



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,  
DEFENCE AND TRADE

(United Nations Subcommittee)

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

WEDNESDAY, 5 JULY 2000

SYDNEY

BY AUTHORITY OF THE PARLIAMENT

## JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

### United Nations Subcommittee

Wednesday, 5 July 2000

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

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

**Senators and members in attendance:** Senators Bourne, Ferguson, Payne and Quirke and Mr Baird, Mrs Crosio, Mr Hollis and Mr Jull

#### **Terms of reference for the inquiry:**

To inquire into and report on the role of the United Nations and Australia's relationship with the organisation in the post Cold War environment, with particular reference to:

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



## **INTERNET**

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to: **<http://search.aph.gov.au>**

**WITNESSES**

**CLARK, Dr Claire (Private capacity).....202**

**ELLISTON, Mrs Joan Marie, National Adviser on Human Rights, National Council of Women of Australia Inc. ....190**

**HOGAN, Mr Des, Campaign Coordinator, Amnesty International .....175**

**KAMAL, Mr Fadel, Representative in Australia, Polisario Front.....211**

**PACE, Dr John (Private capacity) .....148**

**SHERRY, Ms Alanna, Advocacy Manager, UNICEF Australia .....165**



**Subcommittee met at 9.34 a.m.**

**CHAIR**—I declare open this public hearing of the United Nations Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. This is our third hearing in an inquiry presently being conducted by the subcommittee into Australia's relationship with the United Nations and the prospects for reform of the United Nations in the post-Cold War world. We have already held public hearings in Canberra and Brisbane and have received several briefings, most notably from the Secretary-General of the United Nations, Mr Kofi Annan, and from Australia's permanent representative at the United Nations, Ms Penny Wensley.

Much criticism has been levelled at the United Nations in recent years. Conflicts within nation states have escalated and consequently pressure has mounted on the United Nations for humanitarian intervention. The efforts of the United Nations have had mixed success. Wars within states do not fit neatly within the charter of the United Nations or within the traditional views of non-intervention in international relations. The Secretary-General of the United Nations, Kofi Annan, has flagged the need for the United Nations to reconsider the definitions of national sovereignty and self-determination and the way in which the organisation responds to crises. As its agenda increases, pressure has mounted on the United Nations to restructure and reform its operations and its inadequate funding arrangements. The aim of our inquiry is to consider the role of the United Nations within changed circumstances of the post-Cold War environment and the response of the Australian government to arguments for structural, procedural and financial reform of the UN.

Further hearings will be held in Melbourne and Adelaide, and a final hearing will be held in Canberra at a later date. The committee hopes to contribute to the debate and make recommendations to the government early next year. We have come to Sydney today to take evidence from those organisations and individuals with an interest in the United Nations. We look forward to hearing your opinions on the work of the United Nations and the prospects for its reform.

**PACE, Dr John (Private capacity)**

**CHAIR**—On behalf of the subcommittee I welcome Dr John Pace. I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion. The deliberate misleading of the subcommittee may be regarded as a contempt of parliament. The subcommittee prefers that all evidence is given in public, but should you at any stage wish to give any evidence in private you may ask to do so and the subcommittee will give consideration to your request. I invite you to make a short opening statement before we proceed to questions, Dr Pace.

**Dr Pace**—I would like to thank the members of this committee for the opportunity to share with it some reflections that I have had the honour to make during my 33 years with the United Nations dedicated to the field of human rights. I have submitted a paper to the honourable committee. That paper concludes with the following words:

Never in the history of the development of human rights law, has the United Nations been so close to the realization of the spirit and letter of the Charter of the United Nations. On the other hand, the effort that needs to be put into this process cannot be under-estimated, and serious obstacles, known and yet to emerge, will have to be addressed and surmounted—but that has been the hallmark of the evolution that has brought us to this point.

I believe that these words have particular relevance to the terms of reference of the present inquiry. The reason I believe this is that today there can be no reflection or meaningful decision in regard to the role of the United Nations without including international human rights norms. International human rights standards are an integral part of international relations because they affect the everyday life of the individual and of society in civil, cultural, economic, political and social aspects.

I shall not dwell on how it is that the international human rights standards have become so much integrated in the very fibre of international relations. My paper focuses on these historical aspects and traces that evolution which has brought us to this point. Also, there is much literature on the subject and most of it is excellent. I would like, however, with your permission, to mention two facts to illustrate my point. In the first place, it would be useful to bear in mind the convergence that international development, economic and financial institutions have experienced in the last few years around the need to ensure respect for human rights.

The World Bank's comprehensive development framework and its focus on the elimination of poverty is a recent and refreshing departure from the narrow and short-sighted policies of the past based on a primitive interpretation of the so-called economic nature of its articles of agreement. The United Nations development program has come around to recognise the link between its development activities and international human rights standards. The human development report for the year 2000 which was launched only last week focuses on human rights and human development. It furnishes further proof of the central position that human rights standards have acquired in international relations. I recall, Mr Chairman, with some degree of nostalgia, the days when we were investigating human rights violations in certain



countries and UNDP closed its doors on us because we were embarrassing to the rest of the United Nation's system; so we have come a long way.

The second and perhaps most compelling development has been the dramatic swing to international human rights awareness of the business sector. Several multinational corporations have announced human rights policies and have responded to the call of the Secretary-General in Davos last year for a global compact, according to which business would undertake to respect and ensure respect for international standards in human rights, including international labour standards and international standards for the protection of the environment. This represents perhaps the most delicate articulation in human rights evolution. It has also generated much scepticism—and this is very understandable—in regard to the intentions of big business, particularly among community groups who live at first-hand with the often negative effects of the activities of big business. Be that as it may, these are facts that we live with today and they prove that there is a dynamic process converging around international human rights standards.

When we look at these international human rights standards, we see scores of treaties and conventions that governments have worked on and elaborated over the years, and they continue to develop. There are 100 plus such instruments listed in the United Nations human rights web site, for example. Of this mass of international treaties, there are six which contain provisions whereby governments that agree to them also agree to have their conduct monitored by so-called treaty bodies which are committees of experts who are elected by the same governments and who apply a procedure set out by those governments in the treaty itself. It is important to recall that these are not international courts, nor are they tribunals. They are not there to adjudicate. They have the function, set out by governments themselves, to assist those same governments in adjusting their national law and practice to international standards.

Of these six, the two main treaties are the United Nations International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which are, as you would be aware, the direct descendants of the Universal Declaration on Human Rights. They make up the International Bill of Human Rights. The other four are, as you are very well aware, the by now quite well-known CERD, on racial discrimination; CEDAW, on discrimination against women; the Convention on the Rights of the Child; and the Convention Against Torture. As of May this year, all 188 members of the UN and five non-member states were party to one or another of these treaties. On these treaty bodies there are, in all, 105 experts that sit. They come from 53 countries. For the record—for anecdote, if you wish—it is Egypt and Germany who hold the record with five experts on as many committees; they missed out on one. But this shifts as elections are taking place constantly. Most state parties do not have, or have ever had, an expert from their own nationals on these bodies.

The six treaty bodies are meeting all year around. This year, for example, they will meet for some 13 months in all. The two main treaty bodies alone meet for a total of six months in a single year, counting their working group sessions. The child committee meets for three months, CERD and CEDAW for one month and a half each and the torture committee for five weeks. In spite of their intensive calendar and the fact that many states report late, the treaty bodies cannot cope with the states reports that are submitted.

What qualifications are asked of these experts? I shall not go into detail of the six because their qualifications are contained in the actual treaties themselves. But it is worth having a quick

look at the two main ones. Regarding the Covenant on Civil and Political Rights, which is made up of 18 experts—they are all made up of 18, except for CEDAW which has 23 and Torture which has 10—the Human Rights Committee asks for:

... persons of high moral character and recognised competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience ... consideration shall be given to equitable distribution of membership and to the representation of the different forms of civilisation and of the principal legal systems

That is, civil and political rights. Economic and social rights have a peculiar history, as you are aware, and the treaty does not provide for a treaty body: it was added on by the Economic and Social Council later. The requirements for these, probably because they come later, are a little more up to date, as it were, because they not only require candidates to be experts with recognised competence and so on, but they actually allocate seats. They say:

... fifteen seats—

of the 18—

will be equally distributed among the regional groups, while the additional three seats will be allocated in accordance with the increase in the total number of States parties per regional group.

This is then subject to periodic revision. So there is a dynamism in the way this treaty body is made up, whereas the other one, as we shall see, is probably very good—but somewhat atrophied. In the United Nations the system for filling seats in the various committees, commissions, working groups and other posts is a very particular system. The original word in my statement was ‘peculiar’, Mr Chairman. Before candidates are nominated formally, and sometimes after they are nominated formally, delegates, generally in New York, negotiate with each other for seats to be filled. These are informal procedures and, strictly speaking, not binding.

Most UN bodies are made up of a limited number of seats and therefore the qualification of equitable geographic distribution is designed to ensure a balance between the five groups that make up the total membership of the UN. Each one of these groups conducts consultations among the countries that make it up with a view to determining which country is going to sit on which UN body. There are also groups within groups. For instance, the Nordic countries consult among themselves which of the nine Nordic countries would present themselves for which selection in the western European group, and from there they stand a chance of getting one of these seats.

Elections of the experts that sit on the human rights treaty bodies are in the same basket of negotiations. Canvassing starts very early—in some cases years ahead—and most states invest resources to introduce their candidate to other delegations. The canvassing is usually reliable in that most delegations who agree to give their support generally do so, although it has been known on a number of occasions that promises, even by the best of friends, are not always necessarily honoured. It is after all, Mr Chairman, a secret ballot. This procedure is not formal; some countries, such as the United States and others, do not participate in these negotiations even though, in fact, they would in most cases not have much choice but to play it from the sidelines, as it were. The regional grouping helps of course—in other words, they have others who do the work.

The negotiations are therefore extremely complex and, since they are not formal, there is always a certain degree of uncertainty. In these circumstances, in most cases, the actual qualifications of the candidates are taken for granted or assumed, as a decision to back a candidate is very likely determined by the *quid pro quo*. Thus the result always has a certain unpredictability. For instance, the absence of the requirement of equitable geographic distribution on the Human Rights Committee—the treaty does not make geographic distribution mandatory—has produced a heavy western European presence. Today there are eight out of 18 members of this committee that come from the western group, leaving 10 seats for the remaining four groups that make up the United Nations planet.

By contrast, the formula for economic, social and cultural rights is guaranteed to have a fair geographic distribution having built into it not only geographic balance but also the provision for periodic review. This constitutes an undesirable inconsistency in the implementation procedures of the two principal treaties whose provisions are, by definition, complementary with each other. Another inconsistency lies in the fact that, whereas the experts on the Human Rights Committee receive an honorarium when they sit, the experts on the economic and social rights committee do not. This procedure is further complicated by numerous other considerations attributable to numerous factors. In many respects, a human rights treaty procedure is, at best, delicate machinery that has taken 50 years to construct. Mr Chairman, permit me to pay tribute here to the role that Australia and Australians have played in building and in strengthening this machinery, both through its diplomacy, which has traditionally been in the top ranks of the international community—and I am a witness to that—and also through the experts that have sat on the committee bodies, most notably Professor Philip Alston on the Committee on Economic, Social and Cultural Rights, and the Hon. Justice Elizabeth Evatt of the Human Rights Committee. Australia, particularly the many brilliant young Australians, are privileged to have their expertise to build on.

The procedure for implementation of the treaty system is out of date, as is the procedure for election of the expert members to the committee that monitors the treaties. It is a system that was put together over a long period of time and in another time in history. The treaties themselves were all drafted during the Cold War. It is doubtful if the drafters ever expected that these treaties would be ratified by so many governments. As a result, there is today a serious backlog of reporting to the treaty bodies and, apart from some minor attempts at streamlining their internal procedures, there has been no serious effort deployed by the United Nations to enable them to carry out their responsibilities efficiently and punctually.

The system is not coping. It will cope even less as the demand on it will increase. If the UN system is to ensure the realisation of civil, cultural, economic, political and social rights through the support and activities of the various components of the UN system, the international system will need to be adequate in assisting states to monitor their progress in the fulfilment of their international human rights treaty obligations. As the activities of the agencies and programs, the inter-governmental and non-governmental programs, are applied to create conditions in which states can aspire to fulfil their international human rights treaty obligations, and they are, the need will grow to monitor this process. Much good work has been done in putting human rights at the centre of the international agenda, consistent with the charter of the United Nations. Much needs to be done to ensure that the treaty system is ready to face the challenge. There have been several proposals that have been advanced for the reform of the treaty system. Many address the working methods and seek to eliminate the inevitable logjam that would ensue if all states were

to report fully and on time to all treaty bodies. These proposals remain valid and do not need to be repeated.

There are, however, two principles that, with your permission, I would like to share with this committee to ensure reform of the treaty procedures. The purpose is to bring them closer to their original purposes as contained in the United Nations Charter. The first is the principle of homogeneity. This translates itself into two major steps: (a), to give priority to ensure complementarity of the work of the two main treaty bodies. At present, there is no interaction between the two treaty bodies. This separation is not acceptable when the rest of the international system is working towards convergence. Economic, social and cultural rights are interdependent and interrelated with civil and political rights. So should be the monitoring of states' obligations. The procedures for implementation of the remaining four treaties should also be streamlined to make the reporting more precise and objective oriented. (b), the election process of experts to the treaty bodies should be separated from the other elections to fill seats on other UN committees and should not be part of the negotiation process.

The second principle is the principle of internationalisation or universality. As international treaty bodies, thought should be given to the treaty bodies meeting in various regions. At the moment, they meet entirely in Geneva with the exception of the CEDAW that meets in New York and the Human Rights Committee that holds one session a year in New York. It should be made clear that this should not necessarily be for the purpose of examining reports from countries in that region.

It is no exaggeration to say that the treaty bodies are the most important institutions in the human rights sector. It can be argued that they are the backbone of the implementation of the international treaty system. It is no exaggeration, either, to say that they have not received the support that they need and deserve. There is, therefore, a need for countries like Australia to rise to the challenge that this situation poses. As it has done so many times in the past, Australia must once again assume its responsibility to push for reform of the treaty system in order to enable it to function as originally intended—namely, as the international monitor of state conduct in the way in which human rights are brought to reality.

It was with disappointment that I learned of the reaction of Australia to the important work done by CERD at its last session and with much concern at the avowed intention of Australia to review its relations with the UN treaty bodies as a result of this experience. The fact that this review was to be conducted internally was even more difficult to understand, given the nature of the human rights treaty system as one based as a matter of its essence on public interest.

I do believe that the need for reform of the treaty system is further confirmation of the evolution of the United Nations towards the realisation of the spirit and letter of the charter. If we are to be consistent with our heritage, it is in the direction of an efficient treaty system that we need to push. The international system will not benefit if Australia were to send the wrong message. We do not underestimate the obstacles that lie in the way, nor are we unconscious of the proportions of what still needs to be done. But we must remember that a weak treaty system will exacerbate international imbalances, and it is these imbalances that generate, among other phenomena, movements of people, as we witness every single day around the world and especially here in this country.

The United Nations Charter puts the respect for human rights and fundamental freedoms at its core. The International Bill of Human Rights is a direct product of the provisions of the charter. There is no other way for any state which supports the charter but to support the International Bill of Human Rights. Australia must face the challenge. Ultimately, its international peace and security is at stake.

**CHAIR**—Dr Pace, thank you for your comprehensive submission and also for that very detailed overview of your submission. I am sure it will be very helpful to the committee. You have spent a lot of time talking about the committees that exist. I guess from time to time there are questions asked about the validity of the term ‘experts’. I am wondering whether you would have any comment, from your experience, about the quality of members who are on the committee, and a general view of the competence of those people who sit on the committees, bearing in mind their method of appointment.

**Mrs CROSIO**—We emphasise the word ‘expert’.

**Dr Pace**—Speakers attempt to define ‘experts’. As you will see, they restrict themselves to a moral standing and some knowledge of some section of the law, some civilisations. So the threshold is not very high. In my experience, however, I must say that these treaty bodies have shown an interesting balance between the substantive expertise and the political balance with which they carry out their functions. These treaty bodies started in the late 1970s. We have seen since then a change of generation. In the first generation of experts we had a great deal of clubishness. The chairman of the Human Rights Committee was the same person for 15 or 16 years, and understandably so. If you look at the line-up today you will see some brilliant people, mostly—some of the others too—but certainly there is no doubt in my mind that once they are on the committee they indeed bring expertise of the highest order as individuals and as a collectivity. They guard their independence very jealously, too, as you know.

**CHAIR**—I just wonder whether the term ‘experts’ is the best term to use and whether or not there could be a different terminology that could be used.

**Dr Pace**—I believe that is a correct observation. The United Nations terminology is rather careful. It is like ‘rapporteur’. The term ‘rapporteur’ started because there was no better word. Special rapporteurs, as we know them today, were only set up in the Commission on Human Rights in 1978 or 1979, the first one. I was secretary of that commission at that time. The term was borrowed from a sub-commission which had conducted studies at that time, and it was thought to be a good idea to call these people special rapporteurs. You will see that some of them were called envoys or special representatives, and other terminology has been used without any connotation of their expertise. Certainly, with the treaty system, if a better word could be found, it could apply equally.

**CHAIR**—There is one area that you have not commented on in detail, and I am wondering whether you would make some comments. Firstly, it is a fact that since 1990, or the end of the Cold War, we have seen a number of tragedies take place in a variety of nation states throughout the world. The Secretary-General has stated that the United Nations must look more closely at the rights of states to sovereign independence in the light of human rights abuses that have occurred within state borders, and he suggests that state sovereignty is not absolute. What is

your view of this difficult question, because it was the genesis really for this inquiry and one of the issues that we are looking at closely?

**Dr Pace**—Human rights, in my view, is beyond sovereignty. The subject of human rights is the individual; the subject of international law is the state. There is there a built-in contradiction, as it were, an irreconcilable contradiction, between the concept of the international system and the human rights component of that system. Over the years we have constantly battled to get states to understand that it is in their interest—and reconcilable with their notion of sovereignty—to apply international human rights standards. When it comes to human rights, although states maintain the primary responsibility for the protection of their citizens, it is still the duty of other states to help—call it interfere, if it comes to that—in the internal affairs of a state in the interest of upholding international human rights standards.

A distinction may be drawn between human rights and humanitarian concerns. It is easier to understand humanitarian intervention because of the drama of the moment. But human rights intervention is much more long term and, in the long run, much more effective because it relates to the structures that uphold the rule of law, that uphold the institutions of a society that make that society, in the long term, stable and that purport to instil order in a society. This is a responsibility that is shared by all states.

**CHAIR**—But, in fact, the mechanisms that are required for intervention to take place have been so long in the making that, in fact, the tragedy often occurs before the intervention has been able to take place or before the United Nations has been able to intervene. You only have to take the recent tragedies: Kosovo and Rwanda and all those places that have had tragedies within their national boundaries. The mechanisms seemed to prevent action early enough to prevent the tragedies.

**Dr Pace**—Human rights passed from the firefighting approach, which characterised its work until very recently, to a fire prevention approach only in the late eighties and the beginning of the nineties. Up till that time, human rights in the United Nations consisted of putting out fires. In the humanitarian field it is still at that phase. It is only now that we are seeing it—hence my emphasis on the role of the World Bank and the other international institutions, and business. It is now that we can hope for an all-round attack on the causes of lack of balance—of injustice, if you wish. We are, yes, at a very primitive stage, hence the appeal that I tried to make: that it is at this juncture that states, especially states like Australia, must assume their responsibility to push this further. The preventive approach must be pushed now and must not be postponed to another time when it may be too late. You have yourself mentioned this chain of conflagration that has afflicted virtually all regions. It was in Cambodia, it is in the Great Lakes, it is in the Americas, it is everywhere. It is here—around the corner from us. We do not need to dramatise this. It is drama itself that is developing. Hence the responsibility of states that have developed economies, that have developed cultures, to push in the direction of humanitarian intervention—sovereignty or no sovereignty.

