



**COMMONWEALTH OF AUSTRALIA**

# **JOINT STANDING COMMITTEE**

**ON**

**FOREIGN AFFAIRS, DEFENCE AND TRADE  
(Human Rights Subcommittee)**

**Reference: Regional dialogue on human rights**

**CANBERRA**

**Monday, 24 November 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

(Human Rights Subcommittee)

Members:

Mr Nugent (Chair)  
Mr Hollis (Deputy Chair)

Senator Bourne	Mr Brereton
Senator Chapman	Mr Barry Jones
Senator Harradine	Mr Price
Senator Reynolds	Mr Sinclair
Senator Schacht	
Senator Synon	

The committee is to inquire into and report on:

The effectiveness of Australia's regional dialogue on human rights, with particular reference to:

the current debate on the interpretation of human rights in this region;

the place of human rights (civil and political, economic, social and cultural), including the issue of freedom of speech and expression, in the relations between Australia and our regional neighbours;

the place of the debate on human rights in the debate on regional security and stability;

the extent of ratification of the UN human rights treaties in this region and the impact of this on the promotion and protection of the rights of children (including child labour issues), women, workers, indigenous people and minorities; and

the role of existing institutions, both government and non-government, other linkages and avenues for dialogue, and the means by which these might be improved.

**WITNESSES**

<b>BALKIN, Dr Rosalie Pam, Assistant Secretary, Public International Law Branch, Office of International Law, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600</b>	<b>30</b>
<b>BIRD, Ms Gillian, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221</b>	<b>3</b>
<b>CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600</b>	<b>30</b>
<b>COX, Mr Allaster Edward, Director, Indonesia, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221</b>	<b>3</b>
<b>HOOTON, Mr Peter John, Director, Human Rights and Indigenous Issues Section, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221</b>	<b>3</b>
<b>HUNING Mr Ernst-August, Assistant Director General (SESI), Indonesia, China and Business Branch, AusAID, 62 Northbourne Avenue, Canberra, Australian Capital Territory 2601</b>	<b>3</b>
<b>POTTS, Mr Michael John, Assistant Secretary, Mainland South-East Asia Branch, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221</b>	<b>3</b>
<b>RABEL, Ms Jacqueline Theresa, Desk Officer, Indonesia Section, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221</b>	<b>3</b>
<b>SHEEDY, Ms Joan Marie, Assistant Secretary, Human Rights Branch, Civil Law Division, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600</b>	<b>30</b>
<b>STOKES, Ms Deborah, Deputy Director General, Corporate Development and Support Division, AusAID, 62 Northbourne Avenue, Canberra, Australian Capital Territory 2601</b>	<b>3</b>
<b>ZOLLER, Mr Peter Leon, Assistant Director General, Development Issues and Corporate Policy Branch, AusAID, 62 Northbourne Avenue, Canberra, Australian Capital Territory 2601</b>	<b>3</b>

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE  
(Human Rights Subcommittee)

*Regional dialogue on human rights*

CANBERRA

Monday, 24 November 1997

Present

Mr Nugent (Chair)

Mr Hollis

Mr Barry Jones

Mr Price

Mr Sinclair

The subcommittee met at 10.02 a.m.

Mr Nugent took the chair.

**CHAIR**—I declare open the first public hearing of the regional dialogue inquiry being conducted by the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade.

The subcommittee is inquiring into the effectiveness of Australia's regional dialogue on human rights. As this is the first of a series of public hearings which will be continued in early February next year, the subcommittee will be seeking an overview of the range of foreign policy, human rights and development assistance issues that are relevant to Australia's contribution to the promotion and protection of human rights through dialogue with our regional neighbours.

The particular focus of this inquiry results from the interests and concerns raised by the committee in its comprehensive 1994 report to the parliament. Accordingly, the inquiry will address both the human rights debate that has developed in the region and the mechanisms, institutions and processes by which that debate may be advanced and dialogue improved. The inquiry will also examine regional means of promoting and protecting human rights within the definitions established and accepted under the various United Nations covenants.

We are taking evidence this morning from two groups of witnesses: the Department of Foreign Affairs and Trade, together with AusAid, and the Attorney-General's Department. On behalf of the subcommittee, I welcome the representatives from the Department of Foreign Affairs and Trade and AusAID. 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 give consideration to your request.

[10.05 a.m.]

**BIRD, Ms Gillian, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221**

**COX, Mr Allaster Edward, Director, Indonesia, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221**

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**CHAIR**—Although the committee does not require you to give evidence on oath, I should advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the House itself. In view of the number of support witnesses that you brought, it will be important if we call on those witnesses that they identify themselves when they come to the table. After we have dealt with perhaps some of the broader issues we might try to go through country by country on a fairly systematic basis. That will enable your individual country witnesses to then disappear if they need to, if that is amenable to the other members of the committee. I now invite you to make a short opening statement, if you wish, before we proceed to questions.

**Ms Bird**—We are very pleased to be here today in connection with the

committee's inquiry into the effectiveness of Australia's regional dialogue on human rights. The committee will also have received the department's written submission, which was prepared jointly with AusAID.

The joint submission reflects the important linkage between respect for human rights, good governance and sustainable development. The Deputy Director General of AusAID, Deborah Stokes, and a team from AusAID are also here today to elaborate more fully and to answer any questions on Australia's aid and human rights.

The submission begins with a brief overview of the government's approach to pursuing the promotion and protection of human rights internationally, which is also outlined in the recent white paper on Australia's foreign and trade policy. The government views human rights as an inseparable part of Australia's overall foreign policy because the treatment of individuals is of itself a matter of concern to Australians and also because promoting and protecting human rights underpins Australia's broader economic and security interests.

In the context of the debate about the balance between civil and political rights on the one hand and economic, social and cultural on the other, the white paper reaffirms that the government's human rights policies are based on the universality and indivisibility of fundamental human rights—civil, political, economic, social and cultural. The government's approach to human rights has one overall hallmark, and that is a commitment to achieving practical outcomes which actually improve the lives of individuals.

You will see from our submission that the government's approach to human rights includes constructive dialogue on human rights with other governments, including making bilateral representations in both individual cases and general situations, work to strengthen democratic and human rights institutions in our region, use of development cooperation programs to promote human rights and a broad range of multilateral activity, principally in United Nations fora.

In preparing the submission, we made a threshold decision not to cover every country in the region. In nearly all our posts in the region representations on individual human rights cases are made in the context of a developing or continuing human rights dialogue. The countries covered in the submission have been selected to show how the government pursues its human rights objectives in the region. We have included two examples—Afghanistan and the Democratic People's Republic of Korea—of efforts to make our human rights concerns known in countries where we do not have a resident diplomatic mission.

As our submission shows, a substantive dialogue on human rights issues can be developed and maintained, despite differences in perspectives on human rights issues. A major achievement in this regard was the Australia-China dialogue on human rights, the

first round of which took place in Beijing in August 1997. I should add that at the end of this week five officials from the Chinese foreign ministry will be coming to Australia to participate in human rights training courses and discussions under the joint technical assistance program agreed in Beijing.

Mr Chairman, you will be aware from the minister's speeches—and I should note that Mr Downer has made four major speeches dealing with human rights in the period under review, and we have included these in the appendix to the submission—the government gives priority to institution building in the human rights field. National human rights institutions can play a key role in monitoring the human rights performance of governments and provide a check on actions by the state. Such institutions, able to work with governments and civil society, can reflect to a significant degree the different cultures and local conditions of the societies in which they are established while at the same time remaining consistent with international human rights standards.

A number of countries in the region, in addition to Australia, have established national institutions promoting and protecting human rights. Those countries are Indonesia, the Philippines, India, Sri Lanka and New Zealand. A number of other countries in the region have indicated an intention or interest in doing so. For example, Bangladesh and Papua New Guinea have done so, and also recently we have heard Mongolia, Nepal and Cambodia express an interest.

The government gives support to these institutions through training and shared expertise and through the Asia-Pacific forum of national human rights institutions that was established in Darwin in 1996 and which recently held its second meeting in New Delhi. The Australian government is providing \$275,000 over three years to enable the Human Rights and Equal Opportunity Commission to provide a secretariat for the forum. Australia has also spent \$A1.2 million over 2½ years in support of the work of the office of the UN Commissioner for Human Rights on national human rights institutions.

Another relevant initiative by the government covered in the submission is the establishment of a Centre for Democratic Institutions which will further enhance human rights dialogue in the region by providing practical support for the establishment and consolidation of democratic institutions.

Mr Chairman, we very much welcome the committee's interest in this subject and look forward to answering your questions. As you mentioned, I am accompanied by relevant officials from the Department's International Organisations and Legal Division, as well as by the geographic divisions of the department and the AusAID team headed by Deborah Stokes.

**CHAIR**—Thank you very much. Can I start off by asking—

**Ms Stokes**—Mr Chairman, I was wondering whether I might make a brief



statement summarising the aid aspect?

**CHAIR**—My apologies. Of course.

**Ms Stokes**—A recent development in relation to the aid program is the government's response to the Simons review of the aid program. The minister announced that response last week. In that response he indicated that the aid program now has a new objective which is to advance Australia's national interest by assisting developing countries to reduce poverty and achieve sustainable development.

The government certainly sees its human rights assistance as integral to this goal and also sees human rights as a very important part of its broader efforts aimed at improving good governance in developing countries. It is worth mentioning what we understand to be meant by good governance. We see it as the effective management of a country's resources in a way that is accountable, transparent, equitable and responsive to people's needs. We think, therefore, that good governance provides the best environment for the protection of human rights. It is also worth mentioning that governance will now be one of five major sectors of focus in the aid program. The Simons review recommended four sectors and in the government's response it has added governance as a major focus for the aid program in the future.

As Gillian Bird has mentioned, the government is committed to supporting practical activities to improve human rights and that is certainly the approach in the aid program. We also recognise that many weaknesses in human rights in developing countries arise from weak institutions and often a shortage of resources.

