

CHAPTER 6

WORLD HERITAGE ISSUES

The [World Heritage Committee] mission has noted severe ascertained and potential dangers to the cultural and natural values of Kakadu National Park posed primarily by the proposal for uranium mining and milling at Jabiluka. The mission therefore recommends that the proposal to mine and mill uranium at Jabiluka should not proceed.¹

6.1 This chapter examines the World Heritage issues associated with the Jabiluka uranium mine project, and in particular, a number of the issues raised by the World Heritage Committee on its recent visit to Australia and contained in its report from that visit. The chapter comes to the conclusion that the Jabiluka uranium mine poses a serious threat to the natural and cultural World Heritage values of Kakadu National Park.

6.2 In April 1999 the Commonwealth Government responded to the sixteen recommendations contained in the mission's report. Subsequently other interested parties in Australia and the WHC's own advisory bodies have commented on the Government's response. An extraordinary session of the WHC, to be held in Paris on 12 July 1999, will determine whether Kakadu National Park should be placed on the List of World Heritage in Danger (see 2.1-2.12, above).

Kakadu National Park and World Heritage Listing and Criteria

Background

6.3 The Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention) was adopted by the General Conference of UNESCO in 1972. It came into force on 17 December 1975, when 20 countries, including Australia, became parties to it. Today, 156 countries, known as States Parties, are signatories to the Convention.²

6.4 World Heritage is a term applied to sites of outstanding universal cultural or natural significance, which are included on UNESCO's World Heritage List. 'Cultural heritage' is a monument, group of buildings or site of historical, aesthetic, ethnological or anthropological value, while 'natural heritage' designates outstanding physical, biological and geological features; habitats of threatened plants or animal species; and areas of value on scientific or aesthetic grounds or from the point of view of conservation.

1 UNESCO World Heritage Committee, *Report on the mission to Kakadu National Park, Australia, 26 October to 1 November 1998*, p v.

2 World Heritage internet site, The World Heritage Convention:
http://www.unesco.org/whc/world_he.htm#debut

6.5 As at June 1999 there were 582 properties on the World Heritage List, including 445 cultural sites, 117 natural sites and 20 mixed sites in 114 countries. Thirteen world heritage properties are located in Australia. Kakadu was one of the first three Australian properties inscribed on the World Heritage List in 1981, along with the Great Barrier Reef and Willandra Lakes. It is also one of the 20 mixed World Heritage sites.³

6.6 In order to qualify for inclusion on the World Heritage List, a nominated area must meet specific criteria which are contained in the Convention. A World Heritage site can be placed on the List of World Heritage in Danger if it is threatened by serious and specific dangers, such as development projects, the outbreak of armed conflict or natural disasters. Properties are deleted from the World Heritage List if they are seen to have lost the values for which they were listed.

6.7 The World Heritage List is administered under the World Heritage Convention by the World Heritage Committee on behalf of UNESCO. The World Heritage Committee consists of 21 States Parties elected for six year terms during a General Assembly of UNESCO. Australia is currently a member of the World Heritage Committee.

6.8 Although the Commonwealth Government, as the State Party to the Convention for Australia, is the only government which can submit nominations for Australian World Heritage properties, it implements its national obligations under the Convention in conjunction with the State and Territory Governments, through the Inter-Governmental Agreement on the Environment (IGAE). Under the IGAE, the States and Territories recognise the Commonwealth's international obligations to protect World Heritage properties, and the Commonwealth agrees to consult with the relevant State or Territory concerning possible nominations.

6.9 Australia's World Heritage areas comprise a wide variety of land tenures including freehold, perpetual lease, pastoral lease, town reserve, State forest, national park, nature reserve, Aboriginal reserve and recreational reserve. Ownership rights of areas are not changed after World Heritage listing takes place. The management arrangements vary from area to area.

6.10 Approximately fifty per cent of the 19,804 square kilometres of Kakadu National Park is Aboriginal land, leased to the Director of National Parks and Wildlife under the *National Parks and Wildlife Conservation Act 1975*. The remainder of the Park is under claim by relevant Aboriginal groups. The Park is jointly managed by the Aboriginal Traditional Owners of the Park and Parks Australia, with a Board of Management, including a majority of Aboriginal representation, setting the policy. In its submission to the UNESCO World Heritage mission to Kakadu National Park, the Commonwealth Government stated that:

3 World Heritage internet site, The World Heritage List: <http://www.unesco.org/whc/heritage.htm>

[Kakadu National] Park is one of the best resourced and arguably the best managed in Australia. ... Aboriginal traditional owners are actively involved in all aspects of the management of the Park.⁴

World Heritage Listing and the Criteria

6.11 Kakadu National Park was inscribed on the World Heritage List in three stages – Stage I in 1981 (6,144 square kilometres), Stage II in 1987 (an additional 6,929 square kilometres), and Stage III, in 1992 (bringing the total size to 19,804 square kilometres). As the inclusion of Stage III increased the size of the World Heritage site by a third and substantially modified the original nomination of 1981, the World Heritage Bureau regarded the Stage III nomination as a renomination of the entire Park. Following the Stage III inscription, the boundaries of the World Heritage property became the same as those of Kakadu National Park.

6.12 Kakadu National Park is listed under the following criteria for natural heritage and cultural heritage values:

Natural Heritage

- Criterion (ii): Outstanding examples representing significant ongoing geological processes, biological evolution and man's interaction with his natural environment.
- Criterion (iii): Unique, rare or superlative natural phenomena, formations or features or areas of exceptional natural beauty.
- Criterion (iv): The most important and significant habitats where threatened species of plants and animals of outstanding universal value from the point of view of science and conservation still survive.

Cultural Heritage

- Criterion (i): Represent a unique artistic achievement, a masterpiece of the creative genius.
- Criterion (vi): Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance.⁵

6.13 In its publication, *Australia's Kakadu: Protecting World Heritage*, the Commonwealth Government describes the cultural and natural values of the Park in the following ways:

4 Submission by the Government of Australia to the UNESCO World Heritage Mission to Kakadu National Park, October-November 1998, p 9.

5 Environment Australia, *Australia's Kakadu: Protecting World Heritage*, Response by the Government of Australia to the UNESCO World Heritage Committee regarding Kakadu National Park, April 1999, p 4.

The specific attributes that make up [the] World Heritage values of the Kakadu National Park are many and varied. These attributes range from specific sites and features to Kakadu's expansive landscapes and stories of evolution, and include the less tangible features such as the cultural and spiritual associations and interactions between the landscape and a living culture.

...

Kakadu National Park is a landscape of cultural, religious and social significance to local Aboriginal people. Special places in the landscape include ceremonial sites, sites of religious significance, archaeological and rock art sites and other areas that have special meaning to Aboriginal people. These sites both reflect the long history of Aboriginal occupation of the landscape and remain central to Aboriginal culture in the region.

...

The diversity of landscapes, habitats and species of Kakadu National Park, combined with its vast size, are attributes of significant conservation value and provide an excellent environment for the continuation of ecological processes.

...

In comparison with the rest of the Australian continent, the environments of north Australia have been little affected by European settlement.

...

Kakadu National Park is a special Australian place. The World Heritage natural and cultural values and attributes for which Kakadu National Park has been inscribed are recognised, protected and promoted. Australia can show that these values and attributes are protected while responding constructively to suggestions for improvement. Australia recognises that it holds and cares for the values of Kakadu National Park for all Australians and for the world.⁶

Should Kakadu National Park be Inscribed on the Most Recent Criteria?

6.14 In their submission to the World Heritage Committee mission to Australia in October 1998, the Traditional Owners of the Jabiluka mineral lease, the Mirrar-Gundjehmi people, discussed the need for Australia to update the inscription of Kakadu National Park on the World Heritage List to reflect more properly recent modifications to World Heritage criteria. In particular, they argued, the cultural criteria have changed to reflect the importance of 'living tradition'.

[Cultural Heritage] (vi) now reads:

Criterion (vi): Be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance.