**Mr HOLLIS**—The timing of the intervention is always so important. I remember at our first hearing, with the evolving situation at that time in Zimbabwe, the Department of Foreign Affairs was asked when Australia would intervene, or when we should honour human rights issues. The department more or less said to us, ‘When there is a complete breakdown of law and order.’ But we have another situation, as you rightly said, around the corner in Fiji. It has always

seemed to me that when human rights violations are at the forefront of news and get a lot of attention, they tend to get a lot of concern, and maybe in a political situation this is inevitable. But if I were an Indian descent Fijian of four or five generations—many Australians are only fourth or fifth generation—I would wonder what my human rights, be they social, economic or political, were then and what they would be in the future. I would be looking to the world community, and I do not think I would be getting much comfort in the message that was coming back, least of all from countries like Australia and New Zealand and others who seem to me to be saying, ‘Tut, tut, we can do nothing.’ If we are waiting for the sovereign independent authority in Fiji to invite us in there, I wonder who that sovereign independent authority would be. That is the tragedy, as I see it.

**Dr Pace**—I cannot agree more. The case of Fiji is a classic example of where you have a society that is made up of groups that have been presumed to coexist—and probably they have done so to some measure—but there were obviously frictions that were building up gradually over the years that were either connived at or ignored. But, in any case, they reached the point where these differences were enough for people to tolerate a criminal intervention taking power from the government of the state. Therefore, the preventative aspects of it were lived with and were not addressed at the time that they should have been addressed. It is all very clever for me to say that today, and perhaps as I talk we may be sitting on situations elsewhere in the world—and not far from here either—where minorities or groups who are living together in apparent cohesion or peace are in fact sowing the seeds of future conflagration. That is where the international community today has the obligation to be aware of the existence of these societies, even though they may be living peacefully together. Take the Chinese community in Indonesia—they lived there for a long time and when trouble started they were the subject of a lot of violence. The message that I believe we should draw from this is that we have to work constantly and not presume that simply because there is no violence there is no friction or there are no differences. There is an obligation to act.

**Mr HOLLIS**—Thank you for that. Yesterday in Brisbane someone from the university put to us that each conflict always has as its basis a sense of injustice along the way somewhere, maybe going back two, three or four centuries. The other question I would like to ask concerns your disappointment—a disappointment shared by many of us—at Australia’s reaction to recent decisions or comment on the treaty system. Do you think that Australia is today sending the wrong message, or are you flagging a warning not to?

**Dr Pace**—Had you not added that last bit at the end, I would have agreed with you in the first part. In all honesty, and this is my personal opinion, it is sending the wrong message, and the message is heard in a way that is not even intended as it is delivered, because the image of Australia is a very strong one abroad, in the international human rights arena especially. So even though it may be of relative importance locally perhaps, its perception from the international community, particularly those who wish to see the international human rights treaty system weaken, is quite serious and, yes, I do believe that.

**Mrs CROSIO**—Dr Pace, I wish to raise a number of questions from your summary that you gave us very well, by the way. My first query relates to the appointment of these so-called experts. How long are the particular appointments on those various committees?

**Dr Pace**—Four years, with the possibility of renewal.

**Mrs CROSIO**—You also stated that the treaty bodies cannot cope. Is it that they cannot cope because those 18 members on it are not enough, or they cannot cope because there are too many, or is it just the volume of work coming through?

**Dr Pace**—It is the volume of work and the lack of resources. I was part of that bureaucracy for some years. Now I am a free person and can say that, even though it is recognised as the backbone of the system, it has not been honoured in the same proportion by the resources allocated to it. I share some guilt in that, to be fair—and I apologise for it—because, as you may see from the CV that I circulated, when I was assisting in setting up the extra convention procedures—for example, these investigations that we had to organise—it was one of my responsibilities at that time and I literally hogged a lot of the resources because they were more dramatic, whereas the treaty system was boring and heavy. But today they are under-resourced very seriously.

**Mrs CROSIO**—Who decides the budget? Are they under-resourced because we are now aware that America has not paid its contributions of late?

**Dr Pace**—That is, in any case, the basic epidemic of the UN system. The original idea of the treaty system—you can look at CERD, the first treaty that came into effect—was that the budget was meant to be paid by state parties originally. That was later amended. The arrangement originally was that the UN furnished the services and that the states parties paid for their experts to travel there. That is not the case now. Now they are all paid for from the budget. Treaty bodies are literally independent. If the UN, God forbid, had to close down tomorrow, these treaty bodies would continue, because they are relying on an international agreement. It is only you, as states parties, that will decide when to pull out and wreck the machinery.

**Mrs CROSIO**—I have another question on the statement you gave us. Looking at the so-called experts again—and we are looking at the geographical regions and how they seem to talk within their regions—what happens if you have an expert in another geographical region who could have done a better job perhaps than the one that is going to be appointed? Is there any intervention there that a person's ability comes forward, not necessarily because they are not part of the region?

**Dr Pace**—No. That is one of the major defects there is today—that they all have to be nationals of the state that nominates them. Australia cannot nominate a Maltese; Malta cannot nominate an Australian. If Australia has several brilliant lawyers, it would be useful if it could be possible, in the interests of the international community, for that to happen. So that is a defect.

**Mrs CROSIO**—Both in your submission and in your statement here today you are obviously saying that what is happening in the United Nations is out of date. If you were given the authority now, what would be the immediate steps you would take as of next month?

**Dr Pace**—I would immediately reorganise the schedule of the two main treaty bodies. I would have them meet at the same time. They have two identical rooms in the Palais des Nations in Geneva to meet in. I would have them meet in different rooms. Without changing any of the procedures yet—because I do not want to touch the treaty—I would have them meet,



I would have them receive reports from the same countries and I would have informal working groups of both meeting in a third meeting room where they can pool their expertise.

For instance, if they are addressing mandatory sentencing—to take a current example—the civil and political rights committee would take up mandatory sentencing as an alleged breach affecting that part of the covenant that deals with fair trial. The economic, social and cultural committee would be taking it up as a measure adopted to address a social problem manifested by the current test and violation of property. Therefore, the economic and social aspects of that phenomenon are taken up by that body. In the present situation, they meet at different times and in different places so a fusion does not take place. If it were up to me, I would have them meet in the same place at the same time and, if an issue like that comes up, they should get together and sit with Australia and the Australian organisations and address the problem in its totality.

The first step would be to have the two main treaty bodies meeting concurrently and to bring them as close as possible, without touching the treaty, because that would be a difficult process, but this is doable. Secondly, they would save a lot of time because they would not have to repeat the exercise for Australia twice, for example. Thirdly, I would have a schedule, a roster, of meetings in five regions. The UN has very good premises in Bangkok, Santiago, Addis Ababa, Geneva and in Beirut now. It is cheaper in many cases, so it is not a question of budget, to get these 18 people with two or three secretariats—and now with the Internet it is all very easy—to meet in the region.

If I may add a footnote here: the reason I say that is that, in the Asian region, human rights have been almost antediluvian in an international human rights sense. The first international intergovernmental meeting in Asia that ever took place in the history of the UN was in 1993 when the regional preparatory meeting for the World Conference on Human Rights took place. Before then there had not been an intergovernmental meeting on human rights in Asia. Even Africa, with all its problems, had had a commission and at least was trying, and the Americas and Europe as well. There is a need to bring these committees to the regions, not so that they can examine the countries of the region. On the contrary, it would be better for them, for instance, to examine the report of Sweden, let us say, in Bangkok. The point is to make society and those regions aware of the existence and the workability of the region and to educate the members of those committees. Geneva is comfortable and New York is comfortable.

**Mrs CROSIO**—As you say, having the committees meet concurrently seems to make sense to a committee sitting around here. Why do you suppose that the UN has not looked at changing their structure?

**Dr Pace**—At the origin, these treaties were built step by step and they are independent of each other. They are a cumulative process; they are not a concurrent process. The grand design of the International Bill of Rights landed on its feet through a series of accidents really, but it is there. Therefore, there was never the perception of an across the board addressing. Let us take the other four conventions and remove the torture one which is, in fact, an annex of the treaty on civil and political rights. Looking at it carefully, it says in the convention against torture that you should nominate experts who are also sitting on the Human Rights Committee.

The other three are all on discrimination—women, children and race. There is no reason why there could not be a common denominator of those three as well. If you really want to hear the

grand plan, the idea would be to have an international human rights council that would address human rights issues across the board. There is a Trusteeship Council, which is defunct, and there is a Security Council which is working quite well most of the time, but we know that it is going through an audit to bring itself up to date. There is a need to pool human rights across the board. That would then assist the government in addressing human rights problems. The question of sovereignty would no longer arise because it is taken as a point of departure.

**Mrs CROSIO**—In your 33 years of experience in that area, has there been constant complaint over the very structure of the committees?

**Dr Pace**—Yes.

**Mrs CROSIO**—Is it from one particular country or a number of countries?

**Dr Pace**—It is from a number of countries who are not happy with the fact that they have to prepare reports several times over.

**Mrs CROSIO**—When those countries issue a complaint, what happens to that complaint then?

**Dr Pace**—The complaints are usually addressed in the financial and administrative committees of the UN, where the structures are addressed. There they are usually not really tackled up to now.

**Mrs CROSIO**—Are those committees who are looking at those complaints also appointed or elected within the regions?

**Dr Pace**—You are talking about complaints about the functioning of the committees?

**Mrs CROSIO**—Yes, about the functioning of the committee system.

**Dr Pace**—The committees themselves do not address their own problems. They voice them and they have constantly harassed, as it were, the bureaucracy for more resources and for more support, and rightly so. But the budgetary authorities, especially, have always been rather reserved in the resources that they have accorded. Recently, since the present high commissioner took office, some contributions have been received from non-governmental sources and that in itself presented a major problem. Normally, UN bodies are not subsidised by extra-governmental sources. If I am not mistaken, there is a study on these treaty bodies which was commissioned just before I left, and which I do not believe has yet seen the light of day, subsidised by a grant from Ford or one of these institutions.

The United Nations has never been known to be generous in its budget to the human rights program. I do not have to speculate on the reasons why. Nevertheless, compared with what it used to be it has grown. The share used to be 0.4 per cent of the budget and is now more than one per cent, which is a big thing. Today they have much more resources than they had before. Nevertheless, very little of it, and certainly not enough, is going down to the treaty bodies.

**Mr BAIRD**—I would like to go back to your comment about the issues of corporate governance and the way in which the corporations are concerned about various human rights implications. I suppose it also goes to your comment that you see the benefits of the economic committee examining one part of the issues, and human rights, other aspects. Isn't one of the challenges that we face, as we look at what we see as some of the human rights abuses or the breaking of some ILO conventions, the trade-off by developing countries between economic growth and the Western world's concern with human rights abuses? How do you see that this dilemma can be resolved?

A couple of weeks ago I was at the European parliament. We were involved with one of their committees as they were struggling through that issue as well: are we trying to restrict the ability for Third World countries to come up the economic chain by saying that, unless they comply with all of the human rights conventions that the Western world would want, then they should not be given investment by multinationals, et cetera? Do you have any comments on that?

**Dr Pace**—There are two ways of approaching that. One is, first of all, that there is the principle of sovereignty over natural resources. This is contained in one of the articles of the Covenant on Civil and Political Rights and it is repeated in the Declaration on the Right to Development. It is very clearly stated that peoples have sovereignty over the natural resources on which they sit. The second is the question of conditionality.

Regarding sovereignty over natural resources, when you are addressing the business sector, as we have occasion to do—that was one of my last jobs, and one of my current responsibilities is working with one of the major multinationals in this context of reconciling with human rights principles—the multinational, because it is made up the way it is, has no choice other than to exploit natural resources, whether they be human or other, and to do so for profit. There are rules that guide the way in which this can be done. You mentioned ILO rules. There are also human rights rules. It is possible, if the multinational deals with the government as representing those people who have sovereignty over natural resources, to reach a situation where that exploitation for profit can take place in a manner that is reconcilable with international human rights provisions.

I leave aside the question of the relationship between the communities that sit on those resources—like, for instance, the Ogoni people in Nigeria back in 1996—and the government that represents them. That we can talk about ad nauseam. For the purposes of our reflection, it is important to envisage that the principle of sovereignty over natural resources exists and has to be respected.

Then comes conditionality. You will not get development aid unless you clean up your house. There is conditionality, whether we like it or not, but I believe we talk about a positive conditionality and not a negative conditionality. It is not, 'I will not give you this until you do that,' but 'I am going to give you this and you are going to do that, otherwise we are going to have to talk again.' It is perhaps playing with words but, in fact, since 1993 especially, the notion of conditionality has found its level. On the basis of these two principles, the principle of sovereignty over natural resources and acknowledging the need for conditionality—constructive conditionality—you can reach a situation where you can conduct negotiations, in the long-term anyway, in a more constructive and a more profitable fashion. The problem is that sometimes

there is no long-term. There is need for quick profits or quick political successes—I do not have to explain that—and this is where we get problems, and generations will pass, and then the frictions will arise again just as has happened elsewhere.

**CHAIR**—I am going to use a bit of chairman's prerogative and allow this session to continue because I think we are getting such important information that I should allow it to take some extra time. Provided Dr Pace has the time, we will allow this to flow until people finish their questions.

**Mr BAIRD**—Do you think there are benefits for corporations to perhaps sit in on some of the subcommittees of some of these committees, because it is often from corporations that the investment develops in Third World countries?

**Dr Pace**—Most definitely, and I am glad to see that some of them are keen to do so. God knows what they will think after they have been there! It is not so outlandish either to expect the international business community to participate in such deliberations, especially in the two major bodies—the civil and political committee and economic, social and cultural committee.

The United Nations system itself has been rather recalcitrant—I have to be careful not to choose too strong a word, and 'rather' is a soft one—in its duties under the International Covenant on Economic, Social and Cultural Rights, for example. It is only in the last couple of years that you see the ILO making an input into the committee's work or the UNDP or WHO, whereas this is a committee that addresses health, education, housing and the other economic rights. Philip Alston, who used to chair the committee, used to make himself an unpopular person with many of the other institutions and agencies simply because he insisted on their obligation to be there under the treaty. But you cannot force them, and it is only now that they have naturally gravitated towards this committee because there is this convergence. If you are treating malaria as a WHO person, you are also treating a person who is lacking education, which is UNESCO, or who has no roof, which is Habitat. The convergence of the international system is natural by virtue of what they do.

Human rights is the fibre that keeps it together—hence the need to have these treaty bodies that are the backdrop against which this progress is examined and able to do its work. Otherwise, all we get are big, beautiful, glamorous reports—like the human development report, which is not only beautiful cosmetically but also filled with very good substance—but there is no longer any relationship between governments together and the international community. I do believe that business will be there even before some of the inter-governmental organisations. If, for example, you look at the web sites of Rio Tinto, BP Amoco and Stride-Rite, they all have human rights policies and they are developing materials, teaching their managers on human rights and so on. It is a little bit eyebrowish we think, but I do believe very much that it will work.

**Senator BOURNE**—I understand that NGOs submit reports or at least try to submit reports to a lot of these treaty bodies. Can you tell us how that happens and how seriously those reports are taken?

**Dr Pace**—In the early treaties, NGOs were not allowed; now they are welcome. Non-governmental organisations are an essential factor of the human rights process. For instance, if

you take Japan, in the Human Rights Committee the bar associations of Japan regularly presents excellent reports to the Human Rights Committee parallel to the government's reports. They contradict a lot and they show up a lot, but some of it is complimentary, too. The net result is a much more complete picture of the realities in that country. Therefore, there is a much easier way of dialogue between the treaty body and the government. So the contribution of NGOs is made directly, and the treaty bodies set aside some of their informal time to make themselves available to the NGO community. Where they have no formal standing, members sometimes take upon themselves the brief from certain non-government organisations. They are today a standard ingredient of the treaty process.

**Senator BOURNE**—Would that have been why the Secretary-General set up the NGO millennium meeting a couple of months ago?

**Dr Pace**—Yes, definitely. The non-governmental community itself has evolved. Take Amnesty as an example. Amnesty started out as protecting freedom of opinion and non-violence. Amnesty today is talking about big business as well. It is natural that they evolve.

By the same token, not only has the evolution been in the content of their concerns but also in the geographic or regional specificity. You used to have only international ones, because during the Cold War it was some of us and some of them, and you always had one for the other—that kind of thing. Today it is more development oriented, so they need to be maintained. The only danger with NGOs these days is that some of them tend to be much more efficient than they should be because they are either over-resourced or some are still not well motivated, but these are the minority and are quickly picked up. But they are an essential ingredient of the treaty process and, indeed, of the extra convention process. When we were doing Chile during the 1980s, we relied heavily on information from the non-governmental organisations— not just the Chileans but also the Latins and the Europeans.

**Senator BOURNE**—Thank you.

**Senator PAYNE**—My questions flow directly from Senator Bourne's: Dr Pace, you said in your comments that the procedures were out of date, and I think you said 'streamlining' might be one way to address some of the problems. In that streamlining process, what do you think would be the place of NGOs? Should it be formalised?

**Dr Pace**—To some degree. I think excessive formality may make NGOs pseudo-governments. Some governments are pseudo-governments to begin with anyway, so it does not help.

**Senator PAYNE**—It would be duplication.

**Dr Pace**—Yes. I believe that the special status of NGOs should be conserved. The precious quality of NGOs is that they supply a slice of the pie, which is at the grassroots and community based, which governments cannot constantly assure nor will it ever be possible. National institutions such as HREOC and other institutions elsewhere are another slice of the pie. Together, they make up a total spectrum to make sure that the sum total of individual concerns of society surface as constantly as possible at the level of deliberation and decision making.

**Senator PAYNE**—Without wishing to take a side in making this statement, I would advance the argument that, in Australia recently, some NGOs have been accused of having political motivations and of running political agendas in their campaigns rather than pursuing the basic platforms upon which they were established. If you formalise them in the processes, as we have talked about—even to that small degree—how do you obviate that problem, if it is a problem?

**Dr Pace**—If you formalise them to some degree, first of all a political agenda in the sense of an NGO turning into a political party obviously makes it not an NGO. It is not an NGO if it becomes, by virtue of its beliefs and its methods, a political organisation. But many NGOs do have a political agenda because they deal in people. People's plight and people's concerns are not the monopoly of political parties.

**Senator PAYNE**—Fortunately.

**Dr Pace**—On the contrary, that is why you have community groups. In the old Soviet Union days, those groups managed—Shakarov and the others—to unite as non-government organisations in spite of a huge bureaucracy, but they were accused of politics. They were accused of challenging the system, which they were. It is not necessarily an exclusive condition that NGOs have political matters to discuss. If it is a political agenda by virtue of the substance that you do, to my mind, there is no irreconcilability. If it is a political agenda in the sense of pretending to be an NGO when you are a party politic, then you are a party in any case.

**Senator PAYNE**—In the current system when the reports or contributions of NGOs are being weighed against the reports or contributions of states' parties, how does that work? How does the committee form its views around perhaps two divergent contributions?

**Dr Pace**—It depends on the committee members, on the experts. Priority is given generally by all experts to government presentations. The benefit is given a priori to what the government says, because that is the responsible state party. The submissions by NGOs and by other parties are considered to be of a complementary nature and to supplement what the government has said. It is assumed that there may be areas in the government presentation that, in the mind of the group presenting that submission, may not be sufficiently covered. It is usually in that spirit that treaty bodies take submissions by non-government organisations, but they do, as a general rule, give NGOs a great deal of importance.

Some members and some experts do not like NGOs because of their culture or because of their background. Some like them too much because they themselves have been former NGOs. But, in my experience, the balance has been pretty even. It depends on the issue as well. Some issues give rise to a lot of passion and a lot of emotion and in that case there is a risk that the committee loses the clinical attitude that it needs to assess those reports, but this is rare. In most cases they take NGOs in as part of the process but centring on the government submission which remains the one that is answerable to it.

**Mr JULL**—Can I just get back to the committees? While we have heard about their constitutions and something of their workload, what sort of support staff do they have? One of the great criticisms always seems to be that the United Nations and all its agencies are over-bloated bureaucracies. Could you give us a bit of an indication of what sort of support you get?

