



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**

THURSDAY, 6 JULY 2000

MELBOURNE

BY AUTHORITY OF THE PARLIAMENT

## **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>**

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

### United Nations Subcommittee

Thursday, 6 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, Mrs Crosio, Mr Laurie Ferguson, Mr Hawker, Mr Hollis, 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 and Quirke and Mrs Crosio, Hollis, Jull and Price

#### **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

**WITNESSES**

**DOWNIE, Ms Sue (Private capacity) .....297**

**DURHAM, Dr Helen, National Manager, International Humanitarian Law, Australian Red Cross..246**

**JOHNSTON, Associate Professor Stanley William, (Private capacity) .....284**

**KENNAN, Mr James Harley, Member, Global Foundation .....253**

**LANGFORD, Mr Malcolm, Policy and Campaign Officer, World Vision Australia .....232**

**MILES, Mr David Arthur, Chairman, Global Foundation .....253**

**MITCHELL, Ms Pauline Dorothy, Secretary, Campaign for International Cooperation and  
Disarmament.....277**

**O’CONNOR, Mr Michael James, Executive Director, Australia Defence Association .....220**

**POLITES, Mr George, Adviser, Global Foundation .....253**

**POOLE, Ms Jennifer, Relief Program Officer, World Vision Australia .....232**

**SPRY, Dr Ian Charles Fowell, Editor, National Observer .....262**

**THOMPSON, Mr Greg, Manager, Policy and Advocacy Bureau, World Vision Australia .....232**

**Subcommittee met at 9.02 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 fourth 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, Brisbane and Sydney, 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 organisations respond 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 the changed circumstances of the post Cold War environment, and the response of the Australian government to arguments for structural, procedural and financial reform of the United Nations.

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

[9.04 a.m.]

**O'CONNOR, Mr Michael James, Executive Director, Australia Defence Association**

**CHAIR**— On behalf of the subcommittee I welcome Mr O'Connor, from the Australia Defence Association. Do you have any comment on the capacity in which you appear?

**Mr O'Connor**—I appear as Executive Director of the Australia Defence Association, with the authority of the association's board.

**CHAIR**—I must advise 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 committee would give consideration to your request. We have received your submission and it has been authorised for publication. Are there any additions or corrections you would like to make to that submission?

**Mr O'Connor**—I regret there are a couple of corrections. In footnote 3, the word 'interstate' should read 'intrastate'—that is my sloppiness with Latin, I am afraid.

**Mr PRICE**—I picked that one up.

**Mr O'Connor**—And in footnote 12, the date should read 29 October 1998, not 1988.

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

**Mr O'Connor**—The first thing I would say, Mr Chairman, is to emphasise the fact that in our submission we are not looking at the whole range of Australia's relations with the United Nations but purely in the peace operations area. It is based upon a study that the association and I personally have been engaged in for a couple of years now, which is supposed to produce a book at some time.

The only other thing I would add is that the experience in Sierra Leone recently, since this submission was formed, tends to reinforce the concerns that we have about the nature of current peacekeeping operations and their irrelevance to the actual type of conflict that occurs in these intrastate disputes. We believe that our proposals are more realistic; we believe also that, if they had been implemented in the whole process of settling the situation in East Timor before the plebiscite, then we would have had a much more peaceful outcome.

**CHAIR**—From your submission I understand that you are not in favour of a United Nations standing army but you think the United Nations should consider the development of a police or gendarmerie capability of some sort. Don't you think that the formation of that sort of an

operation would have the same sorts of problems as a standing army and would be very expensive? It would consist of various nationalities who might have differing training programs.

**Mr O'Connor**—To take the standing army issue first: it would be extremely expensive and the ownership of that army would be very much in doubt, given that the military forces, the armed forces, of any nation are pre-eminently the manifestation of the sovereignty of that nation. To have a supranational army I think is a bit risky as well as being expensive.

In terms of a police organisation or a gendarmerie, particularly a lightly armed one, you are really reinforcing the notion that peace operations are largely law enforcement operations. In our view, if they are done properly the military component of any peace operation will be quite small. It should be quite forthright in its posture, but it will achieve its objective very quickly. The bigger problem is to re-establish the civil order, in which case a police organisation is much more important.

At the moment, police components of peace operations are drawn from all sorts of countries with varying respect for human rights. We have been somewhat concerned to read recently that the template being used for East Timor, for example, is the police structure in Mozambique, which in our view is hardly something to be recommended. The Mozambique police do not have a great respect for human rights. However, if you have a United Nations force you have the capacity to set down training programs, doctrine and standards that are consistent with at least the United Nations aspirations. In this study I had a look at their civil police operation, and I was impressed with the commitment there and the doctrine that had been drawn up by the people running the place, who were Indian and Irish. I thought it was pretty good; if you had a structure like that, properly supported by an academy, you would get a more effective police component than you get at the moment.

**CHAIR**—Are you conversant with the situation in the Western Sahara?

**Mr O'Connor**—Vaguely, but not particularly. It seems to me to be one of those peace operations which go on forever without any sort of end, a little bit like Kashmir and Cyprus. It is happening in the context of a passivity about the restoration of peace, which simply means that the peace operation becomes one in which—as I suggest in the submission—the troops, the personnel, are there because they are there, and it seems to lack purpose.

**CHAIR**—In a sense, doesn't that identify some of the frustrations that the United Nations is currently feeling in relation to its ability to resolve conflicts?

**Mr O'Connor**—The frustrations are understandable, and this is why we have looked right at the outset at the sort of political structure that you need to put in place. To run a diplomatic and political operation which accommodates the claims of all players is a very difficult thing to do unless you have someone actually in charge who is the authority. This is why I feel quite strongly that the United Nations should be looking at the re-establishment—or the reinvigoration—of the trusteeship system. It was traditionally one which applied to former League of Nations mandates, and when all the trust territories became independent the UN was pretty much content to wash its hands. If you look at the charter you see that it envisages that the trusteeship system is an ongoing thing. It can be reinstated in any situation if certain

agreements can be reached. The system is ignored, yet the charter provides it as a vehicle—and a very useful vehicle.

In fact, as part of this study I became enormously impressed with the wisdom of the people who wrote that charter. It is an outstanding document. The problem is that it has never been put into effect as the drafters intended. The trusteeship area is one example. I worked in a trust territory for many years and I know how it can work. In that particular case, it worked pretty successfully. The important element in the trusteeship system is that, while the United Nations retains sovereignty, the trustee can be an effective organisation or, indeed, country or individual. So, for example, in East Timor our proposal at the time was for a trusteeship to be established with an administrator with the political experience of someone like former Philippines President Fidel Ramos, who could actually govern a country. He knew how to govern a country. He was not, with all due respect to the profession, just a diplomat.

**Mr HOLLIS**—You mentioned Sierra Leone. Although I am not totally familiar with what is happening there, it seems to me that the training of the forces or the calibre of the troops there was very much a contributing factor of the problem. Maybe this reinforces what you say in paragraph 43 of your submission, where you identify a small group of countries which, interestingly, includes Fiji—

**Mr O'Connor**—I think I will have to take that out now.

**Mr HOLLIS**—Someone also identified Fiji in a submission we had yesterday, but I did see that their submission was written in February or March. You also go on to say other possibilities, including Bangladesh, Ghana and Botswana. What is it about—not just those countries—the countries that makes them suitable, say, for training of troops? Is it the specific training?

**Mr O'Connor**—It is training; it is doctrine. Underlying that, I believe it is national culture. It has been very apparent, and I have had no real dispute over this, that the countries that I have identified there have a strong element of, first of all, British training and doctrine or that of related countries like Australia who have had the sort of experience there. But underpinning that experience, there is a culture of dealing in foreign lands with foreign cultures themselves, or respect for human rights, all that sort of thing, which is inbuilt into the training system and the doctrine and which really is not manifest in a lot of other countries or in the way they commit to peace operations. For example, if I can look at the other side of the coin, the Americans are not good at peace operations. They are not good at dealing with cultures other than own. When I spoke to senior Japanese officials and military officers on this issue of fraternisation with local communities, they sort of looked at me blankly and said, 'Why would we do that?'

On the other hand, the Malaysians said to me, 'Our biggest problem is to get the officers to do it as well as the ordinary soldiers. The ordinary soldiers do it very well; the officers don't do it so well.' So there has to be that encouragement in the training and the doctrine that the troops see themselves as protectors of the ordinary citizenry in the country in which they are operating. There is not many that do that. The French do not do it; the Indonesians do not do it; the Scandinavians who tend to provide a lot of forces for peacekeeping do tend to do it, but they are not very good soldiers. They tend to be reservists, poorly trained, and without any strong doctrine of enforcement.



**Mr HOLLIS**—You are familiar, of course, with the other inquiry that our defence subcommittee is doing. A question that comes up there constantly is about the training. To paraphrase it: should our troops be trained for peacekeeping operations or combat duties? The Canadians and apparently the New Zealanders have that emphasis on peacekeeping. There are those who take the other point of view put to us that you can switch from one to the other. If you are trained in combat duties, you can easily adapt to peacekeeping duties; whereas if you are trained in peacekeeping duties it is that much more difficult to engage in combat. In talking about the training, how would you see this? Would you see the forces still being trained for combat duties with an element of peacekeeping in it?

**Mr O'Connor**—I think the way to go may have been the same question before the defence subcommittee.

**Mr PRICE**—I will be checking your answer.

**Mr O'Connor**—You might have asked the question. I believe that you have to train for combat operations. The purpose of having an army is to defend your country, fundamentally. You have to have combat-trained soldiers for that. But you can use combat-trained soldiers for peace operations with a relatively short period of indoctrination before they actually deploy to point out to them what they can do, what they cannot do, what their purpose is, who the various players are and what their task is.

It is a little bit like, on a larger scale, your ordinary civil police on the streets of Melbourne. They are trained to use deadly force if necessary. They do not often do it. You have to have that capacity, as we found in East Timor, to use that deadly force, otherwise you will get what happened in Sierra Leone where a whole battalion was taken prisoner by an insurgent group. It is absolutely ludicrous that the United Nations should allow part of its force to be put in that position. It must have the training, the doctrine and the rules of engagement that allow it to take control. Otherwise you are diminishing the standing of the United Nations as well as putting those troops at risk.

**Mr HOLLIS**—I am interested in what you said about the trusteeship. Do you not think, though, that this would be opening up a lot of problems? We have gone through this big period of decolonisation and put such emphasis on it. I take the point you are making that there is a supervisory, almost helpful role there. We would nearly have to call it something else, though, rather than a trusteeship.

**Mr O'Connor**—The reason I use 'trusteeship' is that the provision is there in the charter at the moment. I do not walk away from the reality that the hardest part of that is to persuade the recognised sovereign that he should surrender that sovereignty to the United Nations. In the case of East Timor, for example, you would have had to have persuaded both Indonesia and Portugal. I do not believe that that was an impossible task: it was simply never tried. The important thing is to remove the claimants from the political clash and get that independent organisation and governor in place so that you can start, as it were, with a clean slate. Coming back to the Western Sahara situation, I think that there is a trusteeship element there because to a large extent it is a product of the decolonisation process. The trusteeship system would have been a very useful vehicle.

**CHAIR**—Did you say earlier that you were doing a paper or writing a book related to—

**Mr O'Connor**—There is a book in process which has not had a word written since East Timor started.

**Mr HOLLIS**—Slow gestation period.

**CHAIR**—This committee will not be bringing down its findings until next year. If you want to put a supplementary submission in in relation to trusteeship I am sure the committee will welcome it.

**Mr O'Connor**—The book does not really focus very heavily or not any more heavily on the trusteeship system than this submission does. I expect that that would not be the case. We have really tried to focus very much on our area of expertise, which is the military aspect.

**Mr JULL**—Claims have been made to this committee that in actual fact there really has not been one successful peacekeeping operation by the United Nations. Do you think that is going a bit far?

**Mr O'Connor**—Yes, I do. Namibia I think was very successful. There is a personal element in that claim because my eldest son served over there. I think it was successful. It was not entirely successful because of the way the United Nations designed it but simply because of the quality of some of the troops involved. The Namibian situation was one which was characterised by a general, stable agreement between the two contesting parties—South Africa and essentially Angola or the independence movement in Namibia—that the process would go ahead. It was a monitoring exercise to a large extent, a degree of reconstruction, mine clearance and that sort of thing, which worked very well. There was some stress and strain during the election period over there but this settled down quite well. The outcome was very sound and very sensible. It is what appears to be now one of the most stable and democratic countries in Africa.

**Mr JULL**—Are you confident about the ultimate outcome of Timor?

**Mr O'Connor**—No. In fact I would be very pessimistic. If I can put it a little bit crudely, Australia has been taken for a ride. What we are getting now is a restoration of Portuguese colonialism, at least in a de facto sense. I have quite serious concerns about the size of the Portuguese contingent in UNTAET; the establishment of Portuguese as the official language; the use of the Mozambique police as the model for the East Timor police and, indeed, if you like, the appointment of a Portuguese-speaking diplomat as administrator. I think the whole process has simply been run in the interests of a small elite in East Timor and the large indigenous East Timorese community will simply become as subservient to that elite as they were to the Indonesians and the Portuguese in the past.

**Mr JULL**—The small elite in East Timor were requesting that the Portuguese come back, weren't they?

**Mr O'Connor**—Yes, indeed.

**Mr JULL**—One section of your submission that I was interested in was that whole area of intelligence. In paragraph 52 you have made some pretty heavy statements regarding the use of intelligence or the lack of the use of intelligence. How do you get around that situation in light of some of the accusations that have been made against the United States? Richard Butler, in terms of Iraq, got a dreadful time. Do you think that the UN should have a fixed policy on the use and sharing of intelligence, or is that all too hard?

**Mr O'Connor**—Personally, as an old intelligence officer, I think it is a crazy principle that you do not share intelligence with your friends and that you do not collect intelligence. I am mindful of the UN dictum in East Timor that the Australian battalion intelligence section should be renamed the information section and that a sergeant who set out to collect intelligence was sacked and sent home.

I had an interview with Mr Akashi, who was the UN Secretary-General's special representative in Bosnia and Cambodia. I raised this issue with him and he was bitterly hostile to the notion that the UN should even collect intelligence. His view was that it was sufficient for the UN to establish a high level academic community to do assessments. For the people on the ground, out in the front line, who are being shot at, that is simply not good enough. You have got to have tactical intelligence, otherwise you do not know who your enemy is, where he is and what he is doing or what his plans are. I find it quite extraordinary.

If you look at the Rwandan experience, when General Dallaire, right from the beginning, was collecting intelligence and passing intelligence back to New York that a massacre was being planned, he was simply told to stop doing it. This was before the major massacre of the Tutsis by the Hutus in a situation where there had been an alleged peace agreement in force for some three years. The UN, as an institution, is guilty of a high degree of wishful thinking in this area. It is impractical and unrealistic. Until that changes, we have to be very sceptical about the UN's capacity to engage in such operations.

**Mr JULL**—I wonder how we get that change of attitude. It would seem to be almost impossible.

**Mr O'Connor**—One of the ways I feel reasonably strongly about is that countries like Australia, the less important powers but quite significant powers, need to be saying to the UN, 'If you will not fix this up, then don't count on us to support you. We will not do it. We will only support your operations on our terms, not on these beautifully idealistic but quite unrealistic terms.'

**Mr JULL**—Wasn't there a degree of that in terms of the commitment to East Timor? Australia made a lot of demands in terms of upgrading chapter 7 before we went in. So I guess in that respect it can be done.

**Mr O'Connor**—Yes, I think there was something of a precedent set there, as there was with UNITAF in Somalia. UNITAF fell apart, in a sense, because the Americans lost persistence, mainly after the 1992 presidential election—I think I am right in saying. With regard to the East Timor situation, which was Australia led, I think Britain was very supportive in getting a resolution, which was worth while. But this was not a UN operation, and I think that is important to recognise. This was a UN-endorsed operation; the UN has not spent a penny on it.

Australia has effectively carried most of the cost and, if you look at the United Nations propaganda, UNIFET does not get a mention anywhere. In fact, of all the stuff I have looked at on the United Nations web site, the only mention is when the Canadian representative at the Security Council got up and complained bitterly that Australia had not been given credit and had carried the cost, and that just went through to the keeper, as it were. So the UN is quite hostile to such operations because it does not gain the UN any credit—probably even more hostile if it is a successful operation.

**Mr PRICE**—Michael, isn't that likely to be the trend for the future—that particularly, say, for problems in our region, we need to be able to have forums that allow us to move quickly in a coalition to respond to particular problems, rather than waiting for the Security Council to debate the pros and cons, argue and do something some months later? Sorry, it is not meant as a criticism so much of the UN, rather that we really need to get our regional acts together to be able to follow up quickly.

**Mr O'Connor**—I think there is a point in that; there is no question about it. There were some hopes that the ASEAN Regional Forum would provide such a capability. It had a potential, I think, which was not realised at the time of East Timor, partly I think because ARF has made itself too big. If it restricted itself to the South-East Asian region, I think it might have done better.

That said, if you go through an international operation like that, there is some benefit, I think, politically in having a UN endorsement of it. The question then arises of cost: who bears the cost? The question also arises of what your outcome is to be and when the UN is going to be satisfied, and who is going to be the controlling political authority. This is why I keep coming back to the trusteeship system. If you let the Security Council run it, they want to run it on a day-to-day basis, and I instance in there General Nambiar's experience in Bosnia with frequent changes of his mandate from the Security Council.

You have got to have the Security Council running as a cabinet, if you like, but one which is two or three steps removed from operations instead of immediately in charge of operations, which is what they like to do. Using the trusteeship system allows you to do that because it puts an operating authority in between the council, which exercises a relatively limited supervision, and the actual situation on the ground. It allows the people on the ground, with some but relatively limited supervision, to get on with the job.

**Mr PRICE**—If we were able to, say, recruit all those long-term unemployed in the western suburbs of Sydney and the western suburbs of Melbourne into the Army, couldn't those forces be part of that UN standing army? It would be a pretty cheap way to go.

**Mr O'Connor**—It would cut our welfare bill. There is no doubt about that.

**Mr PRICE**—Not too much if we kept them as reservists, of course.

**Mr O'Connor**—I think you are painting a fairly remote picture for me. I have a serious reservation about any system that puts pressure on people to join an armed force which is to be a highly professional and highly capable force. The last thing you want in any such force is disenchanted people.

**Mr PRICE**—Absolutely.

**Mr O'Connor**—If unemployed people have the ability, the qualifications to join the armed forces, then there is nothing stopping them at the moment, except maybe the incompetence of the recruiting organisation. On the other hand, if they do not want to do it or if they are not capable of doing it for physical or educational reasons, then there is not much point in forcing them into it. I just do not see any point in that.

**Mr PRICE**—Firstly, I thought there had been a significant beefing up of the military component at the UN that allowed for more effective planning before the UN went on. Do you see us as having reached the limit there or is there further capacity for improvement?

**Mr O'Connor**—There is substantial capacity for improvement. I think there are two aspects here. Firstly, part of the beefing up was the provision by a limited number of countries, including Australia, to provide the so-called gratis officers to the staff of the department of peacekeeping operations. These were experienced officers who were paid for by their own governments. They came from Britain, Germany, Australia, New Zealand, the United States, Canada and one or two others. That attracted the hostility of some of the smaller countries, Third World countries, who thought they were being denied access to the UN gravy train, and in fact a resolution was put up in the finance subcommittee of the General Assembly to have all these people sent home. It was sponsored by the Bahamas, of all places, and it got up and went through without a vote. So all those officers were effectively sacked and sent home.

The other problem is the structure, and I refer to this in the submission, where the military adviser to the Secretary-General is actually responsible to the Under Secretary-General for Peacekeeping Operations. In my view he ought to be directly responsible and accountable to the Secretary-General and he ought to have a proper military staff instead of a grab bag of officers who come together for fairly limited processes. He needs a standard military staff with all those normal intelligence, plans, operations, logistics, personnel branches and another one to cover civil military relations.

**Mr PRICE**—I have just one last question. I guess the thing that impressed me about the Australians in Somalia was the fact that they were a 24-hour operation where the Americans were nine to five, and they actually went out in their HRS. Notwithstanding the rules of engagement, they were brilliant at re-establishing a crude police force, a court system, and liaising with the elders and getting a semblance of local government going. I guess it is that area that seems to me to be the hardest thing in terms of peacekeeping, going from raw military to starting to get the civilian society up and running, and we tend to do it not too badly, I think. What do we need to change about the present system that will facilitate that sort of activity or initiative more readily?

**Mr O'Connor**—I think it has got to be written into the doctrine for a start. I am not sure that the military are always the best people to do it.

**Mr PRICE**—They did it really well.

**Mr O'Connor**—They did it really well in Somalia because there was no-one else to do it, and they did it to some degree in East Timor because there was no-one else to do it. This was

one of the great failings of both the UNITAF and the UNIFET operations, the non-UN operations in Somalia and East Timor, that they were put in there to conduct military operations without any civilian authority to whom they were responsible. That is absolutely and fundamentally wrong in military operations. You must be subordinate to a civilian authority and you must serve a civilian authority. If you do not do that then you have effectively got a military government, a martial law situation, but the end result of that is nothing. We have a parallel in our own history when the Army pulled out of Papua-New Guinea in 1945 where, because no transitional planning had been done, the incoming civil administration was left with absolutely nothing. You had the administrator and his most senior departmental head sharing a tent as their home and their office, as government house in fact.

**Mr PRICE**—That is not a bad idea.

**Mr O'Connor**—You have to have this total civil-military package in any of these sorts of operations. If you do not do that, then you are not looking to the future; you are looking to the immediate issue. Certainly, in both East Timor and Somalia the Australian experience and the Australian doctrine were proven, at least in the military sense. If I may, I will relate an anecdote from a Somali taxi driver now living in Melbourne. He came from Baidoa, where the Australians were. Before the Australians came there was chaos. Everybody went around armed. The schools were not open. When the Australians came it was stabilised. When the Australians left—they were there for only 17 weeks—it reverted to chaos. So he said, 'I came here.' That is a fair statement of the situation. In other words, there was no program to resolve the real problem in Somalia, just as with INTERFET there was a program to restore peace but there was no real program over which we had some influence to rebuild a stable, civil society in East Timor.

**Mrs CROSIO**—If you were given the authority and the power in your area of expertise today, what would be the first steps you would take in the restructuring of the UN?

**Mr O'Connor**—The first step I would take would be to do precisely what I mentioned about establishing a proper military staff with the military adviser directly responsible to—

**Mrs CROSIO**—But you do say in your report that that person, in position at least, is there—he is just scattered around somewhere.

**Mr O'Connor**—Yes, but his lines of authority are very diffuse. He is responsible to the under secretary-general for peacekeeping; he ought to be directly responsible to the Secretary-General. He ought to have a proper staff. I would go further and say that we have to start getting away from this notion that an effective force is going to be drawn from every Tom, Dick and Harry country around the world, regardless of the quality of their troops.

**Mrs CROSIO**—You have mentioned that quite a few times in your report.

**Mr O'Connor**—Yes.

**Mrs CROSIO**—Whether you go 39, 47 or 45, I venture all the way through you are looking at quality.

**Mr O'Connor**—Yes, it is a key factor. I was talking to a senior Australian officer who commanded our detachment in Rwanda. It was he who made those comments about the other detachments around the place.

**Mrs CROSIO**—Where does the selectivity begin? Does it begin because we as Australia know we have the expertise? What if another country puts their people up? Who then says, 'We don't want you but we want you'?

**Mr O'Connor**—It starts with the military adviser, whom I would call the chief of staff not the military adviser. He has to start doing it. Interestingly, the present military adviser is an Italian lieutenant-general who was brought in at short notice to supersede the Australian Frank Hickling, who was suddenly selected to be chief of the Army here and was not available for the UN. He impressed me enormously as a very professional officer. He has to operate within UN rules. You really need those key countries to say, 'We are not going to operate with these rules. If you want to stay with the old rules, go and get some major from some tin-pot little country, make him a lieutenant-general and call him the military adviser. You are not going to get anything better.' You have to get something better, and that means a high degree of military professionalism. You do not want to use it in any forceful way, but there are going to be circumstances, like we have seen over and over again since the end of the Cold War, where you have to take charge of a situation. You have to take control, and that means military effectiveness.

What we found in East Timor—and in Somalia, for that matter—was that when you had highly professional troops coming in and making it plain that they were going to stand no nonsense and that these were tough, professional soldiers, the opposition tended to melt away. That would have happened in Bosnia if the UN force had been given the authority to take severe action against the various militias around the place, who were largely elderly, tubby ex-conscripts who had not fired a rifle in years and who were very good at picking on defenceless civilians but not very good at taking on a professional military force. They tried to harass the UN at a distance with artillery, rather than get close in and dirty.

