we want to see from UNHCR is greater leadership from the High Commissioner in particular but also from UNHCR as a body—greater leadership in the sense of identifying the need for increased donor contributions and greater creativity and push for resolution of intractable caseloads like the Afghans, for example—instead of being reactive and doing what it is that donors see fit to fund. Instead, we want to see the UNHCR actually clearly, publicly and

strongly putting on the agenda the need for donors and others to work together to solve the problems. Catalytic leadership, I guess, would be the way we would cover that.

For a long time we have pushed UNHCR for better accountability frameworks, better priority setting, better evaluation activity, more open and transparent reports on how they use the very considerable funds that they get from donors, particularly in terms of what they achieve for all this money. The sort of thing that in the Australian government context we are very used to about reporting in concrete terms on outputs and outcomes is not part of the UNHCR evaluation framework.

The other thing is for us to get assistance for UNHCR in helping us to find ways to redress that imbalance between the \$10 billion that is being spent on developed asylum systems, much of which is to weed out from the applicants those who are actually irregular migrants rather than refugees, and release the resources and the capacity for states to actually provide UNHCR with more funding for the 22.2 million, that ten billion to one billion imbalance.

We certainly want them to recognise that they cannot deliver their protection work in isolation and in a vacuum. It is part of migration management. They have to work with us to help us fight irregular migration and people smuggling just as they have to recognise that, for example, humanitarian outflows and irregular migration actually reduce the capacity and willingness of countries of first asylum to continue to provide protection for genuine refugees. I guess that in some ways we could sum it up as a recognition that UNHCR has a pivotal role in mobilising the international community and they are also an essential part of states working together to handle these complex issues.

Senator BOURNE—It seemed to me from what we heard when we were in New York that the way our diplomatic mission handles anything that we perceive as a problem is to try and get other countries together to discuss it to see how to go about best achieving the aims that we are after. Is that the case? Is that the way we are going about it and is that process actually working? Are people getting together? Are they discussing it? Are they coming up with ways that they think these things can be achieved? How are we doing it?

Ms Bedlington—We are doing it at two levels—one at the political level and one at the bureaucratic level, the officials level, if I could put it that way. Our minister has been very active in terms of putting this point of view, making it clear that Australia is committed to continue to honour its protection obligations but that we have got to have the UNHCR and executive committee processes work better. He has utilised opportunities like the Australian statement at the Executive Committee last October. He utilises opportunities in bilateral discussions he has with his counterparts with various other countries. Whenever we can create or have an opportunity to pursue that the minister has done so. He met with the High Commissioner very early on. Before he had the opportunity to meet with him, as soon as his appointment was announced he wrote to the High Commissioner elect—as I suppose he was at that stage—setting out Australia's perspectives on some of these issues and assuring the High Commissioner that we were standing ready to work with him on reform of the body.

At the official level there are a number of avenues that we can use. One is our interventions in the business in the executive committee, its standing committees, its informal working groups and so on. The others are in relation to other regional or multilateral bodies. One of those is the

Asia-Pacific Consultations, of which we are a member, that discusses refugee issues. UNHCR is an observer at that meeting. It is another opportunity to deliver the consistent message. But probably the most important multilateral group is the Inter-governmental Consultations, which is a group of most of the western European countries, Canada, the US and ourselves. Most of the major donors to the UNHCR—other than Japan—most of the resettlement countries, except for new countries like Burkina Faso who have either taken no-one or only half a dozen, and the countries with developed asylum systems are destination countries for people smugglers. We have a lot of commonality of interest in UNHCR's role and making it work better.

Australia is the current chair—the chair rotates every year—of the IGC. We will have the full round of consultations here in Australia at the beginning of next month. We are utilising this opportunity to develop an understanding of the need for the comprehensive and integrated approach that we talked about earlier and the critical importance of UNHCR in working with us to achieve those matters.

The other part of it is the global consultations of UNHCR itself, and we are working hard to take every opportunity to put our perspective on the issues and to constructively put suggestions for the way in which UNHCR and its executive committee can contribute to strengthening the international protection framework. The bilateral officials, with the normal sort of interaction that like-minded countries have, take every opportunity to try to develop the understanding and the need to work together.

CHAIR—What happens with the asylum seekers that nobody wants? This is the real problem. We even have cases in Australia where people may have a criminal record or they may have committed some other atrocity in their country of origin, they cannot go back to that country or the country won't accept them, we will not accept them and they are in limbo. This must be the case for refugees. The secretary reminded me of a situation in Hong Kong some years ago when there were a number of people that nobody wanted and would not take.

Mr Metcalfe—There are still a few there.

CHAIR—Surely there must be some process by which these people can be accounted for.

Ms Bedlington—The first thing to say is that there is a clear obligation on a country to take their own nationals back.

CHAIR—But they won't.

Ms Bedlington—Many are not cooperative, but it does not necessarily translate, at the end of the day, that they won't. If they have taken formal measures to deprive the person of their citizenship, and if the person has no other citizenship, then the country is in breach of their international obligations in relation to the creation of statelessness. That does not stop some states. If you have an individual who is truly stateless, then countries around the world generally accommodate that through various mechanisms of permission to remain, humanitarian status or whatever. It does not translate automatically into refugee status, but it may translate into some other status that actually gives them somewhere to remain.

CHAIR—So what has happened to these people in Hong Kong? They are still there aren't they?

Ms Bedlington—They are still there, but the Hong Kong SAR government has finally, as I understand it, given them formal status. You are talking about the Vietnamese, I assume. They have provided local integration and my understanding is that that issue has finally been resolved. The Hong Kong government agreed.

CHAIR—As you know, we have discussed it at another forum. There are people in Australia now who are in limbo. Both their country of origin will not take them back because they have no papers and we will not accept them. How long can you keep someone in limbo—which is really where they are—without either our country accepting them or somebody else accepting them. You cannot keep people in detention forever on the basis that nobody will accept them. I know it is a difficult situation but I do not know what the answers are.

Mr Metcalfe—I think it is a very good question. The answer is that we have not found ourselves in the circumstance where we have had to specifically deal with that. We have had some situations where there have been long delays in obtaining the ability to send someone home. There are a couple of reasons that occurs. There can simply be the fact that the other government may be far less seized of the issue than we are, notwithstanding our representations, and simply that local bureaucratic procedures take months if not years to establish whether the particular individual came from a particular village and whether that person has permission to return to that particular place, and so on. Sometimes that concern is tempered with concern about what is going to happen when that person gets back if he or she is destitute, and those sorts of issues. There can also be a more overt refusal to cooperate. Unless the person actually volunteers to return, the country may be concerned that accepting back deportees or people being removed without the individual's agreement may, in fact, mean that that particular country is subject to criticism from human rights bodies. So that can be a motivating factor as well.