6 Environment Australia, *Australia's Kakadu: Protecting World Heritage*, April 1999, pp 4-11.

[Cultural Heritage] (iii) now reads:

Criterion (iii): Bear a unique or at least exceptional testimony to a cultural tradition or to a civilisation which is living or has disappeared.⁷

6.15 At the time of Kakadu National Park's inscription on the World Heritage List in 1992, cultural criterion (iii) had read, 'bear a unique or at least exceptional testimony to a civilisation which has disappeared'. This was considered inappropriate in relation to Kakadu National Park because of the ongoing living tradition of the Aboriginal civilisation in Kakadu. The Mirrar now contend, however, that the new wording of criteria (iii) and (vi) are highly relevant to Kakadu National Park and that the Park's World Heritage inscription should reflect these changes.

6.16 The Mirrar people also contend in the same submission to the WHC that:

In addition, the World Heritage Committee has developed the concept of 'cultural landscape' as a further category for inclusion on the World Heritage List. Cultural landscapes represent the 'combined works of nature and man' designated in Article 1 of the Convention. The development of the cultural landscape concept is yet another recognition of the cultural significance of living traditions.⁸

6.17 In 1995 the Kakadu Board of Management formally requested that the Commonwealth Government seek the inscription of Kakadu National Park as a cultural landscape. The Senior Traditional Owner of the Mirrar people, Ms Yvonne Margarula, signed this written request. The Commonwealth Government has stated that renomination of the Park as a cultural landscape would require the consent and active participation of the majority of Traditional Owners as expressed by the Kakadu Board of Management and the Northern Territory Government.

At this stage, the Kakadu Board of Management has requested such a nomination and the matter will be considered at the next Northern Territory World Heritage Ministerial Council before further consultation with land owners takes place.⁹

6.18 The Mirrar people state that the Jabiluka mine represents a 'specific and proven danger' to the continuance of their living tradition. By contrast, the recent changes to World Heritage nomination criteria, they contend, fully embrace the concept of living tradition and therefore more accurately reflect the cultural attributes for which Kakadu National Park is inscribed on the World Heritage List.

7 *Mirrar Living Tradition in Danger, World Heritage in Danger*, Submission to the World Heritage Committee Mission to Kakadu, October 1998, p 6.

8 *Mirrar Living Tradition in Danger, World Heritage in Danger*, Submission to the World Heritage Committee Mission to Kakadu, October 1998, p 6.

9 Environment Australia, *Australia's Kakadu: Protecting World Heritage*, Response by the Government of Australia to the UNESCO World Heritage Committee regarding Kakadu National Park, April 1999, p 89.

6.19 The Mirrar people conclude by arguing that any specific and imminent danger to the continuance of living tradition in the Kakadu World Heritage Area, such as mining uranium at Jabiluka, ‘is (subject to compliance with the [World Heritage] Operational Guidelines) *prima facie* evidence of Kakadu being a World Heritage Area in Danger’.¹⁰

Recommendation 16

The Committee recommends that the Government seek a new inscription for Kakadu National Park to enable the listing to reflect the living traditions and cultural landscape of the Park more accurately.

Australia’s World Heritage Obligations

The World Heritage Convention

6.20 The principal obligations on States Parties imposed by the World Heritage Convention are described in Articles 4 and 5. They include, in Article 4, a duty to ensure the ‘identification, protection, conservation, presentation and transmission to future generations’ of natural and cultural heritage, as defined by the Convention, which occur in the territory of States Parties.

6.21 Article 5 sets out in more detail several obligations imposed on States Parties to ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated in its territory. States Parties are required, among other things, to:

- adopt a general policy to give the cultural and natural heritage ‘a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes’;
- establish effective protection services, training and research; and
- take appropriate legal, scientific, technical, administrative and financial measures.

6.22 As a signatory to the World Heritage Convention, Australia must do all that it can and whatever is appropriate to identify, protect and present world heritage within its borders. The legal regime and management arrangements put in place to implement the Convention are, however, matters for Australia itself to determine and can involve a mixture of Commonwealth, State and Territory responsibilities. This is particularly important given the role of the States and Territories as land managers of most inscribed areas.

10 *Mirrar Living Tradition in Danger, World Heritage in Danger*, Submission to the World Heritage Committee Mission to Kakadu, October 1998, p 6.

World Heritage and Kakadu National Park – The Commonwealth Government’s View

6.23 In its publication *Australia’s Kakadu: Protecting World Heritage*, and its earlier submission to the WHC in October 1998, the Commonwealth Government set out the legal and administrative requirements and initiatives it has implemented to manage World Heritage properties in Australia in general, and Kakadu National Park in particular. It argues that in relation to Kakadu National Park it has stringently met its World Heritage obligations and that the processes it has established in relation to the Jabiluka mineral lease ensure that the values and attributes of the Park are protected.

Australia is the only signatory to the World Heritage Convention to have created national legislation specifically aimed at protecting World Heritage values of the properties. The Australian Government has on numerous occasions used this legislation to protect World Heritage values which it considered to be under threat.¹¹

6.24 Commonwealth environment and heritage legislation relevant to World Heritage properties in Australia includes:

- *Environment Protection (Impact of Proposals) Act 1974* (the EPIP Act) – the object of the Act is to ensure that, to the greatest extent practicable, matters affecting the environment to a significant extent are fully examined and taken into account in relation to actions by the Commonwealth Government.
- *National Parks and Wildlife Conservation Act 1975* (the NPWC Act) – provides for the establishment of parks and reserves in Commonwealth areas, in accordance with a plan of management.
- *Australian Heritage Commission Act 1975* (the AHC Act) – established the Australian Heritage Commission to keep the Register of the National Estate and advise the Commonwealth Government in relation to the national estate.
- *World Heritage Properties Conservation Act 1983* (the WHPC Act) – provides for the protection and conservation of properties in Australia that are of outstanding universal natural or cultural value. The Act enables the Commonwealth to take action where a World Heritage property is likely to be damaged or destroyed.
- Environment Protection and Biodiversity Conservation Bill 1998. This Bill was passed by the Senate on 23 June 1999. When proclaimed it will replace the EPIP Act, NPWC Act, WHPC Act and other Acts. The degree and manner of protection of World Heritage properties under the new legislation is not agreed by all parties to this report.

11 Submission by the Government of Australia to the UNESCO World Heritage Mission to Kakadu National Park, October-November 1998, p 9.

6.25 In relation to Kakadu National Park and the proposed uranium mine at Jabiluka, the Commonwealth Government claims that it has abided by Commonwealth legislation. Under the EPIP Act, it instigated an EIS for the mine's Ranger Milling Alternative proposal and a PER for the Jabiluka Mill Alternative proposal. Under the NPWC Act, the Kakadu Board of Management has a majority of Aboriginal members to ensure that the interests of Traditional Aboriginal Owners of land in Kakadu are respected. Under the AHC Act, most of the Alligator Rivers Region, which includes most of Kakadu National Park, was included in the National Estate Register in 1980.

6.26 In addition, the Commonwealth contends, the Djawumbu-Madjawarnja site complex, which contains most of the approximately 230 art, archaeological and sacred sites in the Jabiluka mineral lease, is listed on the Register and protected within two designated Australian Heritage Commission exclusion sites. Finally, the Commonwealth claims that it has not found it necessary to use its powers under the WHPC Act in relation to Kakadu National Park because the 'stringent 3 year EIS process specifically addressed the protection of World Heritage values, and laid down conditions which assured this'.¹²

6.27 The Commonwealth Government also contends that it meets its obligations to a number of World Heritage properties, including Kakadu National Park, through its Aboriginal land, sacred sites and native title legislation. Under the *Aboriginal Land Rights (Northern Territory) Act 1976*, for example, land can be granted to, and for the benefit of, traditional Aboriginal people in the Northern Territory. As a result of ownership of land, exploration of minerals cannot be carried out and mining rights cannot be granted in relation to Aboriginal land unless an agreement has been entered into between the intending miner and the relevant Aboriginal Land Council, which represents, and is answerable to, Aboriginal Traditional Owners under the Act. In the case of the Jabiluka mineral lease, the Northern Land Council entered into such an agreement on behalf of the Mirrar Traditional Owners in 1982. The validity of this agreement is now in dispute (see Chapter 5, above).