The professionalism is vitally important. If you do not use that to deter adventurers amongst all these various militias and armed groups, then you start out with one hand tied behind your back. In Bosnia you had Dutch peacekeepers—who should be good soldiers—corralled and disarmed, and then the local civilian population was being ethnically cleansed while these poor disarmed Dutch soldiers looked on. This is appalling. You should never put good soldiers into that situation.

**Mrs CROSIO**—People like you surely must be in member states all around the world who are part of the United Nations, who would be expressing this type of opinion. Why do you think it is not being carried out? We have evidence to say the United Nations is what we as a state are able to contribute, what we are: the United Nations is us, we are the United Nations. People like you and people everywhere else have these opinions. Why isn't it being carried through?

**Mr O'Connor**—Obviously, I cannot answer for other countries. There is probably a twofold attitude. The United Nations is the only serious international organisation we have. It is the best we have got. For that reason, there is a strong feeling that we should support it to the best of our endeavours.

**Mrs CROSIO**—Even though we know it is wrong in what it is doing?

**Mr O'Connor**—I think that is an attitude. It is not one that I share. We should use our—

**Mrs CROSIO**—But you just gave us examples of where mistakes were made. If we keep repeating those mistakes, surely it has got to come to a stage when someone says, 'Enough's enough. Look what we did here, look what we did there, use that as a precedent: we do not do that again.'

**Mr O'Connor**—Indeed. If the United Nations is not prepared to reform itself or be reformed, we may well be looking at a situation where a number of key countries, mostly Western but not exclusively so, withdraw from the United Nations and set up an alternative body. I believe that countries like Australia have to use what influence they have, not to go to that extent necessarily, but at least to hold it out as a possibility that reform is absolutely essential in this area. The pity of it is that in many areas, particularly in the humanitarian areas, the United Nations does great work. Just its logistic capability in moving millions of tonnes of food to needy areas is quite extraordinary, and its relations and its association with a wide range of non-government humanitarian organisations is enormously valuable. So you would have to be very wary in going down that track.

You have got to work first at trying to persuade the United Nations that its peacekeeping tradition is simply not working. The pre Cold War peacekeeping tradition does not work. This runs hard up against the doctrine of sovereignty but it is the crunch issue. It is an area in which, if the United Nations is going to be effective in its primary task of maintaining international peace, some very hard decisions have got to be taken. I think that Australia has a fair degree of influence, which will have been reinforced by the East Timor experience. We should be using that influence as far as possible and trying to build up a coalition of like-minded countries that can push that view in the United Nations at the diplomatic level.

**Mrs CROSIO**—In other words, we have got to lead, rather than follow?

**Mr O'Connor**—Yes. That is very important. We have a capacity for leadership, because of our size, our strength and our long-term loyalty to the United Nations, which maybe even some of the larger countries—even the permanent members—do not share, and I think we should be using that as far as we can.

**CHAIR**—We are over time, Mrs Crosio. I will let you have one more question.

**Mrs CROSIO**—I have got about four.

**CHAIR**—I know, but I am sorry. We have to limit it because there are a lot of people here.

**Mrs CROSIO**—I will skip the others. I may have an opportunity in another group to ask similar ones. I would just like to have you expand on something you have brought up three times, but also following a question from Mr Jull: the problem with East Timor and what you see in the future. Do you think that problem was there before we actually went in, or do you think it only arose with the Portuguese coming in afterwards?



**Mr O'Connor**—I think the Portuguese have had an influence there for a long time. Let us be realistic about this. The Portuguese armed and supplied the guerillas in East Timor for 25 years; they kept them going. The Portuguese have always resisted, as effectively as they could, any attempt by the Indonesians to establish their authority over the place—not that the Indonesians helped their own cause terribly much. Certainly the Portuguese moved very quickly after the plebiscite. Within a very short period, for example, they had a warship loaded with Portuguese currency out there in East Timor. I think the Portuguese had done a fair amount of planning beforehand and they knew what they wanted.

**Mrs CROSIO**—That is strange because I have heard the same as your comments from two other groups in the last week. It is an interesting comment.

**Mr O'Connor**—It is very disappointing. I think that, from Australia's point of view, although the Defence Force did an exceptionally good job, there was insufficient follow-through by other elements of government in trying to establish a much more stable and democratic structure in East Timor. I might add—and it is no secret—that we put our submission, pretty similar to this but specifically on East Timor, to the government in February last year, long before the timetable for a plebiscite had even been agreed. And we put it to the Senate Foreign Affairs and Defence References Committee inquiry into East Timor the following month. I still believe, with all due modesty, that if that trusteeship process, the installation of someone like Fidel Ramos, had been established we would not have had the massacres and the destruction that we had in East Timor.

**CHAIR**—There are no further questions, Mr O'Connor; our time has expired. Thank you very much for your contribution to the inquiry and for appearing before the committee this morning.

**Mr O'Connor**—Thank you, Mr Chairman.

[9.53 a.m.]

**LANGFORD, Mr Malcolm, Policy and Campaign Officer, World Vision Australia**

**POOLE, Ms Jennifer, Relief Program Officer, World Vision Australia**

**THOMPSON, Mr Greg, Manager, Policy and Advocacy Bureau, World Vision Australia**

**CHAIR**—On behalf of the subcommittee I welcome the representatives of World Vision 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 your 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 time wish to give any evidence in private the committee would consider that request. We have received your submission and also, today, a supplementary submission. Is it the wish of the committee that that be authorised for publication now? There being no objection, it is so ordered. Are there any additions or corrections to your original submission that you wish to make?

**Mr Thompson**—No.

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

**Mr Thompson**—Thank you. We welcome this opportunity to speak on behalf of World Vision Australia. World Vision Australia is an international relief and development agency and a constituent entity of World Vision International, which has offices in 86 countries. Our mission is to work towards a world that no longer tolerates poverty. In that work we have a particular focus on the needs and rights of children. Our work seeks to respect, promote and protect human rights, and we have formally endorsed the fundamental, international human rights instruments, including the Universal Declaration of Human Rights and the Convention on the Rights of the Child.

World Vision International has NGO consultative status with ECOSOC, the economics and social council, and we have formal accreditation with many UN specialised agencies, including UNICEF, UNCTAD, UNHCR, the World Health Organisation and the International Labour Organisation. As well, we work with the World Food Program in many situations around the world. We work alongside the UN and its constituent bodies at the international level and in many operations of relief and development around the world. Our experience brings the basis of this submission.

We welcome this opportunity to highlight the major recommendations and issues we have addressed in our submission to this timely inquiry. Before passing on to my colleagues, Jennifer Poole, a program officer in our emergency relief unit, and Malcolm Langford, a policy and campaigns officer in our international Advocacy Network, I would like to focus on two particular matters addressed in our submission. In the face of globalisation, a strong and

effective UN system is required to ensure good governance at the international level alongside effective regional and national arrangements and institutions. Such a system needs adequate resources, and we acknowledge Australia's commitment to paying our way through our UN fees and special grants to particular agencies and programs of the United Nations. We note that not all nations do that and, in particular, we note that the United States is one of those that does not pay its way. The very fact of globalisation means that more resources are required globally. To that end we recommended that the Australian government should support an inquiry into the proposed Tobin tax, particularly on speculative international financial transactions. We note that at the UN General Assembly Special Session in Geneva last week such an inquiry was established. We are concerned that not only were we not effectively represented at ministerial and political level at that important conference but also we voted with the US to oppose such an inquiry. We urge that Australia gives it support to that inquiry and also to its early implementation of the Tobin tax if that is the outcome of that inquiry.

Addressing term of reference No. 10 on Australia's role and response to the UN system, we noted Australia's important role and contribution to the UN and the promotion and protection of human rights but urge that we could do more, including in the treaty mechanisms and processes. We note with concern the present in-house review of those processes and look forward to a positive outcome. We express our concern that this has not been a transparent process and do warn that a decision to withdraw from such mechanisms would erode the important role that Australia has and should play in the promotion and protection of human rights. With those few opening remarks I hand over to Jennifer, who will address particular aspects of our submission.

**Ms Poole**—I am pleased to be here to support World Vision's submission. I was contributing to the section on peacekeeping and civil and military relations. My background to speak on that comes from five years in Eastern Europe working in Bosnia managing refugee programs and working there with peacekeepers and NATO. There has been an increase in the number of complex humanitarian emergencies in the 1990s, which has resulted in new challenges for NGOs. We now find ourselves working alongside peacekeeping forces and peace enforcers to provide aid to those who are suffering. When missions change from peacekeeping to peace enforcement, problems can occur for NGOs when they can no longer maintain the image of impartiality and neutrality. Therefore, it is essential that NGOs and peacekeepers maintain ongoing dialogue, and that is the theme of my section in this submission. The military has particular strengths in the context of conflict, obviously. However, NGOs also have a role to play supporting peace at the grassroots level, monitoring human rights abuses and also monitoring military abuses.

World Vision believes that there should be a universal code of conduct for all peacekeepers or peace enforcers, both military and civilian personnel. This would eliminate harassment, intimidation or corruption and would protect innocent civilians caught in between. NGOs are bound by codes of conduct—the Red Cross code of conduct, the SPHERE minimum standards in disaster response, the code of conduct for aid workers and the ACFOA code of conduct. We support the Geneva Convention, international humanitarian law and the declaration of human rights et cetera. Such instruments guide our response in a complex humanitarian emergency. The military, we feel, need to be aware of these standards and codes and to have their own codes of conduct because accountability is important and the military must be accountable for their behaviour in these missions.

I refer to page 6 on exit strategies for peacekeepers and peace enforcers. We believe they need to be linked to objectives—the objectives of peace building, good governance and human rights protection. During the transitional period you asked whether there was a role for the UN in the administration and we feel there is. However, we feel that the UN should embrace the skills of the NGO sector, as well as bilateral aid and skills and that these three sources should be channelled to support peace. We feel that the UN should lead all humanitarian interventions and the example is NATO in Kosovo. NATO's mandate was peace and security for Western Europe. It was not the protection of the rights of refugees; it was not a humanitarian mandate. We feel that the UN has a humanitarian mandate in humanitarian intervention. Therefore, it should be leading in these situations. I gave the example on page 8.

We support UNHCR and its mandate to protect refugees. We would like to support a revised mandate to include the protection of internally displaced people. We feel it is important that the UN coordinate with the international community and donors to channel all efforts towards a sustainable peace building policy. Based on these comments, World Vision encourages the government to support training for all stakeholders in peacekeeping and peace enforcement missions, not to cut funding in the civil military sector and to support institutions like at Williamstown for peacekeeping.

Finally, we would like the Australian government to support and encourage dialogue with the NGO community during humanitarian interventions because political decisions here impact on the safety of our staff in the field.

**Mr Langford**—I am responsible for children's rights issues with World Vision. Being a child focused agency, I wish to speak to the reference point 6 in relation to the UN's capacity to protect human rights, and particularly the rights of children, given that 95 per cent of casualties are now civilian and one-third of those are children in armed conflict.

I would like to make two points. Firstly, in relation to the Convention on the Rights of the Child, this is an important instrument for the UN to use in armed conflict. It is important because there are only two states in the world that have not ratified the convention so it has significant support. It also covers both human rights law and international humanitarian law and cannot be derogated in times of war. Unfortunately, however, the convention is difficult to enforce because of the treaty mechanisms whereby countries only report every five years. I just want to outline three brief areas in which the convention could be utilised more effectively, which are contained in both our submission and the additional submission. The additional submission relates to the Security Council resolution 1261 of last year in relation to children and armed conflict. The submission sets out the international consultation in relation to the implementation of that Security Council resolution.

The first issue of implementation is the concern of the Security Council that regional initiatives, diplomatic initiatives, cease-fire agreements, all these areas, take into account the needs of children. If you take the Bougainville situation, for example, of the 20,000 deaths that occurred, 10,000 of those were children, largely as a result of a lack of immunisation because the Red Cross could not get in. So half the deaths there relate to the issue of children being overlooked. We urge that the issues of children be examined in terms of cease-fire agreements, particularly in relation to humanitarian access to food and health services. Indeed, 95 per cent of

deaths of children result from starvation and lack of access to health services, and only five per cent from direct physical trauma.

The second area is, in fact, a much more proactive and aggressive monitoring of the abuse of the rights of children, and we would suggest that an independent mechanism be set up to investigate the situation of children in armed conflict and potential armed conflict that could possibly be under the United Nations Commissioner for Human Rights and report to the Security Council. We also set out in our submission the need for perhaps child monitors who could go into situations of potential armed conflict to investigate what is happening on the ground. There has been a lot of concern with the East Timorese situation that there was not enough on-the-ground information that was reliable that could be used by the UN to take preventative action. We have also set out in our submission a somewhat more ambitious proposal for an international child protection force that could protect children, particularly in the early stages of armed conflict.

The last thing I want to point out is the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict that has just been passed by the General Assembly and is open for ratification by Australia. This Optional Protocol raises the age of participation of children in armed conflict from 15 to 18 and the age of recruitment to 16. Unfortunately, Australia has lagged behind in international opinion on this issue of increasing the age of recruitment to 18, and we would support the Australian government taking that position, but also putting into legislation that you have to be 18 to participate in conflict, particularly in East Timor last year when two 17-year-olds were found amongst the Australian peacekeepers. That concludes my opening comments.

**CHAIR**—It is precisely because of the issues you raised in relation to the escalation of conflicts and the number of instances you raised that this inquiry is being held. You spoke about all of the declarations and all of the statements that you actually support as World Vision. I think most of the people who are member states of the United Nations agree with all of those declarations and yet it does not seem to be working, does it?

**Ms Poole**—Could you just be more specific? Do you refer to military behaviour on the ground?

**CHAIR**—You went through a whole list of things. You said, ‘We support this declaration and we support all the various declarations that have been made on behalf of the United Nations and we are signatories to lots of those things’, yet we are still seeing an escalation of conflict within state boundaries. All of those things that you say you support, or we all support, just do not seem to be working.

**Ms Poole**—I think the content of these documents is not widely disseminated and it is not included rigorously enough in training. You will find some NGOs that may not be aware of the content of some of these documents. You will find a lot of military who are unaware of the content of these documents. Some of these codes are new, and we are proposing that they be revised, reviewed, and that the military in peacekeeping operations has its own code of conduct.

**CHAIR**—I have only just had a quick look through your supplementary submission, which deals a lot with issues of the rights of children, the rights of the child, but isn’t it a fact that in

most of the tragedies that have occurred there has been a total and blatant disregard of all human rights, whether they be adults or children? So isn't it really wishful thinking to think that when conflicts reach the stage that they have in some cases in the past 10 years within state boundaries there is going to be regard for children when there is no regard for human life *per se*?

It does not matter how many declarations, how many statements or how many objectives the United Nations has in place in relation to children—all of us who are parents know how we would feel if our own children were involved in these sorts of conflicts—because it would appear that they only work for those people who respect them and not for those who are involved in the bitter hatred that is involved in the conflicts that have taken place. How do you propose that any special rights for children in these conflicts can ever happen? How can we ever reach the situation where the children will be fully protected in such hostile conditions?

**Mr Langford**—I would agree with you that the issue is human rights generally. I suppose we have been emphasising children because often they are the most vulnerable in a situation of armed conflict. We need to be sensitive to the different needs of different people, if that is possible. Children are particularly vulnerable in relation to starvation and health services. They are unable to survive these periods of armed conflict as well as other people, therefore, their needs need to be respected further. Also, in relation to psychological trauma, they are less able to handle war. Simple measures can often save a lot of lives, and that is why we have been emphasising the rights of children.

**CHAIR**—None of us would argue with that. We would all agree with that. It is just that, with a conflict where there is bitter hatred, where it has maybe gone on for centuries and where it is generations old, I am not sure how you can ever put it into practice.

**Ms Poole**—I think that is when you see the role of NGOs. We work at the grassroots level; we work with communities. We can work with local leaders and communities in re-integration, reconciliation and peace building. There is a new methodology being advocated by NGOs called 'local capacities for peace'—a global initiative which World Vision is part of—that allows you to analyse the impact of aid in the context of conflict. It allows you to see if aid is feeding into conflict or if aid is supporting capacities for peace—a connector. With this framework you can analyse the conflict, you can determine what things at a local level can unite a community, and you can design your packages to support local initiatives for peace. That is a skill that NGOs have; it is not a skill that the military have at the moment.

**CHAIR**—You have had a lot of personal experience in Bosnia, and so you are probably more aware than any of us about uniting communities. Can you see any possibility of unity in communities where there has been bitter division?

**Ms Poole**—It is sad to say that often in divided communities it is a top-down decision. It begins with a battle for leadership; it is a political battle that basically destroys the community. When the leaders are signing peace agreements and talking, a whole range of opportunities for developing peace at the local level tends to open up. I was fortunate enough to be in Bosnia between 1993 and 1997. In 1994, the US government took an interest in Bosnia and a peace agreement was signed. They helped in a peace initiative called the Washington Agreement,

which brought peace between the Muslims and the Croats in Bosnia. As part of that initiative, they put in funding for NGOs to support initiatives for peace in the transition to democracy.

Under that initiative, we took a grant to unite a community divided by conflict. We did that by refocusing at the grassroots level. We involved the canton government, the state government and the media. We had a united package in bringing peace to that community, and it worked. It is still one of the more stable areas, and it is more accepting of refugee returnees. So a really targeted approach and concentrating on one area worked. However, it is a very resource intensive approach, and the donors did not follow through after the initial investment.

**CHAIR**—Unfortunately, the peace agreements often come after the tragedies and not before.

**Senator BOURNE**—I am interested in the future role of NGOs within the UN system. The Secretary-General has identified that as something he wants to encourage. You mention in your submission the pivotal role of NGOs in the Ottawa process of landmines. Can you give us your view on where you think NGOs can best contribute within the UN system and where you think that is going to grow, and where you think there will be more contribution by NGOs or where you think there should be?

**Mr Thompson**—There should be at a number of levels. World Vision's experience reflects operations at all those levels, including at a global level in terms of the operations of particular agencies such as the Commission on Human Rights, where World Vision joins with other NGOs in seeking to draw attention to particular circumstances reflecting our grassroots experience. I think a particular role for NGOs at that kind of level is to be a voice for civil society to draw attention to issues of abuses of human rights, when interventions might be needed and more appropriate processes of addressing national development strategies and so on might be addressed. I think the World Bank, for example, has recognised the important role that NGOs can play along with other stakeholders in establishing national development priorities, particular interventions for poverty reduction strategies and so on.

The other important area, reflected in Jennifer's underlining of the important role at the local community level, is where NGOs have access to local communities and the processes which we try to address in the protection and promotion of human rights, in the building of peace and in ensuring that development strategies can play a really important role at a grassroots level. We are implementers, in a sense, of part of the specialised agencies programs of the UN, as we are for national government development strategies. A range of that level of experience reflects more effectively our voice at the global level so that the international community might hear exactly what impacts the policies of the UN agencies and the member governments of the UN might have in particular circumstances.

**Senator BOURNE**—As Ms Poole was saying, it happened in Bosnia, where you were able to look under both phases at what was going on and report out of Bosnia what was happening. Do you think that that is going to happen more and more?

**Mr Thompson**—I represented ACFOA at the 56th session of the Commission on Human Rights recently in Geneva. Obviously at this time, when attention is being given to the future role of NGOs in the system, there are some tensions that exist. There are some resistances by some governments to the participation of NGOs in those fora. That is across the board from

governments at every level; nonetheless, the opportunities are there. The important role that NGOs can play is affirmed by those systems. I think the millennium summit will be a further example of the recognition that the Secretary-General has given to the role of the UN, given his preparatory statements towards that millennium summit.

I note that the Prime Minister is not going to attend. That is disappointing, again, in terms of the Australian government providing the kind of leadership that we believe it can provide and should provide in the international community to ensure the strengthening of that community. Australia has a good reputation in the international system and that reputation is being eroded at the moment. An example of that was the announcement of the inquiry relating to involvement in the treaty processes, which was made as I arrived in Geneva, and the reactions of the UN High Commissioner's staff and, more importantly, governments from around the world and NGOs that Australia was stepping back from the role that it has played traditionally from the beginning of the work of the Commission on Human Rights until today.

Our hope is that this internal inquiry will affirm Australia's continued participation and that Australia will continue to join with other governments, as it has done in the review of the mechanisms of the UN Commission on Human Rights and its associated bodies. Australia has been joining with other governments in that review and hopefully this internal review will affirm the work that has been done so that the reviews and the revisions that are needed in those treaty processes can take place and so that Australia will be amongst those that give leadership by continued participation in those mechanisms.

**Senator QUIRKE**—Other people probably know the answer to this, but I would like to get a bit of a feel for it. World Vision is not just an Australian arrangement; it is in most Western countries. Could you just give us a bit of a feel for that?

**Mr Thompson**—World Vision historically was based out of a US agency in Korea during the Korean War and since that time has developed into an international organisation with constituent members. Each national body—86 of them around the world—has their own national board. But we have a partnership of agreement between each of those entities to work together internationally in the delivery of aid in both relief and emergency situations and longer term development. The major part of our work is in community development, funded by child sponsorship.

Those national entities exist in North America, Australia, New Zealand, Asia and Europe. In operational terms: through every continent. So our work is both in raising awareness and resources for development and in advocacy in support of the major part of our effort in relief and development on the ground through community development and emergency relief. In that way we work in partnerships with governments as well as other NGOs.

**Senator QUIRKE**—How do you relate to other World Vision entities in, say, the United States or other places? Is the Australian operation literally the Australian operation, or are you part of a larger branch office?

**Mr Thompson**—There is a partnership office that coordinates the efforts of the national bodies, and there is a partnership of agreement between the offices, where there is a rationalisation of the use of resources so that they are used efficiently and effectively. We have



commitments to certain protocols and standards that direct operations. It is like a franchise; but it is not a franchise, because of the national entity that we have.

**Senator QUIRKE**—So when you come here today to give us a submission on the UN and the sorts of issues we are looking at there you are speaking, effectively, as the Australian franchise. I am sorry to put it that way.

**Mr Thompson**—Yes, that is right. But we can draw on experience. We operate internationally in our advocacy work. There is an international advocacy network, of which World Vision Australian staff members are part. We act together with other entities in trying to bring our influence to bear on global institutions.

**Senator QUIRKE**—Is the UN and its current role in the world part of this international network that you are talking about? Does World Vision in Australia, World Vision in the United States and a whole range of other places have the UN on the radar scope? Are you concerned about the role of the UN? Is the international World Vision network—I think you said ‘network’, or whatever the word was that you used—

**Mr Thompson**—It is a partnership.

**Senator QUIRKE**—concerned about the UN?

**Mr Thompson**—Yes.

**Senator QUIRKE**—Is it a regular topic of discussion amongst the various groups, or do you just get on about your business irrespective of the UN?

**Mr Thompson**—No. Increasingly, as we have operated at the local level in particular circumstances and found ourselves in partnership with specialised agencies, we have recognised that it is not sufficient to simply work at that operational level, that we need to also have a voice in international fora. So we have offices in New York relating directly to the UN General Assembly and its specialised agencies based there. We have staff in Geneva relating to the Geneva based UN system, as well as working directly with the World Food Program in Rome. So we have connections and work operationally and in policy work with the UN at the global level as well as in the specialised agencies work at national level.

**Mrs CROSIO**—Mr Langford, the second last paragraph on page 5 of your supplementary submission states:

There is also a need for a mechanism to ensure that action is taken when workers within the UN system report human rights violations. It is unacceptable that some reports are not followed up because of political interests.

Would you expand a bit further on that?

**Mr Langford**—Jennifer may be the person to respond to this one.

**Ms Poole**—Yes. Malcolm is sitting in. Our representative who worked tirelessly on this section is now based in Geneva, so it is hard to come up with the example. But I think in—

**Mrs CROSIO**—Even if you do not want to give examples, could you expand it. You have actually had cases where workers' reports on the human rights violations have not been taken up for political reasons?

**Ms Poole**—Perhaps a gentle example might be, in some instances, early problems in Indonesia as East Timor was breaking away. There were substantial human rights abuses there that were reported and the international community was very slow to act. Eventually there was a UN investigation, but it came some months later. I think that could be used as an example where perhaps the international community and the UN could respond much faster in situations where there are gross human rights violations. The mechanism is just a bit slow.