**Dr Pace**—The Office of the High Commissioner for Human Rights was restructured between 1994-96. It took two years and cost about \$2½ million. The result of that restructuring was, I believe, quite good—but I am biased—and resulted in three sectors being set up: one called activities and programs, which took care of technical cooperation and extra conventional procedures; another one called support services branch, which took care of the treaty bodies and the Commission on Human Rights and its sub-bodies; and the new one called the Research and Right to Development Branch, which I had the honour of heading as my last responsibility. This was supposed to mainstay the other two. The one that dealt with support services was the smallest one in number, even though they had so many meetings. For instance, if I am not mistaken, until recently the Committee on Economic, Social and Cultural Rights had one full-time support staff. Perhaps they have added a junior intern now; I am not sure. The civil and political rights committee are a bit bigger because they have the optional protocol that deals with complaints, and that brings a lot of mail. They have maybe three or four staff. Then there is the CERD which has about 1½. The child committee has a bit more with about two or three, and CAT has about three, because CAT also administers the voluntary fund for treatment of victims of torture, and that has a board of trustees so there is another secretariat there. They have a lot of work to do to bring in patients and so on. They administer about \$US4 million a year in funds. CEDAW is not taken care of by them, but unfortunately it is taken care of by New York where there is a women's department. Therefore, it is the weakest, the smallest and, I dare say, the most fossilised. It needs to be aired; it needs to be strengthened.

If it is any consolation, in the last, say, 12 months of 1998-99 we saw a group of young, very good professionals come in. If they had been left alone to do the job they would probably have done it much better than my generation. Unfortunately, in addition to doing the work they also had to fight through the crust. It is one of the saddest areas that we have.

**Mr JULL**—Could you give us an indication of how many cases you would have each year?

**Dr Pace**—Fortunately, not all states report. If they were to report, it would logjam. There is no physical way, unless we change the calendar, these bodies can handle what comes in. If you have 150 member states and you have them reporting on a roster of, say, 50 or 60 a year, if they give 2½ minutes to each country—which is ridiculous; they need two days minimum—then you cannot do it. You have over 900 ratifications. In other words, theoretically there are about 900, and some reports should come in every year. If you divide that by the working day it is physically not possible.

The treaty bodies, as we said, meet for four months in a year. If you were elected as an expert to the treaty body, you have to say goodbye to your work anywhere else, not to speak of your family, because for three months a year you are away. Once you are away, you work, because it is wall to wall. So these days they only take five or six states' reports a session, if you look at the calendar. Even then they would have filtered them by a preceding working group arrangement. That is why they assign rapporteurs: one of them takes the duty of putting the dossier together and reading through the material and advising the others. It is one of those measures that I characterised as internal that they have tried to adopt in a losing battle against the volume.

**Mr JULL**—Where do most of the complaints come from?

**Dr Pace**—If you are talking about individual complaints, it varies. They used to mostly come from countries that have problems with freedom of expression, but these days they vary. They come from all over, really: from Latin America, from Africa not so much, and the Latins are more prone to use the procedures. The Europeans have their own European regional procedures, so very few come through, but they do. They are quite evenly spread out, I would say. The individual complaints are not easy to subject to statistics because some of them are confidential. The procedure protects individuals. The state knows—the state has to be informed, of course—but not the public.

**CHAIR**—Dr Pace, thank you very much for appearing as a witness before this inquiry today. I think we are very fortunate to have had a person so highly qualified in matters relating to the United Nations appear before our committee today. I can assure you that you have made a very important contribution to our inquiry, and I thank you on behalf of the committee very much for appearing today.

**Dr Pace**—Thank you very much, Chair, gentlemen and ladies.



[10.58 a.m.]

**SHERRY, Ms Alanna, Advocacy Manager, UNICEF Australia**

**CHAIR**—I welcome the representative from UNICEF Australia.

**Ms Sherry**—I am filling in for Gaye Phillips, who apologises for not being able to come.

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

**Ms Sherry**—No, not at this stage.

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

**Ms Sherry**—Thank you very much for inviting me to be here. I would like to focus on three of the terms of reference that we addressed in our submission, just to draw out a couple more things that are not in there. In relation to the term of reference on the increasing demand for provision of peacekeeping operations, our recommendations were that the Australian government promote greater recognition of children's rights in peacekeeping and peace building processes, and recognition of the far-reaching effects of armed conflict on children and young people. We would recommend that the Australian government support child rights training to all personnel—military, civilian—during a conflict. We also recommended that the Australian government promote policies that acknowledge that children's rights are a special category of rights, based on the particular vulnerability of children to harm in armed conflict. What that is about is actually seeing children as zones of peace. What UNICEF internationally stresses, and has done since the 1980s, is that wherever children are it is a conflict free zone, and that women and children should be protected from harm and provided with essential services to ensure their survival and wellbeing.

In our submission we talk about various examples of corridors of peace, days of tranquillity, bubbles of peace—there are different names for the same phenomenon—that have been negotiated in the middle of a bloody conflict. You may recall recently that, during the Sri Lankan conflict, UNICEF Australia issued a statement on this. As an illustration; one of our overseas aid projects that we carry out in Sri Lanka with the help of AusAID is exactly on this, working to establish zones of peace for children in Sri Lanka caught up in the conflict. It also includes the training that I mentioned before, of army and police personnel, in the concept of children as zones of peace. So wherever children are, their rights should be respected—their right to continue schooling or immunisation programs and, obviously, their right to life. This is

probably the best example of sustained humanitarian aid, working on both sides of the conflict and getting parties to the conflict to acknowledge the Convention on the Rights of the Child, which has been ratified by all countries except Sudan and the US. Even in Sudan, UNICEF got combatants in the dispute to recognise commitments to child rights, with eight corridors of relief created. An example of where we would encourage the Australian government to actively promote the inclusion of child centred actions in relief operations and peacekeeping would be East Timor.

The second term of reference that I want to draw attention to is the one about the capacity for the UN to protect human rights as a basic requirement of the charter and its preventative diplomacy, and to address war crimes and crimes of genocide. On the right to development, we recommend that the Australian government acknowledge that protecting children's rights is part of protecting an overall right to development. I think the Australian government is doing this very well. An example is the joint AusAID-UNICEF Australia project, on the Burmese-Bangladeshi border, for universal child immunisation. I was there in March and saw this with my own eyes. It is a child rights approach to development aid.

The right is that every child should have a good start in life, a healthy start in life. So what we do is to immunise all children in this area—these are returned refugees from Bangladesh—against polio and with the six antigens and so forth. That is all part of the right to development too, and also the good governance recommendation that we continue to maintain good governance as a priority in our aid and trade programs. A good example of that, I think, is demining in Cambodia. It is good for Australian business. I was recently there too, and the person heading the community mine action program in western Cambodia—which is the most mined part of the world—is an ex-Australian Army guy. It is also humanitarian and it is protecting the child's right to life and to freedom from injury.

The final one I wanted to draw attention to is the viability of the International Criminal Court. Our recommendations are, basically, that we wholeheartedly endorse the Australian government's stance on this and continue to encourage the ICC to uphold the Convention on the Rights of the Child.

**CHAIR**—In your submission you suggest that the Human Rights Commission has been politicised. Given the nature of the organisation and the fact that it is made up of member states, how could it be anything else?

**Ms Sherry**—I agree. Could I take that on notice, please?

**CHAIR**—Certainly. I am not trying to put you on the spot. I realise that the submission has been put in and that it may have been written by somebody else. You talk about the politicisation of the commission, yet the very nature of the organisation suggests it cannot be much else. Also, you talk in the submission about the emphasis on the rights of peoples. Since the whole structure of the organisation is based on association of member states, how do you think the emphasis could be changed so that it is on the rights of peoples? As that follows from the first question, you might find that difficult as well.

**Ms Sherry**—I think what we meant there was, for example, putting women and children first; prioritising, making sure that human rights—the rights of peoples, whether they are indigenous people, children or women—are considered in the UN system.

**Mr HOLLIS**—In the submission you note that the Convention on the Rights of the Child is the most widely ratified of the human rights conventions. You mentioned it in your introduction, too, as one of the issues. Yesterday when we were in Brisbane most of the people who came before us—and we had a roundtable, a forum—were fairly critical of the UN and what it stands for.

**Mr JULL**—And indeed us.

**Mr HOLLIS**—And indeed of the politicians, but that is beside the point. Many used the Convention on the Rights of the Child to illustrate all that was wrong with the UN, the UN system and treaties, and Australia's participation.

**Ms Sherry**—I think that that reflects the woeful lack of public knowledge of the Convention on the Rights of the Child. Let us face it, we ratified 10 years ago but we need a sustained public information campaign from government, NGOs and media—everybody has a responsibility.

**Mr HOLLIS**—I agree with you entirely there. I think that us politicians, at the time leading up to ratification, received perhaps more anti correspondence—we received very little correspondence in favour. I always think it is a tragedy that those in the community who are promoting or supporting a thing are never as vocal as those who are opposed to it. I do not know how we can overcome this situation. In fact, our committee on treaties, I think, has reviewed our participation there.

On the other point that you brought up, although in theory I agree with what you are saying about bubbles of peace or corridors of peace, I think in a conflict situation it would often be hard to enforce. Have we got any figures or any idea how many child soldiers there are in conflicts today? I guess it would be only a guess, but are there any estimations at all?

**Ms Sherry**—I think I could probably provide that information. I could go away and give you a written answer to that.

**Mr HOLLIS**—I accept it would only be an estimation; it would be handy to have that figure.

**Mrs CROSIO**—Perhaps you could take this on notice. If you are looking at child soldiers, with the work that is now being done by all organisations around the world on children who are being affected by poverty, is it increasing or decreasing?

**Ms Sherry**—I think it is increasing. I would have to give you a written answer to that, too. In terms of the amount of children who are now immunised and in terms of their basic health needs being met, there has been a monumental increase since the 1960s, but HIV AIDS has come into the picture now and is messing up the picture a lot. We have probably got more conflicts going on in the world than ever before this century.

**Mrs CROSIO**—Could we estimate that probably a lot more children are being affected by war and poverty?

**Ms Sherry**—Yes.

**Mrs CROSIO**—Could you expand a bit on the potential problems you see in the accountability of the NGOs?

**Ms Sherry**—Probably when NGOs are working in humanitarian relief operations, everybody has a different role to play. One NGO might be responsible for water, another one for food and another for medical supplies. There has to be some kind of coordinating role. Although the UN does a very good job with that, the nature of disaster relief means that you are going to have overlapping. That is what we talked about in the submission—you might have several NGOs going to do a survey of a village and asking the same question.

**Mrs CROSIO**—But overlapping or duplication would certainly cause a problem?

**Ms Sherry**—Yes.

**Mrs CROSIO**—There is always that limited dollar. Therefore, if you are doing something with the dollar with an NGO organisation who is then duplicating what another one is doing, that would cause a problem. Surely you would have to have a certain amount of accountability?

**Ms Sherry**—Yes, exactly. There is a relatively new code of conduct. I am not exactly sure of its correct title, the Sphere project, which attempts to regulate and has got minimum basic standards for what NGOs should be providing and doing and not doing in the humanitarian relief operations. That book, the Sphere code of conduct, is being distributed fairly widely now. I am not sure how many NGOs there are on the ground, but there are some who are more enthusiastic about it than others. It was put together by NGOs recognising that they need to be accountable rather than being a UN imposed thing. This is probably good. You always have some coordination role by the UN, but it is not perfect. There are definitely these duplication problems, as you said.

**Mrs CROSIO**—So that book or rules, or whatever, is put together by NGOs for NGOs. Why would some NGOs not be too happy with it?

**Ms Sherry**—Because they go in and do their own thing and think they do it very well—there is a lack of communication.

**Senator BOURNE**—Could we have a copy?

**Ms Sherry**—I will ask my colleague in the projects area to get it.

**Mr JULL**—UNICEF has always been regarded as one of the most successful, if not the most successful, of the UN agencies. For the public record, what are the funding arrangements for UNICEF in terms of moneys contributed by the United Nations organisation and what is the percentage of voluntary contributions?

**Ms Sherry**—I cannot answer for UNICEF. Technically, UNICEF Australia is an Australian charity. I could tell you what we do. We receive no core funding from the United Nations.

**Mr JULL**—That is what I was trying to establish, because UNICEF worldwide gets virtually no core funding from the United Nations, I understand.

**Ms Sherry**—I think the field offices do. In other words, the UNICEF offices in developing countries do, but not the ones in developed countries like ours. We are like another Australian NGO. We raise our money from our card sales and from our donors, including corporate donors, 80 per cent of which we send to New York. Our 20 per cent retention is for our overheads. UNICEF in New York—again, I am really not qualified to answer this—I understand has a bucket of funds which come from the general UN bucket. Australia makes its contributions bilaterally and therefore the Australian government contribution comes through that way. We send over the Australian committee for UNICEF contribution. So we are kind of providing funds in two ways.

**Mr JULL**—Do you think that New York is the right place for its headquarters?

**Ms Sherry**—Is there an alternative? Do you mean Geneva?

**Mr JULL**—Geneva, I suppose.

**Ms Sherry**—I do not really know. I would say that we, the national committees, the UNICEF offices in developed countries, deal with Geneva, although of course in New York there are plenty of bureaucrats who are experts. If I needed to know about child soldiers, I would contact the New York person, for example. But I cannot really comment on—

**Mr JULL**—What I am trying to seek is whether or not there is in fact enough coordination between the multiple agencies.

**Ms Sherry**—I think now, with the amount of meetings and emails, and the fact that they have got regional offices—for example, the UNICEF regional office in our region is in Tokyo—they do coordinate pretty well with Geneva and with New York.

**Mr JULL**—The other issue—dare I raise it—is mandatory sentencing. To your knowledge, are there any other areas on the Australian statute books, either Commonwealth or state, that may be in conflict with children's rights?

**Ms Sherry**—I think the Migration Act, yes.

**Mr JULL**—In what respect?

**Ms Sherry**—Effectively, it relates to mandatory detention of asylum seekers. I am talking about those who arrive unlawfully by boat. I could not tell you the part of the act but I can tell you where it is in the Convention on the Rights of the Child. I would say that the relevant article was 22, on refugee children. Specifically on detention, the same part of the convention as for mandatory sentencing—which relates to WA and the Northern Territory—is article 37, which I

think we mentioned in the submission. No child should be detained unless it is absolutely the last resort and then for the absolutely shortest period of time. As I understand from my meetings with DIMA staff, the average refugee child in detention spends only a matter of months there.

There have been cases—as I am sure you all know—of much longer periods of detention. My understanding of the convention and the way it has been applied and the Beijing rules is that unaccompanied refugee children—that means under-18s—as far as CROC goes should never be detained, and they are. There are not so many in Australia, but they exist. It has not really been on the national agenda and in the newspapers as much as the other mandatory sentencing issue, but that is probably an important one. It is probably more by omission. Because we have not domestically implemented the convention, there are gaps. I coordinate the UNICEF Australia Task Force on Child Rights, and we are working with officials of the Attorney-General's Department to produce the next report to the Committee on the Rights of the Child.

**Mr JULL**—That is going all right?

**Ms Sherry**—Yes, so far, so good. We have a very good dialogue with them. The child rights experts from welfare groups, NGOs and hospitals come together in the task force. At this stage, in the time line for the report writing, we have presented to the Attorney-General's Department a list of key issues that we think should be included in the report. I have just mentioned two; of course, the list is very long. Care and protection legislation in New South Wales is another example—physical restraint of kids in care. That is going to be one that we will submit. It is more or less what the government expected. The government asked the states and territories what they think should be included in the report—positive and negative, I should add. There are a number of issues and the Australian government has to respond to the concluding observations of the last report. Again, we have positive and negative content, including mentioning the mandatory sentencing legislation as well as the detention of asylum seeker children.

**CHAIR**—What do you suggest we should do with 17-year-olds who come to Australia illegally? It also applies to our younger people. What do you suggest we should do with them?

**Ms Sherry**—There are alternatives to detention models. I am not an expert on this but I am sure that both HREOC and the Refugee Council of Australia have alternatives on their web sites and also submitted alternatives to an inquiry a couple of years ago. You are familiar with it?

**Senator PAYNE**—I led the inquiry.

**Ms Sherry**—You are probably more familiar with it than I am. For example, say you are a 17-year-old Iraqi boy. Rather than being released into DOCS care—and I am not saying anything about that—maybe it would be better to go to an Iraqi family who will take responsibility for you. I am not suggesting that a 17-year-old be put into a boarding house with no English language skills and no prospect of employment. If we uphold the Convention on the Rights of the Child, then 'under 18' means 'child' and therefore—and there are not many of them—they are to be looked after by their community.

**CHAIR**—How many other countries in the world would uphold that convention? In other words, how many countries in the world would allow 17-year-old illegals to come into their country without detaining them?

**Ms Sherry**—I do not know, but I understand that we are the only western country to detain children willy-nilly when they arrive. That is what I have been told, and I understand fully the reasons that the Department of Immigration and Multicultural Affairs has for it.

**CHAIR**—I do not want to get into a long debate. I can understand seven-year-olds, eight-year-olds, 12-year-olds and 14-year-olds, but I think that these days a lot of 17-year-olds do not class themselves as children. They seem to want to do everything that adults do. I am not quite sure that a 17-year-old should be treated any differently from an 18-year-old or a 19-year-old.

**Ms Sherry**—I suppose it is a bit like the child soldiers debate. Some 17½-year-olds at ADFA slipped through and ended up in East Timor. There was a lot of discontent in the community about that but, okay, they are nearly 18. I totally understand what you are saying.

**CHAIR**—I guess one of the problems is that in some cultures, a 17-year-old is considered much more mature and adult than in other cultures. In the Indian culture we saw children being married at the age of 12. I think sometimes culture should be taken into account as well as just having a hard and fast rule about the actual age level, because an 18-year-old in Australia might be much different from an 18-year-old in India or in many of the other countries in the world.

**Ms Sherry**—But, as I understand it, once they are on Australian soil the Australian government has an obligation to look after them, whether they are Sri Lankan, Afghani or from Sydney.

**CHAIR**—It is probably not the time and place for this debate.

**Mrs CROSIO**—I have a further problem with your statements. Is a family with younger children going to be told, ‘You don’t have to be detained until we process, even though you have come here illegally. You have children, therefore, you don’t have to stay here.’ I have a problem with that as well.

**CHAIR**—I agree. I think it is probably another debate for another day, if the truth be known.

**Ms Sherry**—Yes; about detention generally— adults too.

**Senator PAYNE**—Ms Sherry, I perhaps should declare an interest and acknowledge that I am the President of the Parliamentary Association for UNICEF Australia before we go too much further. I have a couple of questions on your submission. The first is in relation to a specific recommendation which you make that Australia, ‘encourage its neighbours to adhere to the CRC and other international human rights instruments.’ I am interested to know what tools UNICEF Australia advocates for that encouragement. How do we do that?

**Ms Sherry**—In our bilateral relationships, and also in regional fora, just by keeping human rights on the agenda, as we are doing. For example—this is a very contentious issue, I know—engaging with the Burmese government is better than ignoring them—talking with them about

ngaging with the Burmese government is better than ignoring them—talking with them about human rights, including child rights, and doing child rights training.

**Senator PAYNE**—That is your view, that you are advocating?

**Ms Sherry**—Yes. Without strutting too much and turning our neighbours against us, let us say, there are ways—and we have shown it in the past few years—of getting neighbours on side and having a human rights dialogue and, in that, having a child rights dialogue too. I think there are very good ways of doing that in both our aid and our trade, and in general diplomacy we can encourage and set an example too. That is why we mentioned the domestic issues in this submission. Australia has such a good record of upholding its Convention on the Rights of the Child and other human rights instruments obligations, and we need to keep our reputation good so that then we can speak about human rights with our neighbours. If a leader in a neighbouring country turns around and says, ‘But look at your mandatory sentencing,’ then obviously we seem hypocritical, so we have to keep our own turf really sound, and then we can have some impact on our neighbours’ policies.