6.28 The Commonwealth Government also argues that it meets its World Heritage obligations to Kakadu National Park through its policy and legislative framework in relation to uranium mining. In particular it cites the conclusion of the Ranger Uranium Environmental Inquiry, established under the *Environment Protection (Impact of Proposals) Act 1974*, to support its view that the environmental impacts of uranium mining in the mining lease areas inside Kakadu National Park would be minimal:

The hazards of mining and milling uranium, if those activities are properly regulated and controlled, are not such as to justify a decision not to develop Australian uranium mines.¹³

12 Environment Australia, *Australia's Kakadu: Protecting World Heritage*, April 1999, p 36.

13 Environment Australia, *Australia's Kakadu: Protecting World Heritage*, April 1999, p 39.

6.29 The Ranger Inquiry also recommended the establishment of the Kakadu National Park and the creation of the Supervising Scientist for the Alligator Rivers Region. The position of Supervising Scientist was established by the *Environment Protection (Alligator Rivers Region) Act 1978* to coordinate and supervise the implementation of requirements, under any prescribed instrument, associated with environmental aspects of uranium mining and to devise, develop and coordinate the environmental effects of uranium mining.

6.30 The Commonwealth Government concludes the chapter in its April 1999 report to the World Heritage Committee on its obligations to protecting World Heritage properties, and Kakadu National Park in particular, by stating that:

In relation to the Jabiluka mine proposal, Australia has applied its environment protection, heritage protection and Aboriginal land rights legislation methodically and in an open and transparent manner. The Australian Government has met every obligation required under its own legislation and can guarantee to the World Heritage Committee that the values and attributes of Kakadu National Park have been protected and will continue to be protected.¹⁴

World Heritage and Kakadu National Park – Other Views

6.31 In submissions and in evidence given to the Committee at public hearings, a number of interested parties agreed that the Commonwealth Government had failed to meet Australia's World Heritage obligations both in relation to the natural and cultural values and attributes of Kakadu National Park because of its continuing support for uranium mining at Jabiluka.

6.32 In their evidence to the Committee at its public hearing in Canberra, and in their written submission to the Committee, Professor Robert Wasson, Professor Ian White, Dr B. Mackey, and Mr Mick Fleming argued that as mining in the midst of a World Heritage area was not normal, it was absolutely essential that the highest standards of assessment should have been applied to all stages of the project's approval process, and, in particular, the initial EIS stage. This, they claimed, did not occur. Instead, the same standards of protection and process applied to any other site were applied to a mine in a very sensitive World Heritage area. This failed to take into account 'the very high values that are attributed to a World Heritage property by the international community'¹⁵.

The basis of our submission to UNESCO was that, for a project surrounded by a World Heritage property, the highest possible environmental protection is mandatory. Therefore, the best possible EIS is essential in such circumstances. The Jabiluka project is not like other mine developments in this country; it is surrounded by and could impact on a World Heritage

14 Environment Australia, *Australia's Kakadu: Protecting World Heritage*, April 1999, p 41.

15 Professor Robert Wasson, ANU, Professor Ian White, ANU and Mr P. M. Fleming, Consulting Ecohydrologist, *Proof Committee Hansard*, Canberra, 11 June 1999, p 25.

Property. This position has been vindicated by the [Supervising Scientist's] Assessment of the Jabiluka Project. As we note in our Comments on that Assessment, "In every case where we raised a question about the accuracy and quality in the EIS and PER, the Supervising Scientist's Report has agreed that the issue is of substance and concern". The Supervising Scientist's Report argues that many of the issues that we raised in our Submission to UNESCO would have been dealt with at the detailed design stage of the project. This in our view is not an appropriate procedure for a project that could impact on a World Heritage Property.¹⁶

6.33 Professor Wasson and his colleagues remain concerned that the conservation values of the likely impacted areas downstream of the Jabiluka project have not yet been properly assessed in a Kakadu-wide context. They place the blame for this serious omission squarely at the feet of Environment Australia:

As an organisation expert in conservation matters, one might have imagined that Environment Australia would have picked this up fairly early.¹⁷

6.34 Summing up his colleagues' concerns about the possible effects of the Jabiluka Project on the World Heritage values of Kakadu National Park, Professor Wasson stated:

We repeat that damage to an ecosystem of high value (e.g. near Jabiluka) will have effects on the conservation values of the entire Park ... We continue to maintain that the conservation values of the whole Park could be affected by Jabiluka, and that this needs to be assessed.

...

Therefore, we remain concerned about the risk of damage to the World Heritage values of Kakadu National Park largely because of the failure to completely assess the impact on those values of the project.¹⁸

and:

the entire Jabiluka project has been piecemeal and very difficult for non-specialists to understand. I think this is a dreadful outcome for such an important area – and from the perspective of many – an important project. We remain concerned, therefore, that possible damage to Kakadu is a reality because a complete risk assessment has not yet been completed ...¹⁹

16 Professor Robert Wasson, ANU, Professor Ian White, ANU, Dr B. Mackey, ANU and Mr P. M. Fleming, Consulting Ecohydrologist, Submission 50, p 1.

17 Professor Robert Wasson, ANU, Professor Ian White, ANU and Mr P. M. Fleming, Consulting Ecohydrologist, *Proof Committee Hansard*, Canberra, 11 June 1999, p 25.

18 Professor Robert Wasson, ANU, Professor Ian White, ANU, Dr B. Mackey, ANU and Mr P. M. Fleming, Consulting Ecohydrologist, Submission 50, pp 2-3.

19 Professor Robert Wasson, ANU, Professor Ian White, ANU and Mr P. M. Fleming, Consulting Ecohydrologist, *Proof Committee Hansard*, Canberra, 11 June 1999, p 25.

6.35 In their submission to the UNESCO World Heritage Committee, and in evidence to the Committee, Australian non-government conservation organisations were also critical of what they saw as the Commonwealth Government's failure to meet its obligations to protect and preserve Kakadu National Park from uranium mining:

The very existence of uranium mines within the external boundaries of Kakadu World Heritage Area, upstream of its "internationally significant wetlands" and within the World Heritage cultural precinct represents a threat to the World Heritage values and integrity of Kakadu World Heritage Area.

... Australian Government approval to commence development of the Jabiluka uranium mine

- despite the objections of the traditional owners of the Aboriginal land held as Mining Lease;
- prior to completion of formal assessment of critical aspects of the mine;
- prior to actioning 73 preconditions (albeit inadequate);
- despite 'last minute' changes being made to critical aspects of uranium ore tailings disposal without proper assessment and public review;
- before the resolution of outstanding legal issues in the Federal Court

is totally pre-emptive and falls far short of world's best practice expected of development control and management within the external boundaries of a World Heritage Area. These are the serious deficiencies which are now contributing to the damage, risks and threats to the World Heritage values of the listed property and associated enclaves.²⁰

6.36 One of the principal arguments of the Australian NGOs is their contention that despite the fact that the three mining leases inside the boundaries of Kakadu National Park – Ranger, Jabiluka and Koongarra – are legally excised enclaves, it can be readily demonstrated that these areas are an integral part of the natural and cultural heritage of the Park. In the case of the Jabiluka mining lease, they argue that as the lease area includes part of the Magela wetland, which is no different from the remainder of the Magela wetland in the World Heritage Area of Kakadu National Park, then the lease area itself 'is a part of the World Heritage'.²¹ They go on to state that:

20 Submission to the World Heritage Committee of UNESCO by Australian Conservation NGO's, *Kakadu: World Heritage in Danger*, October 1998, attachment to Submission 15, p 4.

21 Submission to the World Heritage Committee of UNESCO by Australian Conservation NGO's, *Kakadu: World Heritage in Danger*, October 1998, attachment to Submission 15, p 21.