**Mrs CROSIO**—But you would grade that as a political interest, would you?

**Ms Poole**—I am not sure which example she was referring to.

**Mr Langford**—This submission is actually from an international consultation which is contributed by a number of NGOs. I am not particularly aware of the exact circumstance that they were referring to.

**Mrs CROSIO**— I know my time will run out. Could you take that question on notice.

**Mr Langford**—Yes.

**Mrs CROSIO**—Thank you. You also state in your submission, Mr Thompson, that Australia should become a regional model in peace reconciliation. Would you like to expand a little bit further on that?

**Mr Thompson**—Sure. I think Australia has been playing that role. Its involvement in East Timor has been a good example of that. Also, by the extent—which we can be proud of—to which we have been able to incorporate so many people of different communities from around the world and different ethnic communities and so on, and by the development and evolution further of the multicultural society in Australia, we can set an example and show the way, mirror that to the region and to the world. By our active engagement with others in promotion of peace and reconciliation in the Pacific and in Asia, as in a post Cold War environment conflicts have emerged at national level within societies, not between societies, Australia's role in modelling a tolerant, inclusive society is an important role in providing leadership by example, as well as promoting activities. Australia's particular support, for example, of the development of national human rights institutions in the region is an important contribution to that process. Australia provides, through our aid program, substantive support to the secretariat for that forum, as well as providing technical assistance to the development of human rights institutions nationally and the promotion and protection of human rights at national level through that regional forum.

**Mrs CROSIO**—You mentioned the Pacific and the region. How might Australia play that role in, say, Fiji and the Solomons?

**Mr Thompson**—We need to work with others in the international community, as well as those people, to promote values and the importance of democracy in those circumstances, to

strengthen those democratic institutions, to provide an important contribution when appropriate, and to provide support at community level to ensure that, despite the kinds of conflicts that can be promoted, national leadership models—different kinds of behaviour—can bring communities together and hold people together in important roles. It is by diplomatic intervention, such as the way in which Mr Downer has been playing that role—along with other partners in the Commonwealth—in the Solomons and in Fiji, as well as continuing to call for and uphold the standards and expectations of a democratically elected government in those processes.

**Mrs CROSIO**—In what ways are our laws on asylum not in line with international standards and conventions?

**Mr Thompson**—To the extent that there are examples when we have not provided respect to the particular refugee conventions, as far as the way in which we have not provided immediate citizenship to particular—

**CHAIR**—Immediate citizenship, did you say?

**Mr Thompson**—Immediate access with respect to the rights of people who seek asylum by the detention of children, for example, in particular facilities, and in violating their rights as children in particular circumstances. So the extent to which the implementation or the opening of detention facilities have violated the rights of children, we are violating our obligations under the Convention on the Rights of the Child as a particular party to that treaty.

**Mr JULL**—My blood pressure went up when I read in the submission:

Gender awareness and analysis should similarly be incorporated in all approaches—

and that:

Australia should recognise the important role of women in peace-building and actively recruit their specialised skills in reuniting communities divided by conflict.

You also stated that the government should resource specialised training for all ADF peacekeeping representatives in establishing communications networks with civilian counterparts including NGOs, local community groups and leaders, including women. In World Vision's recent experience, I would like to know, are women still being excluded in light of the fact that I think one of our great successes in Bougainville, for example, was the fact that we used women, and when this committee went there it was the women who came to us and said, 'Thank God you are using women.' In my experience in East Timor, the female members of the Defence Force were playing a magnificent role so, as I say, my blood pressure got up a bit with that, but I would love you to expand if you can and give us some examples where we are not doing the right thing, because I think that is outrageous.

**Ms Poole**—I do not think that comment was directed at the Australian Defence Force but rather at peacekeeping initiatives generally. There has been to date a lack of women in the military role as peacekeepers, and I think we would like to see that gender balance corrected because women play an exceedingly special role in peace and reconciliation, and it is less intimidating, basically, having women in a community than having a heavily militarised or male

presence. If there is a bit of gender balance then that intimidation threat is lessened. There are many examples of women being successful peacekeepers and Bougainville is a great example.

**CHAIR**—What do you mean by ‘a bit of gender balance’? You either have gender balance or you don’t. You can’t have a bit of gender balance.

**Ms Poole**—It is my language; I am sorry.

**Mr Thompson**—I think it is an example where Australia is providing leadership by example in particular circumstances, and we would hope that Australia could be an advocate for that in the establishment of international peacekeeping forces, as well as leading by example by demonstrating through our words as well in encouraging that process, I think.

**Mr HOLLIS**—Mr Langford, you are aware that there is now an NGO dealing specifically with child soldiers, are you?

**Mr Langford**—There is an international coalition and an Australian coalition of which World Vision is a part.

**Mr HOLLIS**—Mr Thompson, you used the example I put to someone yesterday of Australia sending the wrong messages, whether rightly or wrongly, about various attitudes towards taking statements that have been made recently about our role in treaties, but surely this is the crux of the weakness of the UN. As soon as anyone gets a genuine or a perceived insult or is unhappy, they either have a review of their participation, put reservations on certain treaties or withdraw from certain bodies. The classic example is the UN. Because they are unhappy with some development projects, they are almost \$2 billion behind in funding despite recent catch-up, and for many years they were out of UNESCO. The Brits went out of UNESCO for a while. It is almost like our relationship with Asia: you have this fragile thing there and immediately someone perceives an insult or a hurt they say, ‘Oh well, I am going to take my bat and ball and go home.’ How can we be talking about a world body if it is so fragmented or so insecure with the membership that every time anyone has a bit of unhappiness they will not participate with the rules and they will want to rearrange the rules to suit their perceived interests?

**Mr Thompson**—I think that is one of the challenges in a strong international context. Through globalisation, there is even more of a need for some kind of institution with responsibility for encouraging more effective and good governance globally. One of the challenges of the United Nations and its formation is the question of national sovereignties. In some ways, we need to recognise that those national sovereignties are being eroded by the very nature of global integration that is happening at the moment. We need to develop new behaviours, but recognise the importance of global instruments to manage more effectively while not surrendering completely our national identity. It is a matter of thinking globally and acting locally sometimes. Whilst you are acting locally you also need to think globally. The extent to which we back away, on the grounds of national sovereignty, from some of these international arrangements, we are eroding the possibility of developing appropriate mechanisms for managing our global processes. I think it is a challenging question, and it probably becomes one of the core questions that you are dealing with in the inquiry.

**CHAIR**—Mr Thompson you spoke earlier about the Tobin tax and it is in your submission. For the purpose of the *Hansard* record for people that are reading it, you should perhaps briefly describe the Tobin tax and what you see as its merits.

**Mr Thompson**—Yes. Tobin tax gets its name from James Tobin, a Nobel laureat economist, who proposed a mechanism back in the early 1970s for a means of taxing international financial transactions for two things. And, as the idea has developed, there are two issues that it would seem such a tax might address. One of those relates to the raising of revenue that could be available to manage the global economy because there is a tax on international transactions. So appropriate resources would be available to manage the global commons, to manage international arrangements of governance. A Tobin tax is a fairly minimal amount of money that we are looking at—0.5 per cent on transactions. This varies and it is part of the subject of such a review, I think. As well as that, a Tobin tax on such transactions would be a mechanism by which there could be some sand in the wheels of the speculative flows of finance. It would slow down the kinds of processes that have resulted in instability in national financial institutions. So it is a twofold process. Firstly, it addresses the volatility of international financial transactions and the impact that they have on national economies, as we saw in the Asia region in the Asia crisis recently. As well as that, it is a mechanism through which the international community could raise funds for the kinds of processes and mechanisms of governance that we are talking about in the face of globalisation.

**CHAIR**—Who would control these funds?

**Mr Thompson**—It is part of the review of that process. It could go into the hands of the IMF. It could go into the hands of other kinds of other kinds of international mechanisms—the United Nations. I think we need to look at that question as one of the subjects of who controls it. There are a number of suggestions as to who would collect the money and obviously one of those would be directed to those places where there are major international financial transaction points. There is one suggestion that it be governments of those countries where the international financial transactions take place in London, New York and perhaps in Sydney eventually. It is one of this government's dreams that Australia becomes a more important regional financial centre. If this comes about, a proportion of those funds might be available to that national economy.

There are lots of things to investigate. That is why we did not recommend immediately the implementation of such a tax, but for us to take the next stage and to recognise the importance of it in the context of the post five years on from the Copenhagen social summit. The special session last week in Geneva saw this as an important mechanism through which resources might be available to the international community to address the problems of poverty internationally.

**CHAIR**—I must say, Mr Thompson, that after 30 years I can understand why, perhaps, it is very slow to get off the ground.

**Mr HOLLIS**—Mr Chairman, can I have your indulgence as we are putting things on the public record? We also ought to put on the public record that one of our colleagues—and indeed a former member of the joint committee, John Langmore—while he was a member of the federal parliament was always very supportive and pushed this concept more strongly than

anyone else in Australia. He did not meet with a lot of success; nevertheless, he pushed it and indeed was quite instrumental—with his new position with the United Nations—in pushing it through in Geneva, with or without ministerial assistance. He might have played a greater role there without ministerial assistance so it might not all be a downside that there was no ministerial presence there. But I just wanted to put it on the record that John Langmore did advocate this for many, many years in Australia and that he has played an important role in getting it through in Geneva.

**Mr Thompson**—I think it was a matter that I personally addressed with the members of this committee at one point when John was a member of the committee. And I also acknowledge John's important role. He is arguably the most senior Australian serving in the UN system at the moment, and he has played a crucial role in leading the work, since Copenhagen, in his role in Geneva.

**CHAIR**—Can I take it from your comments that World Vision supports a target tax?

**Mr Thompson**—This is support from World Vision in recognising the importance of the consideration of it. We have not argued in our submission that this should be immediately implemented. We recognise the important issues that need to be addressed before its implementation, but it is an important idea because of the way in which financial volatility affects communities where we work in many parts of the world, particularly in Asia, but also in Latin America and in other parts. We also recognise the important role of a strong, well-financed global institution to manage the international economy which impacts on the people where we are working. The extent to which increasing instability internationally, and nationally, relates to the outcomes of this economy with a growing gap in many places between rich and poor means then we need to be addressing these issues.

**CHAIR**—For practical purposes, does this mean under your proposal that, in fact, if Australia was giving \$140 million worth of aid to East Timor—which is an international transaction—that a portion of that money should be taken out in tax?

**Mr Thompson**—No, it relates particularly to the financial flows, so it is speculative investments, not in terms of aid flows and other things but investment flows, and particularly those of a speculative nature. Some say that about a trillion dollars a day is flowing through those international financial centres. It is not necessarily in capital direct investment—which is another area we need to look at—that we are looking to encourage that taxation but on the speculative flows that are destabilising them.

**CHAIR**—Thank you, Mr Thompson. I would not want to hold my breath waiting for it to happen.

**Mr Thompson**—It is a bit closer now than it was after last week's decision. And the extent to which it was being recognised last week by the international community is important. It was the Canadian and German delegations which promoted that concern, and it reflects a concern within their governments and also in the communities in both countries.

**CHAIR**—Thank you very much to all the representatives of World Vision for appearing before the inquiry today. We thank you for your contribution.

---

[10.52 a.m.]

**DURHAM, Dr Helen, National Manager, International Humanitarian Law, Australian Red Cross**

**CHAIR**—On behalf of the subcommittee I welcome the representative of the Australian Red Cross. I must advise you that proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings of the houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that that does not alter the importance of this occasion. Any deliberate misleading of the subcommittee may be regarded as a contempt of parliament. We prefer all evidence to be given in public, but should you at any time wish to give evidence in private we would consider that request. We have received your submission and we have authorised it for publication. Are there any alterations, corrections or additions that you wish to make?

**Dr Durham**—No.

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

**Dr Durham**—Australian Red Cross thanks the Joint Standing Committee on Foreign Affairs, Defence and Trade for the opportunity to express our views. The topic under consideration is extremely broad. Thus, our submission and my words today will be very limited. Just for some background information, Australian Red Cross was first established in 1914 as a branch of the British Red Cross. Then in 1941 we became incorporated under the royal charter. Australian Red Cross is part of the International Red Cross and Red Crescent movement, which involves the International Committee of the Red Cross—referred to as the ICRC—which has a mandate during times of armed conflict. Australian Red Cross is one of 176 national Red Cross or Red Crescent societies. So we are a very large organisation with an international flavour. We are not a non-government organisation, because our highest decision making body involves states which have ratified the Geneva convention. We actually are a strange beast in international law: not an NGO but obviously not a government body.

Today I wish to talk about two specific areas. The first one is international humanitarian law, or the laws of war, pertaining to peacekeeping operations. Since 1961, the International Committee of the Red Cross has been arguing, or strongly putting forward its view, that all peacekeeping operations and peace enforcing operations should take into account international humanitarian law, or the laws of war. The Red Cross is the guardian of the laws of war, and these laws are found mostly in the Geneva conventions of 1949, which Australia ratified in 1957, and the additional protocols which Australia ratified in 1991.

The Geneva conventions and additional protocols basically do two things: they set aside categories of individuals to be protected during times of armed conflict and they also limit the methods and means of warfare. They say that the rights of parties to an armed conflict are not unlimited and that there are certain weapons that should not be used in armed conflict. Red Cross has argued for a long time that that area of international humanitarian law, or the law of war, should be relevant to peacekeeping operations and peace enforcing operations. On 12

August 1999 the United Nations Secretary-General put out a bulletin stating that IHL was relevant to peacekeeping and peace enforcing operations and Australian Red Cross was delighted at that, as was the international movement of Red Cross and Red Crescent.

The second point I wrote about in the submission of Red Cross related to the International Criminal Court. Australian Red Cross is extremely proud of the role the Australian government played in leading the like-minded group at the Rome and New York negotiations on the International Criminal Court. We believe the ratification of Australia to this treaty, as articulated by our foreign minister, Attorney-General and Minister for Defence, is very important. We have concerns with article 124, which allows countries to opt out, so to speak, of war crimes, and we would very strongly urge the government not to take up this opt-out provision in the ratification of this treaty. That is the end of my summary.

**CHAIR**—How effective are the Geneva conventions? Do you believe the Geneva conventions are still effective?

**Dr Durham**—The Geneva conventions are extremely effective in some instances and, like domestic criminal law, they are not effective at other times. The problem we find in Red Cross is that we only hear in public when the Geneva conventions fail; we do not hear when the Geneva conventions are successful. It is not interesting news to say that prisoners of war were treated according to the third convention: they were given enough food, access to water and Red Cross visited them. We really only hear today that prisoners were slaughtered contrary to the third convention. It is always a big question, but certainly in Red Cross, because we are in 176 countries, we see daily instances of when the law is obeyed and, sadly, when it is not.

**CHAIR**—Would it be a fact that the sorts of tragedies that we have seen in the nineties have been the occasions when the Geneva conventions have not been adhered to? It seems to be that, when we get those sorts of conflicts, it is like a lot of laws that are okay when they are never broken; it is only when they are not effective that we see the shortcomings. I do not know how that can possibly be overcome because in bitter conflicts the Geneva conventions, particularly in relation to prisoners of war, just seem to be utterly disregarded.

**Dr Durham**—That is very much the case. One of the issues is the changing nature of armed conflict. Obviously in the last few years there has been an increasing amount of internal armed conflict. When you have internal armed conflict you have often irregular forces fighting with defence forces of governments. It is a lot easier, in our experience, to be involved in training government members of the defence force when there is a clear command and control, when you understand that what is expressed at the top is told to the soldiers at the bottom and when there is an understanding of enforcement in terms of martial law if this is disobeyed.

The difficulty that we find in disseminating international humanitarian law—I speak for my colleagues throughout the world and I have spent some time in Aceh, in Indonesia, talking to the Indonesian military about the laws of war—is that, when there are non-traditional armed forces, it is hard to understand the command and control. Often what we see is actually just groups of thugs without an ideology or a political background wanting to undertake an activity. So we see the way forward, to try and push that further, as focusing on enforcement of individuals. So the International Criminal Court, the ad hoc tribunals and encouraging domestic countries to prosecute their own would be a way forward, as is continuing to talk to the rebel



groups. I was talking to my colleague who has spent a lot of time in Sierra Leone talking to the rebel groups, and it is fascinating how often rebel groups want to learn about the laws of war because it gives them legitimacy. So your question is very valid, but until someone shows us a better way or gives us a better paradigm to work within, we will continue to disseminate the laws of war and encourage adherence to them.

**CHAIR**—But the very nature of recent conflicts is that they are all irregular, for want of a better word. We have not had wars between nations for a long time, and the reasons for the conflicts seem to be now much different. People were previously fighting under a national identity, quite often, whereas currently the conflicts seem to be because of bitter hatred and ethnic divisions, which there are plenty of examples of. I just do not see how you can apply the Geneva conventions. Those sorts of people are simply not likely to regard the conventions in the same light as countries would on a national basis.

**Dr Durham**—A valid point. But, with all due respect, from our experience in a country like Afghanistan, there is interest among rebel groups at times to understand the Geneva conventions, particularly when they are packaged and expressed in a way that links with basic cultural identity. Just as an example, in Afghanistan the people in the field explaining the Geneva conventions to the Taliban tie it in to the Koran and the treatment of individuals that the Koran articulates. There has been a very high level of success in encouraging the Taliban to treat their prisoners of war by taking the spirit of the Geneva conventions—not necessarily waving the conventions around—and expressing it in local customs. Your point is absolutely spot on, and daily we struggle with it, but we do try and come up with creative ways to make sure that it is expressed as, ‘This is for legitimate military purposes and it will assist your aims’—not just to be nice to each other.

**Mr JULL**—Chairman, could I just follow that up just with one question?

**CHAIR**—Yes.

**Mr JULL**—How successful is Australia in terms of our teaching and creating an understanding of international law? Do we do it well, or have we got problems too?

**Dr Durham**—We actually do it pretty well. I always have to be careful not to seem sycophantic, particularly when I am with the NGO community, but Australia has an excellent program with the military in disseminating international humanitarian law. Australian Red Cross is very heavily involved with the Defence Force in encouraging them to follow the teaching of the Geneva conventions and the additional protocols. In fact, in every military exercise there will be members of Red Cross playing the role of the International Committee of Red Cross and making sure that our soldiers in exercises know how to process prisoners of war. I would say Australian Red Cross is the strongest Red Cross in the world on international humanitarian law—do not ask me why, but Australians tend to be fascinated by it—and our Defence Force is constantly seen as very well trained. That does not mean that they are always spot on, but we certainly have a structure in place, the levels of training, that is very good.

**Mr JULL**—Do the NGOs understand it too?

**Dr Durham**—We are actually, in Red Cross, undertaking a campaign to encourage the NGOs to learn more about the laws of war. We have been undertaking some training of the NGOs about international humanitarian law, and many NGOs do have a good understanding of the laws of war. Others think that the Red Cross is incredibly pragmatic and wrong: in talking about the laws of war, they say, we are actually acknowledging that it is okay to have a war. So there are philosophical tensions about whether you try to regulate or to eradicate armed conflict. We say that you need many groups eradicating armed conflict and protesting outside the military—that is fabulous—but you also need, on the scale of things, people to go in and say, ‘If you are going to fight, here are some basic limitations.’ We are increasingly realising, as an organisation, that we need to deal with the NGO community. We find great sympathy at times, and at other times robust debates.

**Mr JULL**—In that respect, you are saying Australia is perhaps a world leader, if not the world leader. How successful are we in transferring that competence to other groups? Do you get much interaction with other countries in this regard, or do they see us as the great promoters? Or is there a role for us to play even regionally in this?

**Dr Durham**—We in the Australian Red Cross believe there is a strong role we can play regionally. In fact, next week we are having a conference in Perth where we are bringing out our colleagues from the Fiji Red Cross, the Solomon Islands Red Cross, the Myanmar Red Cross, the Indonesian Red Cross and the Sri Lankan Red Cross. We identified the countries that we should perhaps have a stronger dialogue with, and we are bringing representatives of them out to Perth with money we gained from AusAID, which we are very appreciative of. We will be running a three-day seminar learning how they do it, because in Fiji, for example, they have a fantastic puppet show for the communities about the laws of war. When you do not have resources you often come up with really exciting ways. In Australia, we write a paper or we try to do a TV ad, and in other countries there are other creative ways. Not only do we have much to learn from the region; we also have a lot to share.

I have spent a lot of time working with the Indonesian Red Cross. For example, in Australia I am the national manager and I have an IHL officer in every state and territory. We spend almost a million dollars on disseminating international humanitarian law with a staff of 12 people, mostly lawyers. In Indonesia, with the size of their population, there is one young lawyer. So we brought him out to Australia and we encourage him and provide him with as much assistance as possible. So, within the Red Cross world, Australia plays a very strong role, but we are always very careful not to preach. We do not have all the answers, but we certainly have some capacities.

**Mr HOLLIS**—With regard to ICC article 124, which keeps coming up, how many states do you think will actually opt out? The two big reservations at the moment are the United States and Israel, but do you think in ratification a lot of states will opt out of the provisions of article 124?

**Dr Durham**—Hopefully not. Certainly, I was involved at the Rome treaty negotiations in 1998, and it appeared that that was very much a compromise for a number of states to feel more comfortable. Countries such as China, India, America and Israel are unlikely to ratify, full stop, so they probably would not take out a reservation. But, in relation to that answer, I do not know exactly, but we would be very, very disappointed and upset if the Australian government

considered that, because it takes a lot of effort to commit a genocide. You do not wake up and say, 'Today I will get me a genocide.' A lot of work is undertaken to fulfil a genocide, but war crimes occur daily and, if the ICC statute is going to be useful, then we believe the war crimes provision is perhaps one of the most useful.

**Mr HOLLIS**—It seems to me that there is no point in having that article 124 there if you are going to opt out of it. The other thing, as people are overlooking, is that you have got to exhaust domestic legislation first. It seems to me that, to make it meaningful in aspects of humanitarian law, international criminal law, you must have that, and you must adhere to that article.

**Senator BOURNE**—I probably should mention beforehand that I have promised Mr Carlton that I will be starting up another Red Cross group in parliament, so you can all expect an invitation.

**Dr Durham**—Fantastic.

**Mr HOLLIS**—So you are declaring an interest, Senator Bourne?

**Senator BOURNE**—With regard to the optional protocols, I understand one of those is the one that deals with non-combatants and the way they are treated. Can you tell me how many countries have ratified those?

**Dr Durham**—Certainly. The Geneva conventions have been ratified by 188 countries; additional protocol 1, which deals with strengthening the protection for civilians, 156; and additional protocol 2, which deals with internal armed conflicts, and which is exactly what Senator Bourne was referring to, 149.

**Senator BOURNE**—It is not bad. How well do you think they are disseminated throughout? I know you have said that we do it well here but, throughout those 149, particularly with the extra protocols, how well do you think that those are disseminated throughout other countries? Also, when we had the defence department before us at our first meeting, we asked whether they actually included this when they were training officers and men from other armed forces in our regional training, and they said that they did. Can you tell me how well you think that happens?

**Dr Durham**—It is interesting because it comes back to the issue of reality. There is no doubt that every military manual, government manual, throughout the world has mention of the internal conflict provisions found in protocol 2 and the strengthening of civilian provisions in protocol 1. So it is actually in there. The issue which Senator Ferguson was talking to me about before is so that you can translate the laws into reality. It is interesting that a country like America, which have not ratified either of the additional protocols, made a declaration in the Gulf War that they would follow that law despite their lack of ratification. It is interesting to see at the moment that in the discussions about NATO's activities in Yugoslavia there was certainly a lot of discussion by the lawyers about following the laws of war very clearly and the issue of legitimate military objectives, et cetera. So, at a theoretical level, militaries across the world are taught this. At a basic level, the Red Cross and other groups, but mostly the Red Cross, go out and talk to the rebels, but the reality out there is somewhere in between.

**Senator BOURNE**—How do you feel about our Defence Force training people that come from around our region?

**Dr Durham**—Certainly, in the courses that I have been involved in on behalf of Red Cross, there is very good dialogue. It is not a preachy dialogue and it is certainly not telling them how to do it. Often international humanitarian law is taught as legitimate military assistance: ‘This makes your life easier. This is not to necessarily save people’s lives, although it is good if it does. This is actually to make your fighting easier. Do not torture prisoners of war. They will surrender. They will be more reluctant to surrender if they think they are not going to be treated properly. Those are the sorts of issues that need to be considered.

**Mrs CROSIO**—You said in your presentation to us or in one of your statements that I wrote down, ‘It will be pleasing if domestic countries prosecute their own.’ Evidence suggests that many of those war criminals are also leaders of government and military. How would that come about?