**Senator PAYNE**—Australia, with a number of other countries, was a sponsor of a resolution which was adopted by the Commission on Human Rights in Geneva in April of this year. Essentially, it was about good governance, but one clause of that resolution referred very specifically to communicating good practices and best practices and things like that. In the work that UNICEF Australia does between various countries in the region particularly, does UNICEF Australia make an effort to promote, in terms of profile, good programs or good practices that are occurring in other places and perhaps advocate their take-up elsewhere?

**Ms Sherry**—UNICEF Australia does not because we do not have the resources to work too much outside the country other than in our aid projects, but I know that UNICEF country offices do that. In fact, on the UNICEF web site you can look at the best practices section. I am just thinking of an example. One of the major achievements in the last couple of decades has been almost universal iodisation of salt to reduce brain damage in children, goitres and cretinism and so on. The UNICEF offices in Phnom Penh, Delhi and Bangkok are all working with each other and with salt manufacturers and governments, especially departments of health and mining. They get together in regional meetings to learn from each other their best practices in relation to that and, also, what they have learnt from PNG and African countries when salt iodisation was just beginning and, for that matter, from Australia.

**Senator PAYNE**—Part 2 of your submission focuses on the need for peacekeeping and post-conflict peacebuilding operations to focus on the needs of children. Can you tell the committee what up-front involvement UNICEF has when a peacekeeping and peacebuilding operation is being constructed at the UN level to ensure that the needs of women and children are built into that? Is it something that happens on an ad hoc basis and comes along at the end of the process? If the answer to the second half of the question is yes, would it be better if it happened at the beginning.

**Ms Sherry**—It does happen during the process, as far as I understand, although it can always be improved. I have some material here about the way in which, in the heat of the battle, children can physically be removed: there is a cease-fire for a period of time—I think this happened in Sudan earlier this year—while the children are moved to a safe place. As I



mentioned in my introductory statement, where those children are becomes a conflict-free zone. That is done by UN agencies, including UNICEF—those who are on the ground, but UNICEF is very actively involved. I have some examples, one of which is removing or rescuing child soldiers, taking them to the closest city and getting them into temporary accommodation and counselling and giving them medical treatment. UNICEF did that in Sierra Leone recently. That was a big success. Obviously the conflict is still going on in Sierra Leone, but during it, UNICEF treated children as a priority and got them out of that conflict.

**Senator PAYNE**—I heard recently that in Nepal child labour has been outlawed by legislation, addressing the interests of some 250,000 children in Nepal who are believed to be involved in child labour. Is that a campaign in which UNICEF is involved or, if not in Nepal, elsewhere in the world?

**Ms Sherry**—Yes, very much. Child labour is one of our major focuses this year, and I am sure it was in recent years too. The idea is always to have an alternative: do not pull the child out of the sweatshop or factory without a school, for example, to substitute or alternative labour that is not exploitative. Of course, there is child labour in Australia—most of us worked when we were under 18—but the difference is whether it is exploitative or not. So, always addressing the issues of poverty: not just going in and removing children from exploitative or dangerous workplaces without having some program ready to assist them. Yes, UNICEF is actively involved there and elsewhere.

**CHAIR**—What is your definition of child labour?

**Ms Sherry**—In the context of our discussion, exploitative child labour is not, for example, if you are a paperboy and you are under 18. But when we are talking about child labour as a child rights problem, it is when the hours are so long that you cannot do your homework or you do not have the right to play—leisure, sport and that sort of thing.

**Senator PAYNE**—Or miss out on the education environment completely.

**Ms Sherry**—Yes.

**CHAIR**—If you are still using the age of 18, there are some people who voluntarily move out of the education environment, for want of a better term. If you are legally allowed to leave school at the age of 15, then it would only seem right that you should choose to work.

**Ms Sherry**—But if it is dangerous, hazardous or exploitative, that is where UNICEF would come in and try—

**CHAIR**—I think you need to be careful of your definition of ‘child labour’, that is all.

**Mr HOLLIS**—As one who has seconded a motion in the federal parliament against child labour and has always spoken against it, there seems to be an anomaly in the situation of young people in Australia who are brought up on dairy farms, having been brought up on a dairy farm myself. I do not know if it has changed now but we used to get up at six o’clock in the morning and help milk before we went to school, and then when we came home from school and we would get on the separator. I think before Australia points the finger about child labour, we

ought to have a look at some of the long established customs and traditions in this country. Although they do have milking machines now, which dates me, it is quite interesting to have a look at some of the things that happen on dairy farms.

**Mr JULL**—In your case it was very character building.

**CHAIR**—My father always said it was good training for young boys.

**Ms Sherry**—Point taken. I think it is AusAID that is formulating a policy on child labour in relation to its aid program in this region and it is looking at this very point—and we are too. There are children in situations of exploitative child labour in Australia. I am talking about kids helping mum in outwork—

**Mr HOLLIS**—Or some shops too.

**Ms Sherry**—Yes, when they are totally overworked and not getting any sleep, et cetera. There is also commercial sexual exploitation of children. Family and Community Services estimates that there are 4,500 kids under 18 years working as child prostitutes in Australia. So that is another issue.

**CHAIR**—Thank you, Ms Sherry, for appearing before the inquiry today and for your contribution to the committee's work.

[11.38 a.m.]

**HOGAN, Mr Des, Campaign Coordinator, Amnesty International**

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

**Mr Hogan**—No.

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

**Mr Hogan**—Thank you, Chair. On behalf of Amnesty International I would like to thank the committee for inviting the organisation here today to assist you in your inquiry into the UN system. Obviously, this inquiry is quite an extensive one. In our submission which you should have before you we addressed certain discrete areas which come within our knowledge, and after this opening statement I will be happy to answer any questions you might have.

In our submissions we express the hope that Australia recommits itself to continuing its proud history of supporting the UN system. Successive Australian governments over the years have worked hard to ensure that fundamental human rights principles are espoused, codified, promoted and adopted by member states of the UN and within the UN itself. Therefore, it is with regret that we note the statements by the government this year speaking about reducing cooperation with UN human rights treaty bodies. We do hope that this can be put behind us and that the government can recommit itself to the UN human rights machinery clearly and unequivocally.

In our submission we ask the question: who does the UN represent—states and governments or individuals? We spoke of the need to prevent human rights abuses before they occur which requires a deepened international commitment to the less newsworthy and difficult matter of investing sustained resources to protect and promote human rights and not to allow situations to escalate to levels of persecution which allow impunity to go unchecked, abuses to proliferate, refugees to flee their homes and military intervention by the UN to be considered with the entire gamut of nation building and reconstruction which must follow.

In our submission we also spoke of the slide from humanitarian missions into peacekeeping and into peacemaking missions of which Sierra Leone is a recent example. We spoke of the strengths and the constraints of sovereignty in preventing abuses. Who can protect the victim of the violation where the violator is a police or military officer of the state, or where the state is

unable or unwilling to protect such as those killings in the name of honour in countries such as Pakistan?

We also spoke of efforts to strengthen the Commission on Human Rights and are pleased at the number of concrete measures that have come out of this year's commission meetings which were not covered in our submission. We feel that Australia has a lot to offer in terms of constructive dialogue with the commission on areas of common concern. We are pleased to note that the issues of impunity, human rights defenders, integration of gender concerns, regional cooperation on human rights in the Asia-Pacific, ratification and implementation of human rights treaties including the ICC, and issues of budget allocation to the commission and its bodies were highlighted in commission resolutions at its last session. We also hope that Australian policymakers can incorporate human rights concerns into all areas of departmental policy from the defence review through overseas aid, trade policies, refugee protection and, vitally, the full promotion and protection of indigenous human rights.

Finally, I would like to table forward from our secretary-general to the committee this year's Amnesty International annual report which addresses many of the issues of crisis prevention which are before the committee. Thank you indeed.

**CHAIR**—Mr Hogan, your submission to this inquiry suggests that the Human Rights Commission has been politicised. Given that it is a states based organisation, what alternative is there?

**Mr Hogan**—Some people might say it is a little bit inevitable, and that is across the UN system, insofar as voting blocs have been erected. But it is the Commission on Human Rights, and states are bound to send forward delegates to that commission to deal with human rights at the UN level. So if it is not the Commission on Human Rights it should be renamed, but since it is the Commission on Human Rights we would expect it to impartially and fully investigate, monitor and act on human rights situations throughout the world. It is a deeply regrettable fact that it has acted well in some cases but in other cases, recently Chechnya, it has not been able to do so.

**CHAIR**—It is very good in theory but in practice it just simply does not happen because of the nature of the organisation. Are you suggesting there should be some amendments to the charter or that there should be some other way of solving this problem?

**Mr Hogan**—It is a big problem. You have member states of the UN who are representatives at the commission who claim sovereignty—and they can cite international law standards for the sovereignty of the nation state—but within their own countries democratic institutions may not exist. So they are supposed to be representing their people, but they might be a military junta and it might be an authoritarian state, so there is a disparity there. Some further ways of deepening the involvement of civil society in the UN system need to be found. If it is just a question of member states discussing among themselves issues of regional peace and security, we are never going to be able to prevent mass human rights violations when they happen internally in states, unless the Security Council considers there is a threat to regional peace and security.

**CHAIR**—One of the problems arises if you want to achieve this non-political situation. You talk in your submission about impartial assessments of human rights situations based on international standards. Who is going to make the assessments?

**Mr Hogan**—The assessments should be made by individuals who come from member states but are appointed solely in an individual capacity and because of their own expertise, competence and impartiality. That is what we have to move towards. We have to move towards a system where nobody feels threatened when a resolution comes up through the commission, and states see it in their long-term and medium-term interest to say, ‘We accept criticism. We accept that there are situations here. We can accept the umpire.’ When you get situations where countries can denounce it as a Western plot or a means to extract trade concessions or other things like that, you are just going to be in for more and more division and debate. What we need at the international level is, at some place, an umpire who can impartially and correctly state that a situation breaches human rights standards, if that is the case, and then action taken to remedy the situation.

**CHAIR**—I understand that is what we need, but I am not quite sure how you suggest we can achieve it. You said yourself that, if you have got a member that is appointed by a military junta, it is quite possible that he is not going to take an individual line, having been appointed in that manner. In theory it is a wonderful idea, but what we really need to know is just how we can achieve the sorts of things that you want us to achieve.

**Mr Hogan**—Further strengthening of the different special procedures in the commission is certainly a very strong way to go. International condemnation by a UN body is never going to change the situation in a country overnight, but it can act positively over time. Nobody likes to be criticised. Diplomacy, making sure that there is accountability in decision making, knowing that when you do something you will not be acting in a climate of impunity where you can dismiss outside intervention, and a situation where there is clearer morality between states as well—all these can make a difference. One of the problems is that states are often seen to be acting in strategic, selfish economic interests or by geopolitical design when they make criticisms. For example, when Al Gore went to Kuala Lumpur one or two years ago, that was very much the impression that was given at that time. So we need to continue to strengthen it on a practical level but, at the same time, ask the hard questions about how we can open this thing up a little bit more so that it seems a bit more impartial and people can accept the ruling of the umpire.

**Mr BAIRD**—Do you think we need, perhaps, a UN version of the European human rights court?

**Mr Hogan**—The nearest we have to the European Court of Human Rights is the treaty bodies of the UN: the Human Rights Committee, the Committee on the Elimination of all Forms of Racial Discrimination, the Committee on the Rights of the Child and the Committee against Torture—those sorts of committees. That would be the closest we have. They can issue views, which are not decisions binding on states. But, if you look at the actual changes in the laws in Europe, for example, after decisions have been handed down by the European court—which can also insist on redress, including compensation—you will find that not only is the actual wrong corrected but also the laws are often changed. Governments in Europe do not like that sort of system. They do not like being criticised for being found in breach of the European convention on human rights and fundamental freedoms. But it does move things on. Whether

that is possible at the UN stage is very questionable, but, as to whether we should try to get there and whether that is the model we are looking for, I think that again it would be strengthening and deepening the accountability and the institutions.

**CHAIR**—In relation to this inquiry it is important that we keep in mind what might be achievable, rather than what the ideal world would have us put in place. You have to draw the line between going as far as you can and getting something that is achievable, which might be a bit further than what you think you might get in a recommendation—recommending something even further than you might get, or recommending something that, in practical terms, it is just impossible to achieve. I am not quite sure where that line is yet in relation to the issues that you raise of politicisation.

**Mr Hogan**—I suppose it is a question of your reading. We would think that certainly practical recommendations by this committee would be hugely helpful in even moving the debate on in Australia about how Australia can interact with the UN and with member states. At the same time, for Australia to adopt a principled, if pragmatic, view through its overseas missions, including at the UN, and to almost have an audit of human rights in terms of the dialogue and the way Australia represents itself as a nation, would be, we think, very beneficial. It cannot hurt in trying to move things forward, trying to stamp out some of these abuses around the world.

**Mr HOLLIS**—Like Senator Payne who declared an interest to the preceding witness, I should declare my interest that—

**Senator PAYNE**—I will have to do the same here too.

**Mr HOLLIS**—We are waiting for Senator Bourne also to declare her many interests, but I am the secretary and acting chair of the parliamentary group of Amnesty International. Having declared my interest, could we talk a little bit about the ICC, which Amnesty International has mentioned in their report. I note in the five points you have made there about the ICC you mention article 124. That is the opting-out clause, isn't it?

**Mr Hogan**—Yes.

**Mr HOLLIS**—I wonder if you could expand a little bit where you make mention of that?

**Mr Hogan**—Again, I might need to get back to you with a little more detail on article 124 but, generally speaking, the statute of the ICC was signed in Rome in 1998 and it needs 60 ratifications before it comes into effect. When that was being negotiated, certain terms were being bandied around. One of them, of course, was the concern of some militaries, including that of the US, that none of their soldiers be put on trial for abuses in foreign countries.

**Mr HOLLIS**—Yes, also Israel.

**Mr Hogan**—Also Israel. One of the difficulties there is if you are able to opt out of it, since the goal of the International Criminal Court is to bring accountability to gross violations of human rights—it might be war crimes, crimes against humanity or crimes of genocide—since the whole aim is to have an international umpire who can do that, if you have opt-out

agreements and ‘licences to kill’, as we say, it is not really going to work. It is going to have the impression of partiality: that some states that might be poor states are brought before an international tribunal, but that some of the more powerful ones are not.

What we are saying is that probably one of the most important developments of the last decade is the fact that the issue of impunity and international criminal tribunals have come so far forward. So we first of all had the ad hoc tribunals in Yugoslavia and then on Rwanda. The International Criminal Court is trying to codify that into a universal system whereby we have an equal application of law throughout the world, and also that impunity be tackled in domestic law so you make sure that if you cannot extradite someone to another state for, say, a war crimes offence—because they might not have a fair trial system or there might not be a will to prosecute—you can prosecute that person domestically for crimes committed anywhere.

**Mr HOLLIS**—I do not know what the answer is but one of the concerns is that, as so often happens with tribunals, it is seen as victor’s justice. People would be worried that vindictive claims or cases would be brought for revenge. As I say, I do not know how it might be done. Just by the very nature of there being a victor means that they are the people who are going to carry out those tribunals—I do not know what could be done.

**Mr Hogan**—It is a difficult issue. If you look at what happened with The Hague tribunal during the Bosnian conflict, you see that about 93 people were indicted by the tribunal. Of course, there were many more on the three sides who would have been guilty of abuses. But whenever anybody was captured and brought to The Hague, it became a big issue—the usual criticism was that this is the victor’s war and this is the way that the victors are carrying out their retribution. But as the cases continued, and as the triangle was built by the prosecution through going for things that were accepted had happened locally and building up the chain of command and finding that things like ethnic cleansing and crimes against humanity had been committed, the defence in the different cases accepted those findings more and more and people were pleading guilty to offences more and more. I think that there will be a growing acceptance of it if the tribunal or the court can be seen to act impartially, including acquitting people when there is not sufficient evidence or when there has been a breach of procedure in terms of fair trial standards. Once that happens, you will have a momentum which should raise the standards.

At the same time, it is going to be very important for Western nations, particularly the United States of America—and we would be saying this to friends of the US in countries like Australia—not to allow these outdated provisions. If they do, it is going to raise the whole idea that there are two sets of standards: there is one standard for the people who were vanquished and there is another one for those who are militarily or economically powerful. It is very important that it not only becomes a level playing field but is seen to become a level playing field.

**Mr HOLLIS**—I do not know if you are aware of who the signatories are. I wonder if Fiji is a signatory to this.

**Mr Hogan**—I would have to take that on notice.

**Mr HOLLIS**—It would be interesting.

**Mr Hogan**—It would be, and it would also be interesting to see who would sign it if they were.

**Senator PAYNE**—Today or tomorrow?

**Mr BAIRD**—I declare an interest in that as well. May I ask a question on an issue that is a vexing one at the moment—the personnel that sit on these various committees and what would appear to be their lack of full discussion with various interest groups. The example we have here is mandatory sentencing, on which Australia expressed its views. On the one hand, you could say that if you want to be part of a group which criticises others on human rights you have to cop it when questions come to you. But, on the other hand, isn't it appropriate that you should raise questions about the agendas of those who sit on these committees and ask to what extent they have fully canvassed the issues before them? I am not making value judgments either way on the issue of mandatory sentencing; rather, I use it as an example.

**Mr Hogan**—The first thing to say is that members of the Committee on the Elimination of Racial Discrimination are chosen for their impartiality. They are not supposed to represent their state, as with the human rights committee, the torture committee and the child rights committee. Australia is not the only country that has been criticised. One of the difficulties we had when the government criticised the CERD in the way it did was that it was disproportionate to the initial criticism. If you look at the way the UK has been criticised before this, you see that it was harsher in some respects. The difficulty then is that you create a precedent and other states can say, 'We share your concerns.' In terms of the agendas that committee members might have, having read through the transcripts of what went on, I think there was a misunderstanding about the way of committee processes, and that was unfortunate. It was unfortunate the way it came out afterwards as well. On canvassing, as an NGO we would say that there is not enough input from civil society into these committees and that we would like to see more input by NGOs as well as by government.

If you look at the way the committee hearings are structured, the government makes a report which NGOs and others can comment on. The government makes an opening statement, the committee goes away and asks questions and then the government comes back again. But nowhere in the plenary is there an opportunity for NGOs to come in and address a state. At the same time, NGOs can lobby committee members in terms of bringing things to their attention, but I would say it depends on the NGO's credibility, it depends on the information that is put to the committee member and it depends on other matters like that. We are happy to see that it has been addressed in terms of trying to strengthen the funding, the technical assistance and the strength of the personnel in these committees. Whether that comes true, of course, we wait to see.

We would say that the fact that there is such a delay in reports, the fact that reports are supposed to deal with 1993 but today it is 2000, the fact that a huge number of countries have to report, the fact that the follow-up to reports is usually not followed through because of the staffing resources in the secretariat are all really big problems. There are things that need to be changed. We would welcome member states to do that but to do it constructively and in a way which recognises the importance of those international human rights treaties and the importance of trying to promote them throughout the world.



**Mr BAIRD**—Would you see the two questions of, firstly, the credibility of the members on these committees and, secondly, the extent to which they canvass the issues with NGOs, other groups and government are part of the way of providing that credibility to the report?

**Mr Hogan**—We would hope that they would have credibility in terms of the work they do and have done. In terms of canvassing, there really is not all that much canvassing with NGOs that happens before these hearings. There is not a dialogue with committee members. I think there are a few misapprehensions about how powerful NGOs actually are, which I wish were correct.

I think that is what we are looking for; we are looking for a deepening of civil society's involvement in this and, through the High Commissioner for Human Rights, that these views come up. One of the resolutions from the recent commission was asking states to make those positive contributions, suggestions and proposals and to think of ways in which it can deepen in terms of not only Australia's reports back but other countries in the region who might not be very good at doing that or have the technical ability to put reports together and be able to give a coherent statement to the committee. So all these things are really important. Australia has had an awful lot of experience in this, but Australia also needs to say that, firstly, we get our reports in on time and we make sure that they are properly across all the departments so we have proper input and, if there is criticism—

**Mr BAIRD**—You compare the judgments made by the European Court of Human Rights and so on where you do have the changes there because you have got what are seen as impartial judges who go through a selection criteria in the Council of Europe by their peers and that the judgments are made on the basis of law. Does this breach the legal basis that applies?