The natural heritage and natural landscape within the Jabiluka and Koongarra Mining Leases is an integral part of the natural heritage of Kakadu World Heritage Area and as such is World Heritage.²²

6.37 These views are supported by the submission of the Australia International Council on Monuments and Sites (ICOMOS) to the World Heritage Committee:

Australia ICOMOS reasons that the [values] of outstanding significance for which Kakadu National Park is inscribed in the World Heritage List extend across the Jabiluka excision. Indeed, it is concluded that there is a continuous representation of the world heritage values across the landscapes within the boundaries of Kakadu National Park, the World Heritage Area, and in adjacent areas, including the excised mining leases such as Jabiluka, and the National Estate within the Jabiluka mining lease. Such boundaries are artificially imposed on a landscape, or 'country', with links that cannot be separated and that are socially, culturally and ecologically coterminous, with an extent that is the same in space, time and meaning.²³

6.38 The Committee shares the view of Australia ICOMOS that the Commonwealth Government has consistently understated the natural and cultural values of the Jabiluka mineral lease, in part by repeatedly stating its relatively small size in relation to the whole of Kakadu National Park. It also shares the view of the Australian NGOs that 'the [Jabiluka] lease is fully surrounded by World Heritage park, and is ecologically and culturally contiguous with it'.²⁴

6.39 In evidence to the Committee, and in his written submission, Professor John Mulvaney argued that the Commonwealth Government had failed to meet its World Heritage obligations by unduly neglecting the cultural values of the Jabiluka mineral lease area when deliberating on whether to give approval for the uranium mine to proceed.

6.40 Professor Mulvaney, a former Australian Heritage Commissioner, chief Australian delegate to the 1977 World Heritage Bureau meeting which framed the criteria for listing World Heritage properties, one of Australia's most eminent historical archaeologists and a scholar of international reputation, described the cultural significance of the Jabiluka lease area in the following ways:

Jabiluka is set in a major cultural landscape adjacent to several dreaming places – not just one. It has more than one dreaming track running through that area.²⁵

22 Submission to the World Heritage Committee of UNESCO by Australian Conservation NGO's, *Kakadu: World Heritage in Danger*, October 1998, attachment to Submission 15, p 22.

23 Australia ICOMOS submission to UNESCO World Heritage Mission to Australia and Kakadu, October 1998, p 4.

24 Friends of the Earth and The Wilderness Society, Media Release, 19 May 1999.

25 Professor John Mulvaney, *Proof Committee Hansard*, Canberra, 11 June 1999, p 59.

...

[Jabiluka] is a major cultural landscape; it is a much more significant landscape than the Ranger mine.²⁶

and:

The Jabiluka region consists of an intermeshed cultural landscape, continuous with the areas outside the arbitrary base boundaries. Aboriginal landscapes combine as a single entity those two European concepts of natural and cultural environments, best envisaged as a spiritual environment in Aboriginal society. All features of such landscapes are named and have meaning for past events and present belief systems.²⁷

6.41 Significantly, Professor Mulvaney also stated that:

In my opinion ... there is a real possibility that there are sites of significance in the Jabiluka mineral lease areas which have not been recorded or detected.²⁸

6.42 According to Professor Mulvaney, both ERA and the Commonwealth Government have ignored the 'spiritual environment in Aboriginal society' and examined only those sites already known for their archaeological and rock art values. He attributes this shortcoming to a failure to consult Aboriginal Traditional Owners at an early stage of the Jabiluka project and in a very detailed manner.

6.43 The Committee believes that Professor Mulvaney's concerns are endorsed and given greater authority by the Aboriginal Traditional Owners themselves. The Mirrar people argue convincingly that the Commonwealth Government has failed to meet its World Heritage obligations by dismissing their views in relation to the significance of the Jabiluka mineral lease, and diminishing the rights and interests which are an integral part of Mirrar law and custom.

6.44 The Mirrar believe that they have an obligation and a responsibility to look after their country and people. Looking after their country includes preventing both the destruction of the country and the desecration of sacred sites. It is also:

the recognition, assertion and promotion of cultural rights and the carrying out of living tradition on country.²⁹

6.45 The Mirrar are unable to look after the excised Jabiluka mineral lease country even though they are the Traditional Owners of the land which encompasses Jabiluka.

26 Professor John Mulvaney, *Proof Committee Hansard*, Canberra, 11 June 1999, p 66.

27 Professor John Mulvaney, Submission 30, p 2.

28 Professor John Mulvaney, Affidavit to Supreme Court (NT) in case of Yvonne Margarula, attachment to Submission 30, p 4.

29 *Mirrar Living Tradition in Danger, World Heritage in Danger*, Submission to the World Heritage Committee Mission to Kakadu, October 1998, p 8.

They contend that there are dreaming tracks which cross both the Jabiluka and Ranger mineral leases and the World Heritage area and that there are many sacred sites, a number of which have not been identified by Aborigines for a range of cultural reasons, 'all over country', including the Boiwek-Almudj site which is very close to the Jabiluka mine itself.

These sacred sites exist within the Jabiluka and Ranger Mineral Leases and are interconnected with the spiritual and cultural significance of the entire Mirrar estate and other bininj [Aboriginal] country, including the World Heritage Area.³⁰

6.46 Some of these sites, the Mirrar argue, are at present being directly and severely impacted by the Jabiluka uranium mine. The Mirrar go on to say that:

It would simply be a nonsense to suggest that the Mirrar living tradition, which helps comprise the World Heritage values of Kakadu National Park, is intrinsically less significant within the comparatively recent borders of the Jabiluka Mineral Lease than it is in the World Heritage Area.

It would also equally be a nonsense to suggest that impacts associated with activities on the Jabiluka Mineral Lease (or anywhere else for that matter) which affect the Mirrar living tradition do not impact on the cultural qualities for which Kakadu has been inscribed as a World Heritage Area.³¹

6.47 The Northern Land Council support the Mirrar people's claims in relation to the cultural significance of the Jabiluka mineral lease.

The cultural values for which the areas surrounding the lease were nominated and recognised as World Heritage in no way cease to be present once the Jabiluka Mineral Lease area is entered. ... the lease area itself is as rich in Aboriginal artistic achievement and traditional significance as any other areas within Kakadu ... traditional land use patterns, ceremonial beliefs, dreaming tracks and sites all inextricably link the land within the lease boundary to that within the surrounding World Heritage Area.³²

6.48 The Mirrar argue that the Commonwealth Government has failed to meet its World Heritage obligations by both failing to understand and dismissing the nature of living tradition associated with World Heritage cultural values. Both the EIS and PER approvals processes for the Jabiluka uranium mine failed to address adequately issues related to living tradition. Further, the Mirrar state, the Commonwealth Government has not:

30 *Mirrar Living Tradition in Danger, World Heritage in Danger*, Submission to the World Heritage Committee Mission to Kakadu, October 1998, p 8.

31 *Mirrar Living Tradition in Danger, World Heritage in Danger*, Submission to the World Heritage Committee Mission to Kakadu, October 1998, p 9.

32 *Kakadu National Park World Heritage*, Submission by the Northern Land Council to the UNESCO World Heritage Mission to Kakadu National Park, October 1998, p 6.

- established or proposed a method to safeguard cultural values;
- consulted Aboriginal people in relation to the management of cultural values for which Kakadu National Park has received World Heritage listing; and
- attempted to make itself aware of the concerns of the Traditional Owners in relation to cultural values.³³

There is no evidence that the Australian Government is in any way motivated to assess the threat to, and measures required for ongoing protection and management of, living tradition outside an aggressive industrial agenda. The Australian government refuses to require ERA to undertake a moratorium on any further development until these issues can be resolved (or worked through) and does not seek independent Aboriginal advice. The Mirrar believe that the Australian government supports mining at the expense of their very existence.³⁴

6.49 Professor Mulvaney described an incident which the Committee believes starkly illustrates the lack of respect that is being shown for Aboriginal living culture by the proponent of the Jabiluka project. The incident took place during the WHC mission's visit to the Jabiluka mineral lease and mine site with the Traditional Owners. Professor Mulvaney accompanied the group as a representative of Australia ICOMOS.

The mining company was tunnelling, and the Aboriginal people took the World Heritage Committee to the site and showed them, and then they took them along this track way. They were looking towards the main site where the dreaming creature is, and then there was a loud siren and explosions, and ERA continued, even in the presence of the Aboriginal Owners and the World Heritage Committee, to tunnel and blast. That certainly upset the Aboriginal people very much.³⁵

6.50 In their submission to the Committee, the Aboriginal and Torres Strait Islander Commission also warned that the Commonwealth Government must ensure that the Traditional Owners are fully involved in decisions which affect their living culture.