**Dr Durham**—That is why there is the call for an international criminal court and international trials. Every country is legally obliged to prosecute their own criminals but, as you rightly identified, when you have them in positions of power they are very unlikely to prosecute themselves. However, what is often forgotten is that international developments are to complement the domestic developments. They are not to overtake nor alleviate states of their primary responsibility. So the very reason that you expressed—which is one and the same, an individual not wanting to prosecute themselves—is the reason why there was a strong call for international tribunals to be set up. This is going to be inevitably an issue of state sovereignty. If you look at the two different tribunals for the former Yugoslavia and Rwanda, it is very interesting to see that the Yugoslavian tribunal has indicted high-up members of the government who it is going to be very difficult to actually get physical access to. On the other hand, the Rwandan tribunal, because of the fact that many of the powerful people are now in refugee camps, have prosecuted individuals as high up as the former prime minister. So it really does depend on the political realities, not the legal structure.

**Mrs CROSIO**—So it is not law; it is willingness.

**Dr Durham**—Exactly.

**Mr PRICE**—When you talked about the ADF and their training, what level of courses do we have to train overseas people in such laws?

**Dr Durham**—I do not know the exact answer to that but certainly at a high level. At a fairly high level there is a very strong dialogue with military in the region. I know there are one to five levels. I would have to get back to you on exactly what level we start at in the region.

**CHAIR**—Are there any further questions? Thank you very much, Dr Durham, for your contribution to the inquiry. You have made a very good contribution this morning. We appreciate your time.

**Dr Durham**—Thank you very much for the opportunity.

[11.15 a.m.]

**KENNAN, Mr James Harley, Member, Global Foundation**

**MILES, Mr David Arthur, Chairman, Global Foundation**

**POLITES, Mr George, Adviser, Global Foundation**

**CHAIR**—Welcome. 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 evidence to be given under oath, you should be aware that it does not alter the importance of this 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 any evidence in private we would consider a request. I invite you to make a short opening statement before we proceed to questions.

**Mr Miles**—Thank you, Mr Chairman, we are indeed grateful to you and your committee for giving us the opportunity to make some general representations to you in relation to Australia's involvement with the United Nations. Global Foundation is a non-government, not-for-profit independent organisation. It is a coming together of representatives of corporate Australia and individual citizens of Australia. Its primary purposes are to look to Australia's future, Australia's involvement in the world, issues of national development for Australia and how we might encourage those, and how generally this country may continue to play a major part in world affairs and be a major part of the global economy.

It is an incorporated association governed by the Corporations Law. It has a board which controls its affairs. Its membership is made up of corporates and individuals. Its patron is Sir James Gobbo, the Governor of Victoria, and the board draws upon an advisory council of some 40 individuals, of which Sir Zelman Cowen is the chairman and Sir Gustav Nossal is the vice-chairman. Indeed, we are proud to boast amongst our members a number of eminent Australians, including other former Governors-General of Australia.

We are grateful to have the opportunity to make this representation and we do so in very general terms—our perception being that there is a need for Australia to be a very important player in the affairs of the United Nations and the work of that organisation. It would not be lost on you, Mr Chairman, or the members of your committee, that we were there at the beginning in 1945, we played a part in the establishment of the United Nations charter and, indeed, we were the first country, so to speak, to preside over the Security Council. We have been a major participator for 55 years, we are the 10th largest contributor and we are one of 14 major contributors to the agencies of the United Nations.

What we say at the Global Foundation is that what we were and what we are today are as important as they were in 1945 when we participated in the establishment of this organisation. We believe that we need to continue to be involved to the maximum extent possible to protect our national interests and to protect the interests of Australia in our region of the world. Our

involvement has covered almost all of the activities of the United Nations—security, treaties and social issues. We believe that issues in relation to human rights, as far as the United Nations is concerned, are matters about which, of course, we must remain concerned. We see that the United Nations is a body that ought to set standards in that regard, to promote ideals, to influence member states, to advise and to monitor. Indeed, many of the treaties in many areas in relation to human rights have almost developed a status of a subset of international law. We do not, however, believe that it goes to the extent of intervention in domestic issues and we recognise that that is a very careful balance and a balance which we in Australia need to take into regard in terms of our representations to the United Nations.

We believe, essentially, that it is in our interests to remain as involved as we can be and to remain active in the work of the United Nations. We have made a very brief submission and we will make that available to you. In that submission, we do suggest that one thing you might like to take on board in your deliberations is the establishment of a high level wide ranging advisory committee to the minister and to the department to deal with issues, as and when they arise, of Australia's involvement with the United Nations.

Humanitarian intervention, we acknowledge, is a delicate issue. We acknowledge that there are issues that arise as to what is truly a threat to peace and security. We believe that the establishment of general principles, in terms of intervention, is a very difficult thing to come to grasp with and we see that each case needs to be considered on its merits and taken, importantly, by each country that may or may not be involved. We see the UN as a place where one can go to get counsel when particular situations arise in terms of international conflicts. That is the broad thrust of what is before you in a short written document, and we would be only too pleased to submit to your questions.

**CHAIR**—Do either of the other gentlemen wish to make any comments at this stage?

**Mr Kennan**—The only thing I would add is that our interest in this partly arose out of a visit that Steve Howard, the Chief Executive of the Global Foundation, and I made to Washington and New York in early May. Amongst other people, we met Shashi Tharoor, Kofi Annan's executive assistant and the permanent representative to the UN of Singapore, Japan and Australia. We came away with the feeling that there was a perception that Australia, at the moment, was a little out of the loop. Originally Australia was seen as a very strong supporter and player in the United Nations and to have a lot to offer in terms of what might be thought to be its progressive stance on matters of international law, the environment, labour standards and so on. More recently, those interests seem to have waned a little.

As a result of that perception, we thought it appropriate that the foundation discuss the matter. There was also a feeling that a committee such as this may attract critics of the UN but those who support the UN—a silent majority, if you like—may not be quite so vocal. The UN is something that, in many respects, Australians take for granted, and Australians take for granted Australian support and participation in the UN. Whilst the UN in its processes and in the particular stances it may take from time to time may not have the agreement of Australians or Australian governments, the important thing is that we be there to participate, that we be at the table and that we be seen to be a player in it.

**CHAIR**—I was interested to hear you say that you do not believe that the United Nations should become involved in intervention in domestic issues. I would be pretty keen to hear you explain what you believe are domestic issues. One of the problems we perceive the United Nations has is that it cannot intervene when necessary in matters within national boundaries. We talked about conflicts that have occurred in the past 10 years. This inquiry was brought about partly because of the UN's inability to become involved before tragedies have occurred within national boundaries, such as have occurred in Bosnia and Kosovo—all of those internal conflicts which we have seen which might be described by them as domestic issues. Where do you draw the line when you say there should not be any intervention in domestic issues, because that is one of the problems we are grappling with?

**Mr Miles**—I understand that, and we acknowledge the difficulty of defining what is, essentially, an issue of peace and security within a boundary. We do not pretend to try to suggest that that can be clearly defined. Our thrust is to say, following on from what Mr Kennan has just said, that there is a real need for high level participation when such issues occur to endeavour to determine whether there is a justification for some form of intervention. We do not see that as something that can be laid down in a set of principles. I recognise that one of the very real difficulties that you have as a committee is to be able to say when it is justified and when it is not justified. We do not pretend, as a group, to come with the expertise to draw a line in the sand and say in certain circumstances it is justified and in other circumstances it is not. What we do say when those issues arise is that a strong United Nations is the appropriate place to go to seek counsel as to whether those issues can be resolved by other means. We certainly do not pretend to have the expertise to lay down what might be the law in that regard.

**CHAIR**—Let me draw you on something else in relation to the definition of a domestic issue. Is mandatory sentencing a domestic issue?

**Mr Miles**—My personal view is yes. Generally, I think that there is evidence around the world where mandatory sentencing is not criticised. The point we wish to make in that regard is that we as a country and as citizens of the world may not agree with everything the United Nations does. Indeed, it is general that, from time to time, institutions seek to do things that are not acceptable to their members. We believe that has got to be lived with and understood in all its circumstances.

Where a situation arises in a country like Australia that appears to have some form of intrusion on a domestic issue, such as mandatory sentencing, we can say we disagree with that. But the place for us to disagree and to work those issues through is within the United Nations, not in public forum around the world. In other words, we maintain and, if anything, we accelerate our involvement and participation in the organisation when issues like that arise. We have the right to say that we do not agree in that regard, as indeed do other countries. I think it is noticeable that other countries that have mandatory sentencing do not seem to get the criticism that Australia got in that particular instance.

**CHAIR**—While I may or may not agree with your personal view, the fact is that, whether you or I like it or not, we are signatories to certain declarations. You say that the United Nations should not intervene in domestic issues, but, if one of those declarations that we have signed is the rights of the child—and the United Nations' definition of a child is someone up to 18 years of age—and we are considered to be in breach of that declaration or people suggest that we are

in breach of it, there is a crossover of responsibilities and obligations. It is very difficult to say that the United Nations should not intervene in domestic issues because they are so difficult to actually define when we are signatories to international obligations.

**Mr Miles**—Perhaps I could just make one comment about that, and my colleagues might like to follow it up. Maybe the word ‘intervene’ is the wrong word; maybe it is not an intervention. Again, it is this consultation. It is putting forward a view and working within the organisation and making the organisation more workable to bring countries that are signatories to these various declarations to a situation where they may be able to remedy that for themselves. So maybe ‘intervene’ is too strong a word, and maybe that is where we differ on that level.

**CHAIR**—I would be happy if you did not use that word.

**Mr PRICE**—On that same issue: is the stolen generation a domestic issue?

**Mr Miles**—Again, my personal view is yes. It is for Australia to work out for itself what that means, to take its counsel globally, certainly, and to work through it. It is something that occurred within these boundaries at a time when that was a policy of the then powers. I think that those issues ought properly to be dealt with by the sovereign state. Again, that is not to say that within the global organisation of the UN there should not be consultation, listening and forums as to how those issues might be managed.

**Mr HOLLIS**—As you come from a business background, you perhaps understand this matter better than we do. It has been put to the committee that, with the increasing evidence of globalisation, the idea of state sovereignty—narrowly defined as it is in international law—has declined, and that we should look at a new form of sovereignty and maybe a new role for the United Nations in dealing with this globalisation. Do you have any views on that at all? Do you agree with that?

**Mr Miles**—Indeed, it is certainly an emerging issue. Some 12 months ago, the Global Foundation hosted a forum in Sydney, which was addressed by Sir Colin Marshall, or Lord Marshall, on the issues of: what is a global citizen and how will we come to grips with global citizenship within the global economy?

I certainly agree that the issues of state sovereignty, which we are seeing very demonstrably in western Europe at the moment, are going to become issues that need to be carefully thought through. Maybe there will develop out of that some form of regional sovereignty, some sort of common interest sovereignty, that will overtake the national issues. I do not pretend to have the definitive answers to it, but it is certainly an issue that we have begun to address when we come together in forums.

**Mr HOLLIS**—Mr Kennan, I was interested by your comments. You are right, Australia was there from the start in the UN and it has always seemed to be sending a strong message. But, as you say, some see Australia as out of the loop. Do you think that we are sending a wrong message about our involvement in the UN? If we are, what do you suggest we can do to rectify that?



**Mr Kennan**—My impression, I must say, is anecdotal, but I think we are. I think we have a greater role within, and a greater level of support for, the UN than probably is currently perceived. It may be that on issues like mandatory sentencing there are topical and emotional reactions that might not be reflective of the proper context of our whole relationship with the UN. So I think we need to boost it; we need to be represented there in appropriate fora by the highest representatives of our country. We have a huge amount to contribute. There is, for instance, a big and growing trend towards internationalisation of law. It was often used as an argument against a bill of rights in this country, for instance, that we were derivative of the English system of law and it did not include a bill of rights. But they do have a bill of rights now, because they have ratified the European laws on that.

I also think the reporting here of these issues is very poor. I was living in the United States during the Kosovo intervention, when there was a very vigorous debate in the *Los Angeles Times* and the *New York Times* on the very issue the chairman raised, about this issue of intervention in domestic affairs. There were very detailed articles about the basis in international law, if any, for the NATO intervention in Kosovo; whether or not that action was, in fact, sidestepping the UN; whether the matter should have gone to the UN Security Council and efforts there exhausted before a decision by NATO to intervene—the morality of that being one point, the international legal basis of that not being absolutely clear. I was not in Australia for most of last year, but I am not generally aware of Australian newspapers or public discussion dealing with these issues—which is one of the problems.

**Mr HOLLIS**—I can tell you that it would not have been in the Australian newspapers, let alone generated a lot of public debate.

**Mr JULL**—Could I ask a leading question?

**CHAIR**—Shall I rule it out of order first?

**Mr JULL**—On the business about Australia being out of the loop, did you get that impression from, say, the Secretary-General's office?

**Mr Kennan**—I had private discussions there but, yes, it was my impression generally that Australia was seen to be, surprisingly, a bit offside with the UN on some of these issues. Some strong language was used, not about Australia but about impressions. But, in terms of surprise, Australia had always been seen to be a friend and supporter of the UN and the international arrangements that it represents across the board, but suddenly it seemed that that was not the case. So the question was asked, 'What is the real position?' It was also thought, I think, that a committee like this had a very, very important function to perform because it might be able to put the position in a proper context.

**Mr JULL**—I do not mean this in any nasty way: was there any criticism of the standard of our representation in the UN at all?

**Mr Kennan**—To the contrary, our ambassador there was, amongst all the people we saw, highly praised and thought to be highly effective—one of the most effective we have had in recent times—and doing a very, very good job.

**Mr JULL**—I wanted to have that on the record. I had three months at the General Assembly five years ago and, quite frankly, at that time the thing that really impressed me more than anything else was how often Australia was called upon to participate in a particular situation, whether it was the financial administration of the place or whether it was Richard Butler sorting out some weird Middle East country to go and sign the declaration for the 50th anniversary. It always seemed to come back to Australia because they were such good operators. Could I just ask one more question. Your focus has been only on the United Nations. Are there any other world bodies that we should be involved in, where we can have influence that could be advantageous to us?

**Mr Kennan**—If you look at the UN organisation broadly, including the World Bank, the IMF and the ILO—which Mr Polites has particular expertise in—our submission is directed to participation in all of those things. You are right: if you look at the work done by our people who are actually on the ground working full time in day jobs there, you see that they are heavy contributors and have worked hard and have a history of that, which is why I think it is a pity that there is this perception—I am not saying it is anything more than a perception—that we might be a bit offside. I think it can be corrected, and we should be back there reinforcing what we have done.

We probably tend to take a criticism on mandatory sentencing without, necessarily, pointing out any comparison. I am personally a strong opponent of mandatory sentencing, as one might assume, but on the other hand, as Mr Miles said, there are plenty of other countries with mandatory sentencing and penal and sentencing practices that are far more repressive than anything that exists in Australia. We tend not to be pointing that out, unlike other countries in Asia. When Singapore, for instance—I am not suggesting that that be our model—is criticised in some of these things, for a country of 2½ million people it is not slow to hit back and point out some of the practices amongst its critics. It seems to me one can do that but still be a very active participant in the UN, without appearing to attack the international convention on human rights. That is a different thing.

**Mr Polites**—The only point I would like to make, one which the committee might keep in mind, is that the charter itself only permits intervention in order to protect peace and security. It does not allow intervention willy-nilly. That should never be lost sight of. But intervention can take all sorts of forms. Every intervention does not have to be armed intervention, but there is a tendency to believe that it is armed intervention which is all that has been talked about. Mr Chairman, you made an extremely valid point: within the charter, nations do sign treaties, adopt conventions and adapt themselves to it. In doing that, they take on the moral responsibility to put the covenant into effect, and they cannot complain if they are criticised for failing to put it into operation. It is the heart of the UN system to enable criticisms to be made of member states who volunteer obligations and who then do not observe those obligations. It is proper that that should be done.

Where this began was within the ILO, with its committee on the application of conventions and recommendations. Each year it calls governments to submit reports on their activities and their compliance with the conventions which they have ratified. I do not think there can be any complaint about that. On the other hand, you can be misinterpreted. You do have a complaint about the interpretation, the view put by the committee which is examining it, and that is a valid point, but you do not take your bat home. That is the fundamental thing, that you will only get out of it what you put into it.

I think the point that Mr Kennan was making has been brought about by the fact that, as soon as there was some criticism of us over mandatory sentencing and the stolen generation, immediately there was an attack on the institution for making the comment. If the comment is right we should cop it, but if it is not right we should correct it. That is at the heart of living in a world governed by voluntary acceptance of obligations, rights and duties. I believe that that is a most important thing, and one of the most important things that could come out of an examination such as the committee is making.

If I might indulge the committee for a minute or two, some years ago the ILO put the USSR on a special list for failing to observe a convention about forced labour. That would cause an absolute outcry everywhere, especially in Eastern Europe and the like, and I speak with some feeling about it because I was on the committee which took the decision to do it. But the net result was that within a few years the USSR amended its laws in relation to movements from the kokovs and there was a big, substantial change in the way the USSR treated its citizens as a result of that condemnation of the USSR. I do not think one should be afraid of being called to task for misbehaving under a convention which you have voluntarily accepted. The other point that needs to be made is that nations accept their responsibilities voluntarily and, having done it, have a responsibility to pursue it.

**Mrs CROSIO**—I have one question, and I think mine may be a little more curious than Mr Jull's question. In the membership list that you supplied to us you have the global membership, both corporate and individual. Could I ask why there is only one woman there? It is a very impressive list, but I find there is only Dr Margaret Seares.

**Mr Miles**—Madam, if we could encourage more women, we would. May I encourage you to become a member? There is absolutely nothing sinister about that in any way, shape or form. We would gladly welcome an increased membership. We are about two years old and we are setting some higher ideals for ourselves. We are all the time canvassing for membership—both individual and corporate membership—and, generally, as far as the corporates are concerned, they normally nominate their person or their liaison when they join us. I assure you that there is nothing sinister about it.

**Mrs CROSIO**—No. I was just looking at the individual list.

**Mr Miles**—And three men facing you today here.

**Mrs CROSIO**—Point taken.

**CHAIR**—Can I just ask if you have any particular recommendations that you as a foundation would make with respect to government policy towards the United Nations?

**Mr PRICE**—I thought Mr Polites summed it up.

**CHAIR**—He did. That was one area.

**Mr Miles**—The major thrust of our view is that, if it is policy as such, there be a commitment from government in Australia to maintain and, to the extent possible, accelerate, our involvement; as Mr Kennan said, to send our best people in the circumstances when called upon

to be able to make them available if we are to assist the UN, along the lines that Mr Jull referred to, in various of its internal issues or in its committee functions. You probably got the drift of where we were coming from politely. My colleague Mr Polites, blunt as usual, said, when issues do arise, don't take your bat and go home but hang in there, look at your representation, and be involved as much as you can in the UN and in other international bodies.

The only matter we do put as a suggestion to you is that there are people in the wider Australian community beyond the parliament and beyond the civil service who, we feel, do make a contribution, and many of those are people within our membership. Our suggestion that perhaps the department could consider forming some form of high level consultative committee which could meet from time to time and give a broad perspective of advice about Australia's involvement with the UN may be a worthwhile thing to take forward to get more feedback.

You referred to our involvement, Mr Jull, with other international organisations. In the Global Foundation, even though it is only some two years old, we have been pressing for greater interaction with the World Bank and with the International Monetary Fund. In fact, one of the first things the Global Foundation did was to run the first Australia Unlimited conference, at which our special guest was Michael Camdessus. We have, in conjunction with the Committee for Melbourne, worked very hard to get a World Bank representative here in Melbourne, to have the UN bring its procurement conference to Australia last year so that Australian business could see the opportunities for UN procurement. There are a lot of issues like that in which the wider community and the business community could interact with government and with the civil service with a view to enhancing the role that we could play with the various organisations. I would not venture any further on policy. Mr Polites might have a policy issue, and Mr Kennan.

**Mr Kennan**—The only thing that I would suggest is a small thing but it reflects the problem of distance for Australia. Perhaps government could be supportive of hosting some people from the UN and its organisations out here more to talk to parliamentarians, community groups, business organisations and so on, so that there is more exposure and discussion as to these current trends and what is happening. Mr Jull referred to other international organisations. If you look at bodies like the Lawyers Committee for Human Rights and Human Rights Watch, which are the two major human rights organisations in New York, and the agenda of something like the Ford Foundation, you see that they are very much into these contemporary developments in terms of international law; in terms of issues relating to refugees, which is an issue we face; in terms of issues relating to labour standards and globalisation and so on. They are active participants in that, and supported by corporates and individuals.

You tend to have to look on the web for what they are doing, or go there and talk to them. We do not have people out here talking about this, discussing it, being reported, so there is a sense of isolation. The program, which I know has existed for a generation or more, of Australian politicians spending a few months over there is excellent, but I wonder also if it could be reciprocated—not by the Secretary-General or someone of that status, but by other people who are actively involved in these organisations, be it the World Bank or the UN itself, or UNDP. That is another body which does a lot of international development work in regions of Asia close to us, and it ought to be out here but is not. One of the discussions we had with some of these organisations was about whether or not the Global Foundation could play a role in hosting visits for people like that, having lunches and conferences and so on, so that the community

here could be more actively involved in these discussions and the awareness raised of what these issues are.

**Mr Miles**—Again in some quarters, Mr Jull, we have endeavoured to start what we believe will be a very long-term project to see if we can muster support—and government support would be vital in this—for some form of UN centre in Australia, for there to be representatives of the UN agencies. And, again, the Committee for Melbourne—with which I am involved—had what you may think a fanciful idea, to make Melbourne or Sydney the Geneva of the Pacific.

**Mr JULL**—While we flicked past it a bit earlier, the throwaway line about the standard of reporting in the Australian press is fairly significant. The ignorance among the public of the United Nations and what it does absolutely appals me, but I do not blame the public for that. They just do not have any diet of news of what the United Nations is really all about.

**Mr Miles**—When we ran the UN procurement conference it was quite surprising just to see the reaction. It was very well attended by Australian business, particularly emerging businesses who were looking for opportunities in our region. When these UN procurement people came out here, I think there was a general level of surprise among a lot of people in business who do not have the wherewithal to go to New York, Geneva or whatever and to search out these sorts of things—it was quite a revelation that these opportunities were there. As you would probably know, it is quite a complicated procedure to get a UN procurement contract, but here were people being given some instructions and guidance at first hand about how they might go about it, and I am sure that those people went away better equipped. Our business percentage of UN procurement contracts is minuscule, whereas other people work at it—and that is, going back to Mr Kennan's point, an isolation and information issue.

**CHAIR**—Gentlemen, you can draw some satisfaction from the fact that Australia's distinguished and high-level representation at the United Nations will be boosted this year by Mr Hollis and me. That is for the term of the General Assembly, I must say. I understand you have a submission that you wish to make. Is it the wish of the committee that that submission be authorised for publication? There being no objection it is so ordered. Gentlemen, I thank you very much for appearing before us today and for your contribution to this inquiry. We certainly wish the Global Foundation well in its endeavours in the future.

[11.51 a.m.]

**SPRY, Dr Ian Charles Fowell, Editor, National Observer**

**CHAIR**—Welcome. 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 all evidence to be given in public, but should you at any stage wish to give any evidence in private, you may ask to do so and we would consider that request. We have received your submission and it has been authorised for publication. Are there any additions or corrections that you wish to make to your submission?

**Dr Spry**—No.

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

**Dr Spry**—Thank you, Mr Chairman. I should say, first of all, that the members of the Council for the National Interest are Sir Arvi Parbo, Admiral Philip Kennedy, Professor Lauchlan Chipman, Professor Philip Ayres, General David Butler, Mr Charles Francis QC, Mr Peter Westmore, General ‘Digger’ James, Mr Tom Bostock, Sir Charles Court and myself. The committee already has a copy of the original submission which has been made by the *National Observer*, and this morning I have brought a supplementary submission with me. I have made copies of it, and it may be convenient if they are distributed to members of the committee. I have additional copies, which can be given to the members of the committee who are not here.

I have taken some care in the actual expression of the matters set out in this supplementary submission. What I would like to do—it is not very long—is to read it through carefully interpolating remarks and, if the committee has questions at a later stage I shall, of course, be very happy to answer them. The supplementary submission is directed towards the specific aspect of an international criminal court. The original submission, of course, covered a wide variety of areas, but this one is limited because it is a technical area, and it is a matter in which the committee members do not—if I might respectfully say—have particular expertise. I think it is important that a strict legal analysis should be presented of what is involved in the proposed international criminal court.