The requirement is for us to leave no stone unturned in pursuing those issues, and that is something we do. There is a particular caseload that has been in the papers in the last few weeks because of a report from the Human Rights and Equal Opportunity Commission. Essentially, it concerns some people who are subject of criminal deportation from Australia but where their country of citizenship has been a lengthy issue in terms of negotiating arrangements for their return. We are hopeful that will be resolved soon. That has been our experience to date. In continuing diplomacy, continuing contact, continuing ways of trying to deal with the issue, ultimately we find a way to do it, and there are many ways of achieving that outcome.

I am very conscious—I am probably more conscious than many other people—that Australian law requires that people remain in detention during that period and hence our efforts have been doubled and redoubled to try and find those solutions. What a government might ultimately do at the end of the day if the issue becomes intractable, I think, is an issue for a government. There are some clear policy issues there for a government to consider. People cannot be kept in detention forever but I think governments are also mindful of the fact that, if ultimately people get to stay, then that itself can become a pull factor and something that is marketed by people smugglers. The approach of successive Australian governments has been to

continue to engage and work through ways of dealing with the issues and, as I have said, to date that has been able to be achieved.

Mr HOLLIS—Politicians always love hypothetical questions.

CHAIR—But not hypothetical answers.

Mr Metcalfe—And bureaucrats hate them.

Mr HOLLIS—What happens in a situation where someone in this country met the refugee definition of fear of persecution or death in their own country if they return, yet it could be proved that that person had committed atrocities in their original country? Despite what the atrocities might be they might also meet the definition of a genuine refugee. What would we do?

Ms Bedlington—They would meet part of the definition of a refugee. They meet the part that says that they have a well founded fear of persecution if they go home. But for us to owe protection obligations under the Refugees Convention they must not only meet the inclusion part of the definition they must not be excluded, and the clause 1F of the Refugees Convention explicitly excludes from the benefit of international protection somebody who is a war criminal or has committed a crime against humanity.

Mr HOLLIS—Are you monitoring the situation in West Timor? How many refugees do you think are in the camps there?

Ms Bedlington—You have put your finger on a point of some considerable contention. It depends whether you are talking to a particular NGO, to UNHCR, or to the Indonesian government. I think the harder question—and perhaps in some ways the more important question—is: how many of the people in the camps in West Timor actually want to go back to East Timor? The discussions at the standing committee of UNHCR last week on what is happening in West Timor did not come up with a figure. I think what is happening is a concerted effort on the part of UNHCR and an apparent willingness on the part of the Indonesian government to work together to try to bring to a conclusion the separation of those who want to return East Timor and those who want to resettle perhaps elsewhere in Indonesia.

Mr HOLLIS—It has been put to us in a different capacity that most of the people who want to return, for one reason or another, have returned. I said ‘most’ not ‘all’, and it is said that a lot of those who remain for various reasons, maybe an association with the former administration or a genuine fear of what will happen there—

CHAIR—Or a fear brought about because of misinformation.

Mr HOLLIS—Yes, and an amount of misinformation and activities within the camps as well.

Ms Bedlington—There are certainly claims that there are militias who remain in the camps in West Timor, which does make it difficult to be sure that you have true wishes on the part of the people who are responding. There is another issue that UNHCR is working with IOM about,

and that is the superannuation and entitlements of East Timorese who had actually worked for the Indonesian government. They look to be close to resolving that issue, although the final details are yet to be worked out. That may very well be a deciding factor for those individuals who feel that they can go back to East Timor without having given up all of the entitlements that they had accrued through their service for the Indonesian government.

CHAIR—What are the figures that you have got—about 60,000 still in West Timor camps?

Ms Bedlington—No. I would rather take that on notice. If you are interested in that we can give you an update. I would have to check with my AusAID colleagues about what their latest figures are.

CHAIR—I think the figures we were given were something like 175,000 repatriated and 60,000 to 65,000 still in camps.

Ms Bedlington—It is in that ballpark, but we can give you a short report if you are interested,

CHAIR—If you could, yes. I must say, in the funding and donor figures that you gave us, it is quite staggering when you look at the contributions from some countries, like the Netherlands with US\$47 million.

Mr Metcalfe—That is why I say it is important to look at that in the context of the other contributions countries may make in terms of resettlement places or whatever.

CHAIR—But there is a big commitment by the European Union countries, the European community.

Ms Bedlington—Some European Union countries. You will see that there are some with large GDPs and populations that are down below us on the table.

CHAIR—Yes, I did notice that.

Ms Bedlington—There is one other comment I would like to add. The Australian contribution, for example, is the core contribution that we make direct to UNHCR, unearmarked, that they use for their entire operations. We also make contributions in response to particular appeals. For example, we made a contribution in their last funding year for their south-west Asia appeal to assist in relation to Afghani refugees, and we made a very substantial contribution to UNHCR in respect of their West-East Timor operations, which is not reflected in that table.

CHAIR—Thank you very much for appearing before the subcommittee this afternoon. If you are going to provide that additional material please provide it to the secretariat and they will pass it on. Thank you.

Mr Metcalfe—Thank you, Mr Chair, and members of the committee.

[2.52 p.m.]

ECKHARDT, Mr Bob, Director, International Organisations Section, Policy and International Branch, Department of Health and Aged Care

HILLESS, Ms Melissa, Assistant Director, International Organisations Section, Department of Health and Aged Care

CHAIR—I welcome representatives from the Department of Health and Aged Care. I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence under oath you should be aware that it does not alter the importance of the occasion. Any deliberate misleading of the subcommittee might be regarded as a contempt of the parliament. The subcommittee prefers that all evidence be given in public but should you at any stage wish to give any evidence in private you may ask to do so and we would consider that request. We have received a submission from the department and it has already been authorised for publication. Are there any additions or changes that you would want to make to that submission?

Mr Eckhardt—No.

CHAIR—Then I invite you to make a short opening statement before we proceed to questions.

