



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, 22 MARCH 2001

CANBERRA

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, 22 March 2001

**Members:** Senator Ferguson (*Chair*), Mr Hollis (*Deputy Chair*), Senators Bourne, Calvert, Chapman, Cook, Gibbs, Harradine, O'Brien, Payne and Schacht and Fran Bailey, Mr Baird, Mr Brereton, Mr Laurie Ferguson, Mr Hawker, Mr Jull, Mrs De-Anne Kelly, Mr Lieberman, Dr 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 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, Hollis and Nugent

#### 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

**CALLAN, Mr Peter, Director, Multilateral Agencies and Human Rights Section, AusAID.....561**

**CARMODY, Mr Shane, First Assistant Secretary, Strategic and International Policy Division,  
Department of Defence .....515**

**CASAGRANDE, Group Captain Ric, Director, Operations and International Law, Defence  
Legal Office, Department of Defence .....515**

**CUDDIHY, Mr Don, Executive Officer, Middle East Section, Department of Foreign Affairs and  
Trade .....491**

**DARVILL, Mr Steve, Program Manager, Humanitarian and Emergencies Section, AusAID .....561**

**DAWSON, Mr Scott, Assistant Director General, East Asia Branch, AusAID.....561**

<b>EARLE, Lieutenant Commander Alan, Acting Director, Australian Defence Force Peacekeeping Centre, Department of Defence .....</b>	<b>515</b>
<b>FROST, Ms Robyn Louise, Acting Assistant Secretary, Public International Law Branch, Office of International Law, Attorney-General's Department .....</b>	<b>550</b>
<b>GATELY, Commodore Warwick, Director-General, Joint Operations, Department of Defence .....</b>	<b>515</b>
<b>GILLIES, Ms Ali, Assistant Director General, International Program Branch, AusAID.....</b>	<b>561</b>
<b>GORELY, Ms Amanda Louise, Project Manager, Human Rights and Indigenous Issues Section, Department of Foreign Affairs and Trade .....</b>	<b>491</b>
<b>HERD, Mr Warwick, Executive Officer, United Nations and Commonwealth Section, Department of Foreign Affairs and Trade .....</b>	<b>491</b>
<b>HODGES, Mr Chris, Principal Legal Officer, International Branch, Criminal Justice Division, Attorney-General's Department .....</b>	<b>550</b>
<b>JOBSON, Colonel Keith, Director, Directorate of Strategic Wargames, Department of Defence.....</b>	<b>515</b>
<b>KELLY, Lieutenant Colonel Mike, Head, Military Law Centre, Department of Defence .....</b>	<b>515</b>
<b>MacKINNON, Captain Andy, Director, UN Peace Operations and Arms Control, Strategic and International Policy Division, Department of Defence .....</b>	<b>515</b>
<b>MARSHALL, Mr Steven, Assistant Secretary, International Branch, Criminal Justice Division, Attorney-General's Department .....</b>	<b>550</b>
<b>NAGY, Colonel Bill, Director, UN Logistics, Strategic Command, Department of Defence.....</b>	<b>515</b>
<b>NEUHAUS, Mr Matthew, Director, UNC, Department of Foreign Affairs and Trade .....</b>	<b>491</b>
<b>RITCHIE, Mr David James, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade .....</b>	<b>491</b>
<b>ROWE, Mr Richard, Assistant Secretary, Legal Branch, Department of Foreign Affairs and Trade.....</b>	<b>491</b>
<b>SCOTT, Mr Keith, Manager, UN Program, Multilateral Agencies and Human Rights Section, AusAID .....</b>	<b>561</b>
<b>SHIPLEY, Ms Ellen, Acting Assistant Director General, Humanitarian and Community Branch, AusAID .....</b>	<b>561</b>
<b>SIDOTI, Mr Christopher Dominic (Private capacity) .....</b>	<b>532</b>
<b>SKILLEN, Mr Geoffrey, Senior Legal Officer, International Branch, Criminal Justice Division, Attorney-General's Department .....</b>	<b>550</b>
<b>SMITH, Mr Roderick Richard, Assistant Secretary, International Organisations Branch, Department of Foreign Affairs and Trade .....</b>	<b>491</b>
<b>STUART, Mr David, Deputy Permanent Representative, Australian Mission to the United Nations, New York, Department of Foreign Affairs and Trade.....</b>	<b>491</b>
<b>TAPP, Mr Charles, Deputy Director General, Pacific, Humanitarian and International Division, AusAID .....</b>	<b>561</b>

<b>VAN DER WAL, Mr Eric, Director, Human Rights and Indigenous Issues, Department of Foreign Affairs and Trade.....</b>	<b>491</b>
<b>ZANKER, Mr Mark, Acting First Assistant Secretary, Office of International Law, Attorney-General's Department .....</b>	<b>550</b>



**Committee met at 9.58 a.m.**

**CUDDIHY, Mr Don, Executive Officer, Middle East Section, Department of Foreign Affairs and Trade**

**GORELY, Ms Amanda Louise, Project Manager, Human Rights and Indigenous Issues Section, Department of Foreign Affairs and Trade**

**HERD, Mr Warwick, Executive Officer, United Nations and Commonwealth Section, Department of Foreign Affairs and Trade**

**NEUHAUS, Mr Matthew, Director, UNC, Department of Foreign Affairs and Trade**

**RITCHIE, Mr David James, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade**

**ROWE, Mr Richard, Assistant Secretary, Legal Branch, Department of Foreign Affairs and Trade**

**SMITH, Mr Roderick Richard, Assistant Secretary, International Organisations Branch, Department of Foreign Affairs and Trade**

**STUART, Mr David, Deputy Permanent Representative, Australian Mission to the United Nations, New York, Department of Foreign Affairs and Trade**

**VAN DER WAL, Mr Eric, Director, Human Rights and Indigenous Issues, Department of Foreign Affairs and Trade**

**CHAIR**—I declare open this second day of public hearings into the public hearing of the United Nations Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. These two days are the final public hearings in our inquiry into Australia's relationship with the United Nations and the prospects for reform of the United Nations in the post Cold War era. 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. We anticipate that our report will be tabled before the parliament rises for the winter recess in June.

I welcome members of the department and officers from the Department of Foreign Affairs and Trade to provide evidence to this subcommittee, bearing in mind that you have already given us some evidence at an earlier hearing. We took evidence from your department in May last year and we appreciate your time in helping us to conclude our inquiries and answering some of the questions that have arisen because of evidence that has been given to us by other people.

I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings of the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware it 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 time or at any stage wish to give evidence in private, you may ask to do so and the committee would consider such a request. We have received the primary and supplementary submission from the department. They have been authorised for publication. Are there any additions or alterations you want to make to either of those?

**Mr Ritchie**—Not at this stage.

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

**Mr Ritchie**—Thank you. I just want to say a couple of really very small things by way of introduction. My predecessor, Michael Potts, in May last year delivered quite a substantial opening statement to you. Rather than go over that ground again, can I just say that I have been in the job now for only about four or five weeks, so in the joy of having experts around me we have brought along some genuine experts in the form of Rod Smith, who as you know until recently was at our mission in New York, and David Stuart, who is the deputy permanent representative in New York, just happened to be in town at the time, so it is a very happy coincidence as far as we are concerned. We were also very happy to have had members of the committee in New York late last year, and I understand that would have helped the committee a lot with its inquiry and understanding of the arrangements in New York. I will probably just leave it at that. We are very happy to answer any questions or any additional questions that the committee might have. Rather than waste your time with a further statement, I will leave it at that, I think.

**CHAIR**—Thank you, Mr Ritchie. There are a couple of things I think we should get on the record for this public inquiry, although the answers may be known and have been discussed in general discussions previously. One is in the area of reform of the United Nations, which is one of the issues that we are looking at. I am wondering whether you could perhaps describe to us the Australian government's position on the reform of voting blocs within the United Nations.

**Mr Ritchie**—We are very keen to, and we have been working hard at, trying to persuade people of the value of a reorganisation of the voting blocs in the United Nations. We think it is a longer term goal, what we call electoral reconfiguration, and our mission in New York—and I will ask David to say something a little more in a moment—is engaged in the process of educating delegations about reconfiguration and building support for our aims.

As you are aware, support for the concept of electoral group reconfiguration is mixed across the UN system, I think it is pretty fair to say. As more Pacific island countries, particularly, have become members of the United Nations and more active in the United Nations, we have got a lot more support from them for electoral group reconfiguration and our position within both WEOG and their position elsewhere in the Asian group and elsewhere have made us both realise that electoral group reconfiguration would be a desirable goal.

We have found a bit of interest on the part of a number of other countries from other electoral groups, but there is also really quite a lot of caution about it at the moment on behalf of some countries. That includes countries which obviously have vested interests in the status quo, but also a lot of the African countries, Arabs and Latins are very comfortable with the current situation. That is roughly what I would say. We see it as a long-term goal. We see it as



something desirable. We certainly are going to keep plugging away at it, but I do not think there is any particular prospect of it happening any time soon. David, do you want to add to that?

**Mr Stuart**—I can tell you a little about some of the things we have been trying to do and give you a sense of the progress we have made, although I absolutely agree that while we are active on this and we give it quite a lot of priority, at the same time realistically any movement is gradual and there is no short-term prospect of breaking through.

We have had a sort of a strategy for this and it is built around using formal opportunities in UN debates, such as the general debate in the 55th session of the General Assembly when Mr Downer addressed this issue and said quite a bit on it, using those opportunities and seminars and informal exchanges to register that this is an important issue for us.

We are also working methodically to build up support across a number of the regional groups, so not simply in, say, the Western European and Others Group, which we would like ultimately to leave or be changed, but also in the other continents where they may have less interest in changing the status quo.

We have been working to get greater recognition of our distinctive regional role and identity, and a notable way of doing that has been through asserting our Pacific credentials and promoting solidarity in the Pacific Island Forum Group, which is very active in New York. At present, it meets two or three times a month. We are always there. The chairmanship of this has been rotating monthly. We will chair it in April.

We have been trying to stimulate debate and proposals from a number of sources, not only diplomatic missions, but also from the academic world—the think tanks—on how the electoral group system might change. More generally, we have been looking out for opportunities to get this issue on the broader UN reform agenda. For example, there are a number of aspects in which the current system breaks down. Indeed, sometimes the West European and Others Group could be said to be dysfunctional and there is a lot of frustration with that. For example, at present there are six or seven contested elections coming up to the Economic and Social Council elections in the beginning of May, so many countries are facing laborious, time-consuming campaigns because the group cannot get its act together to sort out more agreed slates. That causes considerable frustration and we seek to use that frustration to build up some support for what we are doing.

What is the result of this effort? I think the one area where we have really made yards is in the work of the Pacific group and our association with that group. Of course, we are helped here by things outside the UN such as our role in Bougainville, the Solomon Islands and indeed with Fiji and other examples. But the fact is the group is much more coherent and active and recognised as such in the UN.

A recent example was that the forum secretary-general was invited to participate in the fourth session the UN Secretary-General held with the regional groups of the world. So on that front, we have made some ground, and that group is very solidly with us on changing the group system. They would like some sort of Pacific group or subgroup which included Australia and New Zealand.