Very serious abrogations of Australian sovereignty are threatened by attempts to set up an international criminal court with wide powers of compulsion. The submissions from the Attorney-General’s Department and the Department of Foreign Affairs and Trade are designed to allay concerns and to provide a sanitised conception of the proposed international criminal court. These two submissions provide misleading analyses in regard to the possible future effect of the proposed ICC on Australia. Thus paragraph 1.11 of the Attorney-General’s Department submission states, incorrectly:

1.11 National jurisdictions will have primary responsibility for investigating and prosecuting the crimes within the jurisdiction of the Court. The Court will only exercise its own discretion when a State is unwilling or unable genuinely to carry out the investigation or prosecution of persons alleged to have committed crimes. This should ensure that national sovereignty will be protected.

That final sentence is the conclusion, which, in my submission, is misleading. However, that submission concedes in the next paragraph that the proposed ICC could override national courts if, in its own opinion, those courts were ‘unwilling or unable to deal genuinely with alleged crimes by way of investigation or prosecution’. Hence it appears that, if by a rule of Australian law, it were found by an Australian court that no offence had been committed, if the proposed ICC did not approve of that rule it would be empowered to assume jurisdiction and override Australian law. This would be so whether the person being prosecuted was a soldier or airman, for example, who carried out orders in his role as a member of the Defence Force, or a public servant or politician who authorised or encouraged the relevant actions. Likewise, this position would arise if the proposed ICC considered that the treatment of Australian Aboriginals, for example, amounts to ‘genocide’ or ‘crimes against humanity’. This position is exacerbated—

**Mr PRICE**—Could I suggest that, as this is only a supplementary submission, perhaps Dr Spry could just talk about the commentaries that he wishes to add to it, rather than reading it all.

**Dr Spry**—I actually would prefer to read it through, Mr Chairman. It is a very carefully expressed thing, and I know that members of committees are always very busy. I would like actually to read it through.

**CHAIR**—Okay, if that is your wish.

**Dr Spry**—It is not so long that there will not be time for questions, if there are questions. This position is exacerbated by the vagueness of some of the terms proposed for empowering the court. Very different views are held as to what particular acts may amount to genocide. Even more indefinite is what amounts to an infringement by way of a crime against humanity. It is evident that the proposed ICC might take a much wider view of these matters than would an Australian court. Two examples may suffice here.

First, an Australian Defence Force member may be required to engage in armed combat, pursuant to superior orders. If Australia were subsequently regarded as an ‘aggressor’ by the proposed ICC, or an enemy or civilian casualty were regarded as involving a war crime, the ADF member would be subject to the jurisdiction of the proposed ICC. The same would apply to his commanders, to his colleagues who abet or incite him and to Public Service members and politicians who could be brought within the broad categories of those who incite or abet.

The threat of proceedings in the ICC would be capable of constituting a significant inhibiting factor in relation to the use of Australia’s armed forces, and in relation to particular actions by members of those armed forces. The existing strains of warfare would be added to by the further important consideration in the mind of ADF members that they might be subjected to prosecution in the proposed ICC. This matter is made worse because, in effect, any defence of superior orders would generally be ruled out. The defence of superior orders would not apply to prosecutions for genocide or crimes against humanity, and it would be extremely limited in other cases—see paragraph 1.32 of the AGD submission.

Second, a civil servant or politician may be required to approve or carry out policies in regard to Aboriginals. Although many would believe that claims that there are acts of genocide or crimes against humanity in regard to Aboriginals, who receive many pecuniary and other entitlements not received by other Australians, are without foundation, claims are already being made abroad that genocide or abuses of human rights have been taking place. If the proposed ICC were in existence, politicians determining upon policies, and public servants carrying out those policies, would need to appreciate that they would be subject to possible prosecution in that court, and that defences of acting in good faith or of carrying out superior orders would not be capable of applying in this particular context. Thus it is conceded in paragraph 1.28 of the Attorney-General's Department submission:

In particular, official capacity as a head of State or Government, a member of a Government or parliament, an elected representative or a government official, shall in no case exempt a person from criminal responsibility nor constitute a ground for reduction of sentence.

The foregoing considerations would arise also in a large number of other contexts. In particular, there is a wide difference of opinion as to what amounts to a 'crime against humanity'. It must be stressed that this term has no definite meaning: it represents merely a term of strong moral disapproval. Indeed, it is likely that many abuses of human rights may eventually be regarded by some persons as crimes against humanity. But even the concept of 'abuse of human rights' is itself indefinite. It may, for example, be held by some persons to extend to laws in relation to abortion or laws imposing penalties for offences where there is criticism of either the relevant penalty or of the law creating the offence. Any attempts in the ICC statute to define these terms would not be effective to give rise to adequate certainty, so the definitions would themselves refer to other indefinite criteria.

Again, this position is exacerbated by requirements set out in the ICC statute. The Attorney-General's Department submission concedes in paragraph 1.39:

For example, States Parties may be called upon to arrest and surrender persons to the Court. The Statute does not provide any grounds upon which a State may refuse to comply with a request for surrender.

And that means that in the case of Australia, if a request is made, the Australian national must simply be delivered up even if a view is taken in Australia that there is no relevant offence which has been committed, even if that view is regarded as being clearly correct. Surrender would be compulsory. Moreover, the proposed ICC could impose life imprisonment or imprisonment for up to 30 years and also could require the payment of compensation—that is, of civil damages.

**Mr PRICE**—If I can stop you there, in my electorate I have a lot of Filipinos. If there was a new government of a particular persuasion that passed, say, in New South Wales, a law saying that the children of Filipinos should be taken away from their mothers in the interests of a better upbringing and assimilation into Australia and their career prospects, are you saying then that the government should not be accountable for that, that it should merely be a domestic Australian matter?

**Dr Spry**—What I am saying is this, really: when you have a wide range of potential cases which are arising—and your question suggests one instance where there would be very bad behaviour where one would hope that there would be some redress—if you allow other people



to have the power to redress in that sort of situation, you give them the power to redress in all sorts of other situations also.

**CHAIR**—I invited him to make a statement. We must let him finish his statement and we will have questions afterwards.

**Mr PRICE**—He is reading his supplementary submission.

**CHAIR**—I know it is a supplementary submission, but I am considering it as a statement that we have all got to listen to because we have not read it.

**Mr PRICE**—I am sorry, Chair.

**Dr Spry**—In this context the attempts of the DFAT submission at page 39 to downplay the significance of politically-motivated referrals or prosecutions are particularly unfortunate. Those familiar with criminal procedures are aware that acquittals occur frequently and that it is by no means correct that an ordinary prosecution case—far less a politically motivated case—is necessarily well based. Indeed, the recent history of war crimes trials in Australia, held under intense and unfortunate pressure from elements of the Jewish community, demonstrated the extent to which individuals can be harassed by politically motivated or otherwise unsatisfactory prosecutions. Certainly it would be incorrect to assume that procedures under the proposed ICC would not result in the subjection of Australian nationals to oppressive and unsound prosecutions in future years.

Further concern arises in relation to the proposed triggers for prosecutions. Referrals may be made by any state party, and we might consider in Australia the possibility that Indonesia in particular might be making referrals. In relation to what recently took place in Indonesia with the Australian forces there, it certainly would be quite a possibility that a referral could be made to the ICC by Indonesia. The prosecutor may himself institute proceedings or there may be a referral by the Security Council. Under the first and second mechanisms, but not the third, the proposed ICC would be able to exercise the jurisdiction if either the state where the conduct occurred or the state of which the accused person is a national has accepted the jurisdiction of the court. But even this limited measure of protection would not apply if the jurisdiction of the proposed ICC were accepted by Australia. On this basis Australia would be powerless to protect its nationals if prosecutions were commenced by the prosecutor, either on his own initiative or on a referral by a state party, which might well be inimical to Australia.

There are disquieting aspects of the Attorney-General's Department submission and of the DFAT submission. Both submissions are highly political documents in the sense that they set out determinedly to inflate any possible advantages of the proposed ICC and to minimise and gloss over any disadvantages. This is so not only in regard to the prospective diminution of Australian sovereignty and the exposure of Australian nationals to uncertain and potentially politically influenced foreign proceedings, but also in regard to the details of the proposed court's operation and the absence of particular safeguards.

A difficulty with internationalist utopians is that they commonly place other interests ahead of those of their own country and its nationals. They may be readily drawn into internationalist committees and groups of influence and advance their views at the expense of those whom they

represent. It is difficult to avoid the conclusion that internationalist utopianism is a large determinant of both the AGD submission and the DFAT submission and of the officers responsible for those submissions.

In this context, it is of particular concern that Australia signed the statute in December 1998; that, as the DFAT submission notes with significant approbation, Australia chaired the 'Likeminded Group of over sixty States which strongly support the establishment of the court'; and that 'Australia continues to play an active role in the post-Rome negotiations, in the Preparatory Commission which is working on the Elements of Crimes and the Rules of Procedure and Evidence for the Court, as mandated by the Rome conference' and 'continues to chair the Likeminded Group'.

One may well ask: why are representatives of Australia taking such an active—and, indeed, activist—role in attempting to bring about the institution of a court with a jurisdiction that would be able to be exercised against Australians and that would prevent Australian nationals from being protected by their own country? Who are the Public Service advisers who are responsible for the advice that has led to this position? Why has internationalism, rather than the interest of their own country, been paramount in their minds? For, *inter alia*, if the court comes into existence, no significant advantage will flow to Australia if Australia becomes a state party as opposed to a non-party. Even as a non-party it would be able to communicate with the prosecutor, if it were considered desirable or in Australia's interests that a particular prosecution should be carried out, since the prosecutor would be empowered to act on his own initiation, which is the term used to in the statute.

A critical question here is: what is the balance of advantages and disadvantages from the viewpoint of Australia's nationals in (1) the creation of the proposed ICC and (2) submitting to its jurisdiction if a proposed ICC were set up? This question has not been addressed and it has been avoided by obfuscation and special pleading, much of it tendentious, in the AGD and DFAT submissions.

It is a matter of concern that, especially in view of the existence of such advice from such quarters, Australia indicated on 12 December last the decision to ratify the statute of the proposed court. Clearly, a group of individual public servants exists that has shown a surprising enthusiasm for this result. In fact, for reasons, including those set out herein, submission to the jurisdiction of such a court and ratification would not be in the interests of Australian nationals.

**CHAIR**—Dr Spry, obviously you have written this. You read out a list of Australians who I think you said were on your board.

**Dr Spry**—Yes.

**CHAIR**—Are they aware of all the contents of both your supplementary submission and your original submission?

**Dr Spry**—They are aware of the original submission, but the supplementary submission was only really completed yesterday and today. They are aware of the original submission. It may be assumed that they would have a similar attitude with regard to the supplementary one.

**CHAIR**—Does your supplementary submission go into much more detail, particularly in relation to the International Criminal Court?

**Dr Spry**—It does. Of course, it is directed to that issue particularly. I am a Queen's Counsel, as you are aware, and it seems to me that this committee, which is not a legal committee, does need some input on this matter in addition to what it may receive from the office of the Attorney-General's Department which prepared that particular submission.

**CHAIR**—If you do not believe that the International Criminal Court as proposed should be set up, how do you think we should bring all criminals to justice?

**Dr Spry**—The question of war crimes is a very difficult one really. The traditional criminal rule in all jurisdictions is that, when persons commit a criminal offence, they are prosecuted in the jurisdiction in which the offence was committed. If, for example, somebody is murdered in London or Moscow, then it is in Moscow or London, on traditional principles, that a prosecution should be brought. I think there are many lawyers who would be of the view that that rule should still apply.

For example, if a crime takes place in Australia, many people would regard it with alarm if it were possible to prosecute a person in, say, America, Argentina or Zimbabwe in relation to that particular offence. In the case of war criminals, I would adopt the traditional view under the criminal law that the prosecution ought to take place within the state where the alleged offence occurred and that, if appropriate, extradition proceedings should be taken from that place to bring a person who is in some other place into that jurisdiction to be tried.

**CHAIR**—If a crime has taken place in Bosnia, you are suggesting that Bosnia is the appropriate place for a war criminal, or suspected war criminal, to be tried?

**Dr Spry**—Yes, *prima facie*, that would be so.

**Mr HOLLIS**—I am not a lawyer but already in Australian jurisdiction one example that I know of is that, if child sex offences are committed in any part of the world, the offender can be prosecuted in Australia.

**Dr Spry**—This is because of war crimes legislation that was brought in earlier.

**Mr HOLLIS**—Yes.

**Dr Spry**—That legislation was very controversial, of course.

**Mr HOLLIS**—Yes, it relates to child sex tourism. What you said is that wherever a crime is committed—

**Dr Spry**—I am sorry, I am finding it a bit difficult to hear you. The acoustics in this room are not very good. If you would speak slowly, I would be very grateful.

**Mr HOLLIS**—What I said was, when you made your submission in reply to the chairman, you claimed that, wherever the crime was committed, lawyers believe that the prosecution should take place there. What I am saying is that, in Australian domestic law, with the child sex tourism legislation, wherever a crime is committed, the offender can be prosecuted under Australian law within Australia.

**Dr Spry**—I did not say what you said I said. I said that the traditional rule is that you look at the place where the offence is carried out. I said that lawyers, in relation to the war crimes, are generally of the view that that rule should apply in relation to war crimes. There have been some exceptions obviously to that in recent years. One exception was the war crimes legislation that was introduced into Australia. That was very controversial legislation. It enables people to be tried in Australia when, under traditional procedures, they would have to be tried in the place where the offences were allegedly carried out. It is fair to say that the application of that exceptional legislation has been quite disastrous. There have been a number of attempted prosecutions and they have all failed, and they have failed at enormous expense and great unhappiness for the individuals involved.

The next matter that you raise is the question as to whether, in the case of certain sex offences, it is appropriate to punish in Australia people who carry out certain offences abroad. I think you would find that, despite the existence of legislation, most lawyers would not approve of that legislation.

**Mr HOLLIS**—You are misquoting me; I did not say that at all. I did not ask you whether it was appropriate. I stated to you that, under Australian law—whether or not the lawyers like it—wherever a child sex tourism offence takes place, the perpetrator can be prosecuted in Australia. I did not ask you; I told you.

**Dr Spry**—If you told me that, you are stating something which is obvious, and that has no bearing on the general thesis that I am putting forward. In regard to that particular legislation, I think you would find that most lawyers would not approve of it on the basis that it infringes the general traditional view that all criminal offences should be punished in the place where they are carried out.

**Mr HOLLIS**—I have a few questions that are not related to the supplementary submission but to the original submission. On page 97 of your submission, you make the point rightly that the United Nations comprises a vast preponderance of non-Western countries. I do not know why you are saying that because you are stating a fact and what is a reality of the international community today. Since 1945, many countries have gained their independence and it just so happens that most of them are not European countries. What is the problem with that?

**Dr Spry**—Read the original submission. The point is dealt with in the original submission. You take out one sentence and ask me about it. Just read the original submission that deals with the point. You obviously have not read the original submission properly—or at all.

**Mr HOLLIS**—I am merely quoting from a paragraph you have there, and I am wondering what the point is that you are trying to make. You go on to say that Australia might not have friends, but I do not see why that should be any concern because it is obvious that most of these countries that have joined are not European countries now.

**Dr Spry**—The point appears in the submission. Just read the submission as a whole. This is a waste of time.

**Mr HOLLIS**—Dr Spry did not want to answer that question.

**CHAIR**—Order!

**Dr Spry**—No, I have answered it by saying that the answer is in the submission, and I suggest that you read the submission.

**Mr HOLLIS**—On the next page, page 98, you say:

The costs of operations—

we are talking about Timor—

are generally extremely substantial.

Then you go on with regard to East Timor. On the next page you say:

... Australians believe that they should not have been incurred ...

What evidence have you for that?

**Dr Spry**—I do not say ‘all Australians’—let me find that passage.

**Mr HOLLIS**—No, you say ‘many’.

**Dr Spry**—Yes, ‘many’. Amongst other things, there were letters in newspapers to that effect and conversations with those people I have talked to. There is a division of opinion on that matter. Some people think it was an appropriate course; other people do not think it was an appropriate course.

**Mr HOLLIS**—We politicians judge issues on the comments that are made to us, usually in our electorate offices, and on the telephone calls and letters we receive—it is a rule of thumb but it is a fairly good judge. I, personally, and most of my colleagues to whom I spoke, found it was the one taxation issue—the special levy—that we did not have one objection to. It is the only time in my 18 years in parliament that I have not had an objection to the taxation levy. I received no objections to the amount that the Timor exercise cost or the levy that was put on. Not one person in my electorate objected to that.

**Dr Spry**—That is a comment; it is not a question, is it?

**Mr HOLLIS**—No, I am refuting what you are saying there.

**Dr Spry**—I will make a response to that: there were, in fact, letters to newspapers complaining about the levy. I do not know who spoke to the representative, Mr Hollis, who has just made that statement. I do not know who spoke to him or who did not speak to him. It may

be that people did not think it would be worth while speaking to him on the issue, I do not know. If I might say so, I am not very moved by what he has just said.

**Mr HOLLIS**—In the next paragraph you say:

Australia was unable to provide or sustain a force as expected, and it was necessary to obtain assistance from the United States ...

Again, where is the evidence? The United States was very late coming in, and the only assistance the United States actually gave of a substantial nature was in some airlift, but Australia could maintain and was able to provide and sustain the force for the period that we were the leaders of the force there.

**Dr Spry**—My authority in that regard is General Butler. General Butler indicated to me at some length in what particular ways Australia had to get assistance in order to deploy its force successfully. If you wanted more details on that, you would have to write to General Butler and ask him about it.

**Mr HOLLIS**—With all possible respect to General Butler, we are also on the defence committee and there is a question about whether Australia could have kept going but, for the period Australia was there, I would say that you are wrong.

**Dr Spry**—You say that he is wrong; I would prefer to accept his views rather than yours, if I might say so.

**Mr HOLLIS**—It is a democratic society.

**Senator QUIRKE**—I raise a point of order, Mr Chairman. I think the committee has suffered enough abuse from this witness. If he wants to come in here and read for half an hour a submission that was tabled, then start suggesting the questions are a waste of time, and then is so objectionable and rude, I think, Mr Chairman, you ought to take him to task.

**Mr HOLLIS**—No, it is all right.

**CHAIR**—Senator Quirke, we are in a situation where we are going to have a variety of witnesses before us in this inquiry—some we will agree with and some we will not. I do suggest to the witness that perhaps we do not develop this into a debate. It should be a question and answer session. This is not the place to debate the issues. Mr Hollis, you can continue with your questions, but if we are going to sit here debating who has the right to claim the authority we will get nowhere.

**Mr HOLLIS**— Experts have tried to insult me, as a member of the House of Representatives, and been unable to, so it does not matter. I am just querying your evidence and asking for proof, Dr Spry, because I want to understand. I am not saying you are wrong; all I am asking you for is the evidence—do not think I am saying you are wrong. On page 100 you discuss the case of an Aboriginal state. You then talk about the case where claims are made to Australian land—say, where a claim is made in the UN that Australia should take an additional 20 or 50 million people from crowded countries. The United Nations has never asked countries

to do this. This comes back to the domestic jurisdiction. The United Nations has never supported either of the propositions anywhere that you are putting up there.

**Dr Spry**—First of all, in regard to the question of land: the United Nations has been active in putting pressure upon some countries in Africa—the Ethiopian complex, for example—to accept particular boundaries and for one country to give up land in accordance with claims of another. As far as Aboriginals are concerned, we could have a position where an indigenous group within Australia laid claims to set up a separate state. There are many precedents throughout the world for groups within a country attempting to set up a separate state. It is not inconceivable that this will happen with regard to Australia. Some of the Aboriginal activists wish this to take place. If such a situation does arise, and one would hope that it never will, it is very difficult to know how the United Nations would react in regard to that. It might well be that a predominance of black countries and South American countries and some Asian countries take the view that the Aboriginals should be supported. Again, that might not happen. We would simply not know. I am raising these as possibilities which may, at some stage, lead to the United Nations taking a position against Australia.

**Mr HOLLIS**—My final question relates to page 103. If possible, could you be specific on this because you make a claim there which I think, without substantiation, should be deleted. In the fifth paragraph you say:

... Australian politicians of both main parties who for personal advancement have been drawn to “treading the world stage” and involving themselves in international institutions and concerns ...

And you go on to talk about their motivations. Could you name any politician whom you had in mind when you said that?

**Dr Spry**—I deliberately did not name politicians.

**Mr HOLLIS**—You are making a typical broad-brush slander on all Australian politicians.

**Dr Spry**—No, I am not.

**Mr HOLLIS**—If you have evidence of a politician who has been involved in doing that—making personal advancement by treading the world stage—name that politician.

**Dr Spry**—Why should I name that person?

**Mr HOLLIS**—Why make the claim if you cannot substantiate it?

**Dr Spry**—Because it is true.

**Mr HOLLIS**—If it is true it should be there.

**CHAIR**—Order! One person at a time.

**Mr HOLLIS**—That is all I have to say.

**Dr Spry**—Can I answer that question? It must be fairly obvious to members of the committee why I do not want to name individual people. I do not want to do that even though I have individuals in mind.

**Mr HOLLIS**—We do not mind if you name them.

**Dr Spry**—I do not want to. You might not mind, you might be quite pleased, but I do not want to do it.

**CHAIR**—We have to accept that. As far as the statement is concerned, we will treat the statement as we see fit in regard to the submission.

**Mr PRICE**—Dr Spry, were you surprised at the extent to which the department of foreign affairs and the Attorney-General's Department have been penetrated by internationalist utopians?

**Dr Spry**—No. First of all, you use the word 'penetrated'. I think if we take the Attorney-General's Department, it may well be that there are only one or two people of that particular category, I do not know. So far as the department of external affairs, et cetera, is concerned, I think many of them do become rather caught up in international matters and do tend to lose sight of the fact that they are there as public servants of Australia. There is no question of penetration. I have never suggested penetration. Penetration is not an appropriate concept at all in this area.

**Mr PRICE**—In your supplementary submission, you make the point about ordinary members of the defence forces and the threat of proceedings in the ICC. If we look at recent engagements—say, Cambodia, Somalia, Rwanda, Bougainville and East Timor—would you say that with those operations there was that risk?

**Dr Spry**—Yes, very definitely at risk in regard to recent operations in East Timor. There were reports in the press about criticism of Australian troops, which you would have seen. I, of course, do not know the details of what occurred. A situation may arise in any case like this where what happens, for example, if an Australian shoots somebody and kills somebody and the person in question is not necessarily wearing a uniform? For some reason, which is a good reason in terms of Australian defence policy and the carrying out of operations, he shot. There are many unfortunate casualties of war. War is a very unpleasant thing and there are many unintended casualties. It certainly is quite possible that there would be an allegation of war crime.

**Mr PRICE**—In East Timor, was the incident you were referring to the one about allegations of intimidation of some young East Timorese women?

**Dr Spry**—Yes.

**Mr PRICE**—What is wrong with soldiers and Australia being held accountable for that?

**Dr Spry**—They are accountable under our own rules.



**Mr PRICE**—Absolutely, I agree. What is the danger of an extra layer of accountability?

**Dr Spry**—I think this is the key to the whole issue really. We do have our rules under the Army regulations of punishing people who commit offences abroad who act improperly. Of course it is very easy to say that, if an Australian commits an offence abroad, he should be prosecuted under some international court as well as suffering the possibility of being prosecuted by the Army. But you must think of the many other cases where there is not a war crime, where some act takes place and some individual makes a fuss and says that that particular act which indeed is not a war crime but which may be close to a war crime or which may depend upon disputed evidence should be taken up by the international court—if some country like Indonesia makes a complaint to the international court. That is a situation where there is not a war crime. Nonetheless, an investigation is carried out.

The prosecutor may in the course of that investigation determine that he should not proceed. On the other hand, he may determine that he should proceed. As I have pointed out in the supplementary submission, there are many cases where there is a prosecution where it is found subsequently that the prosecution ought not to have been carried out and there is an acquittal. So that is why it is important in this sort of situation not to look at individual cases where a war crime is committed without also looking at the great number of cases where a war crime is not committed but where a complaint may nonetheless be made.

**Mr PRICE**—My understanding of the incident is that the Australian soldiers were not able to be identified. But I thought our commander made it pretty clear that, if they had been identified, there would have been very swift and appropriate action taken under the act and regulations.

**Dr Spry**—One would hope so.

**Senator QUIRKE**—From reading your original submission and from listening to your supplementary submission, do you think we should be in the UN? I got the impression that you see a lot of difficulties with that—potential difficulties in the future and existing difficulties now. Do you and your organisation support our being in the UN?