**Mr Hogan**—The first thing is that the European judges are judges and they come from member states. Secondly, the European Court's decisions are final. They are binding. They are not binding in the way of the European Court of Justice, but they are binding on member states. The committee members for the UN system were voted on by consensus. I might be corrected on that, but my understanding is that they are voted on and they take an oath that they will be impartial and they will not represent any interest of their country, et cetera, which would be similar to the European Court of Human Rights.

But again, if you look at the commission of the courts in Europe, at their funding and their ability to process cases to deal with a big workload, they are much stronger than the UN system. And the irony is the UN system is supposed to be universal and cover every country whereas the European Court of Human Rights only covers a certain number. So that is a big problem. The second thing is that, if your views or findings are not binding, you are allowing states to come back at you and say, 'Well, we do not agree with this basis; we have got a different view' and things like that.

**CHAIR**—I want to follow up in relation to the various committees. Dr Pace gave us evidence this morning—and I hope I am quoting him correctly—when he said that the submissions made by the governments of member states should carry more weight than those given by NGOs. I think that is what he said this morning. A view has been expressed that, in relation to the human rights committees, too much weight was given to NGO submissions and

not enough to the government submission, particularly in our own case. What is your view of that argument?

**Mr Hogan**—Again, I suppose it goes back to the question of: who does the UN represent? At the moment it represents governments and governments' views are given much more weight. If governments' views are correct and if what they represent in the reports corresponds to reality, NGOs really do not have much to go on about in terms of criticising facts—maybe in terms of emphasis. In terms of NGOs having a disproportionate effect on committees, we would not think necessarily that that is the fact. There are a lot of NGOs. You actually have to be present in Geneva to be lobbying personally, and that means you have to send a delegate from your country. Sending someone from Australia to Geneva happens very rarely. It has happened, for example, with some indigenous leaders, but in other areas it has not really happened. Your other question was about NGOs—

**CHAIR**—Yes. We had the recent case of the Human Rights Committee here in Australia, which everyone is well aware of, and the criticism was that more weight was given to the evidence of NGOs than the government's submission. That is a criticism that was made, whether it is valid or not is for other people to judge. But I guess the criticism of the NGOs was that perhaps they had not canvassed widely enough in gathering their information to submit to the Human Rights Committee. Whether or not the criticism was valid is for other people to judge, but that was the criticism that was made.

**Mr Hogan**—Sure. Governments get criticism half the time from NGOs and NGOs can get criticism if that is the case. If what the NGOs put into their statement is incorrect, that should be quite clear. Similarly, in terms of canvassing, NGOs come from different situations. With Amnesty International, we have a mandate which we come from which includes international law standards. UNICEF, of course, would have a different one; they are a UN agency. But a humanitarian NGO would have a different mandate or agenda as well. The charge would have to be quite specific in terms of which NGO and how it was dealt with. I would imagine that a committee which probably receives hundreds of submissions, even one-page letters, from individuals or NGOs would be able to sift through the stuff which is out there and the stuff which might be credible. Then, of course, the committee will not take on board what the NGO is saying. It would put it to the government if it decides to do so, and the government has the right to respond. So, without an NGO input, you are just going to have governments making statements, being accepted and then there is no involvement of civil society.

**CHAIR**—I think, in fairness, there was not criticism of the NGOs. The criticism was of the committee's response to the reports of NGOs over and above government responses. I guess that is not really a question of—

**Mr Hogan**—As an NGO, we would not think that our problems are taken on all that strongly by—

**Mr BAIRD**—Always.

**Mr Hogan**—Well, they should be, of course.

**Senator PAYNE**—I have two questions in relation to your submission. The first is in reference to the role of the UN in the period of transition following peacekeeping operations and so on. You say at the end of page 2:

The inclusion of human rights principles in such operations can occur without consultation with other UN agencies, with mandates negotiated in New York without reference to Geneva and the Office of the UN High Commissioner for Human Rights.

And you acknowledge further on that improvements are being made. In terms of the way we are looking at how the peacekeeping operations are structured, and some of the questions that you would have heard me ask Ms Sherry from UNICEF, is it preferable in Amnesty's view for this to be part of the up-front process for, if you like, there to be some sort of quite logical process in forming these operations that means that these are not left until later in the process and, therefore, done as catch-up or done without consultation in that way? That is quite a bland statement in your submission, but quite concerning in its impact.

**Mr Hogan**—I think it has to happen up front, and I do not think it has happened yet. I think that the two UN missions in Kosovo and East Timor were made up as they went along. I think people were cutting and pasting from previous UN missions with the result that, not only was there misunderstanding between UN agencies about what was happening, there was misunderstanding between NGOs about where the gaps were. So it can be very dangerous to go into a situation like that, which is in a way imposing a foreign rule of governance on local people, because of the fact that after a while you are going to have a backlash if things are not going well in terms of a local empowerment.

It is still a little way off in terms of getting this right, but human rights and humanitarian considerations need to be fused at the stage when a mission is being negotiated in New York or in Geneva. But, again, that kind of goes to the difficulty of knowing when it is a peacekeeping, a humanitarian or an intervention force, as INTERFET was. We think it is very important that it be included early on. So, for example, last year when Australian soldiers were going into East Timor, we were trying to push our principles—which I think I have appended to our submission—which were, if you want the role of international troops in a local environment, respect human rights and international humanitarian law, making sure that there are not abuses, as happened in Somalia with US troops, and that people understand this from the very beginning.

But, as we were playing catch-up as the troops were already on the ground and it was not put into the original mission plan, it was a question of trying to get little cards handed out to CIVPOL police and troops to say that these are international human rights standards and this is international humanitarian law. Of course it makes eminent sense that armies do not get themselves into trouble by doing things which are going to cause local resistance and give them a bad image and even bring them before a court in the future. That is a small example of the fact that that component was not present when the INTERFET and the CIVPOL were put together.

**Senator PAYNE**—Although I might say for the record that we received evidence in the first of these hearings in Canberra from a member of the ADF, whose name and rank I have conveniently forgotten, about that training within the ADF specifically for these reasons which, as an observer of that hearing and a participant in that hearing, I might say was impressive. So that may be something that Amnesty can look at.

**Mr Hogan**—One of the problems when we have approached the defence department is almost—if I can put it this way—‘Who are you?’ There is not that sort of interface which should occur and which occurs with Amnesty International offices in other countries.

**Senator PAYNE**—That is an interesting note for us. In relation to term of reference 3 you also make the point:

The experience of Angola, Cambodia, Somalia and now Sierra Leone shows that unless the international community tackles human rights violations when they first occur, it will not achieve its stated aims of preventing wars and alleviating human suffering.

I assume in that paragraph there is an implication of support for preventative measures, if you like, so that you do not get as far down the road as needing peacekeeping/peace enforcing operations?

**Mr Hogan**—Almost when we get to the military intervention stage, it is too late in many ways—the violations have already happened, the refugees have fled their homes, the crops are burnt and the gum trees will take four or five years to grow again—and, therefore, we are into a situation of trying to stop more bloodshed, trying to reimpose an outside semblance of order on a local infrastructure and then, of course, you have to search for local agencies in terms of who are going to be your dialogue partners to try to get the country back into reconstruction.

Prevention is so important, and in the foreword which I have tabled to the committee from our Secretary-General the point is strongly made about the need for prevention. For example, in Kosovo in 1993 we warned that this situation was going to conflagrate before long. We made similar risk assessments with regard to other countries around the world. But again, unless it seems to come within a strategic interest of the big powers, these things do not happen. While the Democratic Republic of Congo continues to fracture and a couple of countries are pulled into that conflict, other states like Sierra Leone—because of their colonial past—might merit more intervention. We do not have any consistency, and with no consistency we are back into the whole argument of partiality and of doing this because of selfish concerns—which unlocks the whole human rights argument. If it is not impartial but is seen to be partial, you are really shooting yourself in the proverbial foot.

**Senator PAYNE**—Finally, and perhaps less simply, your submission slides very easily into the statement that the principle of state sovereignty can no longer remain sacrosanct and finishes one sentence after that, which is a fairly brief reference to what I would describe as a fundamental change in the nature of the change of the operation of the United Nations if that is to be adopted across the board. This might not be the place or time to expand on that—perhaps it is something you want to take on notice—but it seems to me you have made a very strong and sweeping statement in saying that. I would be interested to know how Amnesty thinks you go about changing the fundamental nature of the UN to move to that point.

**Mr Hogan**—We would not want to be making a claim that state sovereignty should be abolished overnight or anything like that, but what we would say is that the evolution of human rights in the last 50 years has seen state sovereignty recede. For example, crimes of genocide or huge violations happen and the international community feels itself compelled to intervene, so already that is happening. Arguably, with the human rights machinery of the UN there is also a

breach of that principle as well, insofar as you have got outside agencies criticising and calling to account what is happening domestically.

**Senator PAYNE**—If I could just interrupt: your references to Chechnya and to Russia in your submission say that that is meaningless, effectively, or at least not terribly useful.

**Mr Hogan**—Exactly, in terms of the fact that with Chechnya the state sovereignty is intact, and therefore there was no intervention and Russia was not called to account.

**Senator PAYNE**—That is what your submission says.

**Mr Hogan**—Yes. The Realpolitik of the situation is that the likes of Chechnya and the situation of China will continue while states such as Russia and China see that there is a large lobby in the UN member states who think that the principle of non-intervention in state sovereignty should remain sacrosanct. But I think that, as the principles of universality and indivisibility of individual human rights become stronger, that will become challenged more and more. We must not move to a situation where the powerful states can decide where to intervene, when and how, because that will then exclude the other states and over time you might see a situation where militarily powerful states have vested their interest into regions of the world. That is where the importance of state sovereignty also comes in. State sovereignty is fine as long as states uphold the rights of their citizens and as long as those citizens are empowered to be represented by their delegates at the UN. But when those same delegates chop and choose between international law principles and, of course, abuse their own citizens, their own nationals, that is when we really have to question how long it could remain sacrosanct as in untouchable.

**Senator BOURNE**—Most of the questions I was interested in have been answered, which is good. One small thing, on page 8 of your submission you mention the Vienna declaration on human rights. Speaking as a member of the Australian delegation to that conference, that we did not go backwards on universality and indivisibility did not feel like a moderate success; it felt like a huge success at the time. It strikes me that there are a lot of things that are getting a bit better about acceptance of human rights, particularly universality and indivisibility. ‘Asian human rights’ as a term is not used any more—that I have heard—over the last couple of years. But do you think that there are areas where we are going backwards in this where we should be putting a lot more effort in? And, could the UN be doing something further?

**Mr Hogan**—The big area is prevention; getting in early and sustaining resources through either Australian officials working overseas or through UN or delegated agencies working with local people trying to empower them, so that if there is discrimination, for example, we try to stamp it out and do not allow it to grow into persecution. I think there have been gains: certainly it is very pleasing to see that more and more people in the Asia-Pacific are beginning to talk in terms of rights and not just responsibilities. I have recently been at a regional meeting for Amnesty International where 13 countries in this region were represented. There are stories about local activism, which those countries are doing, and the way that they are dealing with their own governments in terms of positioning themselves. For example, Amnesty Thailand, Malaysia and Philippines are going to be doing a lot of work around ASEAN not only to try to get the child soldiers issue up but also to try to get ASEAN to take responsibility for human rights. And, of course, speaking as Asians and not as white folk. It is also a much more

powerful manifestation of the fact that there are people here who think human rights are not just a western construct.

So there are a lot of improvements in a lot of areas, particularly in the way that civil society is engaging itself, but we have to measure that against the enormous suffering and the fact that torture, for example, is practised in 128 countries around the world. Until we can say that we can get that number down to a very small number, we cannot let up. In fact, the practice of torture is proliferating in certain regions and in certain countries. So we need to ensure that first of all there is ratification of the torture convention, we need to make sure that it is implemented, and then we need to make sure there are national action plans which can make sure that states put pressure on each other to say that this is just not acceptable.

**Senator BOURNE**—So you think torture is actually increasing?

**Mr Hogan**—Yes. Amnesty International will be having a year-long anti-torture campaign starting later this year. I would welcome all the members of the committee to it.

**Senator BOURNE**—We will all be in it.

**CHAIR**—This is physical and mental torture, I presume; having just witnessed in Zimbabwe some mental torture—

**Mr Hogan**—Yes, under the definition of article 1 of the torture convention, which is all forms of cruel and human degrading treatment or punishment, including torture, whether physical or mental.

**Senator BOURNE**—I hope I am not misquoting Dr Pace but I think he said as an aside that NGOs are spreading their wings a bit. He mentioned Amnesty International, saying that you are looking at business as well as individuals and states. Can you give us an idea of what you are looking at in relation to business?

**Mr Hogan**—In relation to business and economic actors and economic relations, what we are saying is that human rights must be a part of trade; that trade should not be seen in isolation. Therefore, even policies of intergovernmental organisations such as the World Bank and the IMF need to make sure that there are audited human rights components in their programs so that you do not go in to save an economy and find yourself impoverishing a whole area or putting children into bonded labour or something like that. Also, for example, the Multilateral Agreement on Investment—the dangers that would have brought to local economies where you could have large overseas corporations coming in and demanding that local, environmental or human rights norms be overridden in the interests of efficiency or proper corporate management.

**Senator BOURNE**—Profits, really.

**Mr Hogan**—Profits, if you want. What we are saying is that we are trying to contextualise and urge the contextualisation of trade in terms of human rights and in terms of making sure that, when we trade, we do so meaningfully and we do so ethically.

**Mr JULL**—Have we got any domestic human rights issues bubbling along in Australia?

**Mr Hogan**—Unfortunately, we have one or two. We have the ongoing issue of indigenous rights, of which mandatory sentencing is one example. We also have the issue of the treatment of asylum seekers, in two main areas. One is making sure that no-one is sent back to a country to face torture or death for any reason, even including non-refugee convention reasons. The report handed down by the Senate Legal and Constitutional References Committee last week made that recommendation. That is very, very important, so that we make sure we have that, that we identify people. The second one is the question of mandatory detention of asylum seekers, which breaches one or two international covenants. We have urged, with the NGOs, that alternatives to detention which are used in Europe and other countries be seriously looked at. Apart from that, apart from things like defence review and trade and things like that, Australia has an exemplary human rights record and has been excellent on the world stage—particularly, in the last 50 years at the UN, in Australia's involvement and Australia's image. But our point would be that human rights begin at home, and for Australia really to engage in the region and engage with the UN we have to clear up the things that are wrong here.

**CHAIR**—Could you just elaborate on those European countries which do not use detention for asylum seekers.

**Mr Hogan**—Most European countries have alternatives to detention. Practically every one has an alternative. None of the European countries have mandatory and automatic detention for people who arrive in a certain way. Of the countries that do have detention, it often gives way to reception centres after a preliminary period. This is because mandatory detention would be outlawed under article 5 of the European Convention on Human Rights. In two court cases under the European convention, the case of Chahal against the UK and the case of Amuur against France, the court found that the detention of somebody as a suspected terrorist—in the Chahal case—for over 2½ years breached article 5, in terms of the person not having the right to go before a court for the lawfulness of detention to be tested. In the Amuur case, the detention of four Syrian asylum seekers for a period of about 30 days in Paris-Orly International Airport was also a breach. Those principles correspond to articles 9, 9(1) and 9(4) of the ICCPR, the International Covenant on Civil and Political Rights. In the *A. v. Australia* case of 30 April 1997, Australia was found in breach of articles 2(3), 9(1) and 9(4). There has been no change to the law since then. We have actually seen the number of detention centres double.

**CHAIR**—So what does Amnesty International think we should do with illegal immigrants, or supposed illegal immigrants?

**Mr Hogan**—First of all, we would differentiate between asylum seekers and economic migrants.

**CHAIR**—Sometimes it is difficult to differentiate.

**Mr Hogan**—It is difficult. But also, with the use of terminology such as 'illegal', we step into the issue of criminalisation. Many asylum seekers cannot get in with a visa. You cannot get a visa in overseas embassies, even if you apply. I am not talking here, for a minute, about the offshore program; I am talking about asylum seekers arriving. What we would say is that under international law standards it is okay to detain, according to EXCOM Conclusion 44 of the

UNHCR: to verify identity, travel route, health, security, public health issues or the claims of the person—but only if it is necessary. The key is that the necessity of the continuing detention has to be tested, and you can only test that if you have a court testing it. The court might say, ‘It is okay to continue detention. This person has done a criminal offence, or we do not know enough about them. They have torn up their papers. It might be okay to continue it.’ But when you cannot do that, you are flying into the danger of becoming arbitrary and unlawful. And, if that is the case, then that is a breach of the fundamental right to liberty.

**CHAIR**—Our previous witness, who I see is still here, talked about not detaining children under the age of 18.

**Mr Hogan**—Unaccompanied minors.

**CHAIR**—If a person aged 17, a child under that classification, is not detained to verify their health, if diseases or things that other people are checked for are brought in, this could impact on the community. Surely there must be some justification for the detention of everybody who comes into this country so that those checks can be made, even if it is only for a short period.

**Mr Hogan**—I would imagine that it would be okay. There is a difference. We are speaking about adults and children under the international standards.

**CHAIR**—I understand that.

**Mr Hogan**—The children’s convention speaks about children and the difference between unaccompanied minors and accompanied minors. With the 17 cut-off stage, you have to have a cut-off stage somewhere and that was the big debate with the Northern Territory mandatory sentencing laws. I would imagine that, to check the health of a child coming unaccompanied, it would be permissible to detain that person for a minimum period, probably for a matter of hours or one or two days. It should not take any longer than that. That would comply with international standards. Of course, I will have to go back and read that article of the convention again. International law does not say that nobody should be detained. It simply says that nobody should be detained beyond a certain period where it is no longer necessary, and you have to test that.

**CHAIR**—I understand that.

**Mr BAIRD**—The distinction you make between asylum seekers and the other group that you put as economic refugees—

**Mr Hogan**—Economic migrants.

**Mr BAIRD**—Do you consider that it is appropriate to detain those people?

**Mr Hogan**—We make that distinction because really the description of asylum seekers comes from the refugee convention, article 31, which says there are penalties for people who come irregularly into the country. That was interpreted by the UNHCR with its EXCOM conclusions. Article 9 of the ICCPR applies to everyone. So after a certain period, even if they were economic migrants, they would still have to have the lawfulness of their detention tested. I



am not suggesting that they would not be able to continue to be detained. All the Australian government has to do is, firstly, to examine alternatives such as community release on bonded bail, reporting to a police station once or twice a week. Secondly, a judge has to look at the lawfulness of detention after maybe three or four weeks and periodically thereafter.

**Mr BAIRD**—What if they do not have the funds to put up for bonded bail?

**Mr Hogan**—If they do not have the funds, the UNHCR EXCOM conclusion recognises the fact that many of them do not have the funds. If it is not bonded bail, the penalty for breaching the conditions of release could be redetention and that already happens in European countries.

**CHAIR**—If there are no further questions, I thank you very much for your contribution towards the inquiry this morning.

**Proceedings suspended from 12.33 p.m. to 1.40 p.m.**

**ELLISTON, Mrs Joan Marie, National Adviser on Human Rights, National Council of Women of Australia Inc.**

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

**Mrs Elliston**—No.

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

**Mrs Elliston**—First of all I would like to give you some history of the National Council of Women. Way back in 1919 the National Council of Women, through its international body, was involved in helping—with submissions—in the founding of the League of Nations. Of course, that went in the time of the war, but in 1946 the International Council of Women again contacted the first president of the United Nations Assembly in London and offered their services and any help that they could give towards the formation. In 1947, ICW, the International Council of Women, was one of the first groups of 31 NGOs granted consultative status with ECOSOC. This was quite an honour and privilege, but also demands service because they are called upon to provide reports on many, many matters.