In relation to civil and political rights, the aid program has a particular focus on practical activities in four areas. We have mentioned those in the joint submission, but I will mention them again here briefly. They are: accountability of government and the rule of law; participation of civil society in democracy; protection of vulnerable groups; and, institutional strengthening to protect human rights.

Examples of these activities have been included in our submission to the committee. We have today an updated list of those activities and a more comprehensive listing which we can leave with the committee today. The total value of these kinds of activities in the program is \$213 million.

About aid conditionality, a topic that often comes up in relation to human rights, Mr Downer stated in parliament just last week, very clearly, that the government does not link human rights to development assistance since we provide aid essentially for humanitarian purposes. There is always a risk that the withdrawal of aid can harm the welfare of the poor while having very little impact on the human rights situation which is of concern, whereas maintaining an aid program can provide the means for dialogue and can contribute concretely to human rights improvements on the ground. Nonetheless, there

will be occasions, such as in Burma, where the government considers it inappropriate to have a bilateral aid program.

Finally, concerning the Centre for Democratic Institutes which Gillian Bird mentioned, we expect that institute to be operational in the first half of 1998 and we expect that the minister will announce, very shortly, the institution that won the tender for operating the centre. We see the institute as providing a very good example of the government's approach to human rights assistance. I will leave my comments there and we, also, look forward to answering questions from the committee.

**CHAIR**—Thank you very much. Given that the government has spoken quite specifically in its time in office about having a different approach to human rights and talks about, as you mentioned, really not tying it to trade and other issues but building up the relationship and perhaps going more for the quieter diplomacy than the public statement, is there any evidence that that is making any difference? Are there any practical outcomes from that as opposed, perhaps, to some structures that might have been set up or is it too early to tell?

**Ms Bird**—As you mentioned, the emphasis has been very much on practical outcomes and making a difference in our human rights diplomacy. A couple of the things that I think distinguish what this government has been on about relate to the work that I mentioned to do with national human rights institutions—trying to get an effective network set up in the region of human rights institutions and having them sharing expertise and working closely together. Quite a lot of activity has taken place on that over the last 18 months or so including the actual setting up of an Asia-Pacific forum of national human rights institutions which has now held two meetings. We think that kind of cooperation and dialogue is very important in terms of taking human rights activity in the region forward.

The Centre for Democratic Institutions is another important initiative which, as Deborah Stokes mentioned, is about to come to fruition in terms of its creation. Again, we think that that institution will play an important role in taking human rights dialogue forward in the region.

On practical outcomes, we think the inaugural meeting of the Australia-China human rights dialogue is another important instance of what has been achieved by this approach to human rights dialogue. It was an extremely useful meeting; it enabled our side to register our concerns across a whole range of issues with the Chinese authorities. We have set in train a technical cooperation program under a human rights umbrella, the first activity of which will be taking place next week in Australia. And, importantly, we think it has put in place an ongoing and continuing dialogue with the intention being a return visit by the Chinese side to Australia next year. As I said, it is certainly an ongoing process but one that we think really does bear the prospects of considerable success.

**CHAIR**—But it is still early days, therefore, in terms of seeing any outcomes. We have not seen any evidence of countries that might behave in a way that we would not approve of actually changing their policy or releasing people that were perhaps locked up that we would want to see released or things of that sort as a result of the approach? I am not saying you are doing it incorrectly; I am just saying, ‘Is it too early to tell?’

**Ms Bird**—It is sometimes hard to point to direct correlations between activity and outcome but a few things have happened of late which have been very encouraging. China has now signed on to the International Covenant on Economic, Social and Cultural Rights; that is something that we have been pushing for for some time. They have, of course, recently released a very high profile dissident. As I said, it is not necessarily possible to point to a direct correlation between action we undertake and outcomes. In fact, with a lot of these issues, particularly individual cases, we have found it is best not to talk too publicly about what we are doing because we feel that is not the most conducive way to ensuring that there is, in fact, an outcome. But it really is a process that is in train that we believe is a productive means forward.

**CHAIR**—Thank you.

**Mr HOLLIS**—Ms Bird, could you tell us—this is a general question—how you view human rights in the region? Do you think they are getting better, getting worse, or are they in a neutral state?

**Ms Bird**—As the submission makes clear, we think the human rights situation is varied in the region. There are some areas where human rights do fall significantly short of international standards. One indicator of that—we have actually included it in the submission; it is on page 50—is a chart that sets out the state of regional adherence to the human rights treaty instruments. You will see from that that it is a fairly patchy—

**Mr HOLLIS**—What page is it on?

**Ms Bird**—Page 50 and 51. We have put down the major human rights instruments and the state of ratification in the region. Interestingly, the Convention on the Rights of the Child is the one that has pretty much complete regional adherence. But for the other human rights instruments, as I said, it is much more patchy. There are signs like that which are indicators that, clearly, there is still more work to be done on a range of human rights issues, but it does vary very much from country to country.

**Mr HOLLIS**—But isn’t it true that all governments pay lip-service to human rights? It is like adherence to universal declarations; some countries even have it in their constitution. Everyone pays great lip-service to human rights until they are actually tested on human rights, and then suddenly their words do not count for very much at all.

**Ms Bird**—That is in fact one of the reasons we are putting a lot of emphasis on

the institution building factor, because it really is important to have in place effective institutions which guard against difficulties and problems that might occur in the human rights field. We have certainly found that that is one very effective way of ensuring that there is some follow-through and that rhetoric in fact is put into action, that words do match, and that the deeds do match the words. That is a promising area. There has been quite a lot of movement over the last year and a bit in the region, and it is one where we do see movement.

**Mr HOLLIS**—One criticism of Australia—it is under the former government and under the current government—is that we tend to pontificate to other countries about human rights. Bearing that in mind—I know that many countries have rejected that, and both the former government and this government, I believe, have taken a strong stand on human rights—what sort of message do you think was sent to our Asian region by Australia's refusal to agree with the human rights condition applied to the trade agreement with the European community?

**Ms Bird**—As you know, that was satisfactorily resolved with an outcome that put in place—I am not sure of the exact name of the document—a joint arrangement with the EU on that issue. This government and previous governments have consistently said that both human rights issues and trade interests are worth pursuing, but we do not think that to tie the two is a productive way forward. That has been a consistent government position.

**Mr HOLLIS**—You do not think we could be accused of being slightly hypocritical? You do not think it is a little bit the case that, as I outlined in my second question, Australia is very ready to pontificate on human rights and how other countries should adhere to human rights standards, but when we are put to the test and asked to adhere to a treaty, we somehow say that—the message that we send out—our human rights performance is beyond reproach? It was rather like Stuart Littlemore on the television the other night—everything was beyond reproach and there was no need for us to adhere to it.

**Ms Bird**—As I said, it was the confusion—the tying together of the two things. We made it quite clear that we had no problem with our human rights record being scrutinised and our performance being held up to account. It was the linkage between human rights and trade. We do not think a choice needs to be made between human rights and trade. We pursue both issues in the most appropriate means on a country by country basis. This government and previous ones have always been opposed to tying those two issues together in that way. We did explain that. We feel that that was understood both with the EU, where we finally came to an accommodation, and more generally.

**Mr PRICE**—Aren't those statements made in relation to trade and human rights with countries whose human rights we seek to improve?

**Ms Bird**—Yes, indeed.

**Mr PRICE**—Does that imply that Australia has a fair way to go in improving its own human rights?

**Ms Bird**—No. We feel we have a very good human rights record. We are opposed to the linking of the two issues—human rights and trade issues—in the way that was proposed in that framework agreement.

**Mr BARRY JONES**—I would like to ask you to address the minister's speech on 27 August 1997—Ms Stokes might like to comment as well—under the heading 'Promoting good governance and human rights through the aid process'. Let me declare an interest: I regard myself as an almost fanatical opponent of the concept of good governance because it seems so absolutely totally meaningless. If you met good governance on the road, how would you recognise it? What are its characteristics? I know it is a buzz word that came out of the IMF but now it is spreading like herpes.

I was at a UNDP conference in New York at the end of July and it was very interesting when I talked to delegates and raised some criticism—for example, the Spanish said, 'We are glad you raised it because there is no term in Spanish for governance. We do not know what it means.' The French said, 'There is no term in French. We do not know what it means.' The Arabs said, 'There is no term in Arabic. We do not know what it means.'

**CHAIR**—Mr Jones, you are provoking me almost to respond to some of those statements!

**Mr BARRY JONES**—The difficulty is that, by using it as a kind of a grab bag, it is so broad that it covers what we think of as government—it covers management and it covers resource allocation. Is there anything that is not included in good governance? The term is so vague that I think that if you say, 'Here is our priority No. 1. Here is the key theme' it may in fact give a coded message to say, 'We don't know what it means and perhaps it is not too significant after all.'

**Ms Stokes**—You are certainly right that 'governance' is a very oft used expression these days, and certainly in the development field. We think we know what it means. I think one way of looking at it is that it draws attention to some of the lessons we have learnt from many years of development effort that, unless the policy setting is right and appropriate, the best aid efforts in the world will be wasted if the developing country government itself has not made the right policy choices and put its resources in the right direction. It focuses on that element of the development debate, and that, we think, is extremely useful. When you look at government policies, you also look at their capacity to implement those, and you also look at the extent to which they are meeting the needs and are in touch with the concerns of their own communities.

You are right in the sense that it is very broad and it is a catch-all but it approaches a range of development issues very much head-on that have not been touched head-on in the past or, if so, were touched on only indirectly. We think that it is a quite useful framework and perhaps the reason that the Simons report did not recommend it as a sector is that it is probably a cross-sector issue. In that sense, they are probably in-line with your thinking. The government thinks it is of sufficient importance as a relatively new area that it justifies being considered on its own as a sector. That is one response for you. Perhaps you would like to elaborate, Peter.