Ms Hilless—The purpose of our submission to the inquiry was to highlight reform measures which have been implemented within the World Health Organisation and, also, to outline Australia's role in the reform process. Our initiatives were aimed broadly at reforming WHO into a more effective, transparent and responsible organisation. It was generally agreed among member states that WHO did not possess a clear mandate or direction and had a multiplicity of ill-defined priorities. It was also felt to be overly centralised at headquarters and at regional levels and overly bureaucratic. In addition, the financial management was not satisfactory. Corruption was a major concern, particularly in relation to staff appointments with the general belief that high quality staff were not being recruited.

Finally, perhaps most importantly, with the number of other emerging players in the international health arena, such as the World Bank, WHO needed to re-establish its role as a leader in international health. Consequently, Australia was involved in moves to reform WHO on two main fronts: management reform and financial reform. Management reform centred around the leadership of the organisation. Dr Hiroshi Nakajima was criticised, and it was felt among member states and more widely that some of the problems that I outlined above with the organisation could be addressed by a change of leadership of the organisation. Australia therefore became involved in moves to find and to promote credible candidates for the next election of a Director-General of WHO.

The issue was raised in meetings with like-minded countries, in forums such as the Western European and others group. Also there was considerable ongoing lobbying by DFAT, AusAID and the department of health staff officials based in both Canberra and Geneva. These efforts

were of great assistance in promoting the candidature of Dr Gro Harlem Brundtland, the former long-serving Prime Minister of Norway. The efforts were also successful. In 1998 Dr Brundtland was elected on a reform agenda as Director-General of WHO. Central to her election platform was her commitment to re-establish WHO's leading role in international health and to place on the global development agenda the links between poverty and health. Within six months, Dr Brundtland had restructured WHO to enable it to better focus on its core business. Fifty-three programs had been reduced to 35 and grouped into nine clusters, each with a clear mission statement. The executive directors, who headed each cluster, along with the Director-General, formed a WHO cabinet for management and decision making purposes.

Since her election, Dr Brundtland has also worked hard to establish coordination and partnership arrangements with UN and other international organisations. For example, WHO is working closely with the World Bank to address issues relates to poverty and its effect on health. A framework for cooperation has been agreed with the OECD, and WHO is an important partner along with the Bill and Melinda Gates Foundation, the World Bank and UNICEF in the Global Alliance for Vaccines and Immunisation, which has raised extraordinary amounts of money to protect children against vaccine preventable disease.

In terms of financial reform, during the 1990s concerns about the organisation's management and effectiveness led to an undesirable situation where countries preferred to put their money into extra budgetary funding of the organisation rather than into regular budget funding. They felt that that gave them more control over how their funds were spent—and with financial mismanagement that was a concern—although this had the effect of removing from WHO the ability to set and maintain commitment to its core priorities. In response to those difficulties, the Oslo Group, which comprised Australia, Norway and the United Kingdom, sponsored a major review of the role of extra budgetary funds within WHO. The review concluded that WHO needed to reposition itself as an organisation worthy of donor funds by reflecting in its work program and priority setting the needs of donor countries. The work of the Oslo Group is one example of multidonor collaboration aimed at reforming a UN organisation. The final thing in relation to financial reform the regular budget is that there were a lot of problems with the financial management and reporting. In relation to the regular budget, since 1998 there has been a number of resolutions passed by member states regarding improved management. The most important of these is agreement that regular budget funds would be in the future allocated to WHO's regional offices on the basis of objective and transparent criteria rather than on a historical basis.

Also in the past, WHO budget reporting had focused exclusively on expenditure of funds—how much had been spent, without reference to results or any outcomes achieved. In 1999 member states passed a resolution setting out their expectations for improved accountability. It was agreed that future budgets should include information on administrative costs by program cluster, they should define targets and results in measurable terms, they should identify sources of expected extra budgetary funds and the impact if those targets were not realised. It was agreed that the budget would be presented in a format that included expenditure across the organisation and at the regional level.

In 1999 member states called on the organisation to maintain a zero nominal growth regular budget position that Australia holds across the UN system and to find further administrative efficiencies. After some initial resistance, a number of administrative reforms were introduced

including staff reductions, a revised publications program and a reduction in the number of meetings. The surplus administrative funds identified through these efficiency measures have been redirected to support program activities. The proposed program budget for 2002-03 uses for the first time objectives, expected results and performance indicators as part of an organisation-wide results based budgeting process.

In conclusion, WHO has come a long way in the last 12 years. It is now accepted at all levels within the organisation that member states insist on restraint, transparency and accountability in financial management, and also WHO seems much more focused and sure of its role as a result of the effective leadership of Dr Brundtland and the restructure of the organisation. I will be happy to answer any questions.

CHAIR—Why did it take so long for a reform process to be put in place? You suggest that for 10 years under the leadership of Dr Nakajima things were not going all that well. What was happening that was not up to scratch, for want of a better phrase, and why did it take so long for the changes to be put in place?

Mr Eckhardt—What was happening that was not welcomed by a good part of the membership was a lack of vision and priorities that were articulated to members; mismanagement of the organisation's funds, with decisions on funding more often than not based on political considerations rather than any needs based analysis; an autocratic and nepotistic style where it was more often than not predictable who would get the job; down to even the organisation of the World Health Assembly. For example, meetings ran for two to three weeks, with long set piece presentations singing the praises of Dr Nakajima—his friends, that is. It is the nature of the organisation. I guess it is the nature of UN bureaucracies where directors-general of the World Health Organisation are initially appointed for one five-year term, and then that can be renewed for a second five-year term. They have—you people would know—the numbers to get up initially and then when it comes to reappointment there is again a lot of work to be done, I guess, for groups that are unhappy to pull together and to sort of articulate that dissatisfaction and then identify the credentials and introduce an alternative leader.

Dr Brundtland, for example, stepped down from her position as Prime Minister of Norway well into her third term in order to concentrate on the leadership campaign to win the director-general's position. It is the way to five-year terms and takes a lot of lead time to replace an incumbent.

Mr HOLLIS—Nevertheless, there have been some successes. It might be a bit of a bureaucratic nightmare with the administration but, when you look at some of the programs that the WHO have been involved in over the years, that may be a tribute to the people in the field rather than in the headquarters, but there has been some considerable success. Have they been involved in the eradication of polio?

Mr Eckhardt—Yes.

Mr HOLLIS—Great success there, and malaria, and the other diseases that have so ravaged the world for so long, and that has been achieved through the activities of the WHO.