**Dr Spry**—Most definitely. Yes, we should be in the United Nations, but we should be very wary to prevent any steps being taken by the United Nations or any United Nations authority that may be adverse to Australia. None of us has ever suggested that we should not be a member of the United Nations. There is a certain value in that. But that does not mean that one should set up such things as a United Nations standing army or some international court without considering very carefully the possible adverse consequences for Australia. That is really one of the most important points which we wish to make.

In all of these situations, one has to weigh very carefully the advantages and disadvantages of any particular course from the point of view of Australia. One should not be in there barracking for the United Nations, thinking the United Nations is a very good thing and it must be supported. The United Nations may be a good thing, but it does not mean that everything it proposes should be automatically accepted without examining whether that particular step is advantageous or disadvantageous from Australia's point of view.

**Senator QUIRKE**—Apart from the ICC, which you have specifically raised a number of objections to, are you and your organisation satisfied with the current role we are playing in the various UN agencies, or do you think we should downgrade our involvement in these agencies?

**Dr Spry**—That is a very wide-ranging question. Another matter I mentioned today is the question of a standing army—but there seem to be problems with that. Your very general question is not a matter on which I feel I could make any comments without referring it to the other members of the council. My personal view is that certainly we agree that we should be a member of the United Nations; and, secondly, we think that when looking at any particular body—for example, the body which deals with racial discrimination—we should look very carefully at whether or not that body may be taking steps which are disadvantageous from an Australian point of view or whether it may be making fair findings. If a complaint is made to one of these United Nations bodies about Australia, can we be satisfied that all the evidence will be looked at in a fair and unprejudiced way? But I do not want to make any final comments in regard to any of those matters because they are not matters which have been specially addressed in the submissions that we have made.

**CHAIR**—Can I just hark back to my initial question to you in relation to where crimes are tried. You espoused the principle of crimes being tried in the country where they were committed, which is a principle that the legal profession and you personally hold very dear. Firstly, I want to know why that principle is so important. In the context of war crimes, in particular, it would appear that for most people the most important thing that could happen is for justice to be done. In many cases, it would appear that it is very difficult for justice to be seen to be done if those trials were held in the country that they were committed in. I cite the recent tragedies in Bosnia and Kosovo or any of those places where there have been alleged horrendous crimes against humanity and where, in general terms, people would suspect that justice may not be dispensed in the country where the crime was committed.

**Dr Spry**—I think that is a very valid point, but I am looking at this matter not from the point of view of whether, for example, the prosecution is to be brought against—I will just take these names—Mugabe or Idi Amin or people like that; I am looking at it from the point of view of Australia. What I am saying is that one would like to see people like Amin brought to justice abroad. I take Amin as a clear case where I think probably everyone would agree that he behaved in a monstrous way. I would have liked to have seen him brought to justice, but from the point of view of Australia and Australian nationals the more important thing is that we should not suffer undue threats to ourselves.

**CHAIR**—It is a very isolationist point of view, isn't it?

**Dr Spry**—You used the word 'isolationist'. The primary duty of the parliament is to protect the Australian people and to look after the interests of the Australian people. It is not contrary to that to want to have people like Idi Amin prosecuted, but if to achieve that objective some step were taken which exposed Australian nationals to unmeritorious prosecutions perhaps then that would have to be taken into account.

**Mr HOLLIS**—What would your view then be—and although it does not involve any Australians it well could have—of the Lockerbie trial that is now taking place in the Hague where the crime as such, I guess, would have been committed in Scotland or Great Britain or

wherever the bomb was put on the plane? Is that a correct jurisdiction? I realise that the trial is being conducted in the Hague under Scottish law which adds another complication, but there would have been nationals involved there from many countries.

**Dr Spry**—I think that is perfectly acceptable. If the law of Scotland permits that to be done, that is fine. If the law of Australia permits it to be done, that is fine. If in any particular case we passed a law which said that some of our nationals could be tried in Peru, China, or wherever it is, we are entitled to take that course. Whether that is a desirable thing is another matter, of course, but if our law permits that, then our law permits that.

**CHAIR**—But you are actually saying that if the crime is committed in those countries, the trial should take place there.

**Dr Spry**—Yes, or under the law of that country. I would accept that in some cases the law of that country might for very special reasons require a trial to be held outside. I think that such cases should be very exceptional. A lot of this has been put by the committee on the basis that it is simply my own view, I think, that crimes should be prosecuted in the place where they are carried out. It is a very long tradition which has taken place in all the English countries and, as far as I know, in all the countries under the Napoleonic code. I cannot speak about some of the African countries or things like that but, in Western countries, it is a tradition which has existed for thousands of years. So I do not want it to be thought that it is some sort of special peculiarity of my own that I bring this forward. It is the traditional view. There have been a few exceptions brought in: each of these exceptions has been very controversial with arguments for and against.

**Mr PRICE**—You are saying, if I understand you correctly, that if we wanted to prosecute a commandant of a German-run Polish concentration camp in the Czech Republic, or in Poland, or whatever, we should do it in Germany under German law?

**Dr Spry**—I am saying, first of all, we should not do it in Australia. But what I am particularly saying is that General Cosgrove should not be subject to being prosecuted by some court which is set up and which is going to carry on duties in the Netherlands.

**Mr PRICE**—But why shouldn't he be if he committed atrocities?

**Dr Spry**—Why should he if he did not commit atrocities? You are always taking, if I might say so, the case where crime has been committed, where the facts are all determined against the Australian, but in most cases the crime would not be committed by an Australian. So if General Cosgrove, of course, went around and did some terrible things he should be prosecuted.

**CHAIR**—You give a poor example, I might suggest.

**Dr Spry**—I understand. You say it is a poor example but the reason it is a poor example is the reason it is a good example.

**Senator QUIRKE**—I would like you to clarify an impression I got when you were talking earlier, particularly in your submission where you raise the failed prosecutions in the Australian war crimes trials of people who are now Australians. I think they were all Australians. There is a controversial case now involving an Australian citizen—I will not mention the chap's name—

and the others, I believe, are Australian citizens. Do you believe that the limit of the Australian law should be to simply extradite them back to where these crimes were committed and that they should stand trial in those particular jurisdictions?

**Dr Spry**—If, purely hypothetically, somebody who was from Latvia were shown to have committed a war crime in Latvia, I think it would be entirely appropriate that that person be tried in Latvia and that Australia should, under the appropriate treaties or agreements, surrender that person to be tried there. There is an additional question of whether we should surrender such a person without some prima facie proof. The laws have been amended so as to take away any requirement for prima facie proof. I must say I regard that as very wrong. I do not think we should be required to surrender somebody unless there is some prima facie case made out; otherwise anyone could be sent abroad.

**CHAIR**—I think we must draw it to a close. Thank you very much, Dr Spry, for appearing before the inquiry today.

**Proceedings suspended from 12.40 p.m. to 1.58 p.m.**

**MITCHELL, Ms Pauline Dorothy, Secretary, Campaign for International Cooperation and Disarmament**

**CHAIR**—I declare this meeting of the subcommittee reopened. On behalf of the subcommittee, I welcome representatives for the Campaign for International Cooperation and Disarmament. 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 we would consider that request. We have received your submission and it has been authorised for publication. Do you wish to make any additions or corrections to that submission?

**Ms Mitchell**—No, Senator.

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

**Ms Mitchell**—The United Nations was born into an atmosphere of vast relief, cooperation and hope, and out of the determination to map out a better future for humankind. The world had just emerged from a devastating war that had touched every continent. It had been a second world war in just over 20 years. During that 20 years there had been a worldwide depression, so the desire for a better way, and to break that cycle, was very strong. It was in that atmosphere of cooperation, hope and determination that the aims were set for the United Nations organisation to oversee work for peace and to provide a level of security for all. To do this, the specialised agencies were set up to deal with world health, refugees, human rights, culture, children and many more issues, and they were to periodically report on progress in these areas. Under the auspices of the UN, important and expert conferences are held on economics, social development, the state of the environment, et cetera, and international treaties to aid behaviour have come into being.

The years we have dubbed the Cold War period are over. It is true that we have not had a world war, but the world is at war. In 1998 the United Nations tallied over 82 conflicts around the world since the fall of the Berlin Wall, and all but one were civil wars. Thousands were killed, millions were displaced and damages were beyond calculation. This trend is likely to grow as inequality between nations and within nations continues to widen.

One goal of the United Nations is to eliminate poverty and hunger and to create conditions that will guarantee a standard of living and the conditions of stability and wellbeing necessary for peaceful and friendly relations. But this has not been achieved, even though the world produces almost \$30 trillion worth of goods and services annually. According to statistics produced at the 50th anniversary conference of the World Health Organisation, the world economy has grown six-fold between the years 1950 and 1997; however, 1.3 billion people live in absolute poverty.

Today the United Nations is engaged more than ever in service to the world's people, but it is hampered by financial problems. Some member states of the UN are in arrears and the United States, the richest country in the world, has not paid its obligatory dues for years. Additionally, the rich industrialised nations keep decreasing their voluntary contributions to development aid. In February the UN had to postpone a world food program because the appeal to donors brought no response. The United Nations is often criticised for its spending and staffing levels, but the UN's overall budget, including all its specialised agencies, would be equivalent to Australia's annual budget for health and aged care alone. As to staffing levels, 53,000 people were working in the UN system in 1996, which is about 3,000 more than are employed at Disneyland and Disneyworld.

Australia has played an important and constructive part in the United Nations, and as a developed country it has a lot to offer. But, recently, Australia has been criticised in some areas and is now considering downgrading its treaty obligations. This is an immature reaction. UN personnel have no axes to grind in Australia and no votes to win. The government should treat this as constructive criticism and as a reminder that more effort needs to be put into these areas. This is no time to loosen the ties with this most representative of international organisations. Australia should improve its relations with the United Nations, implement its obligations and try to reach standards recommended by the conventions and expert conferences. Australia should also use its influence to persuade errant countries to pay their dues to the world body and all other outstanding money. Australia could play a major part in the Disarmament Commission, for instance, by pressing for a reduction of five per cent of the world's armament expenditure and its transfer to the social development budget. This would lead to a more stable world, as inequality breeds resentment.

Australia itself should do more to promote the United Nations within Australia. The United Nations charter says, in part, 'to save succeeding generations from the scourge of war'. If people are to put peace as a priority, we need to start to teach at primary school level more about the organisation, its structures and how it works, and the international treaty obligations and agreements. The United Nations, its work and its ideals are just as relevant and needed now as they were when it came into being 55 years ago. Thank you.

**CHAIR**—Thank you, Ms Mitchell. Which of our obligations have we not adhered to?

**Ms Mitchell**—Australia was recently criticised for its Aboriginal health and its world culture, I think regarding Kakadu National Park and so forth. I think that is what precipitated this withdrawing from treaty obligations, or some of them.

**CHAIR**—But we have not withdrawn from any of our obligations.

**Ms Mitchell**—No. It was just mooted that this was what might happen.

**CHAIR**—Things that are mooted quite often do not eventuate.

**Ms Mitchell**—No.

**CHAIR**—The other thing you said was that the US have not paid their dues for years.

**Ms Mitchell**—Yes, that is right.

**CHAIR**—I do not think it is right. They have paid.

**Ms Mitchell**—Some of them. They pay enough just to keep them in the General Assembly, but they do not pay all of it. They never have.

**CHAIR**—I think they have paid a bit more just in recent times.

**Ms Mitchell**—Yes.

**CHAIR**—I understand they are behind. Of course, they also do contribute almost a quarter of the budget.

**Ms Mitchell**—If they paid they would.

**Mr HOLLIS**—A question I have put to many of the witnesses who have been appearing before this inquiry is: do you think that, with recent statements, Australia is sending a wrong message to the world community about our commitment to the UN?

**Ms Mitchell**—Yes, I am sure we must be. Some must be worried about our commitments to these conventions and so forth.

**Mr HOLLIS**—You mentioned the need for education and that. What would you do, say, to create more awareness of the UN here? Would you do peace studies, or would you just concentrate on the UN or what, in the schools?

**Ms Mitchell**—I think that schoolchildren should be taught the rights of a child, the obligations under a treaty. If you asked the man in the street you would find they are not very familiar with the United Nations, merely because it is not advertised and it is not taught in schools or any education forum until you get to, perhaps, college level.

**Senator BOURNE**—In your submission, on the last page, you mention restructuring and you talk about the Department of Disarmament Affairs being reduced to the Office of Disarmament Affairs, and the Centre for Transnational Corporations disappearing altogether. Can you tell us what effect the reduction from a department to an office and the getting rid altogether of that other centre would have had?

**Ms Mitchell**—The disarmament commission would not be so big—it would be just an office—and so that would downgrade that. There would not be so many people working in it and they would not be able to oversee the offices that they should be paying attention to. The multinational companies are playing a very, very big role in world affairs now. I know the centre was not there when the United Nations started, but President Allende brought a lot of papers to the UN showing how the ITT company was involved in the troubles in his country, Chile. It was set up then to deal with all of these questions, and now that it has been wiped out there is really nowhere to go for these small countries that think they under threat from multinationals.

**Senator BOURNE**—When was the instruction which changed those two things, do you know? Was there one in the 1990s?

**Ms Mitchell**—I think it was in the early 1990s, yes.

**Mr PRICE**—I was interested in your suggestion about teaching Australian schoolchildren about the United Nations and treaties. The parliament of recent times has established a Parliamentary Education Office and has given a pack of information to every school in Australia. Would that be one of the vehicles you think that perhaps the parliament might take the initiative on, of including material in that about the United Nations and international treaties?

**Ms Mitchell**—I think that would be a very good start, yes.

**Mr PRICE**—You spoke in your submission and your opening statement about human rights. I think if we took a survey—certainly in my electorate, I guess in others as well—and asked people what are human rights, I think people would be stuttering and stammering a bit, yet they are things that we tend to take for granted as just being part of the fabric of our country. What do you think we could do or should do in relation to adults? I agree with you about starting with children; that is always very helpful. How can we promote this concept that Australians, that every citizen of the world has these inalienable human rights?

**Ms Mitchell**—I think again it is a matter of education first about what are the rights and if everyone has got them. I think the basic human right is perhaps food and shelter and clothing and a way of life to keep that up.

**Mr JULL**—When I was at school, 24 October was United Nations day which we used to celebrate. Is that still in the syllabus? Can anyone tell me whether the UN day is still part of the school calendar?

**Ms Mitchell**—I do not know. That would be interesting to find out.

**Mr PRICE**—I cannot see why it would not be.

**Mr JULL**—We were probably flogged if we did not know about it in those days.

**Mr PRICE**—That would be interesting for us to find out.

**Senator QUIRKE**—It was just before Guy Fawkes.

**Mr JULL**—I am just interested because, going back to my primary school days, 24 October was quite a big occasion. Can I ask you about your comments on standing armies? Obviously you are not terribly keen to see a standing army there. I guess in many respects the United Nations was never designed to have a standing army. I guess one of the things that the proponents of a standing army are all about is simply that, if they have got a trouble spot, maybe they can get some assistance there more quickly. I do not know if that is right or wrong



with the way the UN works. Is there some other way that perhaps you have thought of that could be devised to allow the UN to get into trouble spots in a hurry when necessary?

**Ms Mitchell**—No, I have not thought of any. It is just the speed with which they could get them there. Every country is supposed to put these aside for a request from the United Nations, but I do not think any country has done so. So it would take longer if that was not in place.

**Mr JULL**—You have expressed concern in the opening statement in your submission about the financing of the UN. There is some argument that if the UN gets its act together—and, indeed, it has had a lot of examination and I understand quite a bit of reform—then are we really talking about more money or better use of money?

**Ms Mitchell**—What I have been reading in here is that the officials are not overpaid, that they are paid relevant to what the American structure is at the time. I suppose in all organisations you can use money more wisely when you come to think of it, but I think that they do a fantastic job with the funds available.

**Mr JULL**—I think you were wrong in your introduction. I do not think they have got as many staff as Disneyland have now. I think they are 6,000 under Disneyland. I think they are about 6,000 fewer.

**Ms Mitchell**—They have cut it again, have they?

**Mr JULL**—I think so. Have you ever thought about alternative ways of financing the UN? In making mention of multinational, transnational companies, in actual fact I think one of the things that is going on at the moment is that quite a few of the big international businesses are now getting involved in some aspects of the UN. I mean, it is almost sponsorship. Do you have any objection to that sort of thing?

**Ms Mitchell**—Yes. I do not think that is very wise because that can put a bit of a bias on it in several areas.

**CHAIR**—Is it a different sort of bias from two of the biggest countries in the world—Japan and the United States—providing such an enormous percentage of the UN's budget? One would have thought that they expect some sort of quid pro quo for their enormous contribution, anyway. Is it any different for a multinational to put money into the United Nations than two countries to provide, I think, 45 per cent of the budget?

**Ms Mitchell**—I do not agree that America should be upset to get more, because it is a democratic organisation and these fees are devised from what a country can afford. America obviously does want a lot of things because she is almost holding the United Nations to ransom—‘You must do these things or else we won't pay our dues’—and I find that very repulsive, really, in an organisation such as this. I do not think we should extend that sort of behaviour to multinationals, perhaps—that they could use the same sorts of arguments.

**CHAIR**—That is an argument you could put forward. But, of course, if the United States were, for instance, to pull out altogether, there would be an even bigger hole, wouldn't there?

**Ms Mitchell**—Yes.

**CHAIR**—And it would be more difficult to do the humanitarian work.

**Ms Mitchell**—Yes, that is right.

**CHAIR**—So you have got to have some sort of balance and dividing line between a very large proportion being paid by one country and that country's influence.

**Ms Mitchell**—You see, I find it very hard to understand. If it were a telephone company or anything like that, and you did not pay your dues to the company, you would be cut off. But they do not do that in the United Nations, and I think they are aware that America is the strongest country in the world. If she goes out, the United Nations would collapse. Also, to set up an organisation with the United States at the head would defeat the purpose of the United Nations—or the purpose that was in mind for the United Nations when it came into being.

**CHAIR**—You have sort of answered your own question, haven't you? It cannot operate another company, because in fact you do have a country with a large population—

**Ms Mitchell**—That is right.

**CHAIR**—which is an enormous contributor, and you certainly would not like to see the United Nations without the United States in it, would you?

**Ms Mitchell**—No.

**Mr HOLLIS**—I would like to make a brief comment on the question of sponsorship. Kofi Annan, the Secretary-General, did instigate two that I know of. One was a program funded by Disneyland, and they gave out prizes, and there was another one which I cannot quite remember. It was one of the big companies giving out some sort of environmental prize, and the companies had been criticised in other countries. I share your concern. I do not know whether it was Coca-Cola. They said yesterday or the other day that it was Coca-Cola, but I think it was one of the others. I think there is a real danger, because there is always a payback, or a quid pro quo, for these things. I think that, if you are going to get these companies putting in huge amounts to sponsor various programs, all very well. It somehow gives the United Nations seal of approval to those. Many people within the United Nations family have great reservations about the Secretary-General's suggestion and, indeed, have expressed those reservations to him. He floated the suggestion in a paper he put out earlier this year, and it caused quite a lot of adverse comment from many within the UN family.

**Ms Mitchell**—Yes, and I think Bill Gates has put a billion in. I do not think it was to any specific program—it was the world food organisation, or something like that.

**Mr PRICE**—You referred to your concern that Australia may be reviewing, or pulling out of, its treaty obligations. Was that concern prompted by the establishment of the interdepartmental committee that has been recently set up to look at treaty obligations?

**Ms Mitchell**—No. I think Mr Downer spoke about that on occasions, and so did Mr Howard. They will look at their obligations under that, and I think this is perhaps a part of it, too.

**CHAIR**—Surely there is nothing wrong with a country reviewing its current situation.

**Ms Mitchell**—No.

**CHAIR**—Depending on what you read into it.

**Ms Mitchell**—That is right, yes.

**Mr PRICE**—Depending on what the outcome is, Chair.

**Ms Mitchell**—And what comes out of it.

**Mr HOLLIS**—And the message it sends.

**Mr PRICE**—But apart from that, it is a good idea.

**CHAIR**—As there are no further questions, I thank you very much for appearing before us today and for your contribution to the inquiry.

**Ms Mitchell**—Thank you.

[2.22 p.m.]

**JOHNSTON, Associate Professor Stanley William (Private capacity)**

**CHAIR**—Welcome. I advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence under oath, you should be aware that 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 evidence in private, we would consider that request. We have received your submission and it has been authorised for publication. I understand that you have a supplementary submission. Is the committee willing to authorise the supplementary submission for publication? There being no objection, it is so ordered. Do you wish to make any additions or corrections to your initial submission?

**Prof. Johnston**—No, thank you.

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

**Prof. Johnston**—Thank you. I suppose the families of all of us here have suffered through wars. With tens of millions killed in the two world wars, the United Nations was set up to reduce that scourge. I think anyone who has no sense of urgency about that task has a schizoid lack of compassion. The United Nations' first charter purpose is to settle disputes under law. To do that, it needs constitutional authority. In the last paragraph of each of my two submissions, I make some modest but urgent proposals to inch us toward a more effective United Nations.

Firstly, to make a general comment, I believe Australia needs a more coherent steady approach to the United Nations and I will mention a couple of recent cases commenting on three ministers without being politically partisan—I will throw bouquets and brickbats. I think the Prime Minister and the Foreign Minister gave Australia a very proud moment over East Timor. The Prime Minister recognised that we need an abiding regional peacekeeping capacity, as is provided for in the charter, chapter 8. Our current pathway to this is probably through the South Pacific Forum, which Mr Howard did not mention. In saying that we could become a deputy to the USA rather than to the United Nations, I believe he diminished the United Nations authority, which alone made INTERFET possible, and he diminished our achievement in producing INTERFET.

The second case I would mention concerns the Minister for Immigration and Multicultural Affairs, Philip Ruddock. I believe he is doing an excellent job managing the illegal immigration problem, but that he let us down badly at the UN Committee on the Elimination of Racial Discrimination when he and his delegation appeared there on 21 and 22 March this year. The reference to the UN summary record, which I have just handed to the Hansard people, is the UN 'hansard' report of these meetings. With respect, Mr Ruddock rambled on with personal and chauvinistic rhetoric. He did not take the process seriously enough to respond sharply to the UN committee's criticisms. His irrelevant generalities were a snow job and it failed. These

committees are sometimes misinformed by complainants, but they have to be answered. Someone for the government said, 'We were not given specific questions.' If that is so, of course, we can ask for them. It is up to liberal democracies to lift this game, not to fear it or reject it. Australia's human rights record is good—that is why we have a swag of illegal immigrants— but it will never be perfect. If we give the impression that we do not care, of course we will get a towelling.

Mr Downer did say that he was appalled at the UN committee's political and partisan approach. But it is the function of these human rights committees to judge national governments. The UN committee would have found Mr Ruddock's appearance appalling. I felt shamed by it as an Australian. I imagine that is the shame that Justice Elizabeth Evatt recently expressed. I sat near her over several days while the Human Rights Committee under the Covenant on Civil and Political Rights was grilling Iran over its human rights record. At any moment I expected the Iranian delegation to walk out. I saw history in the making. This was a process in which the UN committee was establishing its political authority over a nation state. That is what is happening here—we are changing the political order.

In those two cases we moved from boasting of the UN Secretary's pat on the head for INTERFET to somewhat petulant abuse of the human rights system. Romantics often damn the United Nations with faint praise for its high ideals, but the charter purposes are not high ideals at all. Article 1 describes the practical necessities for peace and the regulation of global problems. To take the United Nations seriously is not to kowtow to it but to respect its evolving constitutional status and authority and to engage it in critical supportive dialogue.

The major problem is encapsulated in paragraph 5 on page 1 of my second submission where I refer to the submissions made by the Department of Foreign Affairs and Trade and the Department of Defence on the matter of national sovereignty. Those two important departments still pretend that member states are supreme over the United Nations. They misread the charter and mislead the people and the government. They expect the UN General Assembly to be weak and useless and they help to make it so. They deny the UN the authority which it needs and which the charter gave it. Their view ultimately is anarchist and it partly explains why about half the submissions to this inquiry are simply uncritically hostile to the UN.

That question is a kindergarten level question on sovereignty which those two departments get wrong. The urgent forward-looking question on sovereignty is to get the separation of powers right within the United Nations. The Security Council is riding roughshod over the system. The General Assembly does not claim the authority which is there for the taking and the World Court is sidelined. Those latter bodies, the assembly or legislature and the court or the judiciary, have to be substantially promoted in relation to the Security Council. That question of sovereignty I introduce in paragraph 18 of my first submission. Thank you, Mr Chairman.