**Mr Zoller**—There is not much more I can add to what Deborah Stokes has said. I will, however, say that in a discussion I had in the Development Assistance Committee of the OECD earlier this year, neither the Spanish nor the French seemed to have much trouble—I forget the terms they used—expressing themselves in terms of what good governance is.

There is a general recognition on the part of all the members of the DAC that this is a key issue now in terms of development and a recognition that a lot of the ineffectiveness of aid in recent years, where aid has not succeeded, can be put down to poor governance on the part of the recipient country.

The World Bank has been taking the lead in this in recent years and has learnt from the lessons of the past. It has done a lot of empirical work which shows that where governments do take responsible fiscal action, where they do accord with what are called the structural adjustment programs which are put in place by the IMF and the World Bank and where they recognise the responsible limits of government action, the performance in terms of economic growth in those countries has generally been substantially better, and the link between aid and impact has been substantially better.

There is a recent article by World Bank authorities—and I could make a copy of that available—by two World Bank staffers, Burnside and Dollar, who have shown this quite emphatically—the lesson being that where there is good governance, aid is effective.

**Mr BARRY JONES**—Is there anything that is not included in good governance?

**Mr Zoller**—Good governance covers anything which is considered to be the responsibility of government. I think the issue there is the extent to which governments should be responsible.

**Mr BARRY JONES**—Yes, but is it not being used now in a way that is far more than government activity?

**Ms Stokes**—Yes, it is. In essence to have good governance, you also need a vibrant civil society that keeps government honest, so you have that tension there. So it is the other side of government. I am not sure if I can give you a precise response to your

question 'Is there anything not covered by governance?' You are probably right. In a sense it is a cross-sectoral issue; it is a cross-cutting issue—so you are probably right.

**Mr BARRY JONES**—Will we be using the word 'vibrant' all the time as an adjective, just as we use the word 'good'?

**Ms Stokes**—If you like.

**Mr SINCLAIR**—Could I intrude, because I know Barry's commitment on the use of this particular word. If you had what you call bad governance, and a free press, would you have the same outcomes?

**Ms Stokes**—I think a lot of these issues take years to resolve in any society, as they do in our own. You would not have an automatic outcome of something positive in the short term. But we would be hopeful that over the long term it would be a better outcome than bad governance without a free press.

**Mr SINCLAIR**—While I do not completely agree with Barry, the point I am making is that there are factors in a society other than governance alone. Quite often you have in Western societies—if you would like to categorise them as such—elements of less than good governance. I worry about the quality of description because there are other elements in trying to get positive outcomes—some economic, some social—and that is the problem in the whole human rights debate. It is not just a matter of identifying one encapsulated concept. It is far wider and governance is only part of the dimension. That is where I, to a degree, support Barry's point.

**Mr BARRY JONES**—You might think it was taking it too far, Mr Chairman, but I would like to invite the four people at the table to get a blank piece of paper—Ms Stokes rationally said that she knew what good governance is—and put down four definitions and see whether the four definitions were identical. I would be very doubtful that they would be.

**CHAIR**—I would probably agree with you, Mr Jones, but I think we might pass on that opportunity in the interests of time. Perhaps we could move from some of the general issues we have been talking about and address some of the individual countries.

**Mr PRICE**—Before we do that, I notice you quote Anwar Ibrahim in your submission. Is it possible to get a copy of the full speech he made from which that quotation comes? Do you think that Anwar's view is one that is shared in the region? Are we making any progress there?

**Ms Bird**—We can certainly get you a full copy of the address from which we quoted. The issue of Asian values or universal values is an ongoing debate. There is not one common, single approach in the region on that issue. You have different statements

from different regional leaders and commentators from time to time.

As I said, the Australian government is very clear in terms of the universality and indivisibility of the basket of human rights. Our position has been pretty clearly articulated on that for some time. As I said, it is impossible to say that there is one single, regional approach to that issue. Some countries in the region have come out strongly, backing the Universal Declaration on Human Rights, for example. Others have suggested the possibility of review. There is not a consolidated single position on that issue.

**CHAIR**—But perhaps the fact that Anwar's view clearly is at variance with Prime Minister Mahathir's view makes it particularly interesting?

**Ms Bird**—It further underlines the point that there is not a concerted approach. Even within countries there are often different approaches to that issue. For example, in the submission we also quote statements that were made from the Asia-Pacific forum of the regional human rights institutions. They very strongly came out on the universality side, even though some of those are based in countries where from time to time some significant figures have said other things. So there is not necessarily a single, coherent, solid view on that, even within countries. It really is still a debate.

**Mr PRICE**—Do you think the cutbacks to HREOC and to the Ombudsman have enhanced our human rights record, given the propensity to pontificate that Mr Hollis referred to?

**Ms Bird**—I understand you will be talking to Attorney-General's later today, and they can tell you a bit more about what is happening in terms of the restructuring of HREOC. From our perspective, they are playing a critical role in the region on the human rights institution building side, and we have provided funding for that. They have been extremely active, engaged and successful on that score.

**Mr PRICE**—That is a very good answer. I do not know if it is the answer to the question. If Australia is attacking its own human rights institutions by squeezing their lifeblood—money—does that enhance our reputation in the region?

**Ms Bird**—As I say, Attorney-General's will go through that, but we would dispute the basic premise of your question. What has happened has been some restructuring and reorganisation of HREOC's functions, as I understand, a division and change of responsibilities. But certainly—

**Mr PRICE**—So that has been welcomed by HREOC?

**Ms Bird**—I cannot speak for HREOC or for Attorney-General's. All I can say is that my understanding of the facts is that there has been a reorganisation and a restructuring. From our portfolio's perspective, the critical role they are playing in the



region is a very important and valued one.

**CHAIR**—I take up Mr Price's point. Even though it is somebody else's responsibility, you are saying that, from your perspective, you do not see the changes envisaged in HREOC as having done damage to our image in the human rights area in the region?

**Ms Bird**—Most certainly not, as far as I am aware. It certainly has not hindered what they are doing on our behalf, no.

**Mr PRICE**—You have not cut back the money on what you are doing? There is no change to that?

**Ms Bird**—No.

**Mr PRICE**—And compliments to you on that. Would you make the same comments about the Ombudsman?

**Ms Bird**—I am not aware of it having caused any difficulties at all in the region. I am not aware of any comment on that from others.

**CHAIR**—We will now turn to the topic of Indonesia. Obviously, Indonesia is not only our nearest and largest neighbour, but a very significant size country. There have been over the years a number of concerns from Australia's point of view, the most visible of which is East Timor. Despite the improvements in areas such as poverty reduction and illiteracy in Indonesia, a number of human rights problems are causing concern. You say that on page 19 of your submission. Could you expand on your comments about increasing levels of abuse in some categories of civil and political human rights—for example, in attacks on the Indonesian Democratic Party or prosecutions under the anti-subversion laws and so on?

**Mr Cox**—If you look at the broad trend of the human rights situation in Indonesia over the last 30 years, it has undoubtedly improved. With increasing economic growth and the spread of that growth down through the economy and across the country, if you compare the human rights situation today to that in the mid-1960s or even in the 1970s, in the early time of the new order, it is inescapable that the incidence of abuse and problems of police and armed forces abuse of the population have improved.

Nonetheless, there are oscillations around that improving trend line. The human rights situation does tend to ebb and flow. I think that comment in the document refers to the situation that occurred around the time of the storming of the PDI headquarters in July 1996. At that time, there was an increased incidence of cases brought against political opponents of the government who were brought to trial for offences against the government. That was seen as a rising incidence of political action against opponents of the government. That is really what that was referring to in the statement.

I do not think that there has necessarily been an overall cyclical downward trend that is going to stay down. We just saw an increase in political cases brought against opponents of the government. As you would be aware, Megawati Sukarnoputri had a number of actions brought against her in the courts which were subsequently unsuccessful. As well, Budiman Sudjatmiko, the leader of the PRD, a human rights and political NGO, had a case brought against him and he was sentenced to prison for eight years.

We have seen in the wake of that incident a number of cases. The point about that is that the government, in taking action against its political opponents, now is quite firm in taking action through the courts. There is very little evidence of what might have been the case 20 years ago of extra-judicial action against political opponents. It is the norm now that these actions against certain political opponents are taken through the courts. Those who have objections to government policy often air their views, using the court venue as a way of doing so. This is often what then gets repeated and reported in the media. It is as often reported in the Indonesian media as in the foreign media.

We are seeing a lot of the human rights debate in Indonesia played out through its own media and through the international media in a way it was not 10 or 20 years ago. It is another sign of the human rights debate having matured to quite a large extent in Indonesia.

**Ms Bird**—Indonesia does also have its own national human rights commission, Komnasham, which has also been an active player on the Indonesian scene over the last few years and is perhaps another new element in the Indonesian equation.

**Mr Cox**—I would agree with that.

**CHAIR**—Would you like to comment on East Timor and what is happening there?

**Mr Cox**—The situation in East Timor is essentially one of political and economic development. The government has instituted a very rapid economic development situation. Unfortunately, I think many of the people of East Timor have to some extent become the subjects of development in which they do not feel part of the situation and are unable to direct the economic development to their own ends.

What we have seen, particularly in the last decade through rapid economic development, is that a lot of people—as has also happened in other parts of eastern Indonesia—are feeling marginalised. In certain ways those feelings have manifested themselves politically because of the separate and different nature of East Timor's political integration within Indonesia. That has provoked anger and this marginalisation is then expressed in political ways which, in turn, then provoke the government and the armed forces to crack down at various times, which then provokes a sort of cycle of violent activity, particularly amongst the youth.

The situation in East Timor has become much more difficult since about 1988 or 1989, when a number of the young people who were educated in Java returned to East Timor searching for jobs, and found that the jobs were non-existent. It has also mirrored the opening up of the province, which was something that we encouraged internationally because we thought it would make the province more transparent, but, at the same time, it opened the province to other people from throughout Indonesia. That has meant that the economic opportunities for East Timorese have shrunk as the more aggressive, perhaps more commercially savvy people from Java, Kalimantan or South Sulawesi have entered the market, helping to marginalise people searching for employment and opportunities there.