Mr Eckhardt—I guess that is right, but there was a strong dissatisfaction amongst members that those sorts of very important goals were not being achieved quickly enough under Dr Brundtland's predecessor's reign, that those out there in the field certainly were doing good things that were of benefit to and appreciated by recipients, but the organisation was not sort of drawing on its strengths to play a leadership role and a catalyst role in getting countries to do more themselves to get results. Malaria, for example, was a target of priority of the previous director-general, but not much had been achieved to get results. Similarly, polio eradication was a priority but, again, not much had been achieved to get the results that had been identified.

Mr HOLLIS—I do not know that that it is quite true. When you look at the period of the elimination of polio, if there is none reported in so many weeks it will be completely cleared. You are dealing with countries that might not have the infrastructure that Australia has got, and, as you would appreciate, if the bureaucracy at the headquarters of the WHO is overly bureaucratic, so would many of the bureaucracies be that that organisation would have to work with. It is not my role to support the administration of the WHO, but I do not think that what has been achieved would have been achieved unless there had been some ability there. That is not to say that it could not have been better, but I think some progress has been made. I do not think it should be painted as all doom and gloom.

Mr Eckhardt—That is not my intention. Clearly progress had been made under Director-General Nakajima, but there was certainly concern amongst the membership that not enough progress was being made and the organisation was focusing its efforts in the field to do the work itself. Dr Brundtland's approach has been pretty different. What she has done is not just to deal with health ministers but to broaden it to involve prime ministers, presidents, ministers of finance, philanthropic organisations, the Bill and Melinda Gates Foundation, for example, to mobilise a commitment. Significantly, before WHO goes into these campaigns these days, they insist on the commitment of member states at the highest level to underpin their efforts. Good things had happened, but significantly more things have happened in a shorter space of time under Dr Brundtland's direction than previously under Director-General Nakajima. For example, before Brundtland came to office, I think it was only two regions of WHO's five had been declared polio free. In the short time that Brundtland has been in the job, our region, the Western Pacific, has last year been declared as polio free.

Mr HOLLIS—Be realistic, you cannot give her credit for that. You have to have had no polio reported for I think it is three or five years. You cannot say that that three-year period concluded because she took the office up. It was an ongoing process, as you know. You have to have so many years without any reported cases. It may have just been that the three years were up six months after she took office. With all her wonderful attributes, it is a bit rich giving her the credit for the elimination of polio from our region, which was an ongoing thing for many years. Anyway, let us move on to other things.

Mr Eckhardt—My point is that the new administration has introduced specific targets and a process to achieve those targets, which was something that the members considered was lacking previously.

CHAIR—Was Mr Nakajima a career UN employee?

Mr Eckhardt—Yes.

CHAIR—Because it just seems to highlight the fact of the organisations within the UN that have been criticised in the past. Mr Jull would probably confirm that UNDP was one of those that warranted some criticism up until recent times. You now talk about WHO, and both of those organisations within the UN have had leaders who have come in from outside of the organisation. Mark Malloch Brown came in from the World Bank. We have seen Dr Brundtland in action, and I have no doubt that she has moved things along because I did attend a couple of meetings which she was at, and she certainly is a dynamo. It seems as though the only way that these organisations within the UN can get a shake-up is if someone from outside the organisation comes in and actually puts a bit of a bomb under things—perhaps I should not use that word. It brings a fresh thinking into the organisations to make them more effective and efficient. It might be an unfair observation, but it seems as though that is what needs to happen.

Mr Eckhardt—One of the difficulties with WHO has been that its constituency is 191 health ministers who will go along to the World Health Assembly every year and agree to certain resolutions to do good things, for instance, eliminate malaria or reduce tobacco consumption and production. Then they come home to reality and they are small fish in a big pond and have to get the support of their ERC over competing defence priorities or whatever. Your point about previous incumbents being from within the WHO bureaucracy is right. What Brundtland was able to bring was her approach and experience as a Prime Minister. She understood whole of government approaches. Her style has been to engage prime ministers, ministers of finance and ministers for planning in discussing, identifying and supporting particular initiatives. To get rid of malaria, her approach is to involve the whole of government rather than limit it to health ministers, which was previously the case. Since 1948 it has been a club of health ministers. She certainly has drawn upon her leadership experience to broaden its outlook.

Mr JULL—All that being said, can you give us a job description for the WHO reform 2001?

Mr Eckhardt—A job description for the person to do it?

Mr JULL—No, a job description for the WHO now. What is the focus? How has it changed? Where are we involved?

Mr Eckhardt—The job description to improve the organisation is to continue to maintain that broader focus, working beyond health ministers and beyond governments to involve other agencies—for example, with money the World Bank—to involve the private sector to bring in their resources. Also it can refocus its role to concentrate on what it does best, for example, to improve its technical and research expertise to underpin policy development and reforming of health systems by its member countries. Another example is to marshal collaborating research centres in member countries. Our contribution to achieve that end is to contribute not only in terms of dollars but also in terms of our own expertise, in-kind support. A rather controversial initiative last year was the publication of the World Health Report, which ranked the performance of health systems. That was subject to criticism because of deficiencies in the methodology. We are subsequently working with them to refine that methodology so that they are less dependent on modelling and more able to draw on hard data. We are working with them to improve their capacity to do that.

Mr JULL—Is the Oslo Group still there?

Ms Hilless—It is not still there. It was formed for that specific purpose.

Mr Eckhardt—It was a little group to get Dr Brundtland into the job.

Mr JULL—There is no little watchdog there to keep them honest.

Mr Eckhardt—We are the watchdog, the 191 members at the World Health Assembly, and also the executive board is a pretty rigorous scrutineering process. They want value for their contributions. Certainly the organisation is put under the microscope in terms of having to justify that value is being obtained for members' contributions.

CHAIR—There are voluntary contributions by members. What is Australia's contribution to the WHO?

Ms Hilless—There are two components to Australia's contribution. The regular budget contribution is about \$A11 million, that is this department, the Department of Health and Aged Care. On top of that, there are extra budgetary contributions, most of which are made by AusAID, and that is about \$A17 million.

Mr Eckhardt—It is \$17.78 million.

CHAIR—Through AusAID?

Ms Hilless—That is right.

CHAIR—You were here before when we questioned the Department of Immigration and Multicultural Affairs about the refugee problem. What is your role as a department in overseeing any potential introduction of disease by refugees to Australia, diseases that we do not have? Having just been declared polio free, polio comes to mind because some of our refugees are coming from countries where polio is endemic still. What is your role as a health department in overseeing the introduction of diseases that we do not have? If, for instance, a boatload of refugees arrives on Ashmore Reef and is brought to Port Hedland, does your department do the health checks on them or does the Department of Immigration and Multicultural Affairs?