**CHAIR**—Would you call that a voting bloc? Would you consider that to be a voting bloc?

**Mr Stuart**—Recently, it has started to emerge as such. We had endorsement, for example, for Judge Hunt, which was very useful and made something of a difference just lobbying other delegations when we pointed out—because there were a lot of western candidates in that election, which was a bit of a drawback, but—

**Mr Ritchie**—Twenty-five candidates for 14 positions.

**Mr Stuart**—And about 10 of them came from western group countries.

**Mr Ritchie**—And the Pacific countries voted pretty solidly, or unanimously.

**Mr Stuart**—And in some cases organised proxies and, in the case of Palau, sent an officer from Washington just to vote for us. So it has not quite got to the point where it would solidly vote the same on every issue, but increasingly they are cooperating that way. For all of their problems there, they got elected on ECOSOC and defeated Thailand in an election. That was interesting, because they mobilised not only the Pacific, they got a lot of small country support to do that.

**CHAIR**—That is the other question I was going to ask you. Following on from that, have we given any consideration to alternatives to regionally based voting blocs through applying what we might call in Australia communities of interest, but in fact it could be small island groups, or using cultural or other criteria? Have we given any consideration to anything other than regionally based voting blocs?

**Mr Stuart**—In terms of standing for positions for vacancies, we are stuck with the electoral group system, because in all the bodies in which governments as opposed to experts are represented, the allocation is according to these five electoral groups. So we are stuck with that. We certainly caucus in our day-to-day work on substantive issues. We do not feel bound at all by the western group and increasingly we do that caucusing in interest based coalitions. As I say, the Pacific group meets two or three times a month and there is now a very definite agenda of issues such as consultations on oceans and small arms where we are cooperating all the time and doing joint statements. We have several working groups in that group.

**Mr Ritchie**—We also, of course, put together coalitions on particular issues and we work very closely with other people across electoral groups on issues that are of importance to us in the UN system. In terms of reconfiguration of the electoral system, I guess what David is trying to say is that we are trying to think imaginatively about ways in which we can maximise our vote, bearing in mind we have a longer-term goal of a really important structural readjustment. In the meantime, we try hard to come up with groups—the Pacific group and others—that might help us in candidatures and elsewhere.

**CHAIR**—There are only two other areas that I want to raise at this stage, and they are things that have been brought before us in evidence from other submissions and with other people whom we have had as witnesses. I think that we should really cover the review of the treaty system, which was one of the issues that has been raised by others, particularly yesterday morning. I think Professor Hilary Charlesworth raised a couple of issues: one on gender and one

on the treaty system. Since that 29 August 2000 statement by the Minister for Foreign Affairs, the Attorney -General and, I think, the Minister for Multicultural Affairs, how have other countries responded to the government's review of its obligations to the United Nations treaties?

**Mr Ritchie**—I think probably there have been two responses to them. Firstly, there are a number of countries—quite a large number of countries—who do believe that the UN human rights treaty committee system, which is what we were looking at in the review, is in need of reform and could work better. One of the prime examples—well, two examples of that—are, firstly, that Mary Robinson herself, I think a day or so ago, in announcing that she would not stand for a second term, pointed to some of the deficiencies they have in terms of resources and just coping with some of the issues that come before them.

**CHAIR**—Which was one of our criticisms, wasn't it?

**Mr Ritchie**—Indeed, yes, absolutely. That is exactly right. I know that both Mary Robinson and the secretary-general have indicated several times, including to the Prime Minister last year, that the system could certainly do with strengthening and improvement. So we have found that there are a number of countries that are actually very keen on that as well as the UN institutions themselves believing it.

We attended a meeting quite recently in London—convened by New Zealand—of countries which have an interest in reform of the system. There is a lot of support for practical things we can do to strengthen the system and to improve the way that it covers things, the resources at its disposal and things of that nature.

It is also true to say—and this is the second kind of reaction—that there are obviously countries in the world who want to escape scrutiny of the UN human rights treaty committee system. A lot of countries are concerned—not a lot of countries; a number of countries—to ensure that, in taking the reform process forward, we do not play into the hands of people who want to see that it is just a way of escaping the system.

Our aim is to strengthen the system, it is to make it more capable of scrutinising bad human rights situations in bad countries, and making sure it has the resources at its disposal, a mandate to do it and things of that nature. So I guess support, including from the UN institutions themselves—they certainly acknowledge that reform is necessary—but on the other hand a caution that, in taking it forward in a sensible way, we do not play into the hands of people who might want to escape scrutiny in the system. I guess they are the two reactions.

**Mr HOLLIS**—But on that point, it has been suggested that maybe it was well intentioned, but the wording of the communique in statements left it open to sending wrong messages to various people. I think that has been brought out—and indeed has been brought out in the evidence yesterday morning—in a number of hearings and submissions we have had to this committee and in individual conversations that we have had with people. The chairman asked yesterday, I think, whether Australia, because of the review process, was regarded as a pariah in the international system. That was said very strongly—no—but it was put that maybe, and you have touched on this, in some countries it has even been suggested that we have given comfort to some countries which would not welcome a lot of scrutiny of their record. Some people feel

that, although the intention was there, the wording of the communique and various statements did leave it open to a wrong impression being given.

**Mr Ritchie**—I will not comment on that, other than to say that the government was determined to say what it really wanted to do. Certainly, it was annoyed with what it perceived as unfair treatment and exceeding its mandate by some members of the treaty system, and some aspects of the way that the treaty system worked. That probably came through pretty clearly in its announcements last year. But equally, the government, I think, at the time made it clear that the aim of the exercise would be to strengthen the committee system, strengthen its ability to cope with the mountains of material that it has in front of it and to actually be able to spend suitable amounts of time looking at really egregious human rights abuses in Africa or elsewhere. There are plenty of them around; and that is certainly the aim of the government.

It remains very committed to the UN human rights treaty system itself and has not stepped back in any way from the kind of scrutiny it has under that system. There is no sense that we are withdrawing. Of the six core conventions and other protocols, we adhere to more of them than the United States or even Britain, I think, in those circumstances. The aim is certainly to strengthen the system and we are looking at a number of practical ways.

I think one of the things that the government announced when it made that statement last year was that it would be looking at whether it might be able to come up with a series of practical proposals that Australia could initiate to try to bring about reform of the system. That process is nearly finished and we hope the government will make an announcement on that quite soon.

**Mr HOLLIS**—Some people have said to me, maybe rather unkindly, that perhaps Australia should put its money where its mouth is. I know that Australia is one of the few on-time payers and we pay quite a significant amount. If Australia is going to take the lead in calling for reform, which it has, especially in the treaty committee system—and one of the shortcomings that has been identified, and as you have said yourself, by Mary Robinson and others is the pathetic shortage of staff and resources there; and reform will not come without a cost—it may well be that Australia would be asked to make an additional contribution to meet some of the perceived shortcomings, especially in staffing and resources, in this area.

**Mr Ritchie**—That is obviously an issue for down the track. Our aim at the moment is to try to persuade others of the need for reform and to come up with practical ways of undertaking that reform. We are pretty confident that we have got a good series of countries that support the idea of reform of the treaty committee system and that the agencies themselves recognise that. If we can come up with a series of practical suggestions, the next step is to say, 'How would you reform it?' And persuade others that the reform is necessary and that there are useful things we can do. If it came to providing additional money, that is a matter for the government to consider at the time. But we would not, of course, want to bear the cost of that alone. Ownership of the treaty committee system is very important across the UN system. We would want other countries to come to the party, too, and say, 'It's important and it needs additional resources.' Additional resources is only one part of the issue, too. There is a whole string of things—their procedures, mandates, the amount of paperwork they get, the periodicity of reporting—that I think even the UN committees themselves and certainly their parents bodies would see as important in tackling.

**CHAIR**—The committee system is funded out of the core budget, though. It is not voluntary contributions.

**Mr Ritchie**—That is right.

**CHAIR**—Unlike some of the others—the WHO and so on.

**Mr Ritchie**—That is right. But I guess the point would be that in the first instance we would no doubt want the core budget to handle that and to say, ‘Look, it’s a higher priority and we would like to spend more money on that and less on something that is of a lower priority.’ But on the other hand, if necessary, if countries wanted to be in a position to make voluntary contributions to the system to try to improve it down the track, I think that would be very welcome. My experts point out to me that in fact it is funded half from the core budget and half from voluntary contributions.

**CHAIR**—I was interested to hear you say that we have not withdrawn from the treaty system, because if you only read newspaper reports in Australia you could be excused for thinking we had.

**Mr Ritchie**—They are very frustrating, because we have not in any sense withdrawn from it, no.

**CHAIR**—How often does the government’s interdepartmental committee meet? Has it achieved any results?

**Mr Ritchie**—It is about every month or two months. We had a meeting during February—two months—and we are about to have another meeting in April. I attended my first meeting in February and I found it very useful. For the first time, it was bringing together the agencies—well, not for the first time. That is presumptuous of me, having only just taken on the job. It struck me that it was bringing together the agencies who all have an interest in the UN system and exchanging information about what they are all doing and their interaction with it. I found it really useful. It was a handy way of improving the overall coordination towards the treaty system and also ensuring that everybody that had an interest in a particular issue was involved in coming up with ideas about it. I do not know what you thought. It was Rod’s first meeting as well.

**CHAIR**—Maybe you could expand on that. We know what our position is in relation to the treaty system, but the question I really want to get on the record is the reaction of other governments. I am just wondering whether either Mr Stuart or Rod Smith could comment, as on a daily basis they have contact with other missions in New York, on what the reaction was of those people on the ground during that period?

**Mr Smith**—I think probably, I guess, as a result of some misleading media attention there was initially some misapprehension and lack of understanding on the part of some of our colleagues in the United Nations about the government’s intentions and concerns or those concerns that lay behind the review. But I think over time we have been able to dispel a lot of those misapprehensions. There is, as Mr Ritchie said, very wide acceptance and indeed support for the need to reform and improve the operation of the treaty committee system. People see

that as in fact something that is in the interests of improving international protection of human rights standards.

**Mr Stuart**—I agree with that.

**CHAIR**—I have only got one other issue that I want to raise before handing over to my colleagues, and that is that another issue that was raised yesterday morning by Professor Charlesworth was the issue of gender balance in the filling of positions within the United Nations. I think it is fair to say that when Mr Hollis and I were there it was not an issue that seemed to be at the forefront. It was not something that was readily obvious to us. But Professor Charlesworth maintained that while there were some women holding some high-ranking positions, there was a big gap then between women filling positions below the highest ranking position. There were a lot of males filling positions until you got down to quite a low level, in spite of the fact that Mrs Ogata, Dr Sadik and others have held those positions. Is that a fair assessment?

The point I made in talking to her about it was that there are an enormous number of countries that culturally do not promote women to fill positions and because of the geographical nature of the requirements of filling some of the positions that limited the opportunities in some cases. Would somebody care to comment? She was quite strong about the issue of gender balance within the United Nations.