The government gives civil servants in East Timor a supplement, which means that the economy is quite buoyant, albeit off a low base, and this means that economic opportunities for those who are capable are quite large but, again, this tends to attract non-East Timorese. In this context, a lot of anger is expressed towards the government and its agents and others. This then provokes a cycle of violence at various times.

Overall, the government argues that a reduction in the level of the armed forces presence in East Timor would be a key to reducing this cycle of violence born of this economic marginalisation. One of the real problems of East Timor is that, given the history of the place, the size of the military presence relative to the population is probably larger than in other parts of Indonesia.

This statistical fact of the number of soldiers per resident means that more naturally the population are going to brush up against the East Timorese populace, and this causes human rights problems, particularly in the villages and so forth, particularly when you consider that no-one in East Timor was used to the nature of governance down to the village level involving civilian and military officials—down to all levels of society, as occurs in other parts of Indonesia. This was something that was just not found in the Portuguese colonial times when, essentially, other than in Dili and the church presence throughout the province, there was very little presence of the colonial power of Portugal.

As part of Indonesia, there is now a very different system of governance, with a quite close management of all levels of society. This grates with the East Timorese people and is a cause of friction. That is a source of human rights problems in East Timor, and this is why both the previous government and this government have continually advocated a reduction in the military presence as a key way of reducing human rights abuse.

**Mr BARRY JONES**—I just note in passing the use of the word ‘governance’ as a simile for government!

**Mr Cox**—I am sorry.

**Mr BARRY JONES**—You referred to the ratio of troops and civilian population.

Have you some sort of benchmark figure as to what you think the current ratio is? I mean, what is the overall estimate of the population in East Timor and how many troops are there?

**Mr Cox**—I have not done a precise troop to person ratio to say, for example, that there is 3.5 population to one soldier.

**Mr BARRY JONES**—You actually referred to it though.

**Mr Cox**—We have done some comparative studies in the past. One indicator is as follows. In East Timor there are 13 districts. As you know, in the Indonesian system, for each civilian government district there is a military district. That goes down from the district level below the province to other levels of government and to the village level. Each of these is peopled by a military officer and a team of staff, and this is for a population in East Timor of around 800,000. If you go to the neighbouring province of East Nusa Tenggara, with a population of 3.3 million people, there are only five district level governments, rather than 13, with a military level.

We have not done the numbers there but what that means is that when you look at the Indonesian system of governance, with its military shadow administration through the province, you can see that there would be a lot more military officers and men at all levels throughout the province because of the larger number of district governments. That is a legacy of the Portuguese administration that the Indonesians did not change. As I said, in East Timor there are these 13 district level governments with their shadows whereas in East Nusa Tenggara, with more than four times the population, we find the same structure but far fewer military people.

**Mr BARRY JONES**—With the way it is structured, I can see that what you are talking about makes it very obvious and it sticks out. But are we talking about large numbers of military personnel? I mean, are we talking about single thousands, tens of thousands or what sort of figure? The second thing that you might like to deal with is the cops. Is there a different kind of police structure that is civilian in nature? If so, who runs that? Is that run essentially from Jakarta? Is it centralised or regionalised? What is the relationship between the cops and the military?

**Mr Cox**—The police are part of the armed forces. ABRI includes the national police so it is all part of the same thing. We estimate that there could be up to 16,000 or 17,000 armed forces personnel, including police, in East Timor. I think I gave you that figure when we last met and Mr Price asked the question so it is about the same. That is how many we think are there but it is very hard to estimate for sure. The police are run essentially the same as the armed forces. It is all organised nationwide, with all reporting, ultimately, to Jakarta.

The armed forces commander in East Timor reports to a regional commander in

Bali and the regional commander reports ultimately to Jakarta. So East Timor is within the Bali command for the army and also for the police, which is run on a separate basis. So they all report through separate commands through to Bali and they coordinate closely. Since the Dili incident—or the Dili killings—in 1991, the police in East Timor have been successively given a much greater role in crowd control and crowd management.

In fact, I think it would be true to say that the situation in Dili in terms of crowd management and crowd control reaches the levels of sophistication that they have in Java, which is obviously greater than in other parts of the country in terms of equipment, training and attempts by the commanders to keep the men more disciplined and controlled and to manage the situation with tear gas and riot control equipment and so forth. There is a greater role for the police, particularly in East Timor. That is in terms of numbers and the role of the police. Were there other things?

**Mr BARRY JONES**—No, that is really essentially it.

**Mr SINCLAIR**—I have three areas I want to cover. The first is that my impression was that with the previous governor, Gonzales or a name like that, who was East Timorese, there was a greater measure of East Timorese involvement in the governing of the province. Is that true, or is it just a perception? Under the present governor, has the military and the central government from Jakarta now asserted itself to a greater degree and, consequently, are the day-to-day ordinances and regulations more dictated from outside. Is that true?

**Mr Cox**—The governor of East Timor since integration has always been an East Timorese. The number of East Timorese district level regents, as they are called, or bupatis, has increased. It is now 10 out of 13. There has been an attempt by this government—and that is another thing that we have encouraged through our dialogue with the central government and the East Timorese administration—to encourage more East Timorese officials to be appointed and to have roles throughout the government.

**CHAIR**—It is all part of the good governance practice.

**Mr Cox**—I do not think it is necessarily the case that there are more non-East Timorese now than before. If you look at the early stages of integration, from 1976 through to 1986, I think you will find that there is evidence of a lot more non-East Timorese officials at that period in the government than now. I think that the government, both centrally and at provincial level, is doing all it can to find as many East Timorese to fill government offices, government slots, in the provincial government and in the regent or the district governments as it can.

The influence of non-government people over the provincial government, perhaps business people—as I said, when the province was opened in 1989 it led to an influx of people from outside the province: business people, contractors, people with economic

interests—may well have grown in the last five or 10 years. Those are the people who often have a say over how government policy is made. They have the ear of the governor and of senior officials. The role of those people in East Timor's political economy has certainly grown. In that sense, maybe that is right.

**Mr SINCLAIR**— The second area was in the field of criminal trials. Are they the same in East Timor? Are they essentially military trials? Are the court processes reasonable in allowing some voice on behalf of the accused? Or are they perfunctory in their character?

**Mr Cox**—No. The trial system in East Timor is the same as that nationwide. The prosecutors and the judges are all members of the department of justice and the Attorney-General's department. The system is the same. Civilian matters are not tried by military officers, so the system is the same. There are weaknesses in the civilian trial system, perhaps in that the procedures do not have the necessary sanctions behind them if they are not fully met by the prosecution from time to time. But it is a civilian system rather than a military system in East Timor as much as in other parts of Indonesia.

For example, Xanana was tried in East Timor by a civilian judge, involving a civilian prosecutor from the Attorney-General's department. Obviously though, sometimes the linkages between government agencies—between the military and the civilian authorities—are there. Obviously, as in any government, there is a lot of interchange between various arms. But, to all intents and purposes, he was tried according to civilian law.

**Mr SINCLAIR**—What about the quality of the defenders? Do they have counsel or are they defending themselves or is there a—

**Mr Cox**—They can elect to have counsel. Under the Indonesian criminal procedures code, they should have counsel from the time that they are arrested. Sometimes, as I said, this does not always necessarily happen but, normally, it should happen that they have counsel. There is a wide range of human rights and legal rights groups in Indonesia which are actively defending cases of political and other offences in East Timor. In fact, there is a foundation for legal aid in East Timor to which the Australian government has contributed \$30,000 for helping to defend cases that have come up in the East Timor courts to fund counsel for accused persons.

**Mr SINCLAIR**—Some recent visitors to East Timor, people that were there only a matter of weeks ago, say that in their perception the real problem is with the East Timorese getting jobs. Part of the problem is that so much more money has been spent in East Timor as a province than elsewhere but a lot of it is being administered and directed by Indonesians from elsewhere. Quite apart from the migration for economic purposes, would you see any substance in the fact that there is just no feeling of opportunity for the Timorese people themselves in the ordinary expenditure towards good governance or

towards the administration of the province?

**Mr Cox**—That is very much the source of much of the frustration of the East Timorese people about their lot. Traditionally, I think they were brought up to believe that if you got an education and you got ahead in life you would get a job with a government agency and that that was the way forward to social mobility and improvement of your lot. The size of government is limited and I think a lot of the East Timorese are not very keen on working in government or in the private sector in other parts of Indonesia, although the Indonesian government is trying to encourage them to find and seek opportunities in other parts.

Certainly, I think that they feel that the lack of job opportunities in government and then they have the feeling that they are being squeezed out of a very competitive economy that is run by people from outside the province. We have seen that a lot of the problems in the last two, three, or four years in East Timor have been problems of East Timorese conflict with Bugis, people from South Sulawesi, or from other provinces. The police come in and break it up and there can then sometimes be some sort of element of a problem with the state. But often these things start as inter-ethnic tensions. We have actually also seen that in Flores and in other parts of eastern Indonesia. I think that arises from economic frustration, a feeling of marginalisation that is the source of much of the problems in East Timor today.

**Mr SINCLAIR**—What about education? Is the education of the East Timorese of the same level as elsewhere, or are they still having problems because of difficulties that arose because some of the former administration wanted to teach in Portuguese and there were problems with language and opportunities for the young?

**Mr Cox**—As in other parts of Indonesia, the government now is moving towards, at primary level, teaching the primary school students the local dialect, which is Tetum, in the first five years of school, as well as Bahasa Indonesia. The system of education in East Timor is the same as nationwide. Again, it is a curriculum determined from the centre, from Jakarta. To some extent, while that is good, it reflects an attempt nationally to raise the level of education standard in East Timor, and we have seen that standard raised as many more have gone on to tertiary education and polytechnics or to universities.