I am very honoured to represent my organisation here. I have been involved in international organisations most of my life. As a small child I was with the Girl Guides and I am currently national secretary of UNIFEM and also involved in PPSEAWA, three international organisations. So you could say that I think globally. I have believed for most of my life that the United Nations is one way in which the world can move onwards and, hopefully, have some sort of getting together to raise the status of all people. I have discovered with my reading and preparation for this just how complex the United Nations is. I do not envy you at all in trying to get a clear picture of it. It is a fantastic thing that it has 185 member states and 17 specialised agencies that do all sorts of work, whether it is with trade, health, women's affairs or what. But my interest is with the 135 accredited non-government organisations with access to ECOSOC, UNHCR and CSW.

The other thing that concerns me greatly is the ignorance in our community. I felt I knew a fair amount about the United Nations until I started reading some of their publications. I have been involved in human rights and other issues. But even so, one realises that in the community most people know nothing about the United Nations except its title. They have no concept of the set-up, of the assembly, of being a member state. I put it in my first submission that if this was part of an education process inside schools, where children could be given an

understanding to think globally—which is one of our big assets in Australia, a migrant country—they would understand that what we have here is so good that we should try and help other countries have it, and we have a responsibility to help other countries.

One of the areas that I became very aware of 10 years ago was CEDAW, the Convention for the Elimination of All Discrimination against Women. We as a country became very involved quite early on in it. The Labor Party introduced it, the Liberal Party ratified it, and it has become part of the law—only when it is being watched by the watchdogs out in the community—that all legislation must take into account that women must be given credit or not be discriminated against in any way by the law. But we find that people can abuse the situation. I was embarrassed at a meeting when somebody went to the United Nations and complained in a regular fashion about what was happening to women in Australia. I think this is one of the problems we have because people do not know the right procedures in Australia. CEDAW says that you must use every procedure inside your own country before you go off because people have tunnel vision about some matters.

I believe, and perhaps I am quite wrong, that this investigation into Australia's role with the United Nations is connected with the criticism that we have received because of our treatment of Aborigines and land rights. I believe that there are people who do wish to go and put their single-minded view, and we know that at law it is the view that is put which is the one that has to be taken by the judgment, but I think our government has been perhaps a little tardy in giving it the full picture of what is happening in our country. And this is where I believe that people need to be properly educated about being a member state of the United Nations, and that not only the country has responsibility but also individuals have responsibility and non-government organisations that have international affiliations also have responsibility to be properly informed. I think a simple comic-style publication for schoolchildren would be a good start so that they can get the concept of the different levels on the way through, and I think that factual brochures that are directed at specific areas, whether they be health or refugees or trade, could be readily available in all libraries so that people could pick them up and become better informed.

It is very hard as an individual to get a list of the hundreds of treaties, declarations and conventions that Australia is a signatory to. It is almost impossible. Where do you go to find that information? And yet that is the sort of information, when you are speaking of Australia's involvement with the United Nations, that will show just how deeply we are involved.

Another point that I made in my submission was that—and this happened recently—at the meeting in New York called Women 2000, the Plus 5 after the Beijing conference, there were three women who were members of the government delegation. I know this happened with the prior one in Beijing, too. It is an honour and a privilege and you have to be terribly good to be invited or selected to be on that committee, but those three women could only be selected if they could pay their own fares. For a person who is a voluntary worker in their organisation, or even a paid worker in their organisation, I cannot see why that organisation cannot be wealthy enough to pay that person to go so that the person does not have to self-fund. I think if they are going as a government delegate the government should be prepared to pay for them to go as they do for government employees or members of parliament. I think it is rather unfair.

**Mr HOLLIS**—The trip to London for the Centenary of Federation.

**Mrs Elliston**—I do not think anyone from NGOs was invited to that, were they?

**Mr HOLLIS**—Spouses were invited.

**Mrs Elliston**—Were they? Half their luck. As to the UN designated years and decades, I think this must be the worst one we have ever gone through as regards lack of publicity. I believe UNESCO in Canberra was given the job of giving it to somewhere else around the states to look after it—no money, no help, no nothing. Yet in the International Year of the Culture of Peace there just seems to be a walking away from responsibilities. I think it is rather dreadful actually. There are things happening inside NGOs that are aware of what the United Nations is doing. I know that several of my organisations in their newsletters have had a focus on peace and that they have special meetings where people talk about the culture of peace and reconciliation, and people have been invited to speak to other groups. But I do not think the average person in the street knows it is even on. We did get a lot of publicity last year for the International Year of the Older Person. Some cynic has said, ‘Well, that is because grey power is a great voting power whereas the people who cultivate peace perhaps do not have such a strong voice.’

Next year is the Year of the Volunteer, and from what I am reading—I have nothing specific—there has been quite a lot of funding made available for the training of future and current volunteers. That is quite a good idea, but I also wonder if this is just another passing of the buck down to non-government organisations to do more and more for the community without getting the proper respect and encouragement.

Another point that I alluded to in my original report was the millennium, the jubilee year, and the gesture of peace and goodwill that we should wipe out the debts of Third World countries. I believe it will be proven in time that the troubles that our nearest neighbours are having have been brought about by the meltdown in South-East Asia that started three or four years ago. It is the poorest people who suffer during these times. We had a speaker from Indonesia speaking about the effect on women’s health. Whereas before they could have bought contraceptives for a matter of cents, that amount became dollars, and of course they could not afford them as there was no money. So the rate of primitive abortions and loss of life has been horrendous all around Jakarta and on other Indonesian islands. That is just one instance of what happens when a country is poor. But I think also the instances we are seeing in other countries when they decide that tribal is better than congregational are because somebody has and somebody has not, and the disagreements start. We felt that we were weathering that storm fairly well, but I think others have not. The cost will come back to Australians in the long run because they are our near neighbours, and we have a lot of emotional, as well as physical, attachment to those people. Would you like to ask me any questions?

**Mr HOLLIS**—Thank you for your submission. It is good that someone puts before this committee a positive aspect of the UN because we have some pretty negative ones. Maybe it is exactly what you have said and that there is a great ignorance in the community. You talked about an information kit and pamphlets. I do not know if you are aware that the New Zealand government publishes a year book on UN activities and lists all the members. That may be something that we should consider in Australia. I have a couple of points to make. I take on board what you have said, but I sometimes worry about these years. Sometimes we as politicians have to become involved in these years—

**Mrs Elliston**—It can't do you any harm.

**Mr HOLLIS**—No. They create an awareness in the community. I always think of the Year of the Disabled, which was the most successful year ever. Sometimes one wonders, though, if there are too many years and so the value of a year—whether it is for the older person or the disabled—perhaps loses its impact by every year there is a year. These are more statements than questions. The other point is that Australia made a contribution to the jubilee debt, and we wrote off debts that Third World countries owed us.

**Mrs Elliston**—We have done that?

**Mr HOLLIS**—Maybe that did not get as much publicity in the community as it should have, but Australia made a contribution by wiping off the debt that it was owed. I was involved in my local community in the Jubilee Debt 2000. I am quite happy to argue that Third World debt should be written off, because poverty continues to generate within the poorest of the poor—they cannot afford it. I worry, and have reservations about, that many of these countries, even the poorest of the poor, put substantial amounts of money into the military. I as a politician would not be prepared to lend my support to wiping off the debt of the poorest of the poor if that money, instead of just paying the interest—which is outlandish and should not be there—was being diverted into military expenditure.

**Mrs Elliston**—Yes, I can understand that.

**Mr HOLLIS**—There is no easy answer to any of these issues that you have raised.

**Mrs Elliston**—I think you can get around it. There are treaties on armaments and disarmaments, aren't there? I think you can tie grants to countries to conditions. I do not think one should avoid that action just because you are afraid of what they might do with the money.

**Senator BOURNE**—Can I just inform the committee on that. I think that that is happening. As with other countries around the world, I think we have forgiven debts on the condition that money not be spent on armaments and that sort of thing. I saw a press release from the minister on this, and I am not sure that the debt that Laos owed us was actually forgiven. It is not very big and I do not know what happened to that one, but I think the others have been.

**Mr HOLLIS**—We forgave those who owed us.

**Senator BOURNE**—I am sorry, I am talking backwards. What I mean is that they owe us the money; we forgave three of them out of four, according to the press release. I do not know whether or not we did that with Laos.

**Mrs Elliston**—It is a pity that those things do not get the publicity that they deserve.

**Senator BOURNE**—No, there was one press release and that was it. There was nothing else after it, which is a pity.

**Mrs Elliston**—It is good news, that is the trouble.

**Mr HOLLIS**—That is it—good news does not make the newspapers in this country.

**Mrs Elliston**—Through the Internet, I get *Unity*. Surely that could have featured it.

**Senator BOURNE**—It should have done. In fact, it might be worth while writing to or ringing Ian and saying that.

**Mrs Elliston**—They jump at other things.

**Senator BOURNE**—They do. You made a point about a comic style publication for schoolchildren, and you reminded me that in the 50th anniversary year of the formation of the UN we had a national committee that dealt with this. The education subcommittee had something like that created, but I do not know what happened to it and I have not seen it anywhere. It might be worth our while, Mr Chair, trying to find out what was created by that subcommittee and seeing how useful it might be. You also mentioned that it was a concern that affiliated organisations had access. Why is that a concern?

**Mrs Elliston**—What do you mean?

**Senator BOURNE**—I think you mentioned that there were organisations affiliated with the United Nations that have access. You said ‘my concern is’—I was just walking in at the time, so I could have completely got you wrong.

**Mr JULL**—I think they were affiliated with the National Council of Women.

**Senator BOURNE**—That might have been it.

**Mrs Elliston**—The National Council of Women is affiliated with the UN.

**Senator BOURNE**—You were concerned about other bodies which are also affiliated with it?

**Mrs Elliston**—No, because I think the strength is the diversity. I would not deny anybody the right to be affiliated. I have been to some strange meetings on human rights with some strange people, I can tell you!

**Senator BOURNE**—You should have been in Brisbane yesterday!

**Mrs Elliston**—They are human beings, and they are passionate about the way they go. I guess they try to put up with me, so I try to do the same. When people are passionate about something, they generally have a deep-seated reason, so the thing is to try and find out why.

**Senator BOURNE**—So it is not a matter of you being concerned that they were there, despite the diversity being available?

**Mrs Elliston**—I think I was speaking about somebody who went to the United Nations and spoke against what Australia was doing for women.

**Senator BOURNE**—I see.

**Mrs Elliston**—I spoke at a roundtable and said that I felt that Australia was a free country where you are allowed to make criticisms, where you can get all the press and publicity you want and where you can speak to any member of parliament you want. Why did she step over that level and go to the United Nations?

**Senator BOURNE**—Without going to the first level first.

**Mrs Elliston**—I was called a colonist! I did not answer that one. I am terribly proud of Australia, but the non-signing of the optional protocol hurts me deeply because the National Council of Women was started in 1888 to bring equality to women and to give children a chance, an education. So there is CEDAW—that is what we wanted.

**Mr JULL**—Do you have any idea why we have not signed it?

**Mrs Elliston**—I keep asking; I have written many times. Is there a committee that looks at treaties before we sign them?

**Mr JULL**—Yes, there is.

**Mrs Elliston**—I presume it is looking at it. That is the put-off that I have had to date. I was hoping that when they went to New York they would have signed it there. That would have been a wonderful occasion. There are some ghastly countries that have signed it; we know conditions are pretty awful for their women. They can get away from doing the right thing because they do not have the optional protocol which gives the law for it to happen. Once you sign the optional protocol, the law is in process that you must be answerable to the United Nations if it can be proven. Having gone through all the procedures in your own country, you move onwards and then you get to the United Nations.

If we do not sign it, in places like our near neighbour countries and Africa they might think that we have got something to hide and that we are afraid to sign it. That is one reason they might give. If we sign it, it would be encouraging for them to sign it because they could use us as an example. We are so damn lucky in this country compared to most others, but even so we know things can get better because there are people who are still moaning about things that are not right. I just feel that that is the last step for the government to take to show that it really is for equality of women in this country and for women of the world. It is not just us; it is the women of the world.

I used to say 20 years ago that, no matter who came to the country, within a couple of years of the kids going to our schools they would be looking at being Australians because it would have all rubbed off in the playground. Now, because we have—and the reasons are very valid—separate ethnic schools, they are being taught ethnically, and some of the values of women are not high. So the children are not given the chance to know that women do have equality and that it is not their right to do whatever they want to their wives or girlfriends or daughters. This is why I think that, if it becomes part of their education—human rights and women's rights—and if it is part of the curriculum that they have to be taught, no matter what school it is that they are

attending, that will bring the whole of the Australian populace to a better understanding of equality, which is what I think we are all trying to get for each other.

**Mr JULL**—Could I move on to East Timor? In the various submissions, a number of your constituent organisations were fairly critical of the speed with which we moved in there.

**Mrs Elliston**—Having heard the Human Rights Commissioner speak about it, I think we were just so lucky that we could get there at all. People do not realise how complicated it is. It is the same when they are talking about Honoraria and saying that we should have been up there with guns. You cannot do that. We have to recognise another nation's sovereignty. They are easy, giveaway lines and they get stirred along by media people who do not want to have the real picture looked at.

**Mr JULL**—One of the things that we are looking at is the wisdom or not of the United Nations going to their own standing army or their own standing police force. Have you got any opinion on whether that is the way to go?

**Mrs Elliston**—I would not know the cost and who would run it. If Australians go, we know it is going to be done properly. You would have to get people who are more versed in international situations than I am. It is a big step to take. East Timor could be done because our Prime Minister, our human rights people and our United Nations people could work the system. If it was the whole of the United Nations doing it, I think there would be trouble. When you have good relationships between countries, those things can be achieved. Perhaps each country should commit so many of its people to peacekeeping forces that can be called upon. It is a very profound thing.

**Mrs CROSIO**—There are two areas I would like to elaborate a little bit more on. One is in your submission on the refugees—that is, the need to set strict conditions for those defined as refugees and that each country should be able to set limits to its intake of refugees during periods of high level of displaced persons.

**Mrs Elliston**—Yes, I read that through again this morning. At that time I did not have the annual report from the department of immigration.

**Mrs CROSIO**—So you are aware that the United Nations have got a certain category which they can define as refugees, and we meet our commitment as far as Australia is concerned?

**Mrs Elliston**—Yes. The rules seem to get changed for individuals and I think that causes unrest amongst some people. We were involved in the case of a girl from Africa who had been raped and had escaped, and she could not go back. Because we had met the numbers for that particular country here, it took some months of legal work to get her to be able to stay in Australia. There always has to be the exception to meet the rule, but if we just open the doors we are in trouble. I am realistic enough to worry about the one-child family in China and that almost every Chinese woman who comes here is pregnant. We would never send them home. That is a possibility, and I do not know how you get around these things.

**Mrs CROSIO**—I can assure you I have been in China and quite a few people have got more than one child.



**Mrs Elliston**—So have I.

**Mrs CROSIO**—The trouble is they meet their commitment of raising the others without a condition of the state.

**Mrs Elliston**—Yes. But when a country has a supposedly strict law like that and the people have got the means of getting to another country, to use that as a means of residency or citizenship makes it very difficult for a country to set its hard and fast rules on it.

**Mrs CROSIO**—In the next paragraph down you talk about the funding of the United Nations. You state:

Although conditions appear to be in place one is given the impression that some countries ... without contributing financially—

**Mrs Elliston**—The United States itself, being a non-payer of its fees—and it was only when some philanthropist came through—has not signed CEDAW. California and a few other states have, but that is a very complex country. Yet we look at them as being the major peacekeepers and, in fact, I have mixed feelings about that at times. I know it was a shock for me to discover that the United Nations was so unpopular in the United States. I think many people who live in the United States—isolation has been traditional for some generations—do not see any need for America to be putting its funding into these sorts of things.

**Mrs CROSIO**—It worries me that if they feel they can get away with not paying, many other countries, which have large contributions, may follow suit.

**Mrs Elliston**—Yes, that is right.

**Mrs CROSIO**—If it is good enough for the United States, it is good enough for them.

**Mrs Elliston**—That is what happens. It is of concern. They have got to the point of saying, ‘We will move out,’ or ‘You cannot vote,’ or ‘You cannot be on this committee or that committee because you are not up to date.’ They really should set those real hard and fast rules, but I do not know how—

**Mrs CROSIO**—The rules are there. It is just that they are not being implemented.

**Mrs Elliston**—Yes, but they do not hold them.

**Mrs CROSIO**—Can I just come back to CEDAW? You said you had correspondence from the government, or from the parliament, stating that it is with the Treaties Committee?

**Mrs Elliston**—No, that was an oral—

**CHAIR**—It was just an understanding, was it?

**Mrs Elliston**—I raised this at a roundtable meeting in Canberra in March and somebody said it was with the treaties or some other committee.

**Mr BAIRD**—I am not aware of it. I am actually on the Treaties Committee.

**Mrs Elliston**—You are on the committee and you have not seen it.

**Mr BAIRD**—That does not mean to say it is not on its way there.

**Mrs Elliston**—Would you like a copy of it?

**Mr BAIRD**—No. We can follow it up. It is just a quick call to Parliament House to the Treaties Committee. They have got a secretariat who would tell you where it is. I have not seen it.

**Mrs Elliston**—We have been waiting all along the line.

**Mr BAIRD**—I will look out for it.

**Mrs Elliston**—It is ready. It is being done by another country—

**Senator BOURNE**—It has been signed.

**Mrs Elliston**—It is now back to countries to be ratified.

**Senator BOURNE**—Yes, but has Australia signed it? Are we in between signing and ratifying, do you know?

**Mrs Elliston**—We have signed the convention. The convention has been signed but, as far as I know—

**Senator BOURNE**—Yes, but the first optional protocol, as far as I know—

**Mrs Elliston**—As far as I know, it has not.

**Senator PAYNE**—We are starting right at the beginning.

**Mrs Elliston**—The United Nations put out this book which is very good, and in it they have the optional protocol at the end of it.

**Senator BOURNE**—I think you will find that there are some very influential people in the government at the moment—not sitting at this table, I might add—who are not very keen on—

**CHAIR**—Do you want to qualify that statement?

**Senator BOURNE**—No, I have not finished the sentence yet—who are not particularly keen on signing any of those first option protocols. So I think you will find that—

**Mrs Elliston**—If you gave us the list of names we could attack them!

**Senator BOURNE**—I can later if you like. I probably could now, but I had better not.

**Mrs Elliston**—That information is valuable to NGOs because most of the ones I belong to believe that it should be signed.

**Senator BOURNE**—The one that we have signed has done a lot of good work.

**Mrs Elliston**—I know.

**Mrs CROSIO**—The only other point I wanted to make is that I do not think any of the women in the Labor Party were invited to New York either.

**CHAIR**—I cannot fathom that.

**Mrs CROSIO**—That is just for the record, so do not feel so bad, Mrs Elliston.

**Mrs Elliston**—I would not expect to be invited.

**Mrs CROSIO**—No.

**Mrs Elliston**—I know three people who were on it. Two were paid by their organisation but the other one had to fund herself. She made a very great contribution.

**Mr BAIRD**—Senator Stott-Despoja went along.

**CHAIR**—She paid for herself.

**Senator BOURNE**—But she was thrown out. Senator Newman told her that she could not be part of the Australian delegation.

**Mrs CROSIO**—Do we have a representative there at all?

**Senator BOURNE**—The minister was there. She was the only one.

**Mrs Elliston**—From the reports I have read the new head of the Office of the Status of Women was there. Even people who perhaps politically were not for them said afterwards that it was the best involvement of ministerial and departmental people at any conference. Every day they reported back twice what was happening and what could be done. That was good. These were people who are pretty critical. I gather it was a very successful visit.

**Senator PAYNE**—My question is brief and goes to the National Council of Women and how it fits within the National Council of Women International. For example, I found myself last week sitting around a table at a community of democracies forum with Kuwait, which enunciates in its law the equality of men and women. It does not allow women to vote and has continued that this week. How is the National Council of Women International comprised? What standards or levels are there for countries to participate in? I know the beginning of the end.