**Mr Ritchie**—I will ask David to comment on that.

**Mr Stuart**—It is still an issue. Canada, Australia and New Zealand run a resolution in the general assembly—and I think it falls to us to do it in the next general assembly—on this issue of women in the UN secretariat. Of course, my comments are about the bodies I deal with in New York. I cannot comment so well on Geneva or Vienna. I would have to get the statistical tables out to know for sure. My impression, having come back after leaving a posting in 1992 and returning in 1999, is that there has been a significant improvement in having women in the higher level positions. There are a number of quite prominent people, such as the deputy secretary-general, of course, and a number of others we deal with on a day-to-day basis. I suspect that the overall proportions have improved but not at the rate they would have improved in, say, our own country, for the sorts of reason you mention. But there certainly is an awareness. It is still an issue. That resolution, of course, is a consensus resolution. But a lot of countries support it enthusiastically.

**Mr Smith**—As well as being an issue that is being promoted very strongly by countries such as Australia, Canada and New Zealand it is also an issue that the secretary-general himself attaches a great deal of importance to and he very actively seeks to ensure that due attention is paid to questions of gender equity when he makes very senior appointments. You mentioned Nafis Sadik. When she finished in her position, her successor was in fact a woman, I believe, from Saudi Arabia. I think that is simply an illustration of the importance the secretary-general attaches to that.

**Senator BOURNE**—Can I ask about funding? I understand that it has been agreed now that the US will diminish its funding down to 22 per cent. Does that mean that Australia now has to put in more? I guess it means everybody now has to put in more.

**Mr Ritchie**—Yes.

**Senator BOURNE**—Can you give us an idea of scales? In my notes here it is says that the department was going to give us some answers on expenditure. Have we got those yet?

**Mr Ritchie**—I think we have.

**Senator BOURNE**—Could we get updates on those?

**Mr Ritchie**—Sure.

**Senator BOURNE**—Because a lot of it will have changed by now.

**Mr Ritchie**—Certainly. You are absolutely right. As part of the formula that was agreed to late last year in the UN, our assessed contribution to the UN regular budget has increased. In 2001 it has gone up by \$5.4 million over 2000, I think, to roughly \$29.3 million. Our percentage in 2000 was 1.483 per cent. That is to increase in 2001 to 1.636 per cent. Then there is a scale which takes us to 1.640 per cent in 2002 and 1.627 per cent in 2003. The effect of that is that, although we are paying more, we actually drop from the 10th largest contributor to the regular budget to the 12th largest contributor to the regular budget. In 2000 the United States paid 25 per cent of the regular budget, as you know. That has gone down to 22 per cent. That continues at 22 per cent.

One of the important things is that a couple of other countries, however, have come up in the scale, which we think is a good thing. If the resolution of the contribution scale issue results in the US actually paying its arrears, we will think that is a very good thing. There was a small amount of news on that earlier this year. On 7 February the US Senate voted unanimously to make a payment of \$US582 million in back dues. That still has to go through the House and we will wait to see what happens. The Senate has attached conditions to that, but that is a minor step forward that we would very much welcome.

**CHAIR**—I am just wondering could you give us the scale of assessments as they have been arrived at and the actual dollar amounts?

**Mr Ritchie**—I would be very happy to.

**CHAIR**—Can you provide that to the committee so that we know what all countries are paying? If we could get an update of that

**Mr Ritchie**—I am very happy to do that.

**Senator BOURNE**—That is back dues for peacekeeping and core; is that right?

**Mr Ritchie**—That is what I am talking—core budget.

**Senator BOURNE**—Just core?

**Mr Ritchie**—Yes.

**Senator BOURNE**—What about the peacekeeping back payments? Do we know about the US paying those?

**Mr Smith**—In fact, there were two new scales negotiated in December, one for the regular budget and one obviously for the peacekeeping budget. On the regular budget the US was successful in getting agreement to reduce its ceiling from 25 per cent to 22 per cent. When I say ‘its ceiling’, I mean ‘the ceiling’, but it is the only country that is affected. It was not successful in doing that in the case of the peacekeeping scale. That will be a difficult issue because, of course, under the Helms-Burton legislation, one of the requirements that has to be met in order for the US to release the full amount of its arrears is that the ceiling under the peacekeeping scale must also be reduced from, I think, 30 per cent to 25 per cent. So it is an issue that really is subject to ongoing consideration, principally in the US Congress. In order for the arrears to be released, the House of Representatives has to approve that. It is something in the order of \$US582 million. That is something that Congress will consider later in the year.

**Senator BOURNE**—Has that affected how much we are now owed for peacekeeping from the UN? We must be owed more by now if they are still not paying.

**Mr Smith**—I think our defence department colleagues might be better placed to talk about the reimbursement of peacekeeping costs.

**Mr Ritchie**—We are still owed a very considerable amount, but the Department of Defence can give you the exact details.

**Senator BOURNE**—One more thing on funding. We were told when we were there about the funding options for updating the UN building itself, which was described to us variously as uninhabitable at the moment. It has no fire safety and it would be condemned if it was actually part of the US New York system. Can you give us an update on how they are going with trying to get funding for updating the building?

**Mr Stuart**—I know it is a priority issue. I understand that the US, amongst other governments, has recognised it as an important issue and, indeed, that Senator Helms, who is a very significant figure in the US Congress, accepts that something will need to be done. They were talking about options such as interest-free loans to make it possible. This is simply something I have heard second-hand and I heard it the day I left. It is possible that Donald Trump, of all people, may be prepared to make a very generous offer. You will know from your recent trip that he has built

**Senator BOURNE**—a very large tower.

**Mr Stuart**—Trump Tower Mark 6 a couple of blocks away. I do not know how much weight to give that. As I say, I heard it the day I left. But the basic point is that it is accepted by governments as a significant issue. Something will have to be done. There are serious problems of inaction. Nothing conclusive has been agreed yet, but it is on people’s agenda.



**CHAIR**—Can you tell us where the funding comes from for post-conflict reconstruction, such as in East Timor? What part of the budget does that come from?

**Mr Stuart**—There is no instant formula. Usually when a Security Council mandated peacekeeping operation—and then in recent times operations like East Timor or Kosovo—concludes, they are within an arrangement based on the activities of the major UN agencies and the World Bank at times. So these are all bodies largely relying on voluntary funding. Of course, East Timor has become something of a precedent, along with Kosovo, because the UN has run a transitional administration, including activities it has never undertaken before.

There has been a number of open debates in the Security Council relevant to this issue, one on exit strategy last November and a more recent one on post-conflict roles. While this is a topic where views are very much evolving, my feeling is that it is going to continue to rely heavily on voluntarily funded activities through the big programs and agencies that have specialised in these for some time.

**Mr NUGENT**—Can you give us a full record of where things stand on Brahimi at the moment? Has there been any movement or reaction from the secretary-general or reaction from other countries and that sort of thing?

**Mr Ritchie**—I will just say something in general and then ask my colleagues to fill in the details. Basically I think our assessment is that there has been widespread support in general terms for the report's recommendations, including—happily—from developing countries for the report's recommendations. There has, however, been some developing country concern to ensure that resources are not diverted from development issues to fund the outcomes of the Brahimi report. I guess there has been resistance from a small group of countries to the recommendations that the UN develop some sort of information intelligence gathering role as well.

We, for our part, have been very pleased with the way the secretary-general has moved quite quickly to implement the recommendations within his own responsibility and also to get member states and the fourth committee, which is the peacekeeping committee, and the fifth committee, budget and resources, to look at the balance of those recommendations. We have convened a working group at our end, which includes Defence, Prime Minister and Cabinet, Federal Police and AusAID to look at a whole-of-government response to those individual recommendations. I understand—and my Defence colleagues will be able to fill you in later on that—Defence is doing a detailed analysis of the operational aspects of the report.

The UN secretariat is seeking additional funding from member states to support the restructuring of the DPKO, the Department of Peacekeeping Operations, and other recommendations contained in the report. The source of that funding is still to be identified. We would like to see quite a bit of it come from within the regular UN budget. The next opportunity in which debate on Brahimi will take place within the special committee on peacekeeping is probably in June, but I guess as a sort of summary we would say that we are really pleased with the positive way in which people have reacted to that.

**Mr Smith**—As you know, the Brahimi report came out shortly before the Millennium Summit, in September last year. It became part of the backdrop to the summit. It was strongly

endorsed in the summit declaration, and that lent very useful political impetus to the detailed consideration of the report's considerations. Member states looked at the detail of the recommendations in a special committee on peacekeeping over the period of about a month during November. They came up with an agreed report which endorsed a number of the Brahimi recommendations principally relating to funding and resources for the Department of Peacekeeping Operations and specifically those relating to resources for military planning. That was something that we attached particular importance to. It also covered a number of the recommendations relating to the role of troop contributing countries, or prospective troop contributing countries, in the debate and definition of peacekeeping mandates.

A number of the more difficult recommendations in the Brahimi report, though, require much more detailed debate. As you know, the report includes a very wide range of recommendations covering not just traditional peacekeeping but also a range of other elements of the UN's engagement in conflict prevention, post-conflict peacebuilding and so on. Some of those issues and some of those recommendations are difficult and sensitive and touch on traditional—particularly traditional developing country—concerns about notions of sovereignty, intervention and so on. So all of these questions really need to be thrashed out further between member states, and that will happen as Mr Ritchie said, in the reconvened session of the special committee on peacekeeping, which we expect to take place probably some time in May or June.

You asked about the secretary-general's role. A number of the Brahimi recommendations fell within his own authority and, as Mr Ritchie said, he has moved very quickly, and we think very positively, to implement those recommendations which fall within his authority. He has also helped by ensuring that the Department of Peacekeeping Operations has, if you like, a blueprint for implementation of the Brahimi recommendations, what is called the SG's implementation report. That again has formed part of member states' consideration of the detailed recommendations.

In parallel with that process, if you like, is a process of review of the whole of the operation of the Department of Peacekeeping Operations—something that was not specifically a recommendation of Brahimi but something that we and a number of other member states have been arguing for for some time. It really was an attempt to look at the way the DPKO deploys its resources, organises itself and gears itself to the task of planning, implementing and managing peacekeeping operations. That review is under way now. It is being done with the assistance of some independent consultants but broadly under the responsibility of the head of DPKO. Once the results of that review are available they will, along with the SG's implementation report and the Brahimi report, form part of the detailed consideration by member states of the remaining elements of the Brahimi report.

**Mr NUGENT**—Certainly it would be fair to say that a number of us, when we went there, were surprised at the lack of resources in the department of peacekeeping. I mean, it was just stunningly small, given the task. You have mentioned this potential problem in terms of a shift of emphasis to preventive action, in addition to actually putting out the fire after it has started. What sort of implication would that actually have for Australian government policy?

**Mr Smith**—Successive Australian governments have argued for greater emphasis to be placed in the UN on preventive approaches. It is always a difficult issue. It is highly sensitive.