Mr Eckhardt—I need to seek advice on that.

CHAIR—All right. Could you take it on notice and get back to us? It is an important issue if we are talking about maintaining our status of being free from some of the diseases like polio.

Mr Eckhardt—Absolutely.

CHAIR—Senator Bourne, do you have any questions?

Senator BOURNE—Just one about the reforms. You mentioned in your submission about the financial restraint and zero nominal growth within the regular budget. Is that a position that was taken specifically because there are the problems that you identified with funding—where

the funding was going and what was going on with it—or is it a position which the Australian government just takes on this anyway and Australia is still in favour of no increases in funding and finding efficiencies in any organisation?

Mr Eckhardt—Australia certainly has insisted on maintaining zero nominal growth into budget. It is not alone. Our view is shared by a number of like-minded countries—United States, United Kingdom, Canada, Japan, China for example. It also recognises that Dr Brundtland was elected to office on an administrative reform ticket. We have a bit of an expectation that she will deliver on that reform ticket and live within her means, which I must say she has done. Zero nominal growth within the regular budget has been maintained since she came to office.

Senator BOURNE—Yes, but are we insisting on it because we like zero nominal growth or because we think there are still reforms to be made that would be able to free up money for programs while not really affecting things? For instance, when we were in New York, we were told that there are so few people in headquarters that you could not run a country like this. It is just ridiculous how few people there are running the programs that are out in the field. Has it got to that point with WHO where we just like not having to spend more money or do we think that there is still money to be found from somewhere else, legitimately and reasonably?

Mr Eckhardt—I think there is that expectation, that regular budget contributions will be maintained and the organisation will live within that budget and find savings to do so, but that is also tempered by a substantial increase in extra budgetary voluntary contributions which between the 2000-2001 biennium and the 2002-2003 biennium have increased by 15 per cent. That is a pretty significant growth in contributions. People are voting with their cheque books, so to speak. While they are insisting on maintaining regular contributions on a no-growth basis, they are certainly prepared to dig down deep and contribute to the increased work that the organisation is being asked to do.

Senator BOURNE—Are those increases in programs or elsewhere? Are there specific tags on them for different programs?

Mr Eckhardt—It is a bit of both. The WHO budget allocates money for programs and identifies those funds that are coming from the regular budget and also those funds that are coming from voluntary contributions. Whereas countries might nominate particular activities that they want their extra budgetary contributions directed to, the organisation has been able to manage those so that, in spite of people earmarking money for particular activities, the organisation is still able to fund its budget priorities with that combination of regular and extra budgetary contributions.

Senator BOURNE—Thank you.

CHAIR—Thank you for presenting the evidence to the inquiry today. Please provide that additional material to the secretary. You will be sent a copy of the transcript of your evidence and you may make corrections of grammar and fact to that transcript. Thank you for appearing before the inquiry.

[3.22 p.m.]

SMALLACOMBE, Ms Sonia, Policy Officer, Aboriginal and Torres Strait Islander Commission

WILLIAMS, Ms Christine, Commissioner, Aboriginal and Torres Strait Islander Commission

CHAIR—I welcome representatives of the Aboriginal and Torres Strait Islander Commission. Proceedings here today are legal proceedings of the parliament and warrant the same respect that proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that that does not alter the importance of the occasion and any deliberate misleading of the subcommittee may be regarded as a contempt of parliament. We prefer that all evidence is given in public, but should you at any stage wish to give any evidence in private, you may ask to do so and we will consider that request. We have received a submission from your commission and it has been authorised for publication. Are there any alterations or additions that you wish to make to that original submission?

Commissioner Williams—I do not think there are.

CHAIR—I invite you to make a short opening statement. If there is anything you wish to add, you could include it in that statement.

Commissioner Williams—I would like to provide some background about the Aboriginal and Torres Strait Islander Commission. ATSIC is the peak body representing indigenous Aboriginal and Torres Strait Islander people in Australia. It is an independent statutory authority established by the Commonwealth government under the Aboriginal and Torres Strait Islander Commission Act in 1989, and is commonly known as ATSIC. ATSIC is designed to embody the principle of self-determination for indigenous Australians and to involve decision making activities on indigenous affairs at regional and community level. Through ATSIC's representative arm, the Aboriginal and Torres Strait Islander people participate in the process of government. Elected representatives are able to make decisions on projects, programs and policies that affect our communities. At the national and international level, ATSIC elected commissioners like myself represent the views of indigenous communities from all parts of Australia.

In regard to this inquiry, I wish to provide the following comments. Australia has always had a constructive involvement in UN activities. Australia has played a leading role in monitoring universal human rights principles. As a signatory to international human rights treaties, Australia has the responsibility to adopt a constructive domestic stance on the principles of tolerance, democracy and respect for equal rights of men and women. Not only are these principles central to human rights treaties but also they reflect the values of the Australian community. I want to dispute the concerns that exist in some quarters in Australia that the UN is interfering and imposing their alien values on Australians. I want to make the point that the UN is a body that is credited, supported and given power by the Australian population through the elected government. General principles of specific agreements made by the UN and other

international bodies take effect in Australia only when the Australian government decides whether, when and in what precise manner such principles and agreements should be implemented. Furthermore, article 7 of the UN charter states that it rejects interference in the domestic affairs of the member states.

The UN recognises that different societies and countries have their own cultures and legal systems, their own special conditions and needs. Therefore, individual states like Australia have ample scope to design and define their own solutions within international agreed norms. Just because Australia is seen as a country that enjoys high living standards, open systems of parliamentary democracy and general tolerance of people of various ethnic, political and religious backgrounds, it does not mean that we do not have to worry about our own fulfilment of high standards and the global idea. The reverse is actually the case. We are seen as a country flavoured with many economic, social and political advantages but we must also meet the highest possible standards.

I must point out that, as a woman and an ATSIC representative for women, I am deeply disappointed that the Australian government did not sign or ratify the optional protocol to the Convention on the Elimination of all forms of Discrimination Against Women, commonly known as CEDAW. My understanding is that the optional protocol provides a way for individual women and groups of women to lodge complaints to the committee on the elimination of discrimination against women if their rights under CEDAW have been violated by a state policy. At the moment, all Australian women do not have a complaints mechanism open to them at an international level. The complaint mechanism is very important as indigenous women suffer from both discrimination as women and racism because we are members of indigenous communities.