The issue of protection of a living culture is a very important and sensitive issue. It requires the full involvement of the people concerned, any discussions that seek to determine how they see their survival will be sustained. Therefore, it is essential that the traditional owners who requested that there be an additional layer of protection for their land and culture with

33 *Mirrar Living Tradition in Danger, World Heritage in Danger*, Submission to the World Heritage Committee Mission to Kakadu, October 1998, p 29.

34 *Mirrar Living Tradition in Danger, World Heritage in Danger*, Submission to the World Heritage Committee Mission to Kakadu, October 1998, p 31.

35 Professor John Mulvaney, *Proof Committee Hansard*, Canberra, 11 June 1999, p 61.

a World Heritage inscription, should be intimately involved in ensuring that Australia fulfils its international obligations. To do otherwise would make a mockery of the original listing and the genuine concerns of the traditional owners.³⁶

6.51 The Committee believes that the Jabiluka uranium mine is irreconcilable with the outstanding natural and cultural values of Kakadu National Park and should not proceed.

The Government's Response to the World Heritage Committee Mission's Report

Introduction

6.52 In the report on its mission to Kakadu National Park in December 1998, the World Heritage Committee concluded that a number of serious ascertained and potential threats were posed to the Park as a result of uranium mining in the Jabiluka mineral lease. It went on to recommend that a number of 'corrective measures' were necessary to ensure that the serious threats and dangers to Kakadu National Park were overcome. These corrective measures were presented in the report in the form of sixteen recommendations. The executive summary and list of recommendations for the WHC report are included as Appendix 4 to this report.

6.53 The WHC's major finding was contained in its first recommendation.

Recommendation 1: The mission has noted severe ascertained and potential dangers to the cultural and natural values of Kakadu National Park posed primarily by the proposal for uranium mining and milling at Jabiluka. The mission therefore recommends that the proposal to mine and mill uranium at Jabiluka should not proceed.³⁷

6.54 This recommendation and most of the other substantive findings and recommendations in the WHC report have been rejected by the Commonwealth Government and the proponent of the mine. Two documents, submitted to the WHC in April 1999, *Australia's Kakadu: Protecting World Heritage*, and the Supervising Scientist's *Assessment of the Jabiluka Project: Report of the Supervising Scientist to the World Heritage Committee*, contain the Commonwealth Government's detailed response to the WHC report.

6.55 Supporters of the WHC report, including Australian conservation groups, Aboriginal groups, leading Australian scientists and the WHC's own advisory bodies, the IUCN, the International Council on Monuments and Sites (ICOMOS) and the International Council for Science (ICSU) have subsequently commented on the documents provided to the WHC by the Commonwealth Government.

36 Aboriginal and Torres Strait Islander Commission, Submission 53, pp 19-20.

37 UNESCO World Heritage Committee, *Report on the mission to Kakadu National Park, Australia, 26 October to 1 November 1998*, p v.

6.56 The WHC is currently examining all the submitted documentation and will decide at an extraordinary session of the WHC, to be held in Paris in July 1999, whether to place Kakadu National Park on the List of World Heritage in Danger.

Scientific Uncertainties and the Precautionary Principle (WHC recommendation 2)

6.57 In response to the mission's call for the precautionary principle to be applied to the Jabiluka project because of what it saw as 'the unacceptably high degree of scientific uncertainties relating to the Jabiluka mine design, tailings disposal and possible impacts on catchment ecosystems', the Commonwealth Government requested the Office of Supervising Scientist to subject these scientific uncertainties to further independent scientific review and analysis, and, if necessary, make further modifications to the project design. The general conclusion of the Supervising Scientist's subsequent report was that 'the natural values of Kakadu National Park are not threatened by the development of the Jabiluka uranium mine and the degree of scientific certainty that applies to this assessment is very high'.³⁸

6.58 While the Committee accepts that the report of the Supervising Scientist to the World Heritage Committee provided additional important and useful scientific data in relation to the proposed mine including hydrological modelling, long-term storage of mine tailings, and so on, it is not an entirely adequate response and does not therefore ameliorate the need for applying the precautionary principle to the Jabiluka project.

6.59 The Supervising Scientist's report admits that 'there were a number of weaknesses in the hydrological modelling presented by ERA in the EIS and the PER' and that the Supervising Scientist has made 'a number of recommendations for improvement of the model'. Similarly, in analysing the effect of climate change in relation to hydrological modelling, the Supervising Scientist's report concludes that 'there could be a significant increase in the magnitude of Probable Maximum Precipitation (PMP) events' which should be taken into account in the final design stage.³⁹

6.60 Professor Wasson and his colleagues, in evidence to the Committee, argued that it was precisely these kinds of scientific uncertainties created by the EIS and PER which has led them to doubt the desirability of the Jabiluka project:

We have argued – contrary to the point that was put to you by Dr Johnston [the Supervising Scientist] – that for a project with potential to impact on a World Heritage property the highest possible standards of assessment should be applicable at the EIS stage, not just in the detailed design stage.⁴⁰

38 Supervising Scientist, *Assessment of the Jabiluka Project: Report of the Supervising Scientist to the World Heritage Committee*, April 1999, p 14.

39 Supervising Scientist, *Assessment of the Jabiluka Project*, Report of the Supervising Scientist to the World Heritage Committee, April 1999, pp 5-6.

40 Professor Robert Wasson, ANU, Professor Ian White, ANU and Mr P. M. Fleming, Consulting Ecohydrologist, *Proof Committee Hansard*, Canberra, 11 June 1999, pp 24-25.

...

we believe that very much closer attention should have been paid to some of these issues that are now on the Office of the Supervising Scientist report at the EIS stage. Personally I find it worrying that the mine has continued to be developed while the very important data on rainfall, flooding, the design of the tailings disposals and all of these issues to do with stability are still going on. We are expected to believe an awful lot in good faith. A lot of the processes we have seen thus far do not give us huge confidence. It is almost as if the cheque is in the mail. Frankly, in our view, that is not good enough in a World Heritage Area.⁴¹

6.61 The Australian Wilderness Society and other Australian conservation groups have argued that the Commonwealth Government's response to the WHC's second recommendation, in relation to scientific uncertainties, vindicates the concerns of independent scientists and the mission by acknowledging that there were 'serious errors in the [Jabiluka] project design but that these will be incorporated through the necessary modifications to the project design! Trust us!!'.⁴² The Wilderness Society agrees with Professor Wasson and his colleagues that the mine should not have been allowed to continue while the levels of uncertainty remain:

It is absolutely critical that mining be stopped until there is a full and transparent report on hydrological modelling for the mine, full details of severe weather events, proposed methods for storage of uranium ore on the surface and the long term storage of uranium and the impacts of these issues on the area. ... Until this occurs, and while mining continues, the Property must be placed on the List of World Heritage in Danger.⁴³

6.62 The Northern Land Council's reply to the Australian Government response to this recommendation also casts serious doubt on the integrity of the mine design and the adequacy of the environmental assessment process. It points out that:

The fact that no steps were taken to stop construction of the mine supports the view that the Commonwealth did not intend to seriously test any of the concerns expressed by the UNESCO mission.

Leaving water and tails management aspects of the project up in the air until the detailed design phase and then arranging that those details should be determined by the Supervising Authority (currently the Northern Territory

41 Professor Robert Wasson, ANU, Professor Ian White, ANU and Mr P. M. Fleming, Consulting Ecohydrologist, *Proof Committee Hansard*, Canberra, 11 June 1999, p 29.

42 The Wilderness Society, *An NGO assessment of Australia's response to the 16 recommendations of the World Heritage Committee's mission to Kakadu*, June 1999, p 2.

43 The Wilderness Society, *An NGO assessment of Australia's response to the 16 recommendations of the World Heritage Committee's mission to Kakadu*, June 1999, p 2.

