



Australian Government

Attorney-General's Department

CONFIRMATION OF FAX

Civil Justice Division

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23 February 2004

Dr Andrew Southcott MP
Committee Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

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BY:

Dear Dr Southcott

Inquiry into the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

I refer to your letter dated 13 February 2004, concerning evidence given at the public hearing on 9 February 2004.

In your letter you ask why more information was not provided in answer to a question asked by Mr Wilkie, given the answer provided to a Question on Notice taken by me at a hearing of the Senate Legal and Constitutional Committee on 3 November 2003.

The Question on Notice was "Is there any reason that [Australia] did not attend the last two sessions negotiating the [torture] protocol?" The written response provided by the Attorney-General's Department was that there was little likelihood of progress at those meetings (full text of the response attached).

We understood Mr Wilkie's question to be a further question. Mr Wilkie's question was "Why was it considered that there was little likelihood of useful progress at the 2001-02 working group meetings at the UN". This question was answered by Ms Caroline Millar, First Assistant Secretary, International Organisation and Legal Division, Department of Foreign Affairs and Trade. I understand that the Department of Foreign Affairs and Trade is investigating whether further information is available in response to Mr Wilkie's question.

I take this opportunity to assure you that I and the Attorney-General's Department always seek to fully assist Parliamentary Committees.

Yours sincerely

Kathy Leigh
First Assistant Secretary
Civil Justice Division

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

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Question No. 6

Senator Ludwig asked the following question at the hearing on 3 November 2003:

Is there any reason that [Australia] did not attend the last two sessions negotiating the [torture] protocol?

The answer to the honourable senator's question is as follows:

The decision not to attend the 2001 and 2002 meetings was made on the basis that there was little likelihood of progress at those meetings, Australia wanted to send a positive message that we wished to focus our energies and limited resources only on productive exercises. This was in line with our overall approach to engagement with the UN Treaty Body System, which the Government believes is in need of reform to make it more efficient.

Australia closely monitored developments in the continuing negotiations. As expected, there was no substantial progress made toward agreement on a text for the Protocol in 2001, due to broad areas of disagreement among the parties.

Given the lack of progress, it was considered unlikely that consensus would be reached in relation to any of the existing drafts of the Protocol at the January 2002 meeting. The lack of progress was born out by the fact that the final Protocol voted on at CHR, ECOSOC and UNGA was a draft put forward by the Chair of the Working Group that she believed reflected the negotiations to date. The chair had decided that as there had been so little progress towards an agreed text, she would force the issue and send her draft to CHR 59 (March – April 2002) for a vote.

Australia's capacity to influence future development of the Protocol and to sign an acceptable and effective Protocol was not jeopardised by its absence from the meetings.