Another concern I have is that in the future there may be suggestions by the Australian government to withdraw from the international human rights treaties, like the Convention on the Elimination of All Forms of Racism and Discrimination, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the first optional protocol of the International Covenant on Civil and Political Rights. Any withdrawal from these treaties would deprive individuals and groups of the ability to lodge communications with relevant UN committees if they believe their treaty rights have been violated. Complaint mechanisms are very important. For example, since 1991 only 48 cases against Australia had been brought through the above three complaint mechanisms. To date, violations have been found in only three of the 27 cases that have been finalised. There has also been communication before the Human Rights Committee regarding mandatory sentencing laws in the Northern Territory. This is the first time an indigenous related issue from Australia has been lodged under any of these complaint mechanisms. This issue was important because Australia's accession to the first optional protocol of the International Covenant on Civil and Political Rights was signed through the government's response to the report of the Royal Commission into Aboriginal Deaths in Custody.

The UN system has been an important forum for indigenous people over the past decade. The situation of indigenous people has gained visibility, particularly at the international level. This is due to the growing advocacy of the indigenous people, who have been able to achieve the establishment of procedures and forums for international cooperation. Therefore, as indigenous people we have been increasingly successful in accessing and utilising various international

mechanisms, such as the Subcommission on the Promotion and Protection of Human Rights, the Committee on Elimination of Racism and Discrimination and the International Labour Organisation. However, it is still the case that indigenous people, in their own countries and regions, are amongst the most marginalised and excluded groups.

Today is the international day for the elimination of racial discrimination. I would like to tell the committee what indigenous people in this country are doing to address the issue of racism. In February of this year, ATSIC hosted a regional meeting of indigenous people of Australia, New Zealand, Canada, Hawaii and the United States in Sydney. The purpose of the Sydney meeting was to examine in detail the issue of racism against indigenous people, with particular focus on Australia, New Zealand, Canada, Hawaii and the United States of America. The outcomes from the Sydney meeting included an overview of discrimination against indigenous people in Australia, New Zealand, Hawaii and Canada. This is a forum where participants foster greater input into the international debate on racism against indigenous people and the advancement of partnerships between indigenous people and the wider community to implement the strategies for overcoming racism. A formal report from the Sydney meeting will be submitted to the May 2001 preparatory committee meeting for inclusion in the conference papers for the world conference in South Africa which will take place on 31 August to 7 September 2001.

In closing, I would like to request that the Australian parliament support NGOs' input into the UN mechanism, as these mechanisms provide an opportunity for NGOs, such as indigenous NGOs, to voice their aspirations and concerns in the promotion of the universal human rights principles. Thank you.

CHAIR—Thank you. On 31 July last year, the Economic and Social Council voted to create a permanent forum for indigenous issues within the United Nations. In what way do you think that that permanent forum can benefit indigenous peoples and their rights throughout the world?

Ms Smallacombe—ATSIC does congratulate the Australian government for supporting the establishment of the permanent forum on indigenous issues within the Commission of Human Rights. This forum will provide another avenue for the UN to respond to the concerns of indigenous people, so it will be an important forum for indigenous people at an international level.

CHAIR—What do you hope to achieve through that special forum?

Ms Smallacombe—There are a number of issues that are currently being worked on, particularly the draft declaration of the rights of indigenous people, and the international decade for the rights of indigenous people could be promoted within the forum. I think it is generally maintaining principles of human rights and considering international standards among indigenous peoples.

CHAIR—In your introductory statement you talked about alien values that were being forced upon Australia. What did you mean by alien values?

Ms Smallacombe—In terms of alien values, I think they were some of the comments that were around early last year and late the previous year about the UN imposing its values on Australian society. I think at that time they were called alien values.

CHAIR—I have never heard that phrase before.

Mr HOLLIS—You did not attend the Brisbane hearing, Chairman.

CHAIR—That is true, I did not.

Mr HOLLIS—It was our first hearing in Queensland. That was a minor criticism.

Senator BOURNE—Yes, that is right.

Mr HOLLIS—What is the progress of the draft resolution on the Declaration of the Rights of Indigenous People?

Ms Smallacombe—The draft declaration has been in progress for the last 10 years. The information I received from the last meeting was that there had not been full agreement by states to progress the draft declaration any further. I think there was some disappointment expressed at the last meeting where agreements between states and indigenous people did not occur, and the feeling was we still had a long way to go in terms of progressing the draft. The draft did come in at the lower levels of the United Nations and is now progressing right through, hopefully, to the General Assembly. It is still in the UN process and 10 years along it is still progressing through the system.

Mr HOLLIS—If the draft were accepted, would that permit individual complaints to be progressed through the UN system?

Ms Smallacombe—The UN system still mainly looks at individual complaints. I think the draft declaration is looking more at collective complaints. One of the things about the UN system is that it is focused more on the individual, and that was one of the reasons why the draft declaration was important, because it looked at collective rights of indigenous people.

Senator BOURNE—You mentioned in your opening statement the racism conference in South Africa in September. Do you have a feeling that that conference will have the opportunity to achieve something? Are you sending somebody yourself, or do you know yet whether you are sending somebody?

Commissioner Williams—We do not know. I participated in the conference in Sydney and it was to send off the items that were raised as a matter of concern at that meeting to be looked at at that forum in South Africa. I would like to see that happen. There are still matters that need to be addressed by the UN, and we held that meeting so that we could have the opportunity to produce the paper to put up to that meeting in South Africa.

Senator BOURNE—Have you heard of any progress on that?

Commissioner Williams—Nothing since the meeting, no.

Ms Smallacombe—Because the Sydney meeting was deemed a satellite meeting by the Human Rights Commissioner Mary Robinson, the recommendations from that meeting have gone

straight to the second prep com, which will be held in May in Geneva. We have asked the Australian government to support the recommendations from that report being included in the working document that will go to South Africa. The South Africa meeting will be mainly the work plan, which will be discussed there. So a lot of the work that has to go to South Africa is being done at the moment, and that was why we were particularly interested in focusing on indigenous issues and having the meeting particularly focusing on indigenous concerns.

Senator BOURNE—Have you had any sort of response from the government on whether they are going to look favourably on trying to push this at Geneva to get it into the draft document for South Africa?