But the problem, to some extent, is that, because it is centralised, sometimes it does not meet the specific needs of the East Timorese as well as it might. So while a centralised curriculum and teaching system can be good to raise the level of the overall economic situation for people, it can also have the problem that it tends to miss the specific problems of development that East Timorese people have. That is a sort of double-edged sword of educational development in East Timor.

**Mr PRICE**—I suppose we have mostly questioned you about what the problems are in East Timor, but you have offered one solution, which was a reduction in terms of

the number of military personnel in East Timor. Does Australia have a view about what other elements may be part of a solution in East Timor?

**Mr Cox**—I think we always say as well that more opportunities need to be given to the East Timorese to run their own affairs. Not only does that mean that they should have a stronger role in government, but that we should encourage the Indonesian government to try and find ways to strengthen the political economy of East Timor so that more East Timorese can perhaps develop businesses in East Timor, can run their own economic life.

There are some well-known East Timorese entrepreneurs in East Timor and a couple in Java. But those people need to be given more wherewithal and encouragement to try and boost the economic situation of the province, employ more young East Timorese and give the East Timorese people more of a sense of ownership of their own resources. So it is not just a matter of encouraging more of a role for them in government—I think that is there, and that we encourage more of that—but perhaps it involves more of an element of affirmative action, to some extent, within the Indonesian context.

It certainly perhaps involves also reconciling themselves with the main institutions of society that the East Timorese respect, such as the church, for example, and attempts to meet the church halfway. Those are some of the other elements that we strongly encourage. Certainly in the minister's dialogues with Ali Alatas, or in the visits of the ambassador to the province and those of embassy staff, both from DFAT and AusAID, which are very, very regular, that is the sort of thing that we continue to encourage.

**Mr PRICE**—Three months ago, the minister issued a press release about micro-credit. Do we actually provide any assistance by way of micro-credit to achieve the very things that you are talking about?

**Ms Stokes**—Your questions are in relation to Indonesia?

**Mr PRICE**—In relation to East Timor.

**Ms Stokes**—I will need to ask my colleague from the Indonesia program to come forward to answer that.

**Mr PRICE**—And Indonesia, for that matter.

**Mr Huning**—We do not have micro-credit project activities specific to East Timor. We do have it in Indonesia in a number of locations and there is no exclusion of East Timor from that in due course.

**Mr PRICE**—What does that mean—you are currently working on the proposals?



**Mr Huning**—At this stage there is not a micro-credit activity active in East Timor, but the project design does not exclude it.

**Mr BARRY JONES**—I want to go back to what Mr Cox was saying when he was talking about greater opportunities for work. It has just occurred to me that there is a kind of eerie resemblance here to the argument that was put about the Baltic states, for example, where it was said, 'You have to accept the reality: the Russians are never going to leave. The most you can hope for is to try to maintain some recognition of local culture or entity. If the Russians come in, they will bring expertise and they will bring the same dazzling success that they have had in their own economy.' Do you ever think of that parallel? And, if you do, does it make you feel a bit uneasy?

**Mr Cox**—I do not think of that parallel. But, whatever the case may be, I think, for East Timor, the economic reality of Java will always loom large. Java and Bali are islands of 120 million people. They are an enormous market and they have enormous pulling power and I think the orientation for economic growth, economic development, and opportunities for the future will tend to come from Java. The nearest place in Australia is Darwin. With a population in the Northern Territory of 200,000, a very sparsely populated part of the world, it will never have the market attraction or capacity to generate growth the way Java that will.

**Mr BARRY JONES**—I think you have answered the question: you see an absolute parallel but the only thing is that things changed so far as the Baltic states were concerned.

**Mr Cox**—Yes.

**Mr PRICE**—You have not commented on the Mandela initiative. Do you see much prospect for success there?

**Mr Cox**—We certainly welcome the role of President Mandela in the process. We think that, as a senior statesman, as a man of great experience and years in South Africa in coming together with the South African government to resolve apartheid and bring South Africa to democracy, he has a high standing. He has a high standing with Suharto and that is important.

However, as things evolved, the early stages of his initiative, after his visit, became very public. I think we were concerned then that, because of the way it was being managed, it seemed to give the process little prospect of a future. President Mandela met with President Suharto again last week and he was very careful to withhold any statements. If that process of dialogue with President Suharto were to bring about any change or any improvement in the situation or bring about a political situation which would be satisfactory to all the parties involved—that is, the East Timorese, the Indonesians and the Portuguese, because, ultimately, it all leads back into the UN

processes—then that would be an outcome that we would welcome. At this stage, it is too early to vouchsafe what that outcome might be.

**Mr PRICE**—Do you think the good governance of Indonesia is sufficiently strengthened or improved to cope with a post-Suharto era?

**Mr Cox**—I certainly think the governance of Indonesia can continue to be strengthened. What we have seen with economic development has been a realisation of a need to strengthen some of the key institutions of the state, particularly greater transparency and rule of law in the economic field. As the economy has become more sophisticated, as companies have needed to develop more elaborate legal frameworks to try to raise money—including through the development of the stock exchange—we have seen a realisation that the rule of law and legal systems have not been strong enough and have not been effective enough. I think that is something that the World Bank and other institutions have also been reinforcing with the Indonesian government, and I think there is a strong realisation of that in the Indonesian government.

We cannot vouchsafe when the Suharto era may come to an end but I think that, through increasing the size of the commercial class and the middle class, there has been a realisation that a number of things need to be improved in Indonesia's governance of economic development. I think that is one factor that will tend to assist Indonesia to transform itself in the post-Suharto era. There is some way to go, and the Indonesians themselves would admit that.

**CHAIR**—I think we will draw the line on Indonesia for the moment.

**Mr Cox**—Thank you.

**CHAIR**—I would like to move the questioning to issues that are more prevalent in the areas of south Asia—India, Bangladesh and Pakistan—and deal with the issues of women's rights and child labour. One of the things that your submission did was to express concern about the general state of human rights in Pakistan, particularly relevant to action by the security forces, extrajudicial executions, problems with ethnicity and violence, denial of women's rights and child labour, which is a major problem there. Child labour is also a problem in India and I think a number of the same sorts of concerns can be expressed about Bangladesh.

Could you give us some more detail and perhaps provide some statistics about the level of abuses that are occurring in some of those countries, under those various headings, and perhaps draw some comparisons and talk a bit about programs that are in place to address them.

**Mr Potts**—It is clear that in all three countries—India, Pakistan and Bangladesh—there is the systemic problem of child labour. At national level, governments accept that

there is a problem. They have legislation in place and they have a system of factory inspection and so on. That is the structure that is set up. At the same time, obviously, there is a continuation of traditional practices, which have been ongoing, and abuses continue to occur. I think, between the three countries, we can give you further statistics but I do not think there is a huge difference in the incidence of child labour. It is broadly of a regional pattern.

The problem, of course, is how to focus national governments on treating it as a high priority, given other high priorities that crowd their development agenda—the questions of poverty and so on that are all interconnected. As a government, we have certainly been engaging them on the need to improve their approach, especially to child labour. We have a clear recognition that this is going to be a long-term process and that you do not get quick runs on the board.

We are committed to working with the governments in these three countries and, more broadly, as well, on child labour. As to the detail of your question, especially about the level of incidence of child labour, we owe you, I think, a more detailed response and we will do that.

**Mr SINCLAIR**—Just on child labour, can you look at the age at which children are being recruited? Are they still recruited almost as soon as they can walk or are they getting a little older? Can you also look at the basic education issue.

**Ms Bird**—Deborah Stokes will be able to add to that. She led an Australian delegation to a recent conference on child labour in Oslo just last month. The aid program is obviously very active in this area as well.

**Ms Stokes**—It is an area that we have given some attention to in recent years. As you would appreciate, it is a very complex problem that combines a range of economic factors, primarily poverty for the families concerned but also some cultural issues.

In relation to the countries that you have mentioned, I probably should also mention that last year we funded a study of child labour issues in the region. We would be happy to make copies available to the committee and that provides quite a lot of data about the problem. Also, international attention on this issue has grown, so there is a lot more information around about the dimensions of the issue.

Through our own program, obviously, support for basic education represents a core of our approach to this issue. In the three countries that you have mentioned, most of our activity in this area is in India. Our program in Pakistan is a very small program. This financial year our country program is only \$2.3 million, so there is not a lot of room for new initiatives. But I do understand we are having discussions with UNICEF about possible participation with them in supporting some child labour related activities. That is where Pakistan sits.

In relation to India, we are funding a \$10.4 million program over several years aimed at primary education and very much directed at vulnerable children in three states. That is probably one of our major activities in this particular area. There are a number of other activities on a much smaller scale in India which are working with local communities to address this issue. I am not aware myself of information in relation to Bangladesh. We do not have the South Asia people here with us today, but if there is something significant that I have missed we will certainly provide that to you in writing.

**CHAIR**—How do we deal with the argument that most of those countries advance when you raise this issue that the economies would collapse if you did not have child labour? Everybody says, ‘Yes, it is a terrible thing and it should not happen.’ Nevertheless, as I have experienced it, that argument is always advanced. How do we tend to respond to that?

**Ms Stokes**—I think this issue was obviously at the heart of discussions at the conference in Oslo. What is interesting is the lessons learnt from recent Bangladesh experience. There were trade boycotts, especially driven from the US, of the goods produced from the textile industry in Bangladesh. The effects of that were studied in some detail, and it was demonstrated that the children ended up in much worse situations.

This has been quite a useful lesson for all countries interested in dealing with child labour. It really reinforces the key message that you have to take action on a range of fronts. There is not just one tack you can take on this problem. You need to address education. You obviously need to address economic growth to provide employment opportunities and income earning opportunities for families. You also need to deal with legislation and follow-up to legislation. You also need to address issues on the community front to raise awareness of the issues, addressing things culturally.