Government) is unacceptable when considering a project of this magnitude adjacent to World Heritage and on Aboriginal land.⁴⁴

Visual Encroachment (WHC recommendations 3 & 14)

6.63 In response to the WHC's recommendation that further visual encroachment of the integrity of Kakadu National Park through both uranium mining and the expansion of the town of Jabiru should be prevented, the Commonwealth Government argued that both the Jabiluka mine and the township of Jabiru do not pose a threat to the aesthetic value of the Kakadu World Heritage property. The project, it maintains, is only visible from the air and any expansion of the urban and infrastructure development in Jabiru will be minimal.⁴⁵

6.64 Contrary to the Commonwealth Government's viewpoint, the Northern Land Council stressed to the WHC mission that the Jabiluka mine project would have a significant impact of the visual encroachment of Kakadu National Park.

The excision of the Jabiluka and Ranger areas from the Kakadu National Park to facilitate mining at those areas is a highly artificial action and has a deep visual impact on the Park. The compounding of the damage that presently exists due to Ranger with the additional Jabiluka Mine and Mill or with an intrusive Haulage Road between Ranger and Jabiluka will further erode the world heritage value of Kakadu.⁴⁶

6.65 The Wilderness Society made a similar claim:

It is simply not true to state that "... the project at Jabiluka is not visible from the World Heritage Property, except from the air." This statement is made frequently through the Australian report yet is not true. The mine site and operations are visible from many sites along the perimeter of the Jabiluka mineral lease and within the Property.

6.66 The World Conservation Union (IUCN) argued that the Commonwealth Government has not been able to refute the mission's findings that 'the visual impact of Jabiluka, 22 kilometres north of Ranger and Jabiru, is a distinct and significant additional impact' and concluded that the visual impact of the mine constitutes 'an ascertained danger for the natural World Heritage values of Kakadu in that it constitutes a deterioration of the natural beauty or scientific value of the property'. Therefore, it argued, these concerns were still valid.⁴⁷

44 Northern Land Council, *Reply to the Australian Government Response to the UNESCO Mission Report*, April 1999, pp 9-10.

45 Environment Australia, *Australia's Kakadu: Protecting World Heritage*, April 1999, p 79.

46 Northern Land Council, *Reply to the Australian Government Response to the UNESCO Mission Report*, April 1999, p 11.

47 IUCN, *IUCN Expert Opinion Concerning the Mitigation of Threats Posed by Ascertained and Potential Dangers to Kakadu National Park by the Jabiluka Mine*, May 1999, p 4.

6.67 In their response to the Commonwealth Government's claims that the expansion of the urban and infrastructure development in Jabiru will be minimal, the Mirrar people drew the WHC's attention to what it claims are the Northern Territory Government and ERA's future development strategy for Jabiru. This strategy, they believe, is articulated in a 1995 Jabiru Town Development Authority (JTDA) document entitled 'Development Strategy for the Normalisation of Jabiru', which makes various statements of intent about the future development of the town aimed at relaxing development controls, land usage and even the size of the town itself. The JTDA is comprised of appointees from the Northern Territory Government, ERA and a representative from the Jabiru Town Council and has no Aboriginal representation. The Mirrar go on to argue that:

The Australian Government fails to disclose to UNESCO this stated policy position of the Northern Territory Government and ERA to massively expand the size and kind of development in Jabiru. The development of Jabiluka will see ERA dominate the jurisdictional arrangements in Jabiru and will help ensure that the 'normalisation' process as outlined above is instituted.

If the *Environment Protection and Biodiversity Conservation Bill (No 2)* 1998 is enacted the future expansion of Jabiru could occur regardless of the [Kakadu] Plan of Management or the opposition of the [Kakadu] Board of Management.⁴⁸

Recommendation 17

The Committee recommends that the Government ensure that the future expansion of Jabiru takes place in accordance with the Kakadu Plan of Management and the full endorsement of the Kakadu Board of Management.

6.68 The Committee agrees with the WHC that further visual encroachment on the integrity of Kakadu National Park through both uranium mining and the expansion of the town of Jabiru should be prevented. It is also not convinced that the Commonwealth Government has been able to allay these concerns in its response to the WHC.

Threats to Cultural Values (WHC recommendations 4, 5, 6, 8 & 11)

6.69 Four of the most important WHC report recommendations encompassing cultural values cover:

- the completion of an international best practice cultural heritage management plan;

48 Submission from the Mirrar People to the UNESCO World Heritage Committee ICCROM & ICOMOS in relation to the Australian Government's Report "Australia's Kakadu: Protecting World Heritage", May 1999, pp 14-15.

- an exhaustive cultural mapping of the Jabiluka mineral lease and the Boiwek site and its boundaries;
- the immediate and effective implementation of the Kakadu Regional Social Impact Study (KRSIS) recommendations; and
- the need to repair the breakdown in trust and communication between Aboriginal people and the Commonwealth Government in relation to the Jabiluka project.

(i) Cultural Heritage Management Plan

6.70 The Commonwealth Government stated in its response to the WHC report that it had invited participation in the further development of the Interim Cultural Heritage Management Plan (CHMP) from the organisations identified in the mission, albeit despite the non-involvement of the Traditional Owners. In addition, every effort had been made to ensure the compilation of an accurate cultural inventory for the conservation of the cultural sites located within the Jabiluka mineral lease.

6.71 The Northern Land Council (NLC) was strongly critical of the Commonwealth Government's approach to the CHMP. Despite the Government's requirement in response to the EIS that a cultural heritage management plan be in place prior to the commencement of the construction of the mine, 'construction was allowed to commence without any form of cultural heritage management plan in place'.⁴⁹

The Interim Cultural Heritage Management Plan was eventually supplied to the NLC some six months after construction had commenced. In formulating the Interim Plan there was no consultation with the NLC or Traditional Owners and in an attempt to bypass the appropriate avenues of consultation, an approach was made to Djabulukgu Association to formulate the Interim Cultural Heritage Management Plan. Djabulukgu Association perceived the approach as divisive and inappropriate and refused to participate.

It was not until April 1999, some 12 months after construction at Jabiluka commenced, that the Government wrote to the NLC seeking input into the CHMP and other studies concerning the impacts of dust and vibration from the project on cultural heritage values surrounding Jabiluka. This attempt to reconcile cultural heritage issues at Jabiluka has been made far too late to make any accurate baseline research involving Traditional Owners possible. Given their views that construction represents a real threat to their sites and therefore their physical and spiritual safety, it is not surprising that the owners of the cultural heritage in question are not willing to participate in the process.⁵⁰

49 Northern Land Council, *Reply to the Australian Government Response to the UNESCO Mission Report*, April 1999, p 11.

50 Northern Land Council, *Reply to the Australian Government Response to the UNESCO Mission Report*, April 1999, p 12.

6.72 The Committee is highly critical of the Commonwealth Government's failure to consult properly with Aboriginal stakeholders on the CHMP and many other aspects of the Jabiluka project. Furthermore, the Committee is disappointed that the Government consistently emphasises a 'consultation' approach rather than a more appropriate and useful broader participatory approach.

Recommendation 18

The Committee recommends that the Government develop a broader, more appropriate and more effective participatory approach to the development of a cultural heritage management plan with Aboriginal stakeholders.

(ii) Cultural mapping

6.73 In response to the mission's call for an exhaustive cultural mapping of the Jabiluka mineral lease and the Boiwek site and its boundaries, the Commonwealth Government argued that the Aboriginal Areas Protection Authority of the Northern Territory (AAPA) had reviewed the status and location of Boiwek over the last twenty years but had declined to register the site due to disagreements amongst custodians over the significance of the site and its boundaries. (See Chapter 4, above, for a more detailed discussion of the Boiwek site.)

6.74 According to the Traditional Owners, the Mirrar people, the Boiwek-Almudj Sacred Site is a sacred site complex and not one site as the Commonwealth Government contends.

There are various sites and tracks along a journey in which Boyweg-Almudj made Mine Valley and other landforms, including a soak on the western side of Mine Valley called Boyweg-Bagaloi. It appears that [the Commonwealth Government], while acknowledging the existence of the Boyweg-Almudj journey, seeks to isolate the Boyweg-Bagaloi soak as the only sacred site.