Firstly, mechanisms for conflict prevention, preventive diplomacy and so on are in a sense limited, but it comes back to some threshold questions, if you like, about the role of the United Nations and the rights or obligations and responsibilities of member states and the UN as a whole to involve themselves in emerging disputes and conflicts. Again, I come back to the point I made earlier about the sensitivity of developing countries in particular in relation to notions of sovereignty and intervention or involvement by the international community in what they see as their own affairs. It is always a matter for judgment at what point you or the international community choose to involve yourself in an emerging dispute and the mechanisms that you might use to do that.

One of the things that the Brahimi report did was to argue—this is a recommendation we very strongly supported—that more emphasis should be placed on preventive approaches. The report, though, did not contain a lot of detail about what those approaches might be. There is a lot more work going on in the secretariat, and of course there is a great deal of work taking place in the academic and non-governmental community about preventive diplomacy, conflict prevention and so on.

**Mr NUGENT**—But if for example the report is adopted in broad terms and there is some more work done in the detail of how it might be implemented, would you see that the change in the UN's posture on this would have affected therefore perhaps how we might have had to deal with or react to situations in the Solomons or Fiji or Bougainville or even Timor? I mean, would it have had an impact on us in that sense or would we in all probability have been effectively left to deal with those issues as a regional issue, rather than have the UN becoming involved?

**Mr Ritchie**—Firstly, as Rod said there is a sort of threshold issue about at what point a conflict becomes a conflict that is worth preventing. A lot of developing countries would argue that a lot of sort of lower level things that we can see possibly having consequences down the track are none of the international community's business. So there is an issue there about when we become involved, and there is no easy answer to that. We have to look at that on a case-by-case basis.

In a past life I had a lot to do with the Bougainville issue. I think the UN developing capacity for it to say, 'If you regional countries want to get down there and try and help solve the problem yourself, we are happy to endorse that, support it and have an office in Bougainville if you feel that is necessary,' was a very interesting development in the way the UN approaches those things. I think the UN itself is quite happy, where a group of regional countries are prepared to try to tackle a problem, to actually let them get on and do it. We very much welcome that. In a sense, that is certainly what happened in Bougainville. It is what is happening elsewhere in the world. I personally think that is a really positive development.

**Mr HOLLIS**—Surely that is a part of the whole problem and something that Brahimi was trying to identify. It is interesting. Michael Potts made a statement here before. I do not know how many times I have quoted this, but it was at the time when Zimbabwe looked like it was going to blow up. The chairman actually asked him what it would take for Australia to intervene. Michael Potts—perhaps it was an unfair question, but I will spare him the cap—more or less said—

**CHAIR**—When will the United Nations intervene?

**Mr HOLLIS**—Yes. Not Australia. The question was asked: what would it take for the international community to intervene in what appeared to be an escalating situation in Zimbabwe. Michael Potts said, ‘Well, in essence’—it is in the record somewhere—‘it would have to take a complete breakdown of the system before there could be intervention.’ And of course that is the typical UN state sovereignty role. What I thought the secretary-general had been flagging was that there are certain situations in which the international community—or I should say the regional community—could perceive that as a threat to international peace and security and intervene without waiting to be invited in or without waiting for the system to completely disintegrate.

**Mr Ritchie**—Well, by definition, questions from the committee members are of course not unfair, so—

**Mr HOLLIS**—I do not know about that.

**CHAIR**—You have not been to all of them.

**Mr Ritchie**—As a good public servant I have to say that. Secondly, I did read Michael’s testimony on that very carefully. The Zimbabwe issue is—in fact, that is what is happening, I think. I think the regional countries do see issues emerging in their area and try to take some action themselves. Now, the extent to which that is—a good example, I guess, would be the Democratic Republic of Congo, possibly. In some of the early stages of the civil war there some of the local countries got involved. People do recognise what is happening in their region and try to intervene and make the point to countries that if they continue down a certain track certain things will happen. In a way, that is something the Commonwealth has become a bit involved in. You will have seen the outcome of the Commonwealth Ministerial Action Group in London which is sending a delegation to Zimbabwe to talk to them about the judiciary and perhaps—provided Zimbabwe accepts it, of course, and the signs are not great there—to actually talk to them about some of their problems they see as emerging before a major breakdown happens. I think that sort of action is very welcome, and if we see a problem in our region we will certainly try to talk to others and colleagues about it and try to become involved.

There is a step beyond that, and that is whether the country concerned is happy to have you—that is the Zimbabwe issue. Quite often things develop that are quite unforeseen and happen very rapidly and then you are into a business of trying to stop something that has already occurred. So to the extent we can—and I think not just the UN, the UN will become more involved. The secretary-general travels around a lot talking to people in areas where there is potential for conflict or there has been sort of low level conflict; plus for organisations like the Commonwealth and other regional countries to become involved, and we do.

**CHAIR**—If you do not mind, I will just follow on that. One of the issues that was raised that was really at the genesis of this inquiry was, in fact, how do we make it possible for the United Nations or the international community to intervene before a tragedy occurs rather than after it has occurred. The secretary reminds me what would have happened in Kosovo when there was a more moderate government 10 years ago when you could see the direction that things were taking, if there had been some sort of international invention before that tragedy occurred and the neighbouring countries. The path that Zimbabwe was following 12 months ago was pretty predictable, although it might not be on the scale of tragedies that there have been elsewhere. It

was pretty predictable the way events were unravelling in Zimbabwe, and they have continued to do so. Now, 12 months later, there is talk of a Commonwealth Ministerial Group going in there and it looks as though they will not be welcome. The initial reaction is not one that is very welcoming. With the breakdown of their law and order or the abuse of human rights that takes place in these countries, at what stage can the international community become involved? This is the problem that we started out with at the beginning of this inquiry.

**Mr Ritchie**—In some respects it is an intractable problem. Just a couple of comments on what you just said—I think, firstly, the CMAG mission that is hopefully going to go into Zimbabwe is not the first time we or the international community had raised anything with Zimbabwe. I think the international community, right from the genesis of the issue, has been pretty actively involved in telling the Zimbabwe government about our concerns about aspects of what they are up to, including their neighbours in the region and the British government elsewhere—the international community as such and in other bodies, too. In the Human Rights Commission and elsewhere a series of things has happened to try to bring that to bear. It is not the first time that Zimbabwe and the Zimbabwe issue has been considered in the Commonwealth context as well. We do things bilaterally and we have worked our way through that. So we have been involved because we do not like aspects of what is happening and we can see they could lead to real problems down the track. So that is part of why we become involved.

At the same time, and you have put your finger on it as well, if we want to send a foreign ministers' mission to Zimbabwe—we have taken a big initiative there—the Commonwealth and the Australian foreign minister will be part of that mission. It can only go if the Zimbabwe government agrees to it. I guess that is the point I was wanting to go on to in regard to your point about Russia and Kosovo. I am not sure the Russian government would have been prepared to let—internationally they are very, very concerned about—sorry, the Yugoslav government and others would not be prepared to let people become involved. The same is true with Chechnya and the Russians.

You are basically overturning the sovereignty of a government. It is a big issue. You are saying we are going to become involved in something more than just admonishing, urging and drawing attention to concerns and building pressure from the international community and some practical ways in which it might help talks and things of that nature.

**CHAIR**—But after the tragedy occurred that is exactly what took place, isn't it?

**Mr Ritchie**—That is after the tragedy occurred, of course.

**Mr NUGENT**—I think that brings us back, doesn't it? The take I am getting from this is that—this whole series of questions and discussion has emanated from the points about the Brahimi report, about moving into the preventive area as opposed to the post conflict area, if you like; I will say personally rather than make the committee responsible—it is almost impossible for the United Nations to come up with an effective set of procedures, for want of a better phrase, to get into the preventive area. You can tell me I am wrong there, but I suppose the question it really prompts is: when would we hear some specific proposals as a result of the Brahimi study and the work that is going on as to how a preventive role might actually be undertaken?

**Mr Ritchie**—On the second of those I will ask my colleagues to say, but on the first I do not agree. I was just simply pointing out the threshold issues involved. The UN and the international community as a whole regionally, bilaterally and other UN bodies in the General Assembly and all sorts of ways—Security Council—does actually become quite heavily involved in a lot of potential conflicts or conflicts that are occurring. There is a lot of work going on on the preventive side of things and I will ask my colleagues to talk about that. The UN is already doing preventive work and the international community is doing preventive work.

I guess I was trying to come to grips with the comment from the chair: what constitutes intervention; what do you mean by intervention? At what point does the international community intervene in the affairs of a sovereign country where we see something going wrong? Well, we do intervene to a certain level, but we do not intervene beyond that level unless we have got approval at this point. So the UN is doing a lot of work on it as a result of the Brahimi thing. I do not know if Rod or David wants to say a lot. I might say that we are certainly saying we strongly encourage the UN to become involved in those areas.

**Mr Smith**—One of the problems with preventive approaches, as is the case with peacekeeping, of course, is that there is no simple prescription; there is no simple plan or method that you can overlay that will apply to any emerging conflict. It is very much a question of looking at the specifics of an individual situation or an emerging dispute and trying to make a judgment about what is the best way of dealing with that, be it a preventive approach or something else. There are a lot of mechanisms in place already. The secretary-general makes his good offices available on many occasions. I do not know how many there are, but there are a large number of special representatives of the secretary-general, special envoys and so on, appointed as mediators and as peacemakers dealing with these very questions of dealing with emerging disputes.

The other point that I think is worth bearing in mind is that the United Nations does not have any authority beyond the political will of its member states; it is very much reliant on what the member states can agree on as an approach, as a way of dealing with the problem.

If we look back at the question of Kosovo, the UN was always going to be hamstrung because of a highly polarised Security Council that simply could not agree on either the need for or the nature of any UN intervention. It comes down to what is politically achievable and what is politically acceptable, particularly to the five permanent members of the Security Council. So that will always, to an extent, hamstring the secretary-general.

**Mr NUGENT**—What has been the reaction of those five permanent members to Brahimi?

**Mr Smith**—I would say, if I had to encapsulate it, supportive.

**Mr Ritchie**—Supportive partly because they want to improve the way the UN operates and the UN has generally backed the Brahimi report in general terms. That still does not detract from the fact that in a particular crisis the Security Council is going to agree on it.

**CHAIR**—Supportive except until another detail.

**Mr Ritchie**—Exactly. Then really complicated issues come into play.

**Mr NUGENT**—When do we expect to hear some firm proposals as a result of Brahimi?

**Mr Smith**—On prevention?

**Mr NUGENT**—Yes.

**Mr Smith**—My colleagues might be able to answer this, but I believe the secretary-general has actually called for or set up a specific inquiry or study into developing some specific proposals for conflict prevention. But I might have to get back to you on that.

**CHAIR**—You could take it on notice. It would be interesting to get an indication of what happened.

**Mr Stuart**—I understand there is a particular study about this due out in March or April. Sir Kieran Prendergast, the under secretary-general for Public Affairs, has begun informally talking to delegations about ideas in it. I think the timing is late this month or early April. The next major opportunity to discuss Brahimi will be in the committee of 34, the special committee on peacekeeping, which has now been pushed back and I think June is the latest date. That will consider all the Brahimi issues that were not already dealt with before Christmas. That includes these preventive aspects and I think the particular proposal to set up a unit—I have forgotten the name of the unit—for doing analysis.