**CHAIR**—As you rightly said, many of the submissions we have received are critical of the United Nations. Some of those criticisms might have been out of ignorance—I use that word in its proper term. Some people have suggested that the UN is too powerful already. What would you do to allay those fears amongst people who are either unaware or simply do not understand the actual powers that the United Nations has?

**Prof. Johnston**—First, teaching on the United Nations must start with the charter so we get a fair estimate of what we did achieve in 1945. Of course, it must be a critical study of the charter. We should be vigilant about any government power. Any government can go wrong—any power, like this electric power, can go wrong. We must remain as democratically critical of the UN as we are of governments in Australia. This is the choice between uncritical condemnation of the UN and a responsible citizen's constructive criticism. You said many of the submissions to this committee were critical of the UN. I am saying that about half of them are intelligently critical and about half of them were ignorantly hostile and uncritical. I distinguish criticism from condemnation. Those unpersuaded 50 per cent, the North Queensland gun lobby or whatever—they call me a traitor, by the way.

**Mr HOLLIS**—We are all money grabbing traitors. They have appeared before us. You should read the transcript of evidence. It will make fascinating reading.

**Prof. Johnston**—I certainly respect their position; it is of the first importance. That does not mean I do not want to change it. They have to be educated to enjoy the benefits of the UN and, of course, to monitor its powers—there is always a danger that government will go wrong. My great fear is that a tyranny will entrench itself in the United Nations, and that will be very hard to unseat. That is down the track; it is not the problem today. The problem today is to give the UN enough power and money to do its job.

**CHAIR**—One of the most talked about reforms of the United Nations is reform of the Security Council. You are one of the few people who mentions the Security Council in their submission. You made the statement:

The General Assembly should ... use its democratic and budgetary powers to restrain and guide the Security Council today.

Could you explain what you mean by that? It would appear to me that the Security Council tends to make its own mind up regardless of what happens.

**Prof. Johnston**—You are quite right.

**CHAIR**—How can we restrain and guide it? How can the budgetary powers be used?

**Prof. Johnston**—The assembly has 188 members. The council can go its own way for a while but the weight of assembly numbers will ultimately bring it into line. The assembly elects 10 members of the Security Council. I have said in my submissions that, in doing so, the assembly should pay attention to the first of the articles setting up a security council, which is article 23(1), which requires that the assembly have regard to the contribution of member states to peacekeeping.

It seems to me that the best contribution anyone can make to peacekeeping is to submit unreservedly to the World Court. I recommend as a matter of urgency that we should elect to the Security Council only states which do that. I find it unbearably hypocritical that states in the Security Council which do not submit to that law should presume to enforce that law on others. The other side of that is that, under article 17 of the charter, the assembly has the budgetary power. You know, we all know that that is an almost unbeatable power. The World Court has

held that the budgetary decisions of the assembly are not recommendations; they are binding. I cannot imagine a greater power than that to direct where the United Nations is going.

**CHAIR**—Do you have a comment to make on the numbers of permanent members of the Security Council and the veto provisions?

**Prof. Johnston**—Yes. The general assumption seems to be that we ought to enlarge it to make it more representative. I have said in my second submission that I tend to agree with the National Party of Queensland on this, that it is not necessary.

**CHAIR**—Sorry, what is not necessary?

**Prof. Johnston**—Enlargement. I will come back to the question of veto. Expansion of the council I do not see as being necessary. I would not waste too much time arguing against it, but I do not see it as being essential that the council should be as democratically representative as the assembly is. I see the council as the executive, and you need a small executive council or cabinet. I therefore compare the size of the council more with the size of the court, which is the same—15 members.

In the election of the council and of the court, the instruments—the charter and the court's statute—say we should have regard to geographical distribution. I think it is because we do not have this sense of the precise roles of legislature and judiciary that we are trying to make the council another legislature. I think this is a bit of a cop-out, and I do not look for this democratic representation.

Regarding the veto, we have had governments with a veto. The US president has a veto of sorts over congressional legislation; in Roman times each consul exercised a veto. You can have a government with a veto and get away with it, but I would try and restrict it. I would require two negative votes. I believe the veto has not been altogether evil. I think that during the Cold War, when we were polarised, the existence of the veto might very well have saved us from World War III. But I certainly do not want to extend these inordinate privileges of permanency and veto to countries which, by definition, are already very powerful. Why constitutionally entrench? This is like an Afrikaner saying, 'We are superior to the blacks. Therefore, let's recognise it legislatively.' If we are superior, we do not need that constitutional endorsement.

Certainly, the two candidates most preferred for permanency are Germany and Japan. My problem with Germany is that west Europe already has two permanent members; if Russia is Europe, that gives them three. And I am not happy about Japan. I have given three reasons in my second paper. I would like to add to it that Japan has ratified neither of the protocols to the Covenant on Civil and Political Rights and, indeed, has activated not one of the human rights appeals mechanisms. In terms of promoting the charter's purposes, I think Japan is nowhere nearly a leader in the field.

**Mr JULL**—Just on the veto, I think—from your submission—the veto went to two. Do you really believe we need the veto? I guess the practicality is that you would never get it knocked out even if you wanted to get it knocked out.

**Prof. Johnston**—As to the practicality of it, you would know that any charter amendment requires the affirmative vote of the five veto powers, and they are going to be reluctant to do it. But, if the assembly builds up this expectation that the council will perform its roles in the charter, we might produce a sea change in thinking about the UN, and I would look for that in the long run. If it is desirable to get rid of the veto, I would certainly set myself to that task. With the end of the Cold War I would be happier to see the veto go, but I think there are more important things. I have listed them in my shopping list at the end of each paper.

**Mr JULL**—I must say that I thought, in terms of your composition of the Security Council on a regional basis, that certainly made a lot of sense. I was also interested in the line you were taking regarding the South Pacific Forum. I personally believe that we have got a great responsibility within that South Pacific Forum. Do you see the way of the future for the United Nations that in actual fact, more and more, we will be developing into regional blocs?

**Prof. Johnston**—And end up with George Orwell's *Nineteen Eighty-Four*.

**Mr JULL**—Almost. You probably have a conglomerate of this part of the world that we may even promote or be sort of responsible for, if you could put it that way.

**Prof. Johnston**—I would like to think that Australia will merge into some genuine regional commitment. I think our best opening at the moment is the South Pacific Forum which I would enlarge and upgrade.

**Mr JULL**—How far do you extend that? Would you go into South-East Asia?

**Prof. Johnston**—No. The UN, and most analysts, speak of an Asia-Pacific region. If you try and add up the population there, that is over half the world and there is no sense of regional commitment. China is big enough for a region; India is big enough for another region. Europe is 400 million people at the moment. I do not know how big Europe should become; I think it is becoming too big now. I have a vision of all the Pacific islands in it and I would include Japan, Indonesia, Antarctica—I believe our territory there is part of Australia—and all the way across to Pitcairn. I would call it the maritime region of Oceania, or something like that. If you include the Philippines and Japan, it is no longer the South Pacific. I found this beautiful word in the dictionary just a few days ago and I put it in my second paper—Austronesia—Polynesia, Melanesia, Micronesia, Indonesia and Australia. The word 'austro' means 'south'.

At the moment the South Pacific Forum is negligible. In this morning's first *Age* editorial they were writing about managing this arc of instability to our north and said we must bring in the Commonwealth. I imagine that does not mean the Commonwealth of Australia but the British Commonwealth of Nations. There is not one mention of the South Pacific Forum. I think that is awful. I envy the European regional movement and I would like to think Australia will emulate it. We seem discomfited by the ASEAN blackballing of us. I see mainland Asia as making up its own region. The Americas already have their region. I want Oceania.

**Mrs CROSIO**—To the north, there does seem to be a grouping there.

**Mr JULL**—I think you are quite right. We must be about the only region that has not got a region.



**Prof. Johnston**—Yes, that is true. In the United Nations we vote with west Europe and others. I am proud of our heritage, but this must be a slap in the face to our neighbours. It is not easy to make this change, to break that link. I think we have to look to the future. We keep knocking on the door of ASEAN but I would not waste time on that. I would rather attract East Timor to begin with and then Indonesia itself into a South Pacific league and let mainland Asia go its own way.

**Mrs CROSIO**—I would like to take you to the first submission you presented to us. I quote you on page 9, paragraph 33:

In my experience the UN bureaucracy is lean, and works well. The Secretariat is too small; it will grow.

Most submissions we have had tell us that it is probably too large, staffed by too many, that the bureaucracy is too heavy. From your experience, could you elaborate just a little bit more on that?

**Prof. Johnston**—I spent many months in New York, and I have found these people to be gifted, intelligent and hardworking. I worked in UNESCO in Paris. The staff there were working 8 a.m. to 6 p.m. I was in there at weekends as well and they were not. These people are the cream of public servants. I am sorry to say it, gentlemen.

**Mrs CROSIO**—From your experience, how did they select that staff?

**Prof. Johnston**—By and large on recommendation from foreign ministries. Administrative staff are recruited locally, but for professional staff, if you do not have your foreign ministry's recommendation, you do not get a post. Yes, let us face it, the UN secretariat is destined to become the world's biggest bureaucracy. I am not in a hurry to produce that result, but it is bound to happen. We heard from Ms Mitchell that Disneyland is bigger, but let us compare local government departments. Victoria's education ministry spends more than the whole UN secretariat does, I believe. I like education, but I prefer peace. Certainly the comparison I make, and made in my second paper, is with national military spending. We are spending about \$8 billion on the UN and \$800 billion on armies and that is a perverse ratio. It will change; if we survive. If we are intelligent, it will change—it will be reversed.

**Mrs CROSIO**—In your experience now, you feel it is lean. Are there other areas where you think it should grow to do the job or will it grow by natural causes?

**Prof. Johnston**—At the moment it is not growing. It has been static for about six years, mainly because of US monitoring of its spending and I am all for a public service which is as lean as possible. As David Purnell said in the UNA submission, better than a small secretariat is an efficient secretariat. That is what we really need. I would not approve any addition to the UN budget unless it is going to achieve essential purposes. I applaud the monitoring of UN spending.

**Mrs CROSIO**—It is almost like the dog chasing the tail. If you do not have the numbers to do it, they cannot do the job. If you are going to have an efficient area, they cannot then look to do another job if they do not have the staff to do it. Where do you reach a happy equilibrium there?

**Prof. Johnston**—I am a gradualist and I will keep developing the areas that I think are important or that the Australian government think are important.

**Mrs CROSIO**—From your experience, if the UN have a team of experts doing option A and if the UN believe they have done enough on that, do you think they are capable of moving them over to something new? Do they have the ability to move as quickly as that? In other words, can they say, ‘We have spent a few years on that. We have achieved that; now let us go and look at somewhere else’? Or do you find, as evidence seems to be saying, that they continue to do the same thing all the time?

**Prof. Johnston**—I think UN secretaries-general have been very responsive to US strictures. They know their reappointment depends on the US vote. What is happening is that the secretariat is responding handsomely to Washington and the General Assembly of the UN is not calling the shots as it should do. This is my great beef. I am proud of our alliance with Washington and would not want to damage it, but I am not uncritical about it. I am very critical of UN General Assembly lassitude.

**Mrs CROSIO**—Very quickly, you mentioned education in your previous comment. Going to page 8 of your submission, paragraph 28 reads:

Parents and teachers cripple their own children by imposing social prejudice on them. The human right to education is not fulfilled as prescribed.

On page 4 of your submission, paragraph 10 says:

The anarchism taught in today’s schools of law and politics justifies every national tyrant.

They are extraordinary statements.

**Prof. Johnston**—I use my words carefully. The position identified in my opening remarks, a position espoused by Defence and by Foreign Affairs, is that the UN charter enshrines—a religious term—national sovereignty. It means that the nations are under no law. That is the upshot of it. It is the case in France itself. Napoleon’s tomb is nearly as big as St Peters in Rome, and he was a terrible criminal. And there is still some tendency to worship Hitler in Germany. That is nationalism and that is the logic of the position espoused by the two departments I like most. I have postgraduate research students in both Foreign Affairs and Defence, and I want those departments to think straight, and they are not on this question. I am sorry, I think there is part of your question that I have missed.

**Mrs CROSIO**—No. My attention was particularly drawn to page 8 of your submission where it reads:

Parents and teachers cripple their own children by imposing social prejudice on them.

You go on to say that it is ‘not fulfilled as prescribed’ and that UNESCO should tightly monitor periodic reporting. I suppose I have a question mark on that because I was trying to think: how are they going to do it; how are they going to impose or monitor what we are doing in our nation or what we are doing here?

**Prof. Johnston**—I am sorry, I am lost. Who is going to monitor?

**Mrs CROSIO**—You say that UNESCO should tightly monitor periodic reporting under the Convention against Discrimination of Education.

**Prof. Johnston**—I started off with a reference to Mr Ruddock's difficulty with the Committee on Racial Discrimination. That committee was set up under the Convention on Racial Discrimination. Article 13 of the Covenant on Economic, Social and Cultural Rights sets out about the best description of the terms of the human right to education. The human right to education is not just a matter of access to classrooms. I am saying it goes further. The covenant that we have ratified takes you further into the syllabus. Under article 16, we have to make periodic reports. Philip Alston, the Australian lawyer, is chairman of the UN Committee on Economic, Social and Cultural Rights. That committee does not grill member states as closely on the periodic reports under the Covenant on Economic, Social and Cultural Rights as other committees grill member states on their periodic reports under the Covenant on Civil and Political Rights.

**Mrs CROSIO**—Why don't they do that?

**Prof. Johnston**—The Covenant on Economic, Social and Cultural Rights sets out these socialist or social developmental tasks. They are not as cut and dried as the civil or libertarian rights. Libertarian rights are: do you have a vote or do you not? That is comparatively easy. The rights set out in the Covenant on Economic, Social and Cultural Rights are far more complex. They are meant to be achieved progressively. I mentioned UNESCO there because the UN Human Rights Centre in Geneva monitors the Covenant on Economic, Social and Cultural Rights. That is the more important instrument. UNESCO in Paris monitors the earlier convention on discrimination in education, 1960, of which article 7 requires periodic reporting for their biennial governing conferences. That is a chance for UNESCO to advance the human right to education. We have two committees that could advance the human rights to education. That is the monitoring I see. If Mr Ruddock's committee in Geneva can test us on our race relations, then of course any other committee can test us—I hope sympathetically and constructively—on our achievement under article 13 of the Covenant on Economic, Social and Cultural Rights. I would suggest that no-one in Australia has attempted to fulfil our undertakings under article 13, which describes the human right to education. Certainly, I think our approach to human rights in Australia is unacceptably biased.

**Mrs CROSIO**—You do not want to go a bit further on 'unacceptably biased'?

**Prof. Johnston**—If I have to have a bias at all, I go for the Covenant on Civil and Political Rights. We have a human rights commission set up to monitor that. That Human Rights and Equal Opportunity Commission does not monitor the Covenant on Economic, Social and Cultural Rights. The Declaration on the Right to Development 1986 article 6 prescribes that all human rights are interdependent and indivisible. We have divided them. The great human rights conference held in Vienna in 1993 said exactly the same thing, and everyone clucked, 'Yes, we agree.' We do not take that Covenant on Economic, Social and Cultural Rights with any gravity in Australia. That is a serious omission. That is a bias. I repeat, it is a bias we are comfortable with. It is our tradition.

A few years ago, Dr Mahathir of Malaysia said, ‘To hell with your civil rights, let’s have a declaration on development.’ We clucked, ‘Oh, no, the 1948 declaration is important.’ The simple answer was to say, ‘Listen, mate, we have already got your declaration on development—what are you doing about it?’ He has not ratified any of these instruments. But we did not know enough about the instruments to make this intelligent, critical response, and that was a great opportunity lost.

**Mrs CROSIO**—If we—and I should imagine you mean collectively the leaders of this nation—do not know about it, how are we going to educate our children, as many of our submissions are asking us to do, on what the United Nations is all about?

**Prof. Johnston**—We will get there gradually. I have in my suitcase here the UN human rights instruments. I have been teaching on UN law enforcement, and there are two prescribed texts: one is the charter and one is the UN compilation of human rights instruments. Every student had to buy them. They are two marvellous documents. A former secretary of our foreign affairs department Alan Renouf said that the UN charter was the most powerful document in the world, and I think he was right. We speak dismally about the lack of agreement on ethical standards around the world—that is rubbish. The human rights instruments are a very precise—somewhat repetitious, but even the repetition is reassuring—agreement on basic human ethical standards. We have rich documentation here, and the next task is to implement it.

**Mrs CROSIO**—In other words, it is no good having an agreement if no-one agrees.

**Prof. Johnston**—Not if there is no-one to act on it and no-one takes it seriously.

**Mr HOLLIS**—Professor Johnston, we all appreciate that the UN today is a different body from what it was in 1945, and I guess it is facing different challenges, so we come up against this question of sovereignty. There are entities now which have an income greater than the UN, perhaps even a wider reach. Maybe, with globalism and other things, we have to redefine it. How do we deal with these transnational, international, globalised entities with such huge power and incomes and with the potential, if not the reality, to be major players on the international scene?

**Prof. Johnston**—With difficulty.

**Mr HOLLIS**—That is the easy answer; I want you to attempt the difficult one.

**Prof. Johnston**—The previous witness spoke of the crushing of the CTC, the UN Centre for Transnational Corporations. I was there sitting next to Australia’s Allan Asher in New York when that was not exactly killed but transferred to UNCTAD, the UN Conference on Trade and Development. It was pretty largely buried there. That was a strange combination of the power of US boardrooms and Third World governments, which had been persuaded that they were losing their sovereignty. Just in the pipeline was a draft code of conduct for the transnational corporations. I would like to resurrect that and get a bit of regulation. This has to come. You have transnational corporations and you have a growing swag of non-government organisations that all want a bit of the action. This is democracy. I have no desire to change the national based voting in the UN. This will happen one day, but at the moment nations have the running and it is

working pretty well. A change in voting in the franchise in the UN will come, but it is a long way down the track. I do not think it is anywhere near the immediate agenda of this committee.

**Mr HOLLIS**—A suggestion that was put to us in Brisbane was—and it is something that has been mooted with the millennium forum and the millennium NGO meeting—that there be a people's assembly and indeed an assembly with some structure to it almost paralleling the UN on, say, NGOs. Do you have any views on that?

**Prof. Johnston**—I see the UN as the federal world state. I do not know how else to read the charter. In our own federation, we have a Senate giving equal votes to the states and we have a people's house, exactly as in America. We have a Senate on a states basis and then a lower house, a House of Representatives, representing the people. We could well have a representative house for the people. As an Australian I am not in a hurry to promote the people's assembly at the UN. I give my lousy, selfish reason in paragraph 21 of my first paper and in paragraph 10 of my second paper on a population basis, if Australia was lucky enough to get one vote—our population is less than the average of UN member states; even if we include all the South Pacific Forum, I think our population is still less than the average because there are some big states out there—China would have 65 or 68. Damn that.

I am happy to retain our one vote, but in time the pressures will come. I would rather give the vote on this people's basis than to non-government organisations or transnational corporations. I do not think they deserve any particular advancement. A non-government organisation is a marvellous aspect of democratic lobbying, but I do not think they need any special voting representation. Nor would the transnational corporations. Their business is making money, not governing the world. We cannot move without their input, indeed—very sympathetic input and maybe, under the Tobin tax that you were asking the previous witness about, some financial input as well. No, I would not anticipate giving them voting rights.

**Senator BOURNE**—I think, Professor Johnston, you made a comment about the Human Rights and Equal Opportunities Commission looking at civil and political rights. I am not positive of this, but I think if you look in their schedules you will find they do include the ICESCR and they are supposed to be looking at it as well as the ICCPR which I know is there.

**Prof. Johnston**—I would be delighted to be wrong on that.

**Senator BOURNE**—I think it is there. I know that they were asked several years ago to make a special effort to look at economic, social and cultural issues, but I think that with money having been restricted so much lately they are way back to basics.

**Prof. Johnston**—Thank you.

**CHAIR**—We had the issue raised this morning of non-intervention in domestic matters, or domestic issues. I notice that, in the top paragraph of your second page in the supplementary, you ask the question—whether it is metaphorical, I am not sure—of what matters are essentially domestic. Could you just elaborate on that. This seems to be one of the issues that people have the most difficulty with: what matters should be entirely national and domestic, and which are matters that are international.

**Prof. Johnston**—Article 2(7) is a parallel to section 51 of Australia's Constitution, which defines the powers at the centre, leaving the rest to the states. It is just part of our historic nationalist prejudice that we read this expression, 'essentially domestic matters', as encompassing everything. That is all I am questioning here. Essentially domestic matters are not simply matters which have traditionally been handled by the nations. Obviously, throughout history, everything has been handled by the nations. And the rest of that paragraph is devoted to your question. It has been agreed in the charter, in article 55, that the United Nations 'shall promote higher standards of living, full employment and conditions of economic and social progress and development'. Article 55 also goes on to talk specifically of human rights. I would be delighted if you could tell me anything that is not covered by economic and social progress and development.

**CHAIR**—I understand that. But what about specific issues? For instance, we raised the issue this morning about what a domestic issue is and I said, 'Is the issue of mandatory sentencing'—on which there is a variety of views in our community—'a domestic matter or, as signatories to the human rights charter, has it become a matter that is not essentially domestic?' There is a blurring of the line. Regardless of people's views on mandatory sentencing, there are some who would say, 'This is a domestic matter for the Australian people to decide, and it is nobody else's business'—I could not put it any cruder than that—and there are others who say, 'But, look, you have signed a charter; you've signed an obligation which covers this issue.' So where is the line for domestic issues?

**Prof. Johnston**—I think the line is like a line in the sand. It is where we draw it. I think that, with the Tasmanian dams case, we had this issue of UNESCO's world heritage convention changing the division of powers within Australia—centralising powers from the states to the Commonwealth of Australia. The human rights instruments are doing that also—centralising powers on matters of imprisonment from the states to Canberra and from Canberra to Geneva. That is happening, and I think there is no stopping that.

As I said in my opening remarks, our response to UN strictures on our local race relations and on our imprisonment practices is to knock those UN committees for six with critical responses—not by saying, 'We don't like you talking about it.' A loyal opposition party is radically critical but it does not impugn the legitimacy of the government that it is opposing. I think that is our answer.

On mandatory sentencing, I think that the UN instruments—and there are many of them, covering imprisonments—certainly must be respected. They do govern the situation. In article 16 of my second submission I say that I am not happy with the course that that discussion took. I believe that the discussion has really been premised on the assumption that prisons are inherently violating human rights, anyway, and I think that that very statement is a violation of article 10(3) of the Covenant on Civil and Political Rights.

As a criminologist, I am properly critical of prison conditions, but I certainly regard it as idiotic to say that imprisonment inherently violates human rights. It does not. And I think that the level of discussion here has been very bad. I would have answered the CERD—the UN Committee on Racial Discrimination—much more critically on this. This has been an issue. Carmen Lawrence enacted this legislation first in Western Australia. If she had not enacted it I think we would have had lynch law. We had public protests about young Turks racing around in

stolen cars and killing people. I think she overreacted. She has said since that she thought it was wrong but she did not know what else she could have done, and I think she was probably right.

This might have been an overreaction but certainly not a violation of human rights. So I do not think the question you are asking is entirely it. My answer to your question is: I think the UN certainly has a right, an obligation, and we have an obligation, to examine our sentencing practices. But I am much more sanguine about the outcome. As I said also in that opening statement, I think respect for the UN does not mean kowtowing to it. I like our prisons; they are better than most prisons. We had recent criticism in Victoria on a sentence which was too lenient on two blokes who murdered, killed, someone in the gardens here. People were saying, 'Well, let's have some mandatory sentencing on that.' I think that probably the mandatory sentencing provisions in WA and NT are excessive; they are unwise, but I would not call them violations of human rights. I am sorry; I am rambling. To answer your question, I think the UN certainly is entitled and obliged to get right into our prison cells.

**CHAIR**—I am not sure I am glad I asked that question; I am not sure that I am not more confused than ever. I can understand why people who are less aware of the role of the United Nations and the provisions of the instruments could say, 'The United Nations should keep out of this; it is none of their business and we have a right to make our own rules and to run our own country.' They are totally unaware of what commitments we have made because of our obligations through the instruments. Without wanting to debate the issue, I can understand how some people in the community feel strongly about those sorts of issues without the knowledge of how they came about in the first place.