**Mrs Elliston**—The first platform was for the voting of women. I do not think they made a condition of membership that your women must be able to vote.

**Senator PAYNE**—Yes, I understand that.

**Mrs Elliston**—We do put pressure on countries. When the Indonesian situation was pretty bad two years ago and those women were being raped and the Chinese community, in particular, were being assaulted, we wrote to our international president, who then wrote to the Indonesian president, and voiced Australia's concern. Perhaps other countries did too but you do not need to know that.

**Senator PAYNE**—Where does the international presidency reside?

**Mrs Elliston**—At the moment in Israel. It moves around. It depends on the voting. Mrs Herzog came out here in March this year and we had a meeting in Canberra. She is a very clever lady. She is on the World Health Organisation; she is the United Nations to her fingertips. She spoke at length that she could not understand how Australia, with its wonderful history, had not signed the optional protocol.

**Senator PAYNE**—Has Israel signed?

**Mrs Elliston**—I would think so, yes. I do not have the list of those who have signed.

**Senator PAYNE**—Thank you, Mrs Elliston.

**Mr BAIRD**—Thanks for your comments, Mrs Elliston. On the question of the rights of the UN to intervene in domestic politics, at what point do you consider that appropriate?

**Mrs Elliston**—Do you mean warfare or women's—

**Mr BAIRD**—I am talking about human rights issues. I notice that in your submission you said that the UN should have the ability to interfere.

**Mrs Elliston**—Sooner rather than later, particularly in cases of strong abuse. The wording of the treaties is not so. But if you have signed a treaty that you will do so and so, and then you do not do it and it is blatantly obvious, the United Nations is the only body that can perhaps make you. I presume diplomatically there is a certain curve in the way in which you would go about it before you achieved your results. The trade sanctions seemed to work in South Africa, although we hear about the poor people who suffer if there is a trade sanction. You need to be very wise to be able to meddle in international affairs. If a treaty is signed and you have committed yourself to something, you must then do it. You are morally obliged; the breakdown is war. That is when things stop.

**CHAIR**—Mrs Elliston, thank you very much for appearing before the inquiry today and for your contribution to the committee's work. We look forward to the day when we can make our report. I am sure that you will be interested to read it when we do. Thank you very much.

**Mrs Elliston**—Thank you.

[2.15 p.m.]

**CLARK, Dr Claire (Private capacity)**

**CHAIR**—On behalf of the subcommittee, I welcome Dr Claire Clark.

**Dr Clark**—I have been both an academic and a public servant. I am now retired, but I continue to write about various subjects, including the United Nations.

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

**Dr Clark**—There are a few typing errors. I am afraid I had to have it typed in a distant suburb, and I did not correct the last typing errors. The worst errors are on pages 994 and 995 where it says ‘charter VI’ instead of ‘chapter VI’. There are minor things like that.

**CHAIR**—That is okay; minor things will not bother us at all. I now invite you to make a short opening statement before we have questions.

**Dr Clark**—I was a visiting fellow at the United Nations headquarters in early 1971. I have written and broadcast about the UN. When I was in the legislative research service in Parliament House from 1973 to 1978, I made oral and written submissions to the inquiry into the role of Australia and the United Nations in relation to Australia’s sovereign territories. I worked then in several government departments, including the Office of National Assessments. I have not been in the Department of Foreign Affairs and Trade, but I have trained foreign affairs officers and Indonesian officers when I was on secondment to the ANU. So my experience is fairly broad.

**CHAIR**—Would you like to make any other statement before we go to questions?

**Dr Clark**—Briefly, I would like to comment on just a few points that came up in that previous hearing. On the giving to poor countries which then may spend the money on arms, the Secretary-General now has a program—which will be discussed, I think, at the millennium summit—of goods for arms, rather like food for oil in the Iraq case. If countries give up their arms, they will receive goods in return, and I think that is a very good idea and an excellent way to go. At the time I wrote the submission, I had not received the Secretary-General’s paper *We the peoples: the role of the UN in the 21st century*. I think he has many interesting ideas in that for the millennium summit. It is a pity that the Prime Minister will not be there; he will be one of a few heads of state or government who will not be there. I know it is a week before the Olympic Games, but it would be possible for him to attend—it is only for three days, from 6 to

8 September. I know Mr Downer will represent us well, but it does seem a pity that the Prime Minister will not be there when nearly every country in the world will have a head of state or head of government there.

On a few other points, the events yesterday in Fiji and the Solomon's show that, even with new prime ministers in both countries, the region is not heading for civility any time soon. A request for more peacekeeping operations in that area will come and Australia will be looked to because we are the biggest regional power in the area. I notice from the foreign affairs submission that, in terms of regional groupings in the United Nations, Australia is now advocating a Pacific-Australasia grouping for elections to the Security Council and other organs of the UN. If we seek to have the Pacific-Australasia grouping, we will be required more and more to take a leadership role. I notice that New Zealand has only three priorities for defence in its new defence policy paper, and one of them is peacekeeping. The media reports of Australia's review that was released last week are that it refers only tangentially to peacekeeping. I have sent for a copy of the full report. I do not know what priority it gives to peacekeeping. I am afraid I cannot answer that because it has not arrived yet.

Another question that came up was on sanctions. Certainly, there is a lot of work being done on targeting sanctions so that the sanctions do not affect the poor people. Germany and Switzerland, which is not a member of the United Nations, are both doing a lot of work on this issue. Australia seems to have taken second place in the last year on a number of issues, for instance on the Tobin method of taxing international financial transactions both to target fraud and to stop other sort of tax haven arrangements in some countries. The idea is to tax international financial transactions. Australia was not at that conference at ministerial level. We have not had ministerial representation at a number of conferences.

Also, on the issue of the recent UN report which targeted mandatory sentencing, the initial statements indicated that Australia was really stepping away from that kind of UN investigation which was critical of Australia. It later emerged that the minister was more concerned about the process—and it is acceptable to be concerned about the process—but media reporting needs to be watched carefully because media reports get international coverage these days. The Internet means that a broadcaster in one country can pick up something that is released in Australia within an hour. This week we have been picking up things from Fijilive.com. I am sure the ABC is using it a lot. From Fijilive.com the ABC gets its news report half an hour later, and we know what has gone on in Fiji half an hour before. Other countries see what is going on in Australia half an hour afterwards. The influential people in other countries in Asia and the Pacific are using the Internet a great deal. Indeed, some of them, such as Malaysia, are probably doing more to introduce the Internet to school children than we are, particularly in west Malaysia. It is very interesting. We are doing some but we need to do a lot more.

I agree with the previous speaker who was commenting on information. Perhaps we need to give more positive information on the United Nations. The United Nations itself is doing a lot more to give information to countries that have been afflicted by conflict or where there has been a disaster relief operation. It is really endeavouring to have a very positive information flow about what it is doing there. For the giving countries, there seems to be not an information freeze but certainly a dilution compared with the past. You do not find the enthusiasm in schools for organisations like UNESCO. I can remember as a child that we used to have concerts as

fundraising events for UNICEF every year, both privately in our own gardens and at school functions. Children were aware of the UN. I think that was a very good point that was made.

In Kofi Annan's *We the peoples: the role of the UN in the 21st century*, published in March, he talks a lot about how the UN itself must cooperate more with NGOs and with the private sector, but he also makes the point that the nation state is still the fundamental basis of the United Nations. That is very interesting. The World Bank does a lot to draw NGOs into its areas of work. In peacekeeping operations or in the aftermath of peacekeeping operations in the transition state, the UN itself is doing a lot more with NGOs. The UN is using the private sector more for its mobile and satellite telephone and microwave links for disaster relief or humanitarian work. It is cooperating closely with Ericsson, the Red Cross and the Red Crescent. Obviously, that is the way the United Nations has decided to go, and we have to watch all that.

I noticed that some of the submissions were very critical of how much money the UN seemed to waste. In the Secretary-General's report, he notes that the UN spends only \$1.25 billion a year on the secretariat and its offices in New York, Geneva, Nairobi and Vienna and on its regional commissions. That, he points out, is four per cent of the New York City annual budget and it is \$1 billion less than is spent on the cost of the Tokyo fire department. So, in proportion, we do not get bad value for what the UN gives us. I would be very happy to answer any questions.

**CHAIR**—I guess that the Tokyo fire department is more likely to get its money on time and in full than the United Nations is.

**Dr Clark**—Yes, you are correct. On that point, many poorer countries do get around the need to pay their annual subventions by paying a dollar and deferring the rest of their payment. A number of them have very large deferments. As I point out in my paper, at last the United States, at the end of last year, paid a large part of the money it owed, with some caveats imposed by Republican members of Congress.

**Mr JULL**—But Australia has always paid up on time.

**Dr Clark**—We have always paid up on time.

**CHAIR**—And in full.

**Dr Clark**—And in full. For our subvention, we pay 1.48 per cent of the total.

**Mr HOLLIS**—I have got four comments and questions, Dr Clark. Thank you for your submission, which I read with interest. I thought it was very good. I have no disagreement with you saying that our region is going to be more unstable in coming years. You quoted Fiji and you said that there would be an invitation for some role for Australia. I wonder who would issue that invitation.

**Dr Clark**—Fiji is complicated because what is going on there is very much internal, although what happens in Fiji does affect other countries. For instance, all goods that go from Australia to I think Tuvalu and Samoa go through Fiji, so a crisis in Fiji does have international repercussions. In the case of the Solomons, some critics have said that Australia or New



Zealand should have approached the United Nations to intervene when the former Prime Minister requested our help. At the time that the warlike activity in the Solomons was intensified by some warlike characters—let us call them hooligans—who came over from Bougainville, that involved Papua New Guinea. That would have been an excuse to go to the UN because that clearly involved two countries. The fact that Bougainville is called the north Solomons' province shows how close they are. What we are really seeing is the outcome of the colonial divisions of territory that occurred a long time ago, and we are having to live with it.

**Mr HOLLIS**—With respect, you are avoiding my question.

**Dr Clark**—No, I am not.

**Mr HOLLIS**—When you mentioned Fiji as an example and the invitation that would be sent, I said, 'Who in Fiji would issue the invitation?'

**Dr Clark**—The foreign minister or the head of state.

**Mr HOLLIS**—The foreign minister of Fiji?

**Dr Clark**—Yes, or the head of state or the Prime Minister.

**Mr HOLLIS**—But you do not realistically expect that the so-called existing foreign minister, who some would say under international law is an illegal member of the cabinet being sworn in to replace a democratically elected cabinet, would then invite Australia to go in there in a mediating role? You do not seriously suggest that this would happen, do you?

**Dr Clark**—My own view is that the Fijian military, which is essentially in control at the moment, has handled the thing very carefully. No-one has died yet. Unfortunately, five people were hurt yesterday, but no-one has died yet, which is very much what the Fijians are concerned about. They have tried very hard to make sure that the hostages are not harmed. The former Prime Minister or, in your terms, the existing Prime Minister, Mr Chaudhry, if he could get a message out—messages have gone from the hostages to members of their families—could approach the United Nations. It is a complicated situation.

**Mr HOLLIS**—Yes, and everyone admits that. You actually made your submission on 16 March 2000.

**Dr Clark**—Yes.

**Mr HOLLIS**—I just wonder, if you were writing it now, whether you would have been prepared to say that one of the first countries that could be included, when you were talking about these activities, was Fiji. On page 4, which is page 101 in ours, in that last paragraph, the long paragraph, you state '... the professionalism of whose armies is unquestioned'.

**Dr Clark**—I think the Fijian army has behaved very professionally during this crisis.

**Mr HOLLIS**—What about those members of the army who have sided with the criminal who held the elected government hostage? I would think that a treasonable act by any serving personnel in an army would not be professional. Surely, if we believe in things like separation of power and all things like that, the army should be one that is removed from the government of the day. It should carry out the orders and the issues of the government of the day, but not side with a criminal act.

**Dr Clark**—Five reservists joined George Speight in the initial stages. Yesterday, I gather, reservists on the second biggest island were rounded up and all the weapons have been recovered. I think the professional soldiers in the Fiji army have behaved very professionally. I know that there have been rumours that the spokesman, Tarakinikini, was initially siding with the rebels. There have also been various rumours about Rabuka, which he has vehemently denied. He took power in coups, so Rabuka's government was not quite proper.

**Mr HOLLIS**—As you yourself have said, the situation in Fiji is incredibly complex and incredibly tribal and local. I think that only history will prove whether we are right or not. I want to make just two comments. I really am concerned with what you have said on page 4. It is a view that is expressed time and time again, that somehow Australia should feel somehow embarrassed or should apologise for the role we took in Timor. I am the first to say that there are sensitivities in Asia, that Indonesia is important to us and that we live within the region and have got to do our best to restore relations. I am not a member of the government party, but I think both leading political parties have worked strenuously to restore relations. It seems to me that all the understanding and the concessions have been on our part.

The fundamental thing is that, if we are talking about protection for human rights, we as a part of this region saw human rights dreadfully violated. We followed all the norms of international law when, although many people in Australia were insisting that Australian forces go in there—I attended rallies and everything else—the government of the day said no, we would not go in there. Going in there before we were invited would be an act of declaration of war on another sovereign state. So we waited until, through the UN, we were invited in there. Australia has been criticised internationally for standing aside and seeing gross violations of human rights.

It really seems to me, when we start to talk about human rights and violations of human rights, and our role in society and everything, that it is a two-way process. I do not know of any politicians, or most certainly anyone in the military or anything, who have crowed. I suppose there is a certain pride that we did not have any body bags coming back, but I think the real problem that many people have got with our involvement in Timor is that we did not have 20, 30 or 40 Australian deaths. Even though we did not have 20, 30 or 40 Australian deaths I do not think we have anything to apologise for. Under international law or human rights, or within the United Nations, if people are sensitive and upset that there were not Australian deaths, I do not see why we should apologise for this or feel somehow guilty or that we did something wrong in what we did in Timor. I do not think Australia has ever responded very well to international situations in our region, except for our involvement in Timor. We responded with sensitivity, we did it correctly, we got it right—the only United Nations action which actually got it right—yet now people are expecting us to apologise and somehow feel guilty for it. I am sorry, I do not share that view at all.

**Dr Clark**—I agree entirely with the last part of what you said. We did it very professionally, we did it in the right way. We did it after the US had pressured Indonesia, and that pressure was very important; we did it with Indonesian agreement.

**Mr HOLLIS**—But Australia put some pressure on the US as well.

**Dr Clark**—Yes.

**Mr HOLLIS**—Many of us are a bit cheesed off with the US's role there.

**Dr Clark**—Fine, but we did it with Indonesian agreement which, under chapter VI of the charter, article 38, is essential. All parties must agree because of the domestic sovereignty issue. What I said though was that, in the aftermath, the press, more than the politicians—and certainly not the army—was gloating about the success. This in Indonesia was very difficult for them to understand. First of all, Australia had supported Indonesia's sovereignty over East Timor. A turnaround was very difficult to cope with. Again, it was the question of information. Not many Indonesians knew, at that stage, how bad the atrocities were in East Timor, and what had happened there. It is very good to know that there is some progress by the Indonesian Attorney-General in dealing with those atrocities in investigating them.

**Mr HOLLIS**—I have another question on a totally unrelated matter. When you are talking about the involvement with the private sector on the UN, I actually attended the millennium summit in May for the NGOs. It was the worst organised function I have ever attended in my life, I might say.

**Dr Clark**—That explains why I cannot get enough information on it.

**Mr HOLLIS**—It is on the Internet. There were too many people, 3,000 delegates, and it was terribly organised. One of the things that came out there was this business that the Secretary-General has pushed about more involvement of the private sector. One of the agencies—I think it is UNESCO—allowed Disney to sponsor in some form and I think Coca-Cola or Ford in some other form. There was tremendous criticism within the NGOs of the Secretary-General for allowing private sector investment. Disneyland has put in megabucks. And the other one, whether it is Ford or Coca-Cola, says something like, 'You get the Coca-Cola youth award through the UN.' There was tremendous criticism of that which one of the under secretary-generals attempted to diffuse or answer. But there is a lot of worry there. One of the big companies, in various parts of the world, is doing dreadful things to the environment and was given some award through the United Nations. There was a lot of criticism of that aspect. The criticism was that the Secretary-General had perhaps been rather short-sighted in giving permission to that organisation. The worry of many people was that the individuality or the freedom of the United Nations would somehow be compromised if we went into private sector sponsorship of these various things.

**Dr Clark**—Sponsorship is a difficult one. Where the private sector does work perhaps at cost and saves the UN some money, that would be acceptable. The Ford Foundation has done some work on budgetary outcomes. All this goes back to the UN shortage of money. That is a basic problem.

**Mr HOLLIS**—I accept that.

**Mrs CROSIO**—In your submission, on your page 6, under the heading ‘Reforming the structure of the UN’ in the second last paragraph, you say:

Australia is questioning its membership of the Western Europe and Others Group in the UN. The term ‘Others’ may not be flattering, but while the Asian grouping may be acceptable to some Australians, it would not be to many.

Would you like to elaborate a bit further on that?

**Dr Clark**—So many Australians still seem to reject the idea that Australia should engage with Asia. Our membership of an Asian group would be upsetting to quite a few people in the community. I do not agree with them.

**Mrs CROSIO**—They do not accept that we are geographically located. They just feel we are still part of—

**Dr Clark**—Yes, it is our geographic location. I notice that the foreign affairs submission says that Australia is looking to an Australasian Pacific grouping having been told forcibly by some Asian countries that they do not want us. The submission does not say whom.

**Mrs CROSIO**—They do not want Australia to be part of the grouping?

**Dr Clark**—No, they do not want Australia to be part of an Asian grouping—I suspect that is because of Malaysia.

**Mrs CROSIO**—It is. I can tell you that because we recently came back from an IPU conference. In trying to convince them that Australia is going to take a part in the women’s area, I had to take on Indonesia and Malaysia to get there. So I can assure you of that—but we got there. Can I ask you a couple of other questions. Apart from countries paying their dues, what other ways do you think the UN might be able to overcome its debt or funding shortfalls?

**Dr Clark**—Much better minds than mine are dealing with this. One lapse in my report is that I said that Australia had in the past been on the budgetary committee. I understand that Penny Wensley, our ambassador to the UN, is on the current budgetary committee, and I am sure she is agonising over that very question. Richard Holbrooke is trying to work out ways to deal with this. He has made that a priority for his term as US ambassador to the UN.

**Mrs CROSIO**—He is naturally following the American line on what should be happening there?

**Dr Clark**—Yes. He is using that to try to get Congress to let go of a bit more money with fewer conditions, but it is hard work.

**Mrs CROSIO**—From your past experience, do you think that if they do not pay up they should be denied a vote? Should that be implemented as a mandatory requirement?

**Dr Clark**—That has been suggested.

**Mrs CROSIO**—It has only been spoken about, hasn't it? It has never been put into practice.

**Dr Clark**—It is talked about; it has never been done. One useful thing is to do with the Trusteeship Council. There are no more trusteeship territories, but the Trusteeship Council still exists. They have made it a trustee for all sorts of good works like the environment and so on, but basically they are under the auspices of other organisations anyway. So why not abolish the Trusteeship Council? That would abolish some workers in the UN and it would abolish some committee meetings and so on. I think the reform program that the Secretary-General started in 1997 is beginning to bear fruit. The idea of cutting out conferences like the one that Mr Hollis went to and having it all done by the Internet or by video conferencing and so on seems much better than having conferences with travel costs and thousands of attendants and all those costs. Using information technology to cut costs seems the best way that I have heard of. I do not have any other ideas, I am afraid.

**Mrs CROSIO**—I suppose this is a hard question but I will ask it anyway. Having read your submission and knowing your experience, I want to ask you this: how do you think Australia stacks up on its performance as a nation, as a sovereign state, in the UN?