This was generally accepted in Oslo. So I think the level of debate has become more sophisticated. Developing countries embraced fully the outcomes of the Oslo conference which required them to take a range of actions to develop national action plans, for example, addressing this particular issue of child labour. I think the debate has moved on and there is a recognition that simple one-line approaches are not going to achieve anything.

**CHAIR**—You will provide us with some of that information?

**Ms Stokes**—We will provide you with information on what we are doing in the program. We will also give you information about the Oslo outcomes.

**CHAIR**—Michael, you will give us statistics?

**Mr Potts**—Yes.

**CHAIR**—What about the other areas that I alluded to in my questions—the treatment of women in places like Pakistan? What evidence have we got that that is improving, if it is improving?

**Mr Potts**—With regard to the treatment of women, the country in the region that is of most concern to us is obviously Afghanistan, particularly with the advent of the Taliban. It is fair to say that human rights and women's rights in particular in Afghanistan have always been pretty poor, but it is not to excuse the fact that under the Taliban the record is even worse. That has had a hugely regressive effect on women's rights there.

We do not have resident representation there so our impact is concentrated essentially through the UN system and we are obviously a contributor to that. It is also clear that the UN itself has had problems in engaging with the Taliban. They have been seeking to have elements of conditionality improvement in women's rights built into their program. There has been the predictable resistance from the Afghan authorities. So that is an ongoing situation of considerable concern to us.

I think with Pakistan some of the same problems are evident, particularly in rural areas but clearly not to the same degree as in Afghanistan. The legal situation for women is significantly better. Most law in Pakistan is based on common law. Women's rights are enshrined in the constitution although there is some variance, such as special representation for women in the National Assembly and so on. I think the situation with women in Pakistan is that elements of the treatment of women do remain of concern to us and we monitor them quite closely.

**CHAIR**—You said in your submission that you have concerns about that in Pakistan. It would be interesting to find out a bit more about the detail of what those concerns are.

**Mr Potts**—In areas of customary treatment of women, particularly at village level, their property rights and their own rights to freedom of expression are essentially very curtailed. It is an age-old situation in many ways. Most Pakistanis are still rural people and the situation of women in rural villages is not good.

**CHAIR**—It was not all that many years ago—and I am talking about three or four years ago—when if a woman in Pakistan complained of rape she had to produce four independent witnesses, I seem to recall, and if she could not do that then she was locked up for infidelity or something of that nature. There was a particular name associated with that law. Is that sort of treatment still in operation in places like Pakistan?

**Mr Potts**—I believe it is. It is the sharia law.

**CHAIR**—Yes, that is right.

**Mr Potts**—Certainly, these incidents of discrimination in the legal system continue to persist.

**CHAIR**—When I was in Pakistan last year we met with the so-called senate committee on human rights, who in their two or three years of existence have produced one two-page very appallingly typed reports. When we talked to them about human rights we did not seem to get to first base on what the subject was all about. On what do we base the statement that we think human rights and the treatment of women and so on is perhaps not as bad as it used to be? Is it not lip service rather than the actuality?

**Mr Potts**—I think the bottom line is that clearly, as a government, we do have an ongoing and significant concern about the position of women in Pakistan. That has always been our position. These things always ebb and flow a bit, especially depending on the notoriety of particular cases and the degree to which you have a flagrant case as opposed to just the day-to-day discrimination against women. Clearly, it is something the Australian government has a strong view on, and the government of Pakistan is aware of that.

**Ms Bird**—It is mentioned in our submission that the high commissioner is obviously very actively engaged in making representation on specific cases and also situations in Pakistan. There is a mention of a meeting that was held in the last few months between the high commissioner and the minister for law and justice in Pakistan and that raised a number of issues, including children and women's issues such as extrajudicial killing. As you would be aware, we are very actively engaged in making bilateral representations, largely on behalf of the Amnesty International parliamentary group, and that also covers situations to do with Pakistan.

**CHAIR**—I suppose one of the reasons for my concern is that, as I say, when I was there only last year, apart from meeting the senate committee, I also met the minister who was responsible for human rights type issues. He just conducted, in my view, a defence of the status quo effectively. I found it very difficult, albeit in a relatively short visit, to see any substantive evidence that things were improving or changing other than the fact that when I had been there five years before they would not even talk about it, whereas at least this time they would talk about it. That is why, particularly in relation to Pakistan on some of those issues, I am interested to know what evidence we have that things are actually on the move.

**Ms Stokes**—One of the key issues in Pakistan is the low level of literacy for girls and women. I understand that the Pakistan government at an official level recognises that as a problem, and it is not unrelated to this issue of child labour. I believe there have been some developments with the Pakistan policy in relation to child labour—much more explicit recognition of it as a problem and certainly policies developed to try to address the problem head on. But it is a question of how much progress has been achieved so far.

**Mr SINCLAIR**—What do we do in terms of negotiation on the broad principle of human rights? You mentioned case by case representations, but do we try to raise this through the United Nations or have we talked about their general practices—or, because they have a religious overtone to much of their practices, for example, where women and children are concerned, do we regard that as something we cannot canvass?

**Ms Bird**—No. We certainly raise the issues bilaterally but, as you mentioned, there are a number of multilateral channels—the issues to do with children that Deborah Stokes has talked about; there have been a number of international conferences; the Convention on the Rights of the Child is relevant; women’s issues; the Commission on the Status of Women in New York. The sort of generic issues that we have been talking about come up in those fora as well as the sort of individual representations we make on specific cases with the countries concerned. So they are aired in a number of fora.

**Mr SINCLAIR**—How would the Americans pursue their intervention? Is our practice of intervening in that way adequate or do the Americans or perhaps the Europeans or somebody else do it more effectively?

**Ms Bird**—Each country has its own way of approaching these things. We certainly have one of the more active programs of bilateral representations, at least of which we are aware. We think that is an important complement to the dialogue that we have with those countries. As you know, we work very closely with the Amnesty International parliamentary group. I think raising matters in the UN and other multilateral fora is important too, because often these are issues which are not necessarily specific to one particular country; they can cut across a number of different countries. I suspect it is a combination of a variety of different approaches and attacks on these issues which, ultimately, are the most likely to bring about success.

**CHAIR**—While we are talking about South-East Asia, could we move it slightly and talk about Sri Lanka—less the LTTE but more government and the government forces? Apart from their military action, you get a lot of reports and claims about the Sri Lankan army and its abuse of individuals. Have we got any evidence of that? Do we do anything in terms of protesting to the Sri Lankan government if we do have evidence of that? Could you update us?

**Mr Potts**—It is quite clear that from time to time there are claims that the Sri Lankan armed forces have committed human rights abuses, particularly in the course of military operations against the Tigers. On the whole these claims are generally not very specific. They tend to be broad brush, but on a number of occasions we have made representations to the Sri Lankan government essentially on behalf of civilians caught up in military operations, reinforcing the need for particular care of their rights lest they be caught up in military operations.

It has been particularly the case in the current military operations in the Jaffna

Peninsula and with a significant movement of civilian populations. So it is a subject that we are aware of and that we do take some care in, and we have engaged the Sri Lankan government on this. We have also got it very clearly in our mind that the various Tamil insurgents over the course of the last 10 or 15 years have themselves committed significant human rights violations. That also is a matter that engages us a lot.

**CHAIR**—At this juncture, given that time is marching on and the Attorney-General's Department is with us as well, I suggest, Ms Bird, that we adjourn your department. I am conscious that we have not talked about almost anybody in ASEAN other than Indonesia. We have not talked about North Asia in any detail—China, Hong Kong, Japan, Korea and so on and so forth. I was particularly looking forward to the contribution of Mr Rich, who no longer is in Laos, but he very effectively hosted a visit that I made there recently.

There are a number of areas that we are still to cover. I do not think extending by 10 minutes will deal with that adequately, so I think we will adjourn and I will ask you to come back on another day. When you do that, we will define the particular countries that we want to discuss so that you do not have to bring quite so many people with you next time, if that would be useful.

**Ms Bird**—That would be extremely helpful for us, thank you.

**Mr SINCLAIR**—Just before you leave, could you tell me if there is going to be an election in India? I noticed that there was some talk about it this morning. It is not specific to this inquiry, but I would be interested to know.

**Mr Potts**—I do not think it is clear yet. The chances are yes, and I think every passing day we are getting closer to an election.

**Mr SINCLAIR**—How long is the process likely to take? If there were to be one, about when would it be held?

**Mr Potts**—I think it takes seven to eight weeks—not too long.

**Mr BARRY JONES**—It won't be a double dissolution, mind!

**Mr Potts**—You can be sure of that!

**CHAIR**—Thank you for coming here today. If there are any matters on which we might need additional information relevant to what we have talked about this morning, we will come back to you. We have already put a few requests. We will also define for you the countries that we want to talk about next time. We will send you a copy of the transcript of your evidence, to which you can make corrections of grammar and fact. Thank you.





[11.43 a.m.]

**BALKIN, Dr Rosalie Pam, Assistant Secretary, Public International Law Branch, Office of International Law, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600**

**CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600**

**SHEEDY, Ms Joan Marie, Assistant Secretary, Human Rights Branch, Civil Law Division, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600**

**CHAIR**—On behalf of the subcommittee I would like to welcome the representatives of the Attorney-General's Department to the hearing today. The reason you got a few comments on being lean and mean is that I think we had 27 from Foreign Affairs and AusAID. We feel that the balance has been—

**Mr SINCLAIR**—It shows the competence of the A-G's department, doesn't it?

**CHAIR**—That is exactly right. We feel the balance has been returned. 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 do so and the subcommittee will give consideration to your request.

Although the committee does not require you to give evidence on oath, I should advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the House itself. I invite you to make a short opening statement, if you wish, before we proceed to questions.

**Mr Campbell**—Thank you, Mr Chairman. I just want to make a very short opening statement, as I understand the committee has questions that it would like to put to us in relation to our submission of 28 October, and to aspects of an earlier letter, from the then secretary to our department, of 3 July.