Ms Smallacombe—It is still early days. The government has only recently seen the report and there have not been any comments back, but we are writing to government to ask them to support us.

Senator BOURNE—With some of these UN conferences you get a feeling months before of optimism, that there is some sort of chance to get something really positive out of a conference, and with others they sort of sneak up on you and disappear and you do not even notice it happened. Do you have a feeling with this one that it does have any sort of push about it for change, for improvements, or does it seem to be pretty dead so far?

Commissioner Williams—I have participated in the UN forum as part of the Australian delegation and was a little bit concerned that not a lot of our issues were talked about, but when it is talked about in the forum of the UN, you sit there with the Australian delegation and they agree with everything and smile and say they are going to do this and do that. I have been there twice with them in that forum and have come back here only to find out, months down the track, that they do not normally ratify what they are agreeing to over there when they get back home. And that concerns me as an indigenous person, because it is wonderful to sit at the table and smile at all the UN countries and look good in a position over there sitting at the Australian table, but, if you are not prepared to do what you have to do when you come back, it does not leave me with much faith. And I agree with you, it might not even get on the agenda in South Africa.

This government has got to really start taking us seriously. We have been here long enough now for them to know that we are not going to go anywhere, and we have to start getting it right.

Mr HOLLIS—I am not disagreeing with what you are saying, but one of the real difficulties Australia faces is the same as other federated states do, in that we are supposed to get the agreement of all our states before we ratify anything. Australia has got a bad record, under both political parties, of ratification. We will often sign international agreements or international treaties, but we are very slow to ratify. You can go through the whole list—rights of the child, the whole lot of UN issues—and, when we have got governments of different political persuasions or different philosophical beliefs, to get the agreement of all those state governments and federal governments sometimes is difficult.

So it is not only on race issues, believe you me, that this frustration comes out; it is also on many other issues. I am not justifying it, but I am saying that this sometimes happens, and

maybe governments use that as an excuse to say, 'Oh well, we've got to get the agreement of all the states and that is difficult.' But we have a very bad—or very slow rather than bad—record in actually ratifying treaties and international conventions.

Commissioner Williams—It certainly took a long time to have convention 69 ratified. I do not know now whether it is ratified or not.

Ms Smallacombe—Just going back to the world conference in South Africa, I did attend in Santiago, Chile, last year an expert meeting on issues of racism. One of the things I remember the High Commissioner, Mary Robinson, saying is that she did not want this conference in South Africa to be hijacked—she did not say that word—by certain groups and she wanted it to be inclusive of all groups. That is going to be a real issue at the conference, because there are lots of issues that people feel are being left out, women's issues and racism issues. There are concerns that they may not be considered important. Also, for example, India wanted caste to be a part of it. Indigenous issues we are quite keen to have as an issue. One of the issues in South Africa is going to be trying to bring all these issues together and how to deal with them.

I also want to point out that one of the concerns that came up when I was in Santiago was the fact that governments are quite willing to sign treaties and they do so. One of the concerns that we had as indigenous people was how we then find mechanisms or ways for government to act on them once they have signed them, how we work towards getting governments to take those seriously once they have signed them. That was something that we needed to consider and we still need to consider.

Mr JULL—Can I just move on to the Convention on the Elimination of All Forms of Racial Discrimination? What sort of obligation does that convention put on Australia? Have we got anybody involved in that CERD committee? Do we have any real influence on that committee?

Ms Smallacombe—From memory, I think I heard just the other day that there is an Australian who has just been appointed. This was a communication that we received from Geneva recently that there is an Australian; I do not know the person's name. It was just a vague passing that there is an Australian who has just been appointed to that committee.

The CERD committee certainly has been effective. From ATSIC's point of view, we have been able to take issues to the CERD committee, for example, the amendments to the Native Title Act. Also, the committee is able to put out early warning signals to governments to ask governments to report. At the moment there is an outstanding report from Australia that was due in October last year. That is still outstanding and needs to go to CERD. So, yes, we see it as an important body.

Senator BOURNE—Do you know if they have any plans to put that outstanding report in and, if they do, when?

Ms Smallacombe—Our communications with DFAT have been that it will go in but we are not sure when. What normally happens before the report goes in is that there is some consultation with ATSIC about the report. We are still to organise that consultation. We only found this out about a week ago in terms of the consultation. We knew the report was

outstanding but we were hoping to work with the new area that is set up in Prime Minister and Cabinet to work with them on consultation for that report.

Senator BOURNE—We can check with DFAT tomorrow.

CHAIR—It is not unusual for member countries to be late with reports to CERD. Some countries are three and four years and they have not reported.

Ms Smallacombe—Yes. That is what has happened in the past.

Mr NUGENT—I came in after you started, so if some of my questions have already been covered I apologise for the duplication. Mary Robinson has announced that she is resigning. What impact would you see from that, given that she has been very strong in her period of time on both indigenous and women's issues as the Human Rights Commissioner? With her gone, what impact do you see in terms of advancing progress in those areas? Do you see that as a major blow, or do you think the momentum is there and will be unstoppable?

Ms Smallacombe—We have not really considered it. We had heard that she was not going to stand for a second term but we feel that the momentum is there. We are still optimistic that the momentum will continue.

Mr NUGENT—Perhaps more important is that the reason she cited for going, as I understand it, is that she does not think that human rights is getting sufficient resources, basically, from the UN. That therefore raises perhaps a more fundamental question—less the personality and more whether human rights is getting appropriate priority within the UN system. Do you have any comment on that?

Ms Smallacombe—That was one of the things that we were interested in in the Australian government's review of its relationship with the UN. My understanding of where the Australian government was coming from was that it was interested in trying to improve the effectiveness of the UN treaty bodies, particularly improving the coordination between the committees and addressing the current inadequate secretariat resources for research analysis to support the committees' work. We would support the Australian government in considering those issues.

Mr NUGENT—But there is the reality that if somebody is enthusiastic and puts the time in, they can actually hijack it because it is not properly resourced. I would be interested in your views on the draft declaration on the rights of indigenous people, which has been around for a decade or more now. Whilst I cannot claim to have read it all, I have read reasonable chunks over the years. There is an awful lot in there that certainly I would not be uncomfortable with. But my understanding is that many governments around the world are baulking at ratifying that. Is it realistic that that is ever going to become anything other than a draft? Some people have actually been working on it almost from its inception, and it has become the life work of a couple of people, I think. Do you really think that is actually going to happen or should we be looking for more practical ways of achieving the same objective?