**Dr Clark**—Over the last 55 years, very well. In the last year or so, we seem not to have had as strong a presence as before—apart from the East Timor exercise—and this may be a function of us looking at our own budgetary requirements. It is a difficult issue, but I think we need to keep a strong presence there. We are not as far away as New Zealand but we are far away, so we need to keep up a strong presence in the UN. We need to convey a much more positive image of the UN—we are a member of the UN, and it is not some organisation out there that we can kick and abuse. We are part of it, and we have to help make it work. I think we have got to convey that.

**ACTING CHAIR (Mr Hollis)**—Dr Clark, you mentioned peacekeeping and the New Zealand example. New Zealanders, like the Canadians, have put a special emphasis within their army on peacekeeping. Because we are the foreign affairs, defence and trade committee, many of us around this table are also doing an inquiry into the future of the Australian Army in a post Cold War environment. That is a real problem that we have been grappling with, dealing with issues such as what training there should be and whether the Australian Defence Force should be trained in a peacekeeping role or a combat role. Rightly or wrongly, many of us have come to the conclusion that the Defence Force should continue to be trained for a combat role, because you can adjust quite easily from a combat role to a peacekeeping role. But if you have just been trained in peacekeeping, which has been put to us, it is much more difficult if the situation arises where you have to be in a combat role. From studies I have seen, the Canadians are now coming to this conclusion. Given that New Zealand is New Zealand, maybe in about 15 years time they might come to this conclusion as well. That is just a comment thrown in. So while it is great in theory to have a peacekeeping role, I think you need to be trained in a combat role so that you can adapt to the peacekeeping role.

**Dr Clark**—You also need air and navy support, which some countries seem to think you can do without. You cannot really.

**ACTING CHAIR**—Thank you very much for your contribution. You will get a copy of your transcript of evidence to which you are free to make corrections of a grammatical or factual

nature. If you have any additional information that you want to give to the committee, please forward it to the secretariat. Thank you very much for your interest and appearing before the committee today.

[2.52 p.m.]

**KAMAL, Mr Fadel, Representative in Australia, Polisario Front**

**CHAIR**—On behalf of the subcommittee I welcome Mr Kamal. I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect that proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion and the deliberate misleading of a subcommittee may be regarded as contempt of the parliament. The subcommittee prefers that all evidence be given in public, but should you at any stage wish to give evidence in private, you may ask to do so and we would consider that request. I invite you to make a short opening statement before we proceed to questions.

**Mr Kamal**—Thank you, Mr Chairman. May I first of all express my thanks and gratitude to you and to the members of the subcommittee for giving me the opportunity to contribute to this inquiry. I would like to draw attention to the UN involvement in the Western Sahara—an issue that is hardly known in this country but, nonetheless, provides clear examples of some of the shortcomings of UN peacekeeping.

Nine years and over \$US500 million has been spent so far in the Western Sahara by the United Nations without achieving a mission that should have lasted, according to the original settlement plan, just six months. But the UN's involvement in this issue goes back to 1963 when Western Sahara was included in the list of non-self-governing territories and was considered a question of decolonisation. In 1965 the UN General Assembly adopted a resolution calling on Spain to organise a referendum for the Saharawi people to allow them to exercise their right to self-determination and independence. However, Spain resisted this call until 1974 when, due to the pressure from the Saharawis who launched a liberation struggle, Spain informed the UN that it was going to organise a referendum by the end of 1974. However, Morocco and Mauritania objected to that offer and persuaded the United Nations General Assembly to seek arbitration from the International Court of Justice on whether Morocco and Mauritania had any legal rights over Western Sahara. On 16 October 1975 the court announced:

... the court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonisation of Western Sahara, and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory.

The king of Morocco interpreted this as an acceptance of the Moroccan claim and ordered the invasion of Western Sahara. This resulted in a long and protracted war that lasted until 1991.

In August 1988 the kingdom of Morocco and the Polisario Front agreed to a UN and Organisation of African Unity, OAU, peace plan. Central to the UN-OAU peace plan, or the settlement plan, is the holding of a referendum providing an opportunity for the Saharawi people to exercise their right to self-determination in a free and fair manner. The Security

Council endorsed the settlement plan on 29 April 1991. A cease-fire was declared in 1991 and a UN mission, MINURSO, was deployed in the territory.

According to the original plan, the referendum should have taken place in January 1992, but Morocco's obstruction and the United Nations' inability to put pressure on Morocco have contributed to the delay until now of the implementation of the referendum process. I should like to mention some of the examples that had caused the endless delays of the referendum. Morocco showed its intention just before the declaration of the cease-fire when its army attacked and destroyed buildings that were built by the Polisario for the UN mission. Morocco withheld UN equipment in Moroccan ports, delaying the full deployment of the UN and putting the lives of its staff in danger. This was aptly described by an Australian member of MINURSO in an article published in the *Australian and NZ Defender*:

... to add to UN woes, all equipment for the embryonic venture was provided by the Moroccan armed forces. Not only did the Aussies have to grapple with unfamiliar radios and vehicles, but much of the equipment was poorly maintained and therefore unreliable—a dangerous state of affairs in a country laced with minefields and in which a vehicle breakdown on the roadless expanses of the inland could mean death.

I would just mention that the Australians who were there were a contingent of communications personnel. Despite all the difficulties and challenges, the Australian contingent carried out its tasks in an excellent manner. The Australians' determination and discipline was much appreciated by all the parties and they have been missed since their withdrawal in 1994. In addition to all the difficulties that Morocco put in front of the United Nations, UN staff were under constant surveillance, rooms were searched, mail was tampered with and phones were tapped by the Moroccans. Access to United Nations headquarters in Laayoune, capital of Western Sahara, was prevented by Moroccan guards. Morocco insisted that its flag fly with the United Nations on the UN headquarters—something that is unique for this mission.

After the cease-fire was declared, Morocco moved 40,000 Moroccans into Western Sahara in violation of the settlement plan—paragraph 72.73. Morocco presented the application on behalf of around 200,000 people, 100,000 of whom reside in Morocco and have no link with Western Sahara. Morocco transported people for identification and confiscated their receipts after they were identified and continued to abuse human rights and suppress peaceful demonstrations in front of the eyes of the United Nations mission. Morocco also realised that, if a free and fair referendum were to be held, the result would be independence. Therefore, Morocco opted to halt the referendum and delay it as long as it could. Mr Frank Ruddy, former member of the United Nations mission, MINURSO, described Moroccan behaviour as Mafia like and characterised it as thuggery. He said that the Moroccans run the show. Another MINURSO member, Douglas Dryden, an American, told the UN Fourth Committee in 1996 that 'the atmosphere at the MINURSO Force Headquarters in Laayoune is practically a siege mentality'.

I now turn to the UN shortcomings. The settlement plan was orphaned by the Security Council. By that I mean there was no backing from any member of the Security Council of this peace plan. In fact, some of the members were on the Moroccans' side and tried to put pressure to delay the referendum. There was a lack of control over the process from the United Nations, which allowed Morocco to manipulate the whole process. The transitional period, which was to be declared just after the cease-fire, was delayed. The settlement plan provided for a transitional period, which was intended to commence with a cease-fire and continue until the announcement of the results of the referendum. During this period, the Security General's special



representative for Western Sahara would have ‘sole and exclusive responsibility over all matters relating to the referendum’, and the United Nations would monitor the maintenance of law and order in the territory to ensure that conditions for a free and fair referendum were present. This was paragraph 47 of the settlement plan but never was applied.

The United Nations allowed the parties to distribute applications for identification and present them on behalf of applicants, instead of the United Nations doing that. Some of the UN staff were biased towards the Moroccans. In fact, they handed over information to the Moroccans on computer disks which we had given them containing names of people who had died and also military information. I must also say that some secretary-generals, such as Perez de Cuellar and Boutros Ghali, were very biased towards the Moroccans. The Security Council has not exerted adequate pressure on Morocco. In 1992-93, Morocco was a member of the Security Council and its friends in the Security Council, such as France, prevented any criticism of Morocco. Morocco used its membership of the Security Council to persuade all the others not to mention anything that is harmful to Morocco about its delays and violations of the peace plan.

When former members of MINURSO such as Frank Ruddy, former Deputy Chairman of the Identification Commission in MINURSO, and Douglas Dryden, former US military representative to MINURSO, and others spoke about serious violations and mismanagement of the mission, the UN sent an inspector general. But the inspector general admitted that under United Nations rules he was not allowed to investigate because he could not pass judgment on member states. He said to one of the UN staff that he interviewed, ‘Keep your mouth shut if you want to work for the UN again.’ His interview with the commander of the US forces in MINURSO consisted of ‘Hi, how are you?’ So the Inspector General’s report was a whitewash. What is at stake here is not only the UN’s credibility but also its leverage to carry out what should be a classic UN peacekeeping operation. It is also the achievement of a lasting peace and stability in a volatile region of the world—the kind of mandate that the United Nations was created to achieve.

I have now some suggestions about what could be done at the moment. I believe that the Security Council should re-examine and modify the mandate of MINURSO, to give it some muscle and also to include in that mandate some way for the United Nations to have authority to not allow Morocco to continue to abuse human rights. The continuous abuse of human rights in Western Sahara during the UN presence there is something which is really not acceptable. The United Nations should declare the transitional period which was envisaged by the settlement plan, and should heighten its presence. It should also insist on freedom of movement in the territory, and particularly the freedom of access to the UN compound. NGOs, media and independent observers should be allowed to visit and monitor the United Nations mission.

The Security Council should give a clear and public signal to Morocco that it should stop the obstruction of the UN peace plan. It should consider making it clear to Morocco that article 25 of the UN charter makes it an obligation for all the members to respect Security Council decisions—the UN peace plan was adopted and mandated by the Security Council. And Australia could help by reintroducing its contingent to MINURSO and playing an active role at the UN on this issue.

On a final and positive note, I should mention that the United Nations has made some achievements during its presence there. Particularly I should like to mention the final publication of the voters lists, which took six years to achieve and was published in January of this year. The UN also managed to get Morocco to sit around the same table as the Polisario and have direct talks, which are still continuing under the chairmanship of James Baker, the former United States Secretary of State. Thank you very much.

**CHAIR**—Thank you, Mr Kamal. How many people are involved in the Western Sahara? What is the population of the area?

**Mr Kamal**—There is no census since the Spanish census of 1974, when there were around 75,000.

**CHAIR**—Would you expect there to be more now?

**Mr Kamal**—There are two issues here. One is the census of the population and one is the referendum.

**CHAIR**—I understand that, but I was wondering how many people we were talking about. How viable would the Western Sahara be as an independent state?

**Mr Kamal**—I would say it would be very viable. It would be one of the rich countries in the region because of the mineral resources that we have in terms of phosphate, iron ore and oil, and the rich fishing grounds along the Atlantic coast, and the relatively small population.

**CHAIR**—That may account for Morocco's reluctance to want to do anything about it.

**Mr JULL**—That is what it is all about, isn't it? In view of the wealth of the Western Sahara, the Moroccans are not just going to let that go in a hurry.

**Mr Kamal**—Yes, and we understand that. We have suggested to the Moroccans that they sit with us and discuss the future, the post-referendum stage. We are prepared to consider letting all the Moroccan settlers—hundreds of thousands of them—who came to the Western Sahara for jobs to stay in the Western Sahara after independence. We are prepared to negotiate about the economic relationship, with Morocco participating in the reconstruction of the Western Sahara and benefiting from our resources in a joint manner. We are also prepared to consider giving security assurances to Morocco that we will not be a base for Moroccan opposition or things like that. So there are a lot of things that we can talk about now and consider doing which would be of benefit to Morocco and for us, but the Moroccans are not prepared to do that because there is no pressure on them.

**Mr JULL**—Since we last met the voting lists have emerged, as you have just mentioned. What else has the United Nations done there in the last nine years? You would hardly think that compiling the voting lists would have kept them busy for all that time. Has there been any other area of activity that they have been involved in?

**Mr Kamal**—This is a very good question. Morocco has really played with the UN. They kept them coming and going and waiting. Every time they think they have solved a problem

regarding identification or the other aspects of the peace plan—which are the return of refugees, the exchange of prisoners and the release of political detainees—they give agreements verbally, but nothing is signed, and, when it comes to real application on the ground, nothing happens. The other aspect that I think the UN has achieved is preparation in terms of registering refugees who would be allowed to go back, but nothing much has occurred.

**Mr JULL**—Is it a closed border between Morocco and Western Sahara?

**Mr Kamal**—Yes, we are neighbours.

**Mr JULL**—Yes, it is a very large border. But there is not a free flow of people backwards and forwards between Morocco and Western Sahara?

**Mr Kamal**—Yes, Moroccans control that route and they can do with it whatever. Since the UN came they have transferred about 40,000 people to Western Sahara. They are now in the main city, Laayoune, housed under tents in the tent camp—‘Tent City’, it is called.

**Senator QUIRKE**—Who are the Moroccans frightened of? Obviously they want the mineral wealth, but you said Western Sahara was going to give a guarantee that no bases would be there for their enemies. Just out of curiosity, who are the Moroccans worried about? Who are the enemies of the Moroccans, apart from your crowd?

**Mr Kamal**—Apart from us?

**Senator QUIRKE**—Yes.

**Mr Kamal**—I think the problem here is that Western Sahara provides, as has been mentioned, economic benefits, but it also provides strategic benefits in terms of increasing the size of Morocco by another territory which is the size of Britain; Western Sahara is the size of Britain. There is always competition between Morocco and Algeria. Also, the king and his family have invested a lot. They have put 170,000 Moroccan soldiers in Western Sahara. It was good for the king to get them away from the palace because he was faced with many coups d’etat in 1974. But it is also a matter of his own prestige, and it is difficult to get out and tell the Moroccans, ‘We have made a mistake.’ That is the problem, I think.

**Mr BAIRD**—In terms of this particular committee, which is looking at Australia’s relationship with the UN, what would you like to see go in this report to reflect your concerns?

**Mr Kamal**—We have lots of problems with the United Nations. In fact, as I mentioned, for nine years not only have our people in the occupied area suffered from continuous human rights abuses but also 165,000 of the refugees have been in the middle of nowhere, in the desert, facing harsh and hostile conditions. They are waiting for the international community to do something, but they are frustrated and have lost hope. When we look at a country like Australia, we think that Australia is a democratic country: it is a member of the United Nations and it has recently shown a lot of interest in peacekeeping in East Timor—in going there and doing the right thing. We need the right thing to be done in relation to Western Sahara to influence and encourage the UN to do something. But also, in its bilateral relations with Morocco, we need Australia to keep mentioning that it should stop human rights abuses; that Australia is not going

to do trade with a country that violates UN resolutions and peace plans. Why not reintroduce the contingent to MINURSO, because MINURSO is facing a lot of difficulties? They have just learnt that the Congress has mentioned that the Western Sahara peacekeeping mission will not get more money from the Americans because of these problems which I have mentioned today. International community presence and interest is vital, otherwise the UN will fail, we will continue suffering and war will start again.

**Mr BAIRD**—It highlights the slowness of the organisation to move on these issues. What is the predominant reason why you think it has failed? Is it because there are small numbers involved; is it because of economic pressures from other Arab countries? You can find similar examples in terms of Russia and its recent human rights oppression—they took very little action in terms of Chechnya.

**Mr Kamal**—In this case our problem in the UN Security Council is France and, to some extent recently, also the Americans. They have this wrong idea, an ill-conceived misconception, of an independent Western Sahara—everybody knows that if this referendum takes place there will be independence, because it is clear from the lists—that an independent Western Sahara will not be good for a young king in Morocco who is a very good ally of the West, and it will create instability in Morocco, on which the French look as still a sphere of influence. The Americans think that there is a traditional historical relationship between Morocco and the United States.

It is wrong to think like that. As I mentioned earlier, an independent Western Sahara will benefit Morocco because Morocco is spending \$3 million to \$4 million daily on the occupation, on its army being stationed in the middle of the desert. It is facing economic problems; it is facing challenges from the opposition because there is no democracy in Morocco. If we look at the Moroccan constitution, it can hardly be seen as a democratic country. The king rules as a medieval king. This will allow Morocco to not worry, because this is not going to go away. We are not going to give up. The problem will continue there and war may even start. So an independent Western Sahara should be looked at as a positive thing and will in fact contribute to Morocco's stability.

**Senator BOURNE**—I think Mr Baird's point, and yours in response, is absolutely right. It is so expensive. An occupying army is always so expensive. I do not know why many countries have not worked this one out. They are much better off without it. With regard to the talks with James Baker that you mentioned, can you tell us how they are going?

**Mr Kamal**—Yes. When the lists were published in January, about 133,000 Moroccans who were represented by Morocco were rejected by the UN and the Organisation for African Unity. Morocco again used the appeals process, which is in the settlement plan, that all 133,000 should appeal. According to the UN, that will take about three more years because it will be a new identification process. This has created problems for us and for the UN. James Baker came back again to hold some talks with us in London in May and also last week.

The May talks did not result in anything. In London we just talked about how to overcome the difficulties. We will continue to hold technical meetings in August, and there will be another meeting in September on high level delegations, which will be held in London again. It does not seem that it is really going to go anywhere. Unless there is some kind of concrete and strong

pressure from the Security Council, from the UN and from the international community, we do not think that Morocco will do anything. Why should they do anything? They are in control of their territory. They are using the resources to some extent. They benefit from there being no war. There is a cease-fire. We are in the camps. We are frustrated and tired and losing skills by not training as we used to. They think that time is on the Moroccan side. There is no need for Morocco to progress or to let the referendum go ahead. But we are saying that we are not going to sit there and wait for nothing to happen. The UN should do something, otherwise the situation could really deteriorate. Even now there is talk in the Security Council and in the United Nations that the referendum might not be the best option. We are saying that that is nonsense because the referendum has been mandated by the UN. It has been there on the UN agenda. It is the legal option and we are not going to abandon it to please Morocco.

**Senator BOURNE**—What does Morocco think a better option would be—that they would just take over the country?

**Mr Kamal**—They want to have what is called autonomy for the country, which just means legal occupation.

**Senator BOURNE**—They would just take over the country.

**Mr JULL**—For the record, how many Australian troops were involved in that initial peacekeeping force?

**Mr Kamal**—There were about 45 Australians, but I think they kept being changed.

**Mr HOLLIS**—They were changed every six months.

**Mr Kamal**—It was 91 to 94. Only the ministry of defence would know exactly. I think it was a good experience and maybe prepared Australia for its contribution in East Timor. According to what I have learned and read, they had to face a lot of challenges and had to improvise and do a lot of things, which is beneficial for us and Australia.

**CHAIR**—I am sure we can learn more about it because our Defence secretary, Leo Hogan, served in the Western Sahara, I understand.

**Mr HOLLIS**—Australia wanted a date when it would all end and it seemed that there was—

**Senator PAYNE**—When the UN would do something?

**Mr HOLLIS**—Yes. It seemed that they were not prepared to act so that is why Australia pulled out of the rotating contribution that it was making.

**Mrs CROSIO**—The previous population of Western Sahara —because you have not had a census since—was 75,000. What was the ‘previous population’ of Morocco around that time?

**Mr Kamal**—I would say about 20 million.

**Mrs CROSIO**—I thought it would be about 20 million. Why would Morocco, with their 20 million, be so worried about 75,000?

**Mr Kamal**—Because we are quality.

**Mrs CROSIO**—I represent a city, by the way, that has 210,000 people.

**Mr Kamal**—If you talk about population, it is not the issue here; it is the principle of self-determination.

**Mrs CROSIO**—I understand the principle.

**Mr Kamal**—They do not worry much about us but they worry about the size of the country and the resources of the country. What happened in 1975 or at the end of 1974 was triggered by events in Morocco itself. The king faced two coups d'état in that year and he was facing—

**Mrs CROSIO**—But 26 or 25 years is a long time for that to be continued in the same way, isn't it?

**Mr Kamal**—It is. The problem is how to get out. They say they need a face-saving solution. We say it is their problem.

**CHAIR**—As there are no further questions, I thank you for your evidence.

Resolved (on motion by **Mrs Crosio**, seconded by **Senator Payne**):

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

**Subcommittee adjourned at 3.25 p.m.**