There are two things that I would like to address by way of opening. The first is to update the committee on some developments in relation to communications by individuals to United Nations human rights committees which have occurred since our submission of 28 October. The issue of these communications is dealt with at paragraphs 10 to 15 of our submission.

Since 28 October, the government has received the text of another communication from an individual. This communication concerns migration law. In accordance with

current practice, a summary of that communication will be prepared and tabled in the parliament after its approval by the Attorney-General.

We also understand that the Human Rights Committee—that is, in Geneva—reached a final decision on another communication at its most recent session, which concluded on 7 November. However, the government is yet to receive a text of the committee's decision in that matter.

Taking these developments into account, that means that seven communications have been made. That means that seven communications, under the optional protocol to the International Covenant on Civil and Political Rights, are at what is called the admissibility stage, and there have been four decisions on the merits. This brings the total number of communications against Australia, to United Nations human rights bodies, to 24.

The only other matter I would like to mention is that the committee may be aware that the rights of the child committee, established under the Convention on the Rights of the Child, heard an Australian delegation on its first report, under that convention in Geneva, on 24 to 25 September this year. It is mentioned in our submission. It occurred to me this morning that the committee might like a copy of the concluding remarks of the Committee on the Rights of the Child which were just received last week. The final copy was received last week.

**CHAIR**—Thank you.

**Mr Campbell**—Those are the remarks which I would like to make by way of an opening comment.

**CHAIR**—I have two questions. The first one is relatively obscure, I suppose. I find it very interesting, in reading your submission, that in paragraph 7 you talk about reporting. We are talking about the reporting under the ICCPR. I note that our third report was due in November 1991 and the fourth report in November 1996. Neither of them has actually been submitted.

As a layman in this legal process, I suppose I am a bit surprised that, six or seven years on, we have not made a due report. Could you just explain why that happens, or why we have been tardy, if we have been tardy? That certainly is how it appears.

**Mr Campbell**—There is no doubt, Mr Chairman, that the reports are late. The process for reporting, up until now, has been quite complex, and it is made more complex by the fact that we rely to a large degree on compliance, with our obligations under our human rights conventions, with state and territory legislation and practice.

What has happened in relation to that is that, for example, in preparing the report

under the ICCPR, or the rights of the child convention, we in fact have to go to the states and territories in relation to many of the articles in the convention, and receive all the information about their compliance with individual articles under the convention. In fact, there are well over 100 separate bodies which are involved and from which we gather information.

The other thing is that we do have the third draft report, which is in draft form at the moment, and we are in the process of preparing the fourth report, which will be much shorter than the third. We hope to have the third report prepared and lodged by the end of this year and, hopefully, the fourth report soon after that. That would bring us up to date in relation to the ICCPR. There is no doubt the reports are late.

**CHAIR**—I must admit I thought six years was a bit much.

**Mr Campbell**—I am not saying this by way of excuse, but we are not the only country late with its reporting. A number of countries are late. I do not have the figure here. I think 150 reports are late. Once the reports are put in, it does take a time for the committee to deal with those reports, because of the number of reports that are before the international committees at the moment.

**CHAIR**—You said yourself you were not making excuses. I think the point that needs to be made is that, as a country that prides itself on its human rights record and stance and as an advocate in international forums, the fact that we do not submit reports on time would damage our credibility somewhat.

**Mr Campbell**—I am not in a position to judge whether it has damaged our credibility or not. Let me give a recent instance. We did recently report under the Convention on the Rights of the Child, a very important United Nations convention. Although the committee in its concluding remarks pointed to a number of areas where it thought there could be improvement, it did congratulate Australia on the detail of the report and the fact that the report complied with the guidelines. It made no adverse comments about the report being late.

**CHAIR**—When you consulted with all those states and hundred or so bodies, was the reason for the delay because a few were particularly recalcitrant or was it a broader problem?

**Mr Campbell**—There can be delays in getting the information from the state and territory bodies concerned and some federal ones as well. They all have their own priorities. There is also the question of the amount of information received. It all has to be gone through; it has to be verified; it has to be put in a form that is suitable for the report. There can be delays in getting information, but I would not say that is the only reason for the lateness of the report. I leave my remarks there.

**CHAIR**—Did you want to add something to that, Dr Balkin?

**Dr Balkin**—I would like to just add a couple of things. Historically, the department has had no dedicated resources for reporting and this has caused a problem. We are putting in place new procedures for reporting. We have been reviewing our reporting procedures in line with the United Nations treaty bodies themselves, who have asked that nations do not put in lengthy reports—as many of them have been in the past—because they simply do not have the resources to translate them and get them around to members of their committees. They are finding problems with that as well and that has partly contributed to the delay.

We are trying to keep in line with the new guidelines under which the main parts of future reports will be approximately 30-odd pages. That should help us. We have to think very carefully about what goes into those reports, but we are hoping that that will speed up the process in the future. That is certainly being done across the board for the reports that this department is responsible for.

**Mr BARRY JONES**—I just want to make it clearer in my own mind. You say that they are talking about an upper limit of 30 pages. Is the problem essentially because the materials to be examined are so voluminous that they take a tremendous amount of time to process? Or are the materials not voluminous at all but somehow it does not have a very high priority, and there are other matters that are seen to be regarded as more urgent and, therefore, the resources are not there and it takes a long time to do? Although you talk about the upper limit of 30 pages, what sort of volume are we looking at? What has the length been of the reports that we have had in the past?

**Mr Campbell**—The length of the reports in the past has been around 600 pages.

**Mr BARRY JONES**—Really?

**Mr Campbell**—Yes.

**Mr BARRY JONES**—Our reports?

**Mr Campbell**—Our own reports have been of—

**Mr SINCLAIR**—Has anybody read them?

**Mr Campbell**—Yes, they do read them very carefully. It is a question of gathering together voluminous materials. The fact of the matter is that we are in a federation where we do rely to a large degree on state and territory practices to give effect to the convention. That, of itself, necessitates that there be a volume of material.

If I can go to the other side, even the United Nations recognises that this is a problem in terms of its own committees dealing with the reports. So, for the most part,

they have asked for shorter reports or more thematic reports. For example, in relation to the Convention on the Rights of the Child, next time we will be looking at addressing more particularly the issues that have been raised by the Rights of the Child Committee in examination of the first report and concentrating on those issues rather than going through each article of the convention in detail and setting out what Australia's compliance is with those articles. It is a problem at the international level as well.

**Mr SINCLAIR**—I want to go into a different area. I want to start by looking at the things for which you say you are responsible and then query areas where I see there might be some human rights connotations. Firstly, you have not mentioned war crimes and their extension. While I know war crimes per se cannot be said to be distinctly human rights, the consequence of a matter being a war crime essentially is because there has been a breach of human rights.

Secondly, there is the child sex tourism matter, for which your department has responsibility. Again, that is perhaps not per se human rights but it seems to me to have a very direct connotation in that children are abused, essentially.

There are a number of other areas where I am not too sure whether you view them in the human rights context. One of them is the ICJ and the degree to which matters appear before it. Do any of them have a human rights connotation? I have not looked at the list of matters that go before the ICJ, but are there matters there that in any way relate to human rights?

Another area, and I want to go into a bit more questioning here, concerns the body that HREOC set up which is called the Asian regional rights association, or whatever they call it. Can I come back to that?

It seems to me there are a number of matters of legislative responsibility within your department which do have some type of human rights connotation. Where are we up to in relation to those issues, particularly the war crimes legislation and the child sex tourism matters? Are there any matters pertaining to either that affect countries in our region that we need to be aware of?

**Mr Campbell**—Perhaps each of us could answer different aspects of that question. I will take the ICJ matter, the International Court of Justice matter. Australia has accepted the jurisdiction of the ICJ and that means that for other countries which have accepted that jurisdiction, they can take a case there against Australia.

In recent years the main cases in which Australia has been involved, if one looks at the contentious jurisdiction of the court, have been the nuclear test case in the 1970s; the case brought against Australia by Nauru seeking compensation in respect of phosphate mining on the island, although that matter was ultimately settled so it did not get to a final decision of the court; and, more recently, the case brought by Portugal against Australia in

relation to the Timor Gap treaty between Australia and Indonesia.

I suppose it depends on how wide one's definition of human rights is. Human rights can be brought up in the case of nuclear weapons and people's right to be free from nuclear weapons, people's right to be free from nuclear pollution in that sense. Certainly, in a broad sense, human rights also came up in the case between Portugal and Australia because the whole question of the right of self-determination of East Timor came up in the context of that case. Ultimately that case was decided on the basis that there was an indispensable third party which was not before the court so therefore the court could not hear the case. That indispensable third party was Indonesia. The Nauru case I would not say raised any issues in the area of human rights.

There is the non-contentious jurisdiction of the court or the advisory jurisdiction of the court and we recently appeared in that jurisdiction in relation to the two requests for advisory opinions in relation to the legality of nuclear weapons—one on a referral from the World Health Organisation and the other on a referral from the UN General Assembly. They also, I suppose, raised human rights issues much along the same lines as I referred to before in relation to the nuclear test case. I suppose that is where I would leave the International Court of Justice.

**Mr SINCLAIR**—Has nobody taken anything to the ICJ regarding, for example, the status of Daw Aung San Suu Kyi and her government?

**Mr Campbell**—In relation to the ICJ the jurisdiction depends upon its acceptance of that jurisdiction by the state parties.

**Mr SINCLAIR**—If Myanmar—

**Mr Campbell**—I am not sure whether Myanmar is a party but if it is not a party it cannot be taken to the ICJ. Certainly there are numerous treaties and another way of giving consent to the jurisdiction of the ICJ is actually through a general treaty, which might be a human rights treaty, which says any disputes concerning the interpretation of this treaty shall be taken to the international court of justice. I suspect that Myanmar is not party to the statute of the court.