... Unfortunately it seems that the Australian Government is seeking to deliberately obscure the fact that a significant part of Boyweg-Almudj's journey rather inconveniently traverses the Jabiluka Ore body No. 2.⁵¹

6.75 In 1998 the NLC and ERA entered into an agreement which included recognition of the Boiwek-Almudj Sacred Site Complex, and restrictions were placed on ERA's surface activities in the area of the mine valley. The Mirrar people did not understand why the restrictions were limited to the surface as this was contrary to the

51 Submission from the Mirrar People to the UNESCO World Heritage Committee ICCROM & ICOMOS in relation to the Australian Government's Report "Australia's Kakadu: Protecting World Heritage", May 1999, pp 21-22.

information they had given to George Chaloupka, an internationally acknowledged rock art expert in 1997.

6.76 In June 1998, the Jabiluka tunnel began with the status of the Boiwek-Almudj Sacred Site Complex unresolved:

Since the World Heritage Committee decision, the Mirrar have written to and visited the Australian Government's Minister for the Environment and Heritage on a number of occasions asking for blasting and drilling to stop at the Jabiluka minesite so that further cultural mapping can take place in the minesite area. The Australian Government has rejected the Mirrar requests.⁵²

6.77 According to the NLC:

The Government's audit of cultural mapping on the [Jabiluka] lease area is shallow and results in simplistic conclusions. The NLC has, subsequent to the UNESCO's Mission's report, undertaken its own investigation of the historical record of non-Aboriginal knowledge in relation to sites in the lease area. The NLC has access to substantial material not available to the Australian Government.⁵³

6.78 The Committee notes that although the Commonwealth Government reported to the World Heritage Committee that the AAPA had decided not to register the Boiwek-Almudj Sacred Site Complex, it failed to acknowledge that the Authority also indicated that its decision not to register the area concerned 'does not necessarily mean that this area is not a sacred site'.⁵⁴

(iii) Implementation of the KRSIS Recommendations

6.79 In response to the mission's call for the immediate and effective implementation of the Kakadu Regional Social Impact Study (KRSIS) recommendations, the Commonwealth Government stated that it had already commenced and accelerated the implementation of the KRSIS outcomes that will ensure that effective structures are in place within twelve months.

6.80 The NLC has indicated to the WHC that:

52 Submission from the Mirrar People to the UNESCO World Heritage Committee ICCROM & ICOMOS in relation to the Australian Government's Report "Australia's Kakadu: Protecting World Heritage", May 1999, p 25.

53 Northern Land Council, *Reply to the Australian Government Response to the UNESCO Mission Report*, April 1999, p 14.

54 Letter from the Aboriginal Areas Protection Authority to the Northern Land Council, 20 July 1998, quoted in: Aboriginal Areas Protection Authority, Submission 52, p 1.

No proposals detailing how and when the KRSIS recommendations might be implemented have yet been submitted by the Government to the NLC and the Aboriginal community.⁵⁵

6.81 The NLC is also very concerned that the Commonwealth Government will, in its eagerness to produce visible results in the region which it can report to the WHC, leave little room for the priorities of local Aboriginal people themselves to be established and acted upon.

6.82 The NLC argues that any attempt to implement the KRSIS recommendations and other programs of regional significance should be undertaken with the support and subject to the reasonable control of Aboriginal people. A hasty approach may mean that the efforts which are being made to reach long term solutions to many complex issues of very great importance to Aboriginal people, touched on in the KRSIS reports, will be wasted. The NLC argues that Aboriginal people in the region must be empowered to reach solutions and set priorities for change themselves.⁵⁶

(iv) Breakdown in trust and communication

6.83 Contrary to the finding of the WHC mission, the Commonwealth Government denied that there had been a general breakdown in communication and trust between Aboriginal people and the Government in relation to the Jabiluka project. Both the NLC and the Mirrar people claim that such a breakdown has occurred.

6.84 The NLC believes that:

There has been no change of any substance to the circumstances prevailing at the time of the Mission's visit, nor has the Commonwealth attempted to redress this situation. This is illustrated by the Commonwealth's failure to provide the NLC and the Aboriginal community with detailed proposals for the implementation of the KRSIS recommendations ... and, instead, to rely on the chair of the implementation committee by way of informal and ad hoc communication.⁵⁷

6.85 The Committee notes with concern that the NLC has not been requested to advise the Commonwealth Government in relation to any consultation process regarding the nomination of cultural landscape criteria. This 'consultation' has been taken over by the Northern Territory World Heritage Properties Ministerial Council.⁵⁸ The Committee believes that as long as action on this issue is driven from this forum

55 Northern Land Council, *Reply to the Australian Government Response to the UNESCO Mission Report*, April 1999, p 17.

56 Northern Land Council, *Reply to the Australian Government Response to the UNESCO Mission Report*, April 1999, p 17.

57 Northern Land Council, *Reply to the Australian Government Response to the UNESCO Mission Report*, April 1999, p 24.

58 IUCN, *IUCN Expert Opinion Concerning the Mitigation of Threats Posed by Ascertained and Potential Dangers to Kakadu National Park by the Jabiluka Mine*, May 1999, p 13.

it is unlikely that Traditional Owners of either Kakadu or other Aboriginal lands will have an interest in pursuing such an agenda.

6.86 The Mirrar people believe that the Commonwealth Government is clearly not interested in building trust and communication with them or any other Aboriginal people who support the Mirrar people's right to protect their country and culture. In particular the Mirrar claim that the Government does not consider an In Danger listing for Kakadu National Park is justified because, they argue, it cannot be shown that 'an irretrievable loss of or serious damage to World Heritage values' has occurred.⁵⁹

The Mirrar are appalled that the Australian Government does not consider the potential loss of a distinct language, culture, spirituality and society as an "irretrievable loss" or "serious damage".⁶⁰

6.87 As has been noted in Chapters 4 and 5 of this report, the development of the Jabiluka uranium mine has placed enormous social and cultural pressures on the Aboriginal community:

Possible social impacts ... can include the psychological and health effects of suffering fear, reduced use of the area concerned and of species normally hunted from it. Over a very long period there is a risk of gradual attrition of knowledge of these areas if they become less frequented and children are taken there less often for socialisation into traditional ecological knowledge.⁶¹

6.88 The Committee believes that the Jabiluka project threatens the living culture of the Aboriginal population. It therefore threatens the integrity of the cultural values of Kakadu National Park and their interaction with the natural values for which Kakadu is justifiably recognised internationally.

6.89 The Committee is of the view that in proceeding with the Jabiluka mine without the effective involvement of the most relevant people, the Traditional Owners, the Commonwealth Government is taking an approach which is clearly at odds with the cultural values of Kakadu National Park as a World Heritage site.

59 Environment Australia, *Australia's Kakadu: Protecting World Heritage*, April 1999, p 122.

60 Submission from the Mirrar People to the UNESCO World Heritage Committee ICCROM & ICOMOS in relation to the Australian Government's Report "Australia's Kakadu: Protecting World Heritage", May 1999, p 41.

61 Environment Australia, *Environment Assessment Report: Proposal to Extract, Process and Export Uranium from Jabiluka Orebody No 2*, August 1997, pp 113-4.

Recommendation 19

The Committee recommends that the Government take appropriate steps immediately to implement the recommendations of the UNESCO World Heritage Committee's report on Kakadu National Park. The Committee does not believe that the Government has adequately addressed the major findings and recommendations in that report.

Should Kakadu National Park Be Given an 'In Danger' Listing?

Introduction

6.90 In its mission report the WHC states that:

In accordance with paragraph 77 of the *Operational Guidelines* "a World Heritage property – as defined in Articles 1 and 2 of the Convention – can be entered on the List of World Heritage in Danger by the Committee when it finds that the property corresponds to at least one of the criteria" set out in paragraph 78 concerning the case of cultural properties and paragraph 79 concerning the case of natural properties.⁶²

The specific cultural and natural ascertained and potential danger criteria are included in Appendix 4 to this report.