Ms Smallacombe—I am not sure. Maybe there are other opportunities to look for other ways to achieve the objective. At the last meeting that was held in Geneva last November, there was a lot of disillusionment on both sides—the indigenous side and the government side— where

there was not agreement on a lot of issues. But I think there is a feeling that these issues go in cycles: sometimes a stalemate is reached; but the next time they come back there may be some movement. So the feeling is that it is still worth pursuing, even though it is 10 years down the track. We are just hoping that both sides, the indigenous people and governments, will be willing to keep coming to the table and talking about it.

Mr NUGENT—But is it perhaps not the case that without a real big push from one or two of the leading nations—particularly the States or the Secretary-General himself—it is going to keep going round and round in circles, should we not be looking for other more practical ways of achieving the same ends? I think you sound more optimistic than I am that it is actually going to happen.

Ms Smallacombe—For example, the setting up of the indigenous permanent forum may help towards trying to balance out some of those issues and trying to resolve some of the issues. So that may be another avenue.

Mr NUGENT—How do you see that permanent forum working in practice in terms of interfacing with the rest of the United Nations organisation?

Ms Smallacombe—As I was saying before, ATSIC felt it was important because the permanent forum would provide another avenue for the UN to respond to concerns of indigenous people. One of the issues for indigenous peoples—or anybody other than states—is that it is very difficult to get access to the club of the UN. With the setting up of the permanent forum, it is certainly an avenue for indigenous people to look at concerns and at ways to progress the issues of human rights on an international level and also to develop standards at that level as well.

Mr NUGENT—I think you talk in your submission about there needing to be a more pluralistic concept of national sovereignty in Australia. Could you give us some ideas of how that might work in practice?

Ms Smallacombe—Pluralistic in terms of national sovereignty?

Mr NUGENT—Yes, in your submission you urge consideration of a more pluralistic conception of national sovereignty. I cannot point to the page—the secretary might be able to help me there. We think it is on page 2 under the discussion of national sovereignty.

Ms Smallacombe—All I can probably say to that is that the Australian government and the parliament be willing to look at inclusion of the different needs of groups within Australia and that all groups have access to human rights standards. I think the belief is that one form of right is seen as being equal across all groups of people and, in fact, that may not be the case. So in terms of looking at being more inclusive of different groups, the fact is some groups may have different needs from other groups, and it is trying to incorporate all those different needs within the state.

Mr NUGENT—You state:

... a formal settlement in resolving outstanding issues from the past, and recognise the distinct status and rights of the Indigenous peoples of Australia.

That is the conclusion of that section in the submission where you are talking about cultural pluralism. Can we look at one of the other things you talked about in your submission, which is where you were urging the government to enact domestic legislation to meet Australia's responsibilities under the Convention on the Prevention and Punishment of the Crime of Genocide. Could you amplify on that?

Ms Smallacombe—I think that comment about the crime of genocide is in relation to the removal of Aboriginal and Torres Strait Islander children from their families. One of the things that came out of the report of the inquiry into the separation of Aboriginal and Torres Strait Islander children is that it was seen as a genocide. So genocide is talked about in terms of the repetition of removal of Aboriginal children so that the dislocation of Aboriginal children from families is not repeated.

Mr NUGENT—But if there is a Convention on the Prevention and Punishment of the Crime of Genocide, a UN convention, and you are suggesting that we need to enact domestic legislation to implement that convention, what sort of components would that legislation have?

Ms Smallacombe—One of the components of the legislation would be to ensure that repetition does not occur and that some of the domestic laws that are introduced do not reinforce the kinds of things that have happened in the past—things such as mandatory sentencing and the removal of young people from the communities. Even though mandatory sentencing is a law for everybody, it is also seen as impacting on a certain group. So I think that is what we were advocating there.

Mr NUGENT—I will not get into mandatory sentencing. We could go on for a long time.

Commissioner Williams—I cannot really comment on what you are saying but I can see myself from where I am coming from the impacts that things have had on us. That is like the Royal Commission into Aboriginal Deaths in Custody. We had it; it is over. What has happened with it? The same with the stolen generation inquiry in that we have had it; it is over. Where is it going? What positive answers are there for us? Even though these things have happened, there is nothing as a result—except all I can see, as a person out there in the community, is a waste of waste of taxpayers' money. You get all these recommendations after every commission that they have, and what happens with it? Do they file it up, lock it up and save it for next time? Nobody works on any of the recommendations.

Mr NUGENT—That is one of the reasons why I have been asking questions about what are you suggesting in terms of practical solutions when you talked about the pluralistic perspective, the need for legislation on the prevention and punishment of crimes of genocide and so on. If you have specific suggestions of what the government should do, that would obviously help us perhaps in our recommendations—

Commissioner Williams—But after these commissions of inquiry the government would have directions from the recommendations, and they choose not to do anything with them. What difference would it make if we suggested what was going to be best for us? I believe we need to

hang on to the declaration that is being worked on now. You are saying that people have lifetime jobs out of it, but we have to hang on to something like that. We have to hang on to it because, if it is taken away—if Mary resigns or whatever and it is no longer there—what do we have? Whom are we going to go to? We have to hang on to something we have because we know it is there and we do not know if there is going to be anything like that ever again. As indigenous people we do not really have much hope in stuff like this, because our views and our concerns are always put forward but it just builds up big files for somebody—whoever is keeping them and doing nothing with them.

CHAIR—It is probably fair to say in relation to Mary Robinson that there is no reason why she will not be replaced with someone of equal calibre or with someone who might be even better.

Commissioner Williams—That is right.

CHAIR—Nobody knows who it will be. She has served her term and she just chooses not to seek another term.

Commissioner Williams—I know that, as a commissioner of ATSC, we make a reasonable donation to the UN like other people. I mean, America has all the money in the world. We do not even have any out here and what they have of ours is much better for them over there than for us here.

Mr NUGENT—And the Americans do not pay their dues on time anyway.

CHAIR—There being no further questions, I thank you, Commissioner Williams and Ms Smallacombe, very much for appearing before the inquiry today. You will be sent a copy of the transcript of your evidence that you may correct for errors of grammar or fact. *Hansard* may wish to check some details with you of your evidence today before you go. Once again, thank you very much for appearing before us today.

Resolved (on motion by **Mr Hollis**, seconded by **Senator Bourne**):

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

Subcommittee adjourned at 4.03 p.m.