**Mr NUGENT**—Do you mean the information and strategic analysis section? That was going to be my next question.

**Mr Stuart**—Yes. Sir Kieran is very committed to that unit. Indeed, I think he has already started to assemble it in advance. He is hoping to get approval. There is an interesting aspect here. The secretary-general has some discretion in how he organises the secretariat. He or she is the one responsible under the charter for that. While member states obviously have an interest in how the secretariat is organised, if the secretary-general wants to assign more of his staff to this work, in effect he or she can do so. I want to make two points about this argument about preventive action.

The first is that there is a really serious constraint on what the UN can do simply in terms of resources. Even if we were to strengthen it considerably, the constraint would still exist. The fact is that there are a great many potential and existing conflicts. The UN will never address them all, and I do not think it would be desirable for it to do so. It can play something of a leadership role, and it certainly becomes very important in situations where you need to call on the powers that exist in the Security Council in particular. Really, it is just part of a complex system of international action to try to keep the world as peaceful as we can.

We work with the UN secretariat day to day, and we certainly have good working relations with people in the Department of Political Affairs and the Department of Peacekeeping Operations. They at any time are already stretched to deal with a number of issues and are in fact delighted and think it is excellent, and have said so in so many words, at the role Australia and New Zealand are playing in the South Pacific. They have no ambitions to expand their

efforts there. They will help as they can. Sometimes they can be very useful, for example, in galvanising support from bodies like the UN Development Program and others, which become very useful adjuncts to the efforts of regional countries. So my first point is that there is a real constraint of resources. With the best resources in the world, that will continue to exist. In fact, I think the most desirable thing is for the UN to simply be part of a pattern of international cooperation where we get better at dealing with and indeed anticipating problems.

My second point is about the nature of preventive diplomacy. A lot of things are going to be done if you do strengthen the ability to do this in the UN and elsewhere well before the point at which you start to see some major crisis emerging. Your options are narrowed once you get to the point where you have a country breaking apart or a civil war looming or something like that. A lot of this preventive action is simply about seeing the potential for problems and perhaps adjusting development efforts or trying to help shore up a crumbling democracy or something of that order. So a lot of these efforts happen well before the point of the sort of difficult intervention which raises in large measure the sovereignty issues which my colleagues have mentioned. When you get to that point, it is very tough. I think that is when the international system is really sorely tested. It actually has more margin and more capacity to doing more by this business of lower order activity well in anticipation of problems.

**Mr NUGENT**—My last question on Brahimi relates to the section you mentioned, the information and strategic analysis section. Does the Australian government plan to cooperate with that section's work? What would that involve?

**Mr Smith**—It has not been set up yet. It is actually one of the more controversial recommendations of the Brahimi report. It is controversial in part because it has been misunderstood, particularly by the G77 and the non-aligned. It was probably not as well explained by the Brahimi panel as might have been the case. The use of the term 'intelligence' was ill advised and really was not what was intended. The idea behind the unit was to give the Department of Peacekeeping Operations greater capacity to analyse whatever information is available to it—very largely open source information—on a political situation in a particular country on the nature of an emerging conflict, for example, and enable it to provide better advice to the Security Council and the secretary-general on the nature of an emerging dispute and in that way feed more effectively into the planning process for a preventive approach or for the development of a peacekeeping operation.

The use of the term 'intelligence' is highly problematic to developing countries. They see that as something very different. The debate in New York on that recommendation has gotten caught up in some of those sensitivities. As David Stuart said, the secretary-general can divert resources any time he chooses into strengthening the information analysis capacity of DPKO. Australia has seen that as a very important part of the process of strengthening the UN's capacity to plan and prepare for operations.

**CHAIR**—You do not expect there to be a full exchange of intelligence between the CIA and this new panel, in other words.

**Mr Ritchie**—I do not think it is that sort of body. The point Rod is making is that we would support it. I think that is the answer to your question.



**Mr HOLLIS**—We talked earlier about voting blocs in the UN. What about the progress of reform in the Security Council? Has any progress been made there at all? I remember when I attended the Millennium Summit every speaker identified the need to reform the Security Council. I would guess that there has been very little progress made on it, such as expanding the Security Council itself and also the position of the permanent members. Is it going to be expanded?

**Mr NUGENT**—Mr Chairman, is it in order to ask Mr Hollis to clarify his question? Did the members of the Security Council at the Millennium Summit actually—

**Mr HOLLIS**—Surprisingly, most of them did. What I was interested in is whether any expanded permanent member would be there with veto powers or not.

I think that is the crux of the whole thing with the Security Council: whether the veto power remains, goes or is expanded.

**Mr Ritchie**—I think the answer is that discussion on this issue has made just very limited progress. The open-ended working group on Security Council reform has been working for seven years. And while everybody says that the Security Council needs to be reformed, and there is a lot of discussion about expanding it and who should you expand it to, there is absolutely no key consensus at the moment on, for example, new permanent seats or curtailment of the veto or anything of that nature—who should get the seats, should they be just the Japans and Germanys of this world, or should it be on a regional basis, rotating or whatever? There just is not agreement on any of that at the moment.

Having said that, I think there has been some progress in the way the Security Council operates. I think it operates more openly. I think there have been one or two quite good open debates in the Security Council. And in a slightly more transparent way than in the past, there will always be Security Council debates which are closed. I stand to be corrected, but my sense of it would be that the Security Council, in the way it operates, has improved. But in terms of the longer term goal of trying to get a revitalised Security Council expanded, the issues of who should be members, the veto and so on, we are not making very much progress at all.

**Mr Smith**—That is essentially the state of play. While there is a pretty strong consensus that the council needs to be reformed and expanded, there is simply no agreement on the manner of that expansion.

On those critical issues—you mentioned, Mr Hollis, the question of new permanent members, whether there should or should not be new permanent members or only new non-permanent members, and also the question of the veto—both retention of the existing veto right for the existing permanent members and the possible extension of the veto power to new permanent members. There is no consensus on any of those issues, and until there is, there is very little prospect of a package of reforms being agreed.

**Mr HOLLIS**—I have one final question. How important, in your view, are NGOs in the UN system?

**Mr Ritchie**—I think NGOs are important in the UN system, which is why they have been very heavily involved in a lot of UN bodies. There are arrangements for their involvement in discussions by NGOs. Also, I think that NGOs are important in delivering UN programs around the world in some respects. By and large, I think we regard NGOs as important. I mean, in the end, the UN is a body of 188 or so sovereign states, and they are the people who have to actually take responsibility and fund things—

**CHAIR**—Don't forget Tuvalu. It is 189.

**Mr Ritchie**—One hundred and eighty-nine. Excuse me, I would never forget Tuvalu.

**Mr HOLLIS**—It did not make it 189, did it? Because Yugoslavia was—

**Mr Ritchie**—It is very important, and we are very happy to have them engaged. For example, I chaired a meeting with all the Australian NGOs on human rights last week for a whole day. We talked these issues through and involved them in our delegations and so on. But in the end, they cannot usurp the powers of the sovereign states and, in the end, that is where the decision-making power lies.

**Mr HOLLIS**—Part of the reason I asked you that was that, bearing in mind the statement that was made last August, where it seemed to me that emphasis was being put on the undue influence of NGOs over democratically elected governments—to quote from memory what was in there—it seemed to me that that was a downplaying of the role of the NGOs; whereas statements from various people from the secretary-general of the UN down have emphasised, over the past 12 months, the importance of NGOs and the increasing importance of NGOs.

**Mr Ritchie**—Certainly more generally we regard NGOs as important. They have a very important role to play in the system. The statement last year was mainly concerned that, rather than a downplaying of NGOs, there had been too much reliance placed on the views of NGOs ahead of sovereign governments without necessarily giving sovereign governments the chance to comment on some of those things or to be able to put their case. A lot of things that NGOs said to committees were taken at face value without any government having the chance to even respond to it. I think it is more in that line. I think that we and a lot of other like-minded countries would see that as a very important part of reform of the treaty committee system. But we are not trying to eradicate NGOs from those discussions at all. On the contrary. We rely on NGOs for a lot of advice on human rights situations, for example, and to draw things to our attention and to be involved.

**CHAIR**—Going back to the reform measures, we have to draw some conclusions at the end of this inquiry. Would it be fair for us to deduce that if there was to be a reform of the Security Council or other reforms of the United Nations, there would be unlikely to be reform of the Security Council if the removal of the veto was a stipulation?

**Mr Ritchie**—I personally think that is a very fair characterisation of it, yes.

**CHAIR**—What about if it was a modification of the veto? There were suggestions that the veto could be used, but that the permanent member would have to explain the reasons for using the veto. That was a sort of fall-back position, as I understand it.

**Mr Smith**—There are a number of suggestions that have been put forward. The approach that we take to this is a practical one. It is founded on the premise that the five permanent members of the council will not give up their veto and they will not agree to any package of reforms that involve them giving up their veto. And as they have a veto right over amendments to the charter, which would be necessary to reform the Security Council, that is not going to happen.

**CHAIR**—Are they unlikely to extend the veto as well to any new permanent members? Is that also, do you think, a likelihood?

**Mr Smith**—I think that will depend very much on which countries you are talking about as prospective new permanent members. Our longstanding view is that we would rather the veto not be extended. As Mr Ritchie said at the beginning, we do not like and we never have liked—not since 1945—the idea of the veto. But it is a fact of life in the Security Council, and we think it is not going to change.

The approach that we have taken in the negotiations on council reform is again a very practical one. We have looked at ways in which we can essentially, through a sort of voluntary process, get the agreement of the Security Council members to limit their use of the veto to certain kinds of situations—not, for example, on procedural questions. The idea of requiring them to explain why they have used the veto and, in particular, why they have used the veto as a way of meeting the requirement set down in the charter for the veto to be used in the interests of international peace and security, is one of the ideas that Australia, along with a small group of countries with which we cooperate on council reform, has been promoting. It is one of the issues that is in this melting pot of discussion on council reform.

**CHAIR**—The secretary-general's office has been the prime mover in a lot of the more recent innovations or proposed innovations in the United Nations. Has there been any indication yet whether or not the current secretary-general would be prepared to serve a second term?

**Mr Ritchie**—The short answer is no.

**Mr Stuart**—Up to a point.

**Mr Ritchie**—He has yet to say anything formally about whether or not he would stand for a second term.

**Mr Stuart**—Certainly there have been no public announcements. The pattern of his visits, particularly to Asia—I think we have discussed already the situation where the Asians argue that it is actually Asia's turn to provide the secretary-general because Africa has, in fact, had two terms, Boutros Boutros-Ghali one and Kofi Annan a second. However, in that week or so before I left—and you would not have had reports on this yet—there seemed to be some indications that Annan is quite close to making an announcement that he will run again.

**Mr Ritchie**—He has not yet done so.

**Mr Stuart**—There is nothing public. There are just some indications out there, one of which is that there appears to be agreement in the African group to endorse him.