6.91 Article 11.4 of the Convention Concerning the Protection of the World Cultural and Natural Heritage establishes a prescribed List of World Heritage in Danger. For a property to be added to the List of World Heritage in Danger it must be threatened by:

serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves.⁶³

6.92 Contrary to the findings in the WHC mission report, the Commonwealth Government does not believe that Kakadu National Park should be placed on the WHC's List of World Heritage in Danger. It argues that:

62 UNESCO World Heritage Committee, *Report on the mission to Kakadu National Park, Australia, 26 October to 1 November 1998*, p 7.

63 World Heritage internet site, *Convention Concerning the Protection of the World Cultural and Natural Heritage*, http://www.unesco.org/whc/world_he.htm

there is no basis, in terms of either ascertained or potential dangers, or inadequate legal and administrative protection, for placing Kakadu National Park on the List of World Heritage in Danger.⁶⁴

6.93 Subsequent to receiving and analysing the Commonwealth Government's two major responses to the WHC mission report, *Australia's Kakadu: Protecting World Heritage*, and the Supervising Scientist's *Assessment of the Jabiluka Project: Report of the Supervising Scientist to the World Heritage Committee*, the World Conservation Union is still of the view that Kakadu National Park should be placed on the List of World Heritage Sites in Danger:

IUCN recognises that the Australian Government has put considerable resources into addressing the issues raised by the Unesco Mission in October 1998. However our assessment of the analyses provided is that many of the concerns identified by the Mission remain valid. In the opinion of IUCN, continuing uncertainties over the final design of the mine site and the weaknesses of previous design as recognised by the Supervising Scientist's report, argue for application of the Precautionary Principle as recommended by the Mission. Jabiluka will constitute a significant additional impact on the visual integrity of the sweeping landscapes for which the Park is rightly recognised internationally. And there is strong evidence that Jabiluka is dividing the Aboriginal community and threatening the integrity of the cultural values of the Park. For these reasons IUCN believes that the conditions still exist for inscribing Kakadu National Park on the List of World Heritage Sites in Danger.⁶⁵

6.94 On the balance of the varied and detailed evidence it has examined over the course of this inquiry, the Committee supports the view held by the IUCN, namely, that if the proposed Jabiluka uranium mine were to proceed, there would be strong natural and cultural heritage grounds for inscribing Kakadu National Park on the List of World Heritage in Danger.

6.95 The Committee deplores the view repeatedly expressed by the Minister for the Environment and Heritage that the Commonwealth Government will not halt the proposed Jabiluka uranium mine if the WHC inscribes Kakadu National Park on the List of World Heritage in Danger. The Committee believes that such action, were it to occur, would place Australia in direct conflict with its international obligations.

6.96 The Committee believes that the Jabiluka uranium mine threatens the natural and cultural values of Kakadu National Park. The Committee therefore urges the World Heritage Committee to place Kakadu National Park on its List of World Heritage in Danger at the extraordinary session of the WHC in July 1999.

64 Environment Australia, *Australia's Kakadu: Protecting World Heritage*, April 1999, p 124.

65 IUCN, *IUCN Expert Opinion Concerning the Mitigation of Threats Posing Ascertained and Potential Dangers to Kakadu National Park by the Jabiluka Mine*, May 1999, p 5.

Recommendation 20

The Committee recommends that the UNESCO World Heritage Committee place Kakadu National Park on its List of World Heritage in Danger.

Consequences of an ‘In Danger’ Listing

6.97 The Commonwealth Government insists in its response to the WHC mission report that one of the main consequences of Kakadu National Park being inscribed on the List of World Heritage in Danger is that some of the fundamental principles that underpin the Convention Concerning the Protection of the World Cultural and Natural Heritage would be put at risk:

In particular, the principles of respect for the sovereignty of the State Party, the safeguarding of the property rights provided for in its national legislation, and the primacy of the role of the State Party in the protection of the natural and cultural heritage. Such action would also, in Australia’s view, be at odds with the terms of both the Convention and those relevant parts of the Operational Guidelines which are consistent with the Convention. It would represent a significant change to the basis upon which states took the serious step of becoming a party to the Convention and may deter other States from taking that step in the future.⁶⁶

6.98 The Committee notes, however, that the Commonwealth Government admits later in the same report that an In Danger listing is possible without State Party consent where there is ‘an irretrievable loss of or serious damage to World Heritage values or in the integrity of the World Heritage property’.⁶⁷ The Committee is of the view that an In Danger listing of Kakadu National Park without State Party consent, as a result of uranium mining proceeding at Jabiluka, would be justified as the mine represents a serious threat to the Park’s World Heritage values.

Recommendation 21

The Committee recommends that the UNESCO World Heritage Committee proceed to place Kakadu National Park on its List of World Heritage in Danger without State Party consent.

6.99 The Commonwealth Government also claims that an In Danger listing will lower the esteem in which the World Heritage Convention is held in Australia. The Committee believes, however, that such an action by the WHC, if necessary, would demonstrate to the Australian population that the World Heritage Committee and

66 Environment Australia, *Australia’s Kakadu: Protecting World Heritage*, April 1999, p 49.

67 Environment Australia, *Australia’s Kakadu: Protecting World Heritage*, April 1999, p 124.

Bureau are credible organisations which take their responsibilities seriously. It would also demonstrate that a State Party must not evade its obligations under the Convention.

6.100 Contrary to the views of the Commonwealth Government, the Committee believes that the main consequence of an In Danger listing of Kakadu National Park would be the damage to Australia's international reputation on conservation and indigenous issues. As this report has noted, Australia has been a leader in World Heritage protection, with thirteen World Heritage properties and high standards of management, community involvement and protection. Australia remains the only signatory to the World Heritage Convention to have created national legislation specifically aimed at protecting the World Heritage values of its properties.

6.101 This well deserved reputation is now being jeopardised unnecessarily by the Commonwealth Government's intransigence in relation to a proposed uranium mine at Jabiluka. The Committee does not believe that the economic benefits claimed for the mine can in any way offset the damage to Australia's international reputation in relation to cultural and natural heritage.

6.102 The Committee also regrets the damage to Australia's international reputation in relation to the human rights of indigenous peoples. This inquiry has revealed an alarming lack of respect by the Commonwealth Government for the legitimate participation of indigenous people in an issue which directly affects their daily lives and their living culture.

Recommendation 22

The Committee recommends that the Government note the damage to Australia's reputation in relation to the human rights of indigenous peoples as a result of its lack of respect for the legitimate participation of indigenous people in issues affecting their daily lives and living culture.

6.103 In addition, the Committee notes the possible damage to Australian tourism resulting from the proposal to open a second uranium mine within the boundaries of Kakadu National Park.

Recommendation 23

The Committee recommends that the Government examine the possible impact on the Australian tourism industry of an In Danger listing of Kakadu National Park.

Conclusion

6.104 The Committee reiterates its view that the Jabiluka uranium mine threatens the natural and cultural values of Kakadu National Park, and therefore urges the World Heritage Committee to place Kakadu National Park on its List of World Heritage in Danger at the extraordinary session of the WHC in July 1999.

6.105 As one group of witnesses expressed so eloquently at the Canberra public hearing:

Let us be clear: mining in the midst of a World Heritage area is not normal. That is why we have World Heritage areas. Therefore, to apply to a mine in the midst of a World Heritage area the same standards of protection and process as we do to any other site seems to miss the point of the very high values that are attributed to a World Heritage property by the international community. Kakadu is a very special place.⁶⁸

6.106 It is precisely because Kakadu is a very special place, not only for those Australians who are fortunate enough to visit it, but for all Australians, including the Aboriginal people who own it, that every effort must be made to ensure that its natural and cultural values are protected. The Jabiluka mine threatens those natural and cultural values and therefore should be not be allowed to proceed.

Recommendation 24

The Committee recommends that the Jabiluka uranium mine should not proceed because it is irreconcilable with the outstanding natural and cultural values of Kakadu National Park. Every effort must be made to ensure that these values are protected.

Senator Lyn Allison
Chair

The Greens (WA) endorse and support the majority report of the Australian Democrats and the Australian Labor Party.

Senator Dee Margetts
The Greens (WA)

68 Professor Robert Wasson, ANU, Professor Ian White, ANU and Mr P. M. Fleming, Consulting Ecohydrologist, *Proof Committee Hansard*, Canberra, 11 June 1999, p 25.