**Prof. Johnston**—Yes. My cure for that is better education on the UN charter and the human rights instruments, in particular, so that we are as vigorously critical of UN functioning as we are of local government functioning.

**Mrs CROSIO**—It is a few years since I went to school; what are our students being taught about the UN?

**Prof. Johnston**—Nothing seriously anywhere.

**Mrs CROSIO**—In years gone by we used to have days when the UN was celebrated. It was a special day at school when you raised money for the UN and did things like that. They do not do that any more, do they?

**Prof. Johnston**—No. Loyalty has become a bit of a dirty word, and that is unfortunate.

**Mrs CROSIO**—To your knowledge, is this happening in secondary schools?

**Prof. Johnston**—No, nowhere at all. I have been teaching criminology at universities and the people I get from schools of politics and law are so badly educated about the UN that it is extremely serious.

**CHAIR**—I am sorry, we do have to finish right on 4 o'clock at the latest. Thank you very much for your contribution today. Reading through the history of your employment and the other things you have done in relation to the United Nations, I can see that you have a very

well-qualified background to give us this sort of information. Your contribution to this inquiry has been invaluable. Thank you very much.

**Prof. Johnston**—Thank you. I wish this committee well. Your question is of the first importance.

**CHAIR**—Thank you.



[3.12 p.m.]

**DOWNIE, Ms Sue (Private capacity)**

**CHAIR**—Welcome. 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 take an oath, you should be aware that this does not alter the importance of the occasion, and 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 we would consider that request. We have received your submission and it has been authorised for publication. Do you wish to make any additions or corrections to that submission?

**Ms Downie**—I am appearing in a private capacity, although I am at Monash Asia Institute, Monash University. There are no corrections to the submission; I have an addition which could be presented verbally now or added as an appendix.

**CHAIR**—How long is it?

**Ms Downie**—It is two pages.

**CHAIR**—You can present that verbally because I am going to invite you to make an opening statement anyway and you can incorporate that into the opening statement.

**Ms Downie**—I am appearing today in a private capacity, not representing Monash University, although I am doing my PhD at Monash on peacekeeping. I appear before the committee on the basis that I am working on a book on peacekeeping in Cambodia and also the PhD thesis, which is on the development approach to peacekeeping and peace building. The addition that I would like to make to my submission, because it was made some time ago and, as you would know, things are moving relatively fast, especially in East Timor—which is where I focus my attention as well as on Cambodia—is as follows.

The mission in East Timor, UNTAET, appears not to have mastered two of the early problems that were experienced in Cambodia. My thesis and my submission are based on lessons learned from Cambodia that would be useful for future missions, especially in East Timor as it is also South-East Asia, it is current and it is close to Australia. The two problems experienced in Cambodia that I think are not being addressed in East Timor are, first, the hiring of appropriate staff and, second, local resentment towards the UN.

East Timorese leaders are criticising UNTAET for hiring inexperienced and inappropriate staff who have little or no experience nor knowledge of East Timor's political, social and cultural environment. This is exactly what happened in Cambodia. This is an entrenched and ongoing problem for the UN but it could be alleviated by the UN providing much more comprehensive training and briefings before recruits go into the field. For the August referendum, the UN volunteers posted to East Timor as electoral workers underwent five days

training in Darwin before they were deployed to East Timor. That was a major commitment by the UN mission then, but it could be argued that five days is not enough, and certainly not all the staff received that training. When the UN is spending such a large amount on peacekeeping—especially in East Timor, the budget is very high proportionate to other missions, including Cambodia—one could expect that it would spend more time on preparing staff, in terms of briefings and information, before they go into the field.

Some countries are better than others at preparing missions. The Canadians are among the most experienced peacekeepers, and those who went to Cambodia underwent almost three months training prior to departure, in combat first aid, negotiating skills, defensive driving, convoy skills, ambush drills and a refresher course for weapons. In addition, they had lectures on the history of the UN and the Cambodia mission, UNTAC, and also the history, culture and religion of Cambodia. This was an extraordinary commitment from the Canadians. I must say the Australians, prior to departure, also had preparation, but nowhere near the degree that the Canadians had.

Most international staff, on the other hand, attended two or three days of briefings after arriving in Cambodia, and their subsequent actions in the following months proved that that was not enough. There was a lot of controversy over the behaviour of some of the international staff, and criticisms because they were not sufficiently aware of the Cambodian political, social and cultural situation and therefore were not able to handle the situation and certainly were not able to control the administration, which was what the Cambodian mission was supposed to do—one of the five key tasks. I think they failed to do that because they hired people who did not have sufficient knowledge or experience of Cambodia, and then, even if they did not have sufficient knowledge or experience, they were not briefed sufficiently before they went in to Cambodia.

I recognise that it is impossible for newcomers to a region to acclimatise physically and culturally in such a short time. They must simultaneously find accommodation, identify services, hire local staff and fully understand the mission mandate, their component's role and responsibilities within the mission, and how their work fits into the overall mandate of the mission. In addition, they have to have a thorough understanding of the recent political history, especially the workings of the government and the administrative, political and military links, who is who and who is able to influence whom. International people fresh out of New York, Geneva, Melbourne or anywhere else should not be expected to go into a country—in most cases, one which they have never been to before—with very little preparation. Even basics, like reading about the country before going, just do not happen in UN missions, except very, very rarely. There are some exceptional individuals who will make the effort to prepare before they go, but the UN as a system, or the peacekeeping component, does not have a mechanism for sufficiently preparing people before they go into the mission.

In the case of Cambodia, one of the key UN mandates was to control the administration. People who were fresh out of New York were expected to control a communist system that had been in place for 13 years, that was not only thoroughly entrenched but also pervasive throughout the countryside, from the state council level to the village level, and a key element of that administration of that regime was secrecy. So to expect someone to come in from outside with no prior experience of Cambodia and to not only understand but also control that administration was extremely difficult. I think that is one of the reasons the UN failed in that task. It had five key tasks and that was one that it did not accomplish.

The second problem experienced in Cambodia, and which I think is being repeated now in East Timor, is resentment from the local population towards the UN. Firstly, there is resentment from the local leaders that the UN is taking or controlling their positions, especially in administration; and, secondly, resentment from the general public because the UN staff have better resources, salaries, cars, houses, access to restaurants, while unemployment remains at 70 per cent to 80 per cent in East Timor. These matters are cause for resentment. We saw the same thing in Cambodia but I think it is more dramatic in East Timor. The gap between the two is wider in East Timor.

In Cambodia, for example, one UN staff could earn in one day the equivalent of what a local civil servant could earn in 12 years. The UN staff received their salary plus per diem, known as an MSA—mission subsistence allowance—of \$US140 a day. If you consider that a Cambodian civil servant at that time earned, on average, \$US25 a month, then it comes out at 12 years.

**Mr JULL**—Was everything in US dollars?

**Ms Downie**—Yes. Although that sounds dramatic, keep in mind that the cost of living in Cambodia was much less than it was in the West. But in order to attract people of sufficient calibre to come and work in another country, in a mission, the UN has to pay decent salaries. I do not think that is going to change. I do not think there is any way around it, but the UN must keep in mind this enormous gap between what its people are earning and what the locals are earning.

The other component to consider is that the budget for the UN mission is generally spent outside the country, with a small proportion spent on the local economy. For example, in the beginning of the Cambodia mission, only 11 per cent of the budget was spent in Cambodia—all the rest was spent on procurement, catering services, air support services, prefab accommodation and vehicles. Two of those four examples I gave happened to be Australian companies. All the vehicles were bought from Japan. Only 11 per cent of the total budget actually remained in Cambodia. Another element to keep in mind is that often the salaries for the staff are paid directly into bank accounts in Melbourne, Geneva or New York, to use the same examples again.

The current mission in East Timor has acknowledged that they are having difficulty hiring experienced and valuable senior staff. In addition, they have also lost some very experienced and valuable staff. I do not think it is appropriate to name names, but some very senior people who would have been a great asset left East Timor because they were frustrated by the UN system. The UN in East Timor is also being accused by the East Timorese leaders of overlooking local personalities for UN positions. You may well have heard already that the regional district administrators are complaining about this. Discontent has been expressed on the streets and in the rice fields, as well. There have been demonstrations outside the UN headquarters, et cetera.

In summary, the East Timor mission represents the UN's fourth attempt at conducting a ballot and controlling a straight states administration. Together with the people of East Timor, the UN will be creating a new state, and this does not happen very often. Therefore, it is in a unique position to show that it has the will and the ability to implement or reject lessons learnt from previous missions. The UN can do this by combining its skills in peacekeeping, balloting and

state building, to develop solid foundations for sustainable political, social and economic development, which should be the core elements of building a new state.

As Boutros-Ghali has said, 'Peace development and democracy are interlinked.' This in a way calls into question—but I will diverge for a moment. At the Asian Studies Association conference yesterday, I presented my paper on East Timor and Cambodia comparisons. One of the East Timorese stood up at the end and said, 'What's the UN doing in East Timor? Why are they there? We don't want them there.' The debate which followed entailed questions about the role of the UN in terms of peacekeeping these days, because it is moving much more into these complex peacekeeping operations. I am not sure what background you have had already on the move into comprehensive second-generation peacekeeping operations. Traditionally, peacekeeping was lightly armed or unarmed observers monitoring an agreed ceasefire. They were all key words. They were always military; they were monitors; they did not interfere; they were lightly armed, or unarmed; and it was an agreed ceasefire. That has spread into a much more comprehensive peacekeeping operation now that involves policing, human rights, electoral work, supervision of administration and things such as writing constitutions for new administrations, retraining the police and re-establishing the judiciary. All of these are components of a peacekeeping operation of the 1990s, Cambodia being the most comprehensive and the best example of a comprehensive peacekeeping operation. One has to ask: what is the UN doing in East Timor? It is not a traditional peacekeeping operation. Should we in fact still call it peacekeeping, because it is not; it has moved into the realm of development?

Up until 1989, until Namibia, I think about 18 peacekeeping missions were involved in the traditional monitoring of an agreed ceasefire. From Namibia onwards, we have seen peacekeeping operations moving into this development realm. So all those things I listed—re-establishing administration, setting up courts and judicial systems, retraining police and military after the military have been disarmed, preparing the election, conducting civil education, conducting human rights awareness—come under the banner of development and post-conflict reconstruction. Are they, in fact, peacekeeping? Maybe this term 'peacekeeping' ought to be reconsidered as another term. That is something that is very current and very timely that arose yesterday at the ASA conference.

**CHAIR**—Ms Downie, I want to want to look at the problems. I am not sure you have given us many answers, particularly in relation to things such as whether United Nations personnel are going to be paid at a rate that it is going to be envied by the local population. If you cannot get people to go to those countries unless you pay them those sorts of salaries, it seems to be a bit of an insoluble problem. If you cannot get them there, they cannot perform the job, and if you do not pay them the money you cannot get them there, and that is what breeds the resentment. That is one of the issues that I think we would find very difficult to find answers to. The other thing in relation to East Timor is that many of us in this group went to East Timor in early December last year, and I could say only that the atmosphere was one of welcome to the Australian forces that were there. We could feel no resentment anywhere.

**Ms Downie**—Sorry, what month was that?

**CHAIR**—We went in December when INTERFET was still in operation. It was always going to be the case that the United Nations were going to take over the operations. I do not know that in my mind I still think of it as a peacekeeping operation. I do not think many do

because there were so many more things to be done there. The peace was made by the time the United Nations got there, and we had had a peacemaking operation and a peacekeeping operation for three months. I do not know what other body could reconstruct a society where there was no structure left—no civil structure, no judicial structure—other than the United Nations. If that breeds resentment amongst the local population, I do not know what the alternative is. I do not know whether you have any comments to make on that.

**Ms Downie**—Only that in my submission I end by saying that there is no simple solution. The UN must offer higher salaries to attract experts from their offices in New York or agricultural projects in Germany, but these salaries are not in keeping with the development ethos. The one way, perhaps, of lessening the resentment is to communicate more with the local population in a way that you would not have seen in December when INTERFET was there. It was a quite a different situation then from what it is now.

**CHAIR**—I understand.

**Ms Downie**—The resentment has come in more recent times. INTERFET was seen as the saviours. It was an immediate—

**CHAIR**—Liberators almost.

**Ms Downie**—Exactly. It was an immediate need and they got on very well. In this next phase, which is the rebuilding phase, there has been resentment, firstly, because it has not gone as fast as they wanted to and, secondly, because of the problem of disparity between the rich and the poor. That has been exacerbated in the past six or so weeks. In the past two months it has really been much more evident than when you were there.

**CHAIR**—The rich and the poor do not necessarily stop at United Nations people. There are some East Timorese loosely termed ‘elite’ who have considerable influence in East Timor at present. How much of that resentment is aimed at those East Timorese people and how much is aimed at the United Nations?

**Ms Downie**—I have not seen any reports on resentment towards the East Timorese, but I have seen a lot of reports on resentment towards the UN and the international staff. They are simple things such as the UN staff personnel flaunting their wealth, perhaps unnecessarily. I think this goes back to the briefings that the international staff have before they go in order to prepare them for what to expect there, what the circumstances are and the fact that there may well be resentment—and how can you lessen that?

I saw it in Cambodia time and again. There was not enough interaction. It was almost like two worlds. There is them and us. Some of the UN international staff would be driving around in their big four-wheel drive vehicles taking up parking spaces that the Cambodians were used to having and driving excessively fast and dangerously. They killed Cambodians on the road and there was a huge report on this and how many accidents there had been. It is an attitude thing. They should be briefed sufficiently before they go about how to lessen resentment by hiring local staff. As I have indicated, the salaries of the international staff in Cambodia are such that you could hire someone for several years. With the huge unemployment there at the moment, there is no reason why the international staff could not hire more local staff.

**CHAIR**—Have you spoken first hand to people in East Timor?

**Ms Downie**—Yes, at various times and including yesterday.

**CHAIR**—Have you had a chance to have a look yourself?

**Ms Downie**—I have not been back since September.

**CHAIR**—Since September last year?

**Ms Downie**—I was there as an observer for the referendum and got out just after.

**Mr JULL**—Can I follow this line a little bit? Perhaps this is grossly unfair, but it was put to me by somebody who is in the system that one of the difficulties you have with the UN staff is that it is very much a club, that there is a system of mates and they will go in and they will pick up their mates and the mates are probably not qualified for anything much. The second thing that was put to me is that the club also operates in procurement and that it was fairly established that Australia was not going to get too much out of East Timor at the end of the day because there were companies in places like Sweden and France—there were three in particular—and they believed, in terms of things like food and catering contracts even, that the Europeans were more likely to get this because of the old ties and the way the system worked.

**Ms Downie**—Perhaps also because, if I could just add, in Cambodia it was an Australian catering company so it is someone else's turn now.

**Mr JULL**—So there is some justification for people perhaps suggesting that this happens?

**Ms Downie**—Most definitely. In my experience in Cambodia there was no question that both of those points you raise are right, that it is a mates club hiring their friends who may not be qualified and, secondly, that there are networks for procurement. There was a lot of dodgy procurement in Cambodia—it was very dodgy. But I do not want it to appear as though everything I am saying is negative. There are some fantastic people who have done a fantastic job who are committed. Many people in Cambodia did not even know they were getting the MSA. They went there not even knowing they were going to get the \$140 a day and they were shocked when they were told that they would be getting it. It is the same in East Timor. There are people there who want to be there because they want to help and they want to contribute: they are not there for the money. But, on the other hand, the mates club does also work to hire people who are not sufficiently qualified, and I know of examples.

**Mr JULL**—I was trying to back you up on that because it would seem crazy to me that if a Danish catering company was supplying food into East Timor and they were using Ecuadorian bananas as part of that contract, why the hell couldn't they go up the mountains and go to one of the roadside stalls?

**Ms Downie**—The problem in Cambodia was—and I do not know about procurement in East Timor—as an example, as a parallel, that there were not sufficient materials in Cambodia. They had to procure outside the country, and there was no question of that. Secondly, at the same time they should have been trying to develop a local industry. As one example, the potato industry

sprang up in Cambodia. Cambodians do not generally eat potatoes, but there was a Uruguayan battalion and the Cambodians recognised that the Uruguayans liked potatoes so they started planting potatoes. That just happens spontaneously. We do not think of this as a peacekeeping operation; we think of it as a peace building operation. I consider it as a development program.

One of the key elements of a development program is participatory development—including the local people so they make the decisions. First, they recognise the needs and they make the decisions on what is going to happen and they implement it and evaluate it. They own the program, and in that way it is much more sustainable. I maintain that the house that UNTAC built in Cambodia fell down because the foundations were not solid. It fell down in July 1997 during the so-called coup. That was the crux of it. It had been building up till then and that is when it fell apart. Unless the foundations of a development program are really solid, it is not going to be sustainable. The test of sustainability is when the patrons withdraw, when the UN leaves and when the international community leaves. Unless the foundations are solid it is going to fall in. One way of making that solid is to involve the local people—participatory development.

**Mr JULL**—That was the suggestion that was made to me, that it would have been much better to get a couple of hundred East Timorese together and teach them how to put together a prefabricated house before we actually brought them in. Then that would be with them forever. In fact, you would get the thing started and just let them go.

**Ms Downie**—I agree. I could give you a huge list like this of examples from Cambodia. Just let me give you three very quickly to illustrate why I think it should be a development approach. First, the Japanese battalion south of Phnom Penh, an engineering battalion—

**Mrs CROSIO**—You have got it in there.

**Ms Downie**—I have got it in there. I will not repeat it. Then there is the Chinese battalion with the bridges. I am sorry; I have written so much on this. I cannot remember which one went where.

**Mrs CROSIO**—Can I ask you about not only the examples you have given there but what you have said here of Cambodia and East Timor. Obviously the United Nations must have recognised the problems that happened in Cambodia. They must have been aware of it because they have seen what happened there. These examples come forward. People like you are able to provide information; you are able to provide studies. But we have gone into East Timor and done the same thing. When is the door going to open and the light come through? People are saying we have got to educate the community at large to understand the United Nations. We have got submissions to say the United Nations are doing a lot of good work, and they are. You have given us a submission not wishing to be all negative, but the same thing seems to be applying—we are getting more and more evidence of repetition and mistakes without learning from those and improving in the next area.

**Ms Downie**—I could not agree more. This is a really key problem with the Department of Peace Keeping Operations in New York. They have a ‘lessons to learn’ unit but even people who work there admit that it does not work. There is no culture within the UNDPKO of looking back, analysing, assessing, accepting or rejecting. They go in and think, ‘This is a new mission;

we are going to do it our way.’ They do not look back on previous reports. Just quickly, another example—

**Mrs CROSIO**—Constant mistakes.

**Ms Downie**—Cambodia came immediately after Namibia and even included some of the staff from Namibia, including the police chief, Klass Roos. They did not look back at what happened in Namibia to see what they could do in Cambodia. They are not looking at any of the lessons learned documents that were produced after the Cambodia mission. There are piles and piles of papers that have gone to New York. Every department in the Cambodia mission had to produce a lessons learned document at the end of the mission.

**Mrs CROSIO**—And no-one has read them?

**Ms Downie**—I would like to know if anyone has read them. What we see is a repeat of the same mistakes and the same approach.

**Mrs CROSIO**—Who in your estimation would be responsible for the direction?

**Ms Downie**—DPKO. It is an attitudinal thing. It is a culture within DPKO, and perhaps in other UN departments and agencies—I do not know. But certainly there is lack of continuity, which seems extraordinary because the head of DPKO at the moment is Hedi Annabi who was involved in the preparations for the Cambodia mission. He was instrumental in bringing about the peace agreement of 1991. He has enormous background on Cambodia and also in other areas. There are people who have worked on previous missions. I do not want to name names but there is another one who was in Cambodia who was on the East Timor desk and is now in East Timor. I imagine he is pulling his hair out with frustration because he can see what happened elsewhere is not happening now in East Timor. I am sure there are examples from other missions but I have not looked at them. I have only looked at Cambodia and East Timor.

**Mr JULL**—During my brief time at the UN General Assembly and through getting involved in a few committees, I think if I had any one particular criticism of some of the bureaucrats in New York it is that basically they were pretty arrogant.

**Ms Downie**—Maybe.

**Mr JULL**—You have not found that?

**Ms Downie**—I would not want to comment on that. There are some very good people in the UN.

**Mr JULL**—Yes, there are.

**Ms Downie**—I do not want everyone to be tainted with the same negative—

**CHAIR**—Treat Mr Jull’s comment as an observation.



**Senator BOURNE**—Can I go on from what Mrs Crosio was saying? I have been to the UN a couple of times and talked to people in various departments. I always seem to be talking to somebody different that I have not talked to before. I went in December last year to talk to people at the UN about East Timor. One of the people I was speaking to, who was very senior and should have known, had no idea what the Australian Electoral Office had been commissioned to do by the UN when they were getting together the rules for the ballot. They just did not know. In fact I said I would pass it on, I would get the right person in the AEC to get on to him. But they were commissioned by the UN to do it. How come this person who was in charge of it, or virtually in charge of it, had no idea and did not even know to ask? It was not until I volunteered the information that he realised that this information was available. So it seems to me that there must be a huge turnover and just no passing on of even the most basic information when that happens. Are you aware if that is the case?

**Ms Downie**—Most definitely—and I have many examples. The Electoral Commission is one. Another example is from when I was in East Timor just before the referendum. I went to see the legal adviser, who happens to be a professor of law from Harvard, and he gave us a copy of the *Code of Conduct for the Referendum*—that is its actual title. I went through it and noticed quite a lot of things that did not jell with me and I went back to him and said, ‘What about this, this and this?’ At the end I said to him, ‘How many examples have you got in here from the Cambodian electoral law?’ and he said, ‘I didn’t know one existed.’

The UN has an Electoral Assistance Division that was set up several years ago and has assisted with conducting elections and referendums in something like 79 countries or states. It is often in the form of providing technical assistance to existing electoral systems, so they have vast experience—at least 79 missions in developing countries post conflict.

In Cambodia, when they came to write the press law two self-appointed guys—one was a professor of law from a prestigious American university and, off the top of my head, I am not sure where the second one was from—sat down over a weekend or a week or so and wrote the Cambodian press law, which turned out several years later when I was working in Cambodia on the press law to be a disaster. As a result of that, the Cambodian government used that as their excuse to make defamation a criminal offence in the Cambodian press law.

Why would these two not have referred to the Electoral Assistance Division in New York, which has vast experience in this area? If there were two things that I would like to see changed—my wish list for peacekeeping—one would be the lessons learnt. The other thing would be that the development approach be incorporated into ‘peacekeeping’ missions. To me it is peace building; it is state building; it is a development program. There is very little peacekeeping left in it these days.

**CHAIR**—Sometimes it is post peacekeeping, isn’t it?

**Ms Downie**—Yes, you can have both pre and post peacekeeping, peace building and development. You can have it going on before, during and after. The argument in my thesis is that the Cambodian mission was an example where we could have had development during the peacekeeping operation, and we did, to a certain extent, but there was not enough—as in the examples that I have used. But in East Timor there is peace, so that is not the priority. The priority is building the country, building the state and rebuilding the social and physical

infrastructure. I am saying that DPKO should be doing that with the two elements of a sustainable development approach so that, when the patrons withdraw, it continues, and an element of that is participatory development, including the locals, to make the foundations solid. They would be my two strongest wish lists for DPKO.

**CHAIR**—Thank you very much, Ms Downie. I think that the difference between the example of East Timor and many of the others is that, after the INTERFET left, there was no need to build the peace within the country itself. The only line of hostility is the border, whereas in lots of other elements of peacekeeping they have to keep apart the warring factions or the ethnic groups or whatever it may be within the country. So East Timor is really a different situation. I guess you could say that East Timor is a nation-building enterprise as much as it is a peacekeeping enterprise.

**Ms Downie**—Most definitely. I put peacekeeping in inverted commas when talking about East Timor. I do not regard it as a peacekeeping operation, certainly not in the strict definition—a historical, traditional way. It is definitely a nation-building mission.

**CHAIR**—How long were you in Cambodia?

**Ms Downie**—Six years—before, during and after the Cambodian mission. In my last year, at the invitation of Prince Ranariddh, I worked as a media adviser in the coalition government. It was very interesting. I got to see the post conflict rebuilding and reconciliation which is a very important phase of any mission.

**CHAIR**—Can I say on behalf of the committee that we are very pleased that you offered to give us evidence today. We find that people with experience in the field have given us in-depth evidence which comes from experience, rather than from an ideological stance. Your contribution is greatly appreciated by this committee. Thank you very much for appearing today.

**Ms Downie**—Thank you.

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

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

**Subcommittee adjourned at 3.51 p.m.**