**CHAIR**—And unlike his predecessor, there would be unlikely to be opposition to him having a second term?

**Mr Stuart**—The Asians have not yet declared their position. There is talk in a number of ASEAN and other countries of a possible candidate or candidates. I think if he declares his hand he will be in a strong position.

**Senator BOURNE**—This question may be better asked of Defence, because I think it is mainly about peacekeeping, but I will ask it here. One of the major problems that was identified early on, particularly with peacekeeping but also with other operations, was that there seemed to be no records kept which were then looked at in order to discover what lessons had been learned from former operations. The secretary-general had set up a section to do that and we did have some evidence very early on that that did not seem to be working very well. Can you give us an update on that? Does it still exist and do you think it is working well?

**Mr Smith**—The secretary-general I think about two years ago set up what he called a lessons learned unit in the Department of Peacekeeping Operations. Its success has been, frankly, limited, but again I think that is largely a function of the resources it had available to it. One of the recommendations of the Brahimi report was to strengthen that element of management of peacekeeping operations. I think in fact already the lessons learned unit has been augmented with additional resources that were approved by the fifth committee. The objective, of course, is to feed that process of understanding and so on into the management, planning and so on of new operations.

**Senator BOURNE**—And you think it is improving?

**Mr Smith**—Well, more resources are being made available to it. It is something that the secretary-general is very concerned about. We hope to see some improvements, yes.

**CHAIR**—We are nearly out of time. There are just a couple of comments I want to make. I wonder whether you might comment on them, particularly for the purposes of what we may wish to write in the report. We have talked a lot this morning about the opportunities for preventive measures. As I said, that is one of the issues that caused this inquiry to take place.

In my experience of having been there for a few months, it would appear that the United Nations is very good at doing some things and not very good at doing others. It seems that it is very good in the areas where it can get common agreement—in the areas of world health and social issues within countries—or a certain amount of agreement, with human rights and various other things. It is not so good at solving political conflicts that occur around the world, but one of its main charters was maintaining peace and security in the world.

It would appear that the best thing the United Nations does in relation to political conflicts is provide a focal point for world opinion, to be able to put pressure on countries that are perceived to not be doing the right thing or are perceived to be doing things within their own countries that are against the humanitarian standards that are set by most countries throughout the world. I am just wondering whether you think that is a fair observation. Are there any other comments you would like to make, because at the end of this we have to try to draw up some conclusions for the report.

**Mr Ritchie**—From my perspective, solving political conflicts is always going to be the tough end of what the UN has to do. People are very happy to see the UN involved in improving living standards in countries and helping out on social issues and to some extent on human rights issues and other things. Solving political conflicts brings you down against hard issues of nationalism and national sovereignty, which are very difficult, as we have been discussing this morning.

**CHAIR**—The Middle East is a prime example—ever since the United Nations has been going, almost.

**Mr Ritchie**—If the UN could ever solve the Middle East we would be delighted. It is like curing the common cold. But I think the UN goes beyond just being a focal point for world opinion. Being a focal point for world opinion is a very important part of what the UN does, but it does get involved in other things: the secretary-general's good offices role, taking on an expanded peacekeeping role, supporting regional solutions to conflicts, providing a sort of neutral party to help with negotiations or bringing parties together, imposing sanctions where sanctions are necessary—a whole series of things that the UN can do and has done.

I think personally that we are seeing a really interesting evolution in its role in peacekeeping, peace monitoring and even to some extent peace enforcement over the last few years. So it is very active. It has become more active. While being focal point for world opinion is very important, the UN does have a role beyond that and is in fact engaging in that role beyond that. I think that is very good. In the end, when it comes down to solving political conflicts, in a lot of countries you just come up hard against that national sovereignty issue. I think that is the bottom line, really. We like the UN. We like the way it works. We like to see it become involved in these things, but it can only do so up to a point.

**CHAIR**—You raised the issue of sanctions, which is one of the things we really did want to ask you about. What is the status of the UN's review of sanction measures, particularly in the light of the UN sanctions, for instance, that are currently put on Libya, where member states have actually broken the sanctions? I really want a comment on the effectiveness on the sanctions anyway. There is a review, I understand, of the sanction measures. I am just wondering where that is at.

**Mr Smith**—The question of sanctions and their effectiveness, of course, has been the subject of debate in the UN since 1945 and continues to be just as difficult and sensitive and controversial as it ever was. There has been a lot of work done in the last few years to try to define more effective sanctions measures—trying to find more surgical ways, if you like, rather than just using the blunt instrument. These measures have been called smart sanctions. In a sense, some of the problems we face with other avenues of the UN dealing with things we face in the case of sanctions as well. What works in one situation will not necessarily work in another. Finding the points of leverage, if you like, against regimes that are not behaving in a manner that the international community judges as appropriate or regimes that are in violation of Security Council sanctions is a difficult issue.

The Security Council, I think, has become much more attuned to some of the problems in recent years and looks now much more carefully at what is going to be effective. We see that, for example, in the way it has defined and imposed sanctions in a number of recent cases,

including in Africa. In the case of Iraq, of course, we saw some very major changes to the sanctions regime at the end of last year, in 1999, again recognising that if you can target sanctions more effectively then you deal with the underlying problems much better.

**CHAIR**—As there are no further questions, I thank you very much for appearing before us this morning. If there is any additional material we asked for, particularly in relation to the scale of assessments, could you forward that to the secretary? That would be helpful. You will be sent a copy of the transcript of the evidence to which, as you are aware, you can make corrections of grammar or fact. Hansard may wish to check with you before you leave about any details of your evidence, but thank you very much for once again coming before this committee, because the information you have given us this morning will be most helpful in finalising our report. Thank you very much.

**Proceedings suspended from 10.37 a.m. to 10.46 a.m.**

**CARMODY, Mr Shane, First Assistant Secretary, Strategic and International Policy Division, Department of Defence**

**CASAGRANDE, Group Captain Ric, Director, Operations and International Law, Defence Legal Office, Department of Defence**

**EARLE, Lieutenant Commander Alan, Acting Director, Australian Defence Force Peacekeeping Centre, Department of Defence**

**GATELY, Commodore Warwick, Director-General, Joint Operations, Department of Defence**

**JOBSON, Colonel Keith, Director, Directorate of Strategic Wargames, Department of Defence**

**KELLY, Lieutenant Colonel Mike, Head, Military Law Centre, Department of Defence**

**MackINNON, Captain Andy, Director, UN Peace Operations and Arms Control, Strategic and International Policy Division, Department of Defence**

**NAGY, Colonel Bill, Director, UN Logistics, Strategic Command, Department of Defence**

**CHAIR**—I call the committee to order. I welcome the officers from the Department of Defence and thank them for appearing before the subcommittee again, having appeared in May last year. We are very grateful for your making yourselves available again.

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 it does not alter the importance of the occasion and that any deliberate misleading of the committee may be regarded as a contempt of parliament.

Naturally, we prefer that evidence be given in public, but should you at any stage wish to give any evidence in private you may ask to do so and we will give consideration to that request. We have received your primary and several supplementary submissions from your department and they have been authorised for publication.

Before we go any further, I should also ask that the committee move that we make public the submission from the Human Rights Commissioner this morning so that it can be published.

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

That this committee authorises for publication the submission of the Human Rights Commissioner received this morning.

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

**Mr Carmody**—Mr Chairman and members of the committee, Defence is very pleased to have the opportunity to speak to the subcommittee today as you progress your inquiry into Australia's relations with the United Nations in the post Cold War environment. As you know and made the point, the last time Defence appeared before you was on 19 May in the year 2000. In the intervening 10 months, many of the matters that you identified as being of specific interest to you today are the ones to which we have devoted considerable attention since we last spoke to you. I will touch on a number of these in my opening remarks, but I also have the benefit of the presence of a number of officers from within the department with particular expertise in these areas, and they will certainly be happy to expand on the issues as we move forward through the questioning period today.

Before I address a few of your specific themes, it is probably helpful if I briefly restate for the subcommittee Defence's key interests as they relate to the United Nations. They were outlined in our written submission to you and are elaborated upon in the white paper *Defence 2000: Our Future Defence Force*. As the white paper states, the maintenance of appropriate relations with the United Nations is a key component of Australia's broader strategic interests and whilst the primary focus of the ADF remains the defence of Australia we have a clear strategic interest in fostering the security of our immediate neighbourhood, the wider Asia-Pacific region, and in contributing to the efforts of the international community, especially the United Nations, to uphold global security.

In recent years, as part of the government's broader efforts, the Defence organisation and more particularly the ADF has made substantial and consistent contributions to the United Nations. Notably, over the last 10 years Defence personnel have deployed in support of a number of UN sanctioned peace operations, including those in Africa, the Middle East, South-East Asia and the Pacific.

Our commitment to East Timor is particularly significant, with approximately 1,600 ADF members currently deployed in support of UNTAET. We have recently deployed ADF personnel to support peacekeeping efforts in Africa, notably in Sierra Leone and in Ethiopia and Eritrea. While our involvement in these operations is modest, entailing a deployment of just four ADF members in Africa, it is nevertheless significant. Deployment of ADF personnel on these operations supports our alliance relationships and demonstrates our ongoing commitment to international efforts to promote global security. Government approval for Australian involvement was given after careful consideration of our national interests, including consideration of the safety of the ADF personnel involved.

In addition to our contributions to peace operations, Defence participates directly in the UN system through the provision of Defence representation within the permanent mission in New York and the contribution of ADF personnel to UN headquarters. This presence provides opportunities to increase our level of engagement with the UN, to foster dialogue and promote Pacific means of settling disputes.

Having provided some overarching context, I would like to briefly take up three themes from the issues you have identified as being of specific interest to you today. The first relates to



proposals for the reform of the United Nations, particularly as they are expressed in the Brahimi report. The second is the foreshadowed establishment of the international criminal court. Finally, I would like to make a few brief remarks with respect to some current issues in peace operations.

Firstly, with respect to the Brahimi report, as you know the report aims to address deficiencies in UN led peace operations, including peacekeeping, doctrine and strategy, mission leadership and deployment time lines. Australia's engagement with the UN in the coming months will take place largely in the context of our consideration of the Brahimi report in the development of an Australian position on key recommendations. We in the Department of Defence have been working closely with the Department of Foreign Affairs and Trade and other key agencies on developing this position, and progress is well advanced. Australia's examination of the Brahimi report provides an ideal opportunity for Defence to engage with the United Nations on issues of critical importance to us and to shape the outcomes.

Turning to the second issue, the Defence organisation has been an active participant in the government's efforts to establish the international criminal court. The Department of Defence, along with the Department of Foreign Affairs and Trade, the Attorney-General's Department and other key agencies, has played a constructive role throughout the long process of negotiating the court's statute, drafting the rules of procedure and evidence. The jurisdiction of the ICC will be limited to the most serious crimes of concern to the international community as a whole. The ICC must respect Australian jurisdiction and cannot proceed with a case that is being or has been properly investigated or prosecuted by Australia. This means that with the enactment of appropriate domestic legislation the Australian government will retain full jurisdictional authority over the activities of ADF personnel and will therefore be able to investigate and, if necessary, prosecute allegations of crimes by ADF personnel.