On child sex tourism, it is true that amendments to the Crimes Act a couple of years ago deal with child sex tourism and Australian nationals who commit crimes under that act overseas. I might turn to my colleague here because there are developments in terms of a protocol to the Rights of the Child Convention which is intended to deal with that.

**Ms Sheedy**—Australia has been involved in an open-ended working group that was established by the Commission on Human Rights four years ago in drafting a new optional protocol to the Convention on the Rights of the Child on sale of children, child

prostitution and child pornography. The idea of that protocol is to call on states to criminalise activity in this area and to set up a regime for extradition and mutual assistance, rehabilitation of victims and education campaigns, et cetera.

As I say, we have been involved in the working group in the drafting sessions. The next session of the working group is scheduled for the beginning of February next year but it is an open-ended working group and at this stage there is no finalisation in sight on that work.

**Mr SINCLAIR**—On to war crimes.

**Dr Balkin**—War crimes are dealt with in different types of legislation. There is the Geneva Conventions Act and the Geneva Conventions Amendment Act. The Geneva Conventions Act implemented our obligations under the four Geneva conventions—the so-called Red Cross law. They essentially make grave breaches of each of the conventions a criminal offence in Australia and oblige Australia to prosecute for those serious crimes. They are the grave breaches provisions of each of the four conventions. Each one of the four conventions has a separate article making some offences grave breaches.

There are many other acts that are prohibited but they are not covered by the legislation. I am afraid I do not have the dates before me but the Geneva Conventions Amendment Act enacted into law the additional protocol No. 1 to the Geneva conventions. That is a 1977 protocol to which Australia became a party that deals with international armed conflicts and that extends quite extensively the Geneva law. As far as I know there have been no convictions under that legislation but I can check for you.

**Mr SINCLAIR**—The real thing I was getting at was Pol Pot. He seems to be one of the figures in our region—and we are looking into human rights in our region—who is the sort of person who could easily be said to have breached these human rights conventions. There has been a bit of talk about it but I did not know whether you had a particular view on that.

**Dr Balkin**—We have not looked at it, but we could possibly cover that under the Geneva Convention's legislation because it applies across the board. It is not limited to acts in Australia, so it can apply to acts committed abroad. It is not limited to prosecuting Australian citizens, but of course it would be difficult for us to exercise that legislation unless the accused was brought to Australia.

**Mr SINCLAIR**—So there is no move of which you are aware and on which Attorney-General's has advised with respect to any war crimes type prosecution being considered with respect to Pol Pot?

**Dr Balkin**—There is a matter on hand at the moment. It is a matter that came before the Refugee Review Tribunal. It does not involve an Asian situation. I understand



there is an applicant for refugee status currently in Australia who admitted to the tribunal that he had participated in acts in the Sabra-Shatila camps in Lebanon. The issue there comes up as to whether he should be granted refugee status. Under the refugee convention there is an exemption that a person committing war crimes is not entitled to the benefit of the protection of the refugee convention. But I suppose that would raise the additional issue of whether that person ought to be prosecuted here in Australia or elsewhere.

**Mr SINCLAIR**—The question was not just about matters of prosecution here. I asked the question because your department advises on these issues and because we are obviously interested in the application of any prosecution in our region.

**Mr Campbell**—As you may be aware, the United Nations Security Council has set up a couple of tribunals to look at war crimes in relation to Yugoslavia and Rwanda, but as yet there is no tribunal that is actually set up to look at war crimes anywhere else under that aspect. There is also the development at the moment of the international criminal court. I do not know whether you would like to hear about that. It would be a court which would exercise jurisdiction over international crimes.

**Mr SINCLAIR**—We would be interested to hear about it.

**Mr Campbell**—It is not set up at the moment, but it is the subject of quite intense negotiations. Those negotiations are the responsibility of the Criminal Law Division in the department. It is not represented here. From our department's perspective, Dr Balkin might be able to say where they are up to at the moment.

**Dr Balkin**—The negotiations have been going on for some years now. The delegation has consisted of somebody from our criminal law department, Mark Jennings, as well as representatives from the Department of Defence and the Department of Foreign Affairs and Trade. The sessions have been held in New York on a regular basis twice yearly. A diplomatic conference is planned for late next year and there is another interim session to take place in New York in December. There are currently interim negotiations—unofficial, that is—going on in Syracuse at the moment to which Australia has sent a delegation. We expect another formal session to take place before the final diplomatic conference. That conference is scheduled, I gather, for a period of approximately seven weeks, so there is a lot yet to be worked out.

The aim of that is to set up an independent international criminal tribunal. It will not be an arm of the ICJ, but its relationship to the United Nations is yet to be finally worked out. It is proposed that the United Nations will be able to give cases to the tribunal and some countries would like to leave it at that, but many countries—Australia included—have said that the jurisdiction of the tribunal should be wider than that and that countries themselves should be able to nominate cases for the tribunal. As I say, these are all under negotiation at the moment.

The tribunal will have jurisdiction to try war crimes. These are war crimes that we all know about. The current Yugoslav and Rwanda War Crimes Tribunals have a list of war crimes: crimes against humanity and war crimes properly so-called, such as rape, murder, torture. All of those things will, it is proposed, be included in the jurisdiction of the tribunal when it is ultimately set up. There are some countries which have wanted the tribunal to have even wider jurisdiction, for example the Latin American countries were pushing to have drug offences added to the list of offences of the tribunal, but they are unlikely to be included, at least in the shorter term.

**Mr SINCLAIR**—Reverting back to Pol Pot, is it your department or somebody else who would have the responsibility of including Cambodia in the list of countries where war crimes might be considered to have been perpetrated?

**Mr Campbell**—In terms of setting up a tribunal?

**Mr SINCLAIR**—No, in terms of. . .

**Mr Campbell**—In terms of an Australian prosecution?

**Mr SINCLAIR**—No, in terms of raising the question internationally of considering that war crimes had been committed in Cambodia. Who would initiate that process? Would a country like Australia, or is it raised in the Security Council or in the United Nations General Assembly? How does it all begin?

**Mr Campbell**—It would be open to any country to raise it.

**Mr SINCLAIR**—Where?

**Mr Campbell**—In the United Nations.

**Mr SINCLAIR**—Yes, you could raise it, but who would actually react to it? Who sets up the process?

**Mr Campbell**—In the case of the tribunals, in relation to Yugoslavia and Rwanda, they were actually set up by the UN Security Council as their basis. Obviously, that flowed from a country with concerns, or countries with concerns, flagging those and ultimately getting support for the setting up of a tribunal there.

**Mr SINCLAIR**—On that final question relating to the regional association of human rights—the body of which Chris Sidoti was a main instigator—as HREOC is within your bailiwick, what role do you play in that?

**Ms Sheedy**—We actually do not play any role in that at all. That work is funded by the Minister for Foreign Affairs.

**Mr SINCLAIR**—You are not involved?

**CHAIR**—Accepting that it is funded by DFAT and therefore it is outside of HREOC's core business, nevertheless, the expertise and the availability of the right personnel from HREOC are quite important contributors to that exercise. Was any consideration given, in looking at the restructuring of HREOC, to the work being undertaken by people like Chris Sidoti in that particular regard? Clearly, if funding and other resources are cut back within HREOC generally, that presumably is going to constrain him somewhat in the efforts he can make in that wider international sphere.

**Ms Sheedy**—Two aspects to that: one is that the funding cuts that were announced for the commission did not impact directly on the money that comes separately to the commission in relation to the regional human rights work that it does. Secondly, in the restructure of the top structure of the commission that was announced by the Attorney recently, he pointed out there that by giving one of the proposed deputy presidents a general role in relation to human rights and disability, that that particular deputy president would be able to continue to do broader work in the human rights field. Yes, it was taken into account, but the budget cuts were a separate issue from that money that comes to them from the Minister for Foreign Affairs.

**CHAIR**—I understand that. The reality of life is that we as members of parliament get funded from a particular bucket, but it often gives you the resources to go and do things elsewhere if you like. If your core funding resources are cut back, your ability to do some of those extra things is constrained, even though those extra things may technically be funded elsewhere. It was in that sense that I was really asking the question.

**Ms Sheedy**—I think that in evidence that Chris Sidoti gave to the estimates committee in August this year he set out at some length how the commission was implementing the budget cuts, and how that would impact on their work. He made it clear there that work in relation to the regional human rights dialogue would continue.

**Mr BARRY JONES**—Are you aware of, or do you take judicial notice of, the de facto human rights organisation that operates within UNESCO—the rather mysteriously entitled CRE—the Committee on Conventions and Recommendations. I actually chaired it for two years from 1991 to 1993. That deals with human rights issues involving areas within UNESCO's areas of competence, for example, writers, scientists, teachers, academics generally, but it involves a lot of human rights areas. In fact, many of the cases that came up were cases from South-East Asia, so there were repeated cases coming up about Burma, repeated cases about Indonesia, repeated cases from China—more from China than anywhere else.

I raise this just really to ask if you were aware of this parallel outfit. It seemed to me that it might be worth while talking to people in Foreign Affairs so that at least you are on the mailing list. With some of the cases, particularly in China, we were pretty

successful. I made representation on a couple of cases. Clinton made representation on the same cases. Clinton was inclined to get the credit, in the end, but we got in there first. I think you at least ought to be aware of it, even just for the purpose of having file notes, but I wanted to know if you were aware of it.

**Mr Campbell**—Personally, no, I was not. I am glad to know about it. I am not sure about my colleagues here.

**CHAIR**—You think they may not be glad to know about it?

**Mr Campbell**—Oh, I see—

**Ms Sheedy**—We share Mr Campbell's gladness.

**CHAIR**—We might close there. Thank you for coming here today. If there are any matters on which we need additional information the secretary will write to you. We will send you a copy of the transcript of your evidence to which you may make corrections of grammar and fact.

Resolved (on motion by Mr Jones):

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

**Subcommittee adjourned at 12.17 p.m.**