The final point I would like to make is a brief comment about contemporary peace operations and the environment in which they currently operate. The post Cold War international security environment has seen the emergence of expanded roles for military deployed on peace operations. The contemporary operational environments are often characterised by humanitarian crises combined with political and/or military disruption. This change in the operational environments has meant that the complexity of the tasks assigned to the UN missions has tended to increase.

The ADF's deployment to East Timor is a case in point. Fulfilling the complex range of UNTAET security, humanitarian and civil administration tasks has entailed the achievement of effective coordination between the ADF, multinational and indigenous security forces, government and non-government agencies, the UN and, of course, the local population. We have benefited in the Defence organisation from the extended opportunity to test the ADF's command and control, logistics support and movement systems at all levels, from policy development through to the mechanics of deployment and we have drawn valuable lessons from this experience, which provide a sound basis for enhancing and systematising the ADF's approach to peace operations in the future.

Let me conclude by restating how pleased we are to have the opportunity to speak with the subcommittee today. This is a dynamic period of UN reform, with a considerable level of involvement by the Australian government and our ADF members. We welcome our interaction

with the subcommittee as an opportunity to contribute further to the shaping of Australia's ongoing relations with the United Nations.

**CHAIR**—Thank you, Mr Carmody. Do any other members of your team want to say anything at this stage or just answer questions?

**Mr Carmody**—We will answer questions.

**CHAIR**—We have received many submissions and a wide variety of views in this inquiry. I can assure you that they have come from possibly one extreme to the other. I wish to raise a couple of issues about the international criminal court, because I think it is probably fair to observe that most of the opposition to the international criminal court in the United Nations has come from the armed forces and the flow-on effects that the ICC may have on any cases that may occur within the armed forces. In your opening statement, you said—and I agree with what you said—that the international criminal court would not become involved with any case against an Australian which was properly investigated within Australia. I raised this issue yesterday with Professor Charlesworth: who decides whether or not a case has been properly investigated?

**Mr Carmody**—I have Group Captain Casagrande here, who may be best placed to respond, being our expert on the international criminal court.

**Group Capt. Casagrande**—Of course the Attorney-General's Department, together with Defence and Foreign Affairs and Trade, has taken the lead on this issue. We have been engaged to ensure that the concerns that no doubt have been expressed about the safety of ADF personnel is ensured, and there are a number of safeguards built into the ICC statute.

In terms of your exact question, there is a procedure in the statute whereby a prosecutor would have to liaise with a national authority to see if something has been investigated and whether any action has been taken. There is a possibility that if he is dissatisfied he can take that further, but to proceed with any sort of investigation would have to get the approval of the appeals chamber of the ICC itself. We believe the stature of the court itself and the types of people who would be members of the chamber would be sufficient safeguards to ensure that there are no frivolous or vexatious attempts by prosecutors who may be trying to run a political agenda, which I know the US is very concerned about.

**CHAIR**—It is not that I am so concerned myself, but we have had a number of witnesses who have been quite vehement in their opposition to the establishment of an international criminal court. I guess this is one of the issues that they would raise. Can I give you an example? For instance, in the case of after the events in East Timor, the detention of Gutteres and any subsequent trial that might take place in Indonesia, for all intents and purposes it appeared to those of us who were observing from outside that there were a number of atrocities committed. I am not suggesting that he is guilty of them, but circumstantial evidence and the things that we read about would suggest that there is a strong case to answer. Just for instance say that they decided that he was not guilty: who would decide whether that case was properly investigated? Using the term 'properly investigated' I think leaves it open for a very wide interpretation.

**Group Capt. Casagrande**—Indeed, and that is why there are a number of safeguards, so it does not rely just on the prosecutor, which is currently the example with the Yugoslav tribunal. With the ICC, if a prosecutor is not satisfied that a case has been properly investigated, then it must go to a trial chamber of three judges. I may be a little bit short on the detail here, but that safeguard is in place whereby three judges must look at the case and decide if the case has been properly investigated and if the prosecutor should proceed with any independent prosecution or investigation by the ICC itself. So that is the safeguard that is built in there.

**CHAIR**—If a case is dealt with by a sovereign nation and they consider that they have conducted an adequate trial of that person, they could still be overruled by the ICC?

**Group Capt. Casagrande**—Yes. That is put in there specifically to make sure that states do not hold sham trials or investigations to protect their own citizens where they may, in fact, be guilty of very serious crimes—universal crimes, in fact—of which we could all be found liable wherever we are in the world.

**CHAIR**—What is the department's understanding of the applicability of the ICC statute to serving members of the ADF?

**Group Capt. Casagrande**—Again, the legislative framework of the ICC statute is that it complements our national jurisdiction. So in the first instance the ICC would in fact look to work with any national legislation or investigation. In our case, we have the Defence Force Discipline Act, which incorporates all the criminal laws of the Commonwealth, and the ratification process will in fact ensure that all those laws will cover the crimes that are in the statute itself. So before the ICC would get involved, it would defer to Australian jurisdiction.

**CHAIR**—I understand that amongst the statutes one of the crimes listed is the crime of aggression. What is the department's position on how a crime of aggression should be defined by the ICC, because it seems to me it is a very loosely worded term, 'the crime of aggression'?

**Group Capt. Casagrande**—Indeed. It has caused the international community much angst in trying to put some words around it. 'Crime of aggression' really came out of the Nuremberg tribunals, and it was directed at the acts of the political leadership of the German state in that case in terms of carrying on an aggressive war against other international states. So it really is very much aimed at the political leadership and hence we do not see it has any applicability to the actions of Australian Defence Force members.

In terms of the definition, we are not going to see a definition for at least seven years after the statute comes into effect because there is not one, and there is going to be a lot of water under the bridge before the international community can come up with any sort of definition that will be suitable. So it is a long way off.

**CHAIR**—In the light of what I would consider to be some misinformation that is being spread about the international criminal court, the statutes and what it would mean to Australians, is there any disquiet amongst serving personnel about the potential implications of an international criminal court, or are they being kept well informed?

**Group Capt. Casagrande**—I think we have to step up that effort now that we are getting closer to ratification and now that we have a statute. As part of that process we will be including in an international law update a summary of the provisions of the statute and what effect it may have. Our assessment is that it will not have any effect because we will be asserting national jurisdiction over our servicemen. Nevertheless, it is a matter that they should be informed about and understand that, in effect, there is no danger to them in the statute—and that is why we have been engaged through the whole process—and also that it could serve as some benefit in situations such as East Timor or Somalia. Where we go into a situation where war crimes may well have been committed, the burden initially falls to us as the peacekeeping force to try to investigate it. When we have an ICC we have an international, independent arbiter that we can go to and say, ‘Look, we think something really bad has gone on here. Can you send your investigators in?’, hence taking the burden off the ADF.

**Mr HOLLIS**—Is there a degree of concern amongst former serving defence personnel?

**CHAIR**—Following on from that, I am wondering whether or not it has been the subject of discussion amongst senior serving officers, whether you or your senior officers have discussed the issue of the international criminal court. That is why I am trying to find out whether there is any disquiet amongst serving officers in the same way that it has been described by some former senior service personnel.

**Group Capt. Casagrande**—Certainly through the whole process the senior leadership, the chief of the Defence Force and the service chiefs, have been kept informed and briefed. They have expressed no disquiet in relation to the progress to ratification. But, as I say, I think the burden falls on us to make sure that, in relation to the questions that are now being asked, our senior leadership are comfortable with the answers for it. So I think we have an education process to go through.

**Mr Carmody**—We would focus that on the fact that it is not a threatening issue for members of the Australian defence organisation and all members of the defence organisation who operate in accordance with the Defence Force Discipline Act and the normal acceptable laws of the country. It is not a threat to them. In fact, it is less targeted at defence organisations and defence forces like ours than it is at a range of others. It is more a broader international community concern. We would focus on the fact that they should view it as a positive rather than a negative.

**Mr HOLLIS**—What we understand—and we are perhaps in a privileged position where we have access to information—is that the shock jocks on talkback radio are running a campaign against this. That means that people are ringing us up as members of parliament.

There is a degree of deliberate misinformation being fed out there in the community and there are statements by people whom one would hope would know better—not least members of parliament—and senior ex-serving defence personnel which carry some weight in the community. If this is all used by some of the talkback radio hosts and this fear campaign, or misinformation—

**CHAIR**—Or a lack of understanding.

**Mr HOLLIS**—Yes, a lack of understanding—is being spread out there, to me it is a matter of concern. It may well be our role, or the government's role or parliament's role to disseminate more information, or the correct information, out there. One of the concerns I have is that we are going to get a lot of serving personnel in the defence forces—I do not mean the senior officers; they have not—lower down the scale and people in the community or other people might be saying to them, 'You could be hauled over the coals by these international judges for the hint of not understanding our democratic systems.' You have heard all the arguments before and all of these cases come out. But it is a matter of concern out there.

**CHAIR**—We have had evidence—and I think it is probably fair to say that Digger James is one of those who gave us evidence; I do not know whether you have read it—

**Group Capt. Casagrande**—No, I have not.

**CHAIR**—It probably would be as well if you read it, I think, because we need to be sure in our own minds that the correct information is being given to your forces.

**Mr Carmody**—And I think it is incumbent upon us—and we are confident about the proposals that Group Captain Casagrande has mentioned—to make sure that we ensure that the ADF and the defence organisation more broadly understands them and they will inevitably work their way, as these do, doctrinally into our education and training programs and a range of other things. I think the point is well made and it is something that we need to look at.

**CHAIR**—I just want to change to one other issue that I wanted to raise with you, which is the issue of regional operations. In previous evidence from the foreign affairs department, which some of you have heard, it was stated to us that the United Nations is quite happy and prepared to let powers within an area, such as Australia and New Zealand, be involved in regional operations as has happened or is happening currently around us. This comes at a considerable cost to Australia and to the department and not a cost to the United Nations, because I presume that it is operations that we do not get reimbursed for. I guess I am really trying to find out what is our capacity. How far are we extended at present? Do we have a current capacity to undertake new operations should they arise? I am just wondering if you could give us a broad overview of the extent to which we are stretching our ability in being involved in regional operations with the blessing of the United Nations but without any financial support.

**Mr Carmody**—Certainly. I will commence the answer and then I might pass over to Commodore Gately. Certainly, the point is well made. There is a range of regional operations that we are involved in and they do come at a cost. At the same time, it clearly serves our national and strategic interest to have involvement in regional activities and to assist where we can in maintaining the stability of the region. That is true as much of East Timor, which of course is very large scale, as it is of Bougainville or the Solomon Islands, for example.

Also, the Brahimi report, which I am sure we might discuss in a little bit more detail, as you are probably aware very strongly encourages regional solutions to regional problems. So that is the direction we are actually being pushed in. In terms of ADF commitment and the stretch on ADF commitment, the decision-making process to involve ourselves in regional activities is quite long and considered. In terms of operational tempo and ADF capability and how much

flexibility we have to involve ourselves in another activity—how far we are stretched—that is one of the principal considerations with the overall political and strategic consideration. In terms of what that stretch actually means, I will pass over to Commodore Gately, but I understand that those are the issues that we consider very seriously.

**Cdre Gately**—If I can just follow on from Mr Carmody's comments, you are aware of our battalion commitment in Timor and our ongoing activities, of course, in Bougainville and the Solomon Islands. There is capacity to undertake further activities depending, of course, upon the scope and the nature of the task and what exactly we would be looked upon to do.

There are some concurrency issues that we are facing in the ADF at the moment, certainly in relation to strategic airlift, transport support, but each activity would need to be looked at on its merits and looked at in terms of our national interests before we make a commitment to it. But there is capacity in the ADF to do some more offshore if that was required.

**CHAIR**—Is it the view of the department that we should in fact concentrate our efforts in regional deployment rather than perhaps sending troops to Somalia, the Middle East, or wherever they have been required to go in the past? Is it the view among the department that we should concentrate on regional peacekeeping operations?

**Mr Carmody**—In the white paper that was released last year, it made the direction reasonably clear, I think, to us that our relative priorities lie with respect to participation in peace operations in our immediate neighbourhood in comparison to those in support of activities further away. That being said, there is both a regional security component, if you will, and an international citizenship—global citizenship—component in this. So it is in fact a finetune judgment. But certainly the white paper noted the trend—which we all note, quite obviously—and made the point that that is where we seem to be going in the foreseeable future in the short term and that, in terms of priorities, if there is a fundamental priority choice, then our priority choice should rest with our region.

But in terms of the points—following on from Commodore Gately's comment also—quite often with contributions to these peace operations or a range of other operations, it is a question of mix of forces. We might have force difficulties in one area but retain support in that area and obtain support from someone else in that area. In the same way, in contributing to something further away, we might be well placed to contribute a small element where another nation is in fact stretched. So there is a degree of balance.

**Senator BOURNE**—I have a couple of questions. It was suggested to us earlier how much is owed to Australia out of the peacekeeping budget of the UN. You might be better able to answer that—perhaps not immediately. If somebody could get that figure to us, that would be very useful.

**Mr Carmody**—I think we have that.

**Col. Nagy**—With respect to the current UNTAET contribution that the Australian government has made, the assessment that we have made—based on the legal documents that we have negotiated that underpin that contribution with UN New York—indicates that for the first 12 months of UNTAET the UN should reimburse the Australian government in the order of

\$135 million. That money has not been forthcoming in full simply because of the customary delays in the process that the UN has but also because some of the legal documents have not yet been finalised, and they are the basis for the actual calculations. They are the estimates that we have.

In future years, based on current predictions, we estimate that figure will drop down to somewhere in the order of \$96 million. These estimates are based on today's exchange rate and, of course, will fluctuate accordingly.

**Senator BOURNE**—Yes, of course. How much of what we are assessed as being entitled to do we actually get in peacekeeping funding? I know that the US, for instance, has not paid their dues for quite a while. Can you give a percentage?

**Col. Nagy**—The history of this in terms of Australia's contribution has been perhaps a bit more successful than the US. There are no examples that I am aware of where we are—that is, the Australian government—significantly, if you like, in debt in that sense. But our contributions, of course, in the past have been perhaps not on the scale as they are in UNTAET at the moment.

The sums of money are relatively lower. We are quite confident under the system that the UN currently operates that actually determines the level of reimbursement that we will be compensated. To this point in time, the United Nations has actually paid of that amount some \$A29 million by way of reimbursement. So we are well short of what we will eventually receive, but it really does depend on the conclusion of the legal documents, which are the basis for these calculations.

**CHAIR**—So there has not been a negotiation of an agreement with the United Nations as to how much should be paid?

**Col. Nagy**—No. There has been negotiation at this particular point in time. What we have not yet succeeded in doing is actually finalising a number of the documents that will actually serve as the basis for the final calculations. These matters are in hand and have been the subject of ongoing negotiations with the United Nations in New York.

**CHAIR**—So it is agreed. The agreement is there; it is just that the actual detail of the amount, or the cost of the operations or what can be included, is still the subject of debate, is it?

**Col. Nagy**—The actual legal instruments have not yet been signed by the representatives of the respective parties, which is the government of Australia and the United Nations, but there is agreement on the detail of those figures, yes.

**CHAIR**—Okay.

**Senator BOURNE**—Can I go on to another area and demonstrate my appalling ignorance, and that is in the case of an Australian contingent to a UN peacekeeping operation that is actually in a country or in a place that has no laws to speak of. What laws do we operate under and do we officially operate under any laws? The UN, of course, cannot have its own laws. Do we officially operate under Australian law or is it just done by agreement? What happens there?

**Mr Carmody**—Colonel Kelly may well be placed to answer this.

**Lt Col. Kelly**—That is an extremely good question that we have been facing regularly on a lot of our deployments and particularly initially in the deployment to Somalia where, as you are well aware, there was a total collapse of law and order. Obviously, there is an obligation and a moral imperative for the ADF as well as a mission mandate to step into that vacuum on an interim basis. This was analysed fairly carefully after the Somalia operation.

At the time, we determined that the fourth Geneva Convention, which is designed to protect civilians and regulate the relationship between the military and civilians, applied as a matter of law to the deployment in Somalia, given that we were there without the consent of a state. Therefore, that provided us with a firm foundation and a very clear and workable foundation for administering law and order on that interim basis. Under that auspice, we re-established a temporary justice system there, setting up a police force and a judiciary, a criminal investigation division and enabling that capability to put on trial some war lord or militia elements that had been responsible for the genocide that was being conducted in that area. That was very successful.

Taking the lessons learned from that in East Timor, we were there under an agreement with the Indonesian government, the Portuguese government and the UN. So we did not determine that the fourth convention applied as a matter of law. But using the chapter 7 mandate, which authorises all necessary measures, we applied the fourth convention as a matter of policy. Under that guise we took the most serious elements of the Indonesian criminal code and promulgated an ordinance under the authority of General Cosgrove, as the commander of INTERFET, that those serious crimes would be policed, if you like, by the ADF. In tandem with that we established a detainee management unit, which was staffed by defence force legal officers, which provided a fundamental pretrial review, if you like, of detainees who were held to establish whether sufficient evidence existed against those individuals to enable them to be held for longer periods while awaiting the UN administration and the East Timorese to establish a trial capability.

So we have come up with a number of solutions to filling that legal vacuum, but it always puts an onus on us to be able to come to grips very quickly with what is the legal tradition and customs of the area. Prior to moving into East Timor, we assembled manuals for the benefit of the troops and the legal officers deploying with the Indonesian criminal code, criminal procedure codes and other documents to assist them in that respect.

**Senator BOURNE**—And am I right in thinking that in East Timor that has been carried on from INTERFET to UNTAET and, really, the basis of that is being used as the basis currently of the legal and prisoner-keeping system?

**Lt Col. Kelly**—Yes. We were very insistent right from the start of our deployment to East Timor and in our campaign planning to put pressure on the United Nations to address this rule of law issue much earlier than it has tended to be addressed. We did get a lot of serious engagement on that and they did in fact respond more rapidly than they ever have before. We established a transition process between the detainee management unit and the interim justice and trial administration. It was not perfect by any means and there are still, I think, some defects in the system.



The problem is that they had not only a breakdown of the system there but a total absence of personnel within East Timor with any kind of expertise—judiciary, police, or whatever. They had all been either Indonesian functionaries or pro-integrationist functionaries. So they had very little to work with. That has had obvious teething problems, but we did the best we could to effect a proper transfer. All of the files that were being maintained on the detainees—the cases and evidence against them and the proceedings that had occurred—were handed over officially to the UN administration.

**Senator BOURNE**—I must say when we were there a few weeks ago it seemed to me that the system was working a lot better than I expected. I think it is probably to ADF's credit that that is happening. So I am really pleased to hear that. Can I just ask one more on Brahimi. Can you tell us what you think the most important issues are as far as the Australian Defence Force is concerned and the ones that you would prefer to highlight yourself in the talks both within Australia and also with other countries.

**Capt. MacKinnon**—I think in terms of the defence interest in the Brahimi report—and there are much broader national interests involved—we have tended to focus on those issues that impact on ADF capability and resources, hence the particular issue of the UN stand-by arrangements scheme and our contributions towards that have been a particular focus. Whilst we have been a contributor to that scheme notionally for some years—since the early nineties—the reality is that our input to the UN on that has been somewhat dormant. So we are looking to revitalise that and support it. Related to that, we are looking closely at notions of having stand-by planning officers available, and indeed this issue was considered at high level only yesterday.

I think there are some other areas where we have, if you like, support in principle—notions of having people identified and available to go and support or act as mission leaders, but not necessarily giving names to the UN. I think what we are looking to do is to adopt the principles of Brahimi whilst at the same time giving ourselves the flexibility to pick and choose who we see as appropriate.

I am just reminded that the whole focus for us really on Brahimi has been on our contribution towards its rapid reaction capability—those things that we can do to help in speeding up its processes, hence the planners, the mission leaders. Of course, in the broader sense, I think, along with the Department of Foreign Affairs and Trade, our input to the committee so far has strongly supported robust rules of engagement, the clear mandates that are advocated by Brahimi and more open discussion between troop contributing nations.

**Senator BOURNE**—Can I ask about the logistic support within that? Are we focused more on how we can provide logistic support and management support for potential operations more than saying, 'Okay, at any one time we can provide so many officers and men to come in and do something'? Are we looking more at arrangements in a broader field?

**Capt. MacKinnon**—I think more the latter than the former in the way that you have described it. We are looking at the availability of certain types of equipment and personnel that could be available from within the ADF to support UN peace operations.

That said, when we look at the range of capabilities that we currently have within the ADF, and those things which we have previously identified to the UN, I think one of the points that

we would be looking to keep the UN informed of is what we have already deployed. And when one does the sums and looks at numbers of ships and troops and aircraft and various other bits of logistic equipment that might be deployed to UN operations, it is quite clear that much of that is already in East Timor and there is not too much to spare.

**Senator BOURNE**—That must have been a bit of a drain on the Defence Force and probably will continue to be for a fair while.

**Mr Carmody**—In relation to the point that was raised earlier about UN operations versus UN sanctioned operations and some of the other activities in which we are involved—which means that the UN does not have to be involved, for example—we seek to find a way within this to highlight those, too, which makes it clear that our contribution is broad. And if the focus is on more regional solutions to regional problems, then we are also contributing regional solutions to regional problems, and we should make that more readily apparent to the UN, and we will find a way within the process to do that.

**Mr HOLLIS**—It was interesting when Captain MacKinnon was talking about the capacity of a rapid reaction capability. Every so often, the idea is floated about the UN having a standing army. I have never been quite sure what people mean by this UN standing army, whether they mean a couple of thousand troops somewhere in a barracks, or whether they mean the idea—which I think is the latest idea—of various countries committing a set number of people, not having them there in a barracks at the moment but saying, ‘If a situation arose, we would provide X number of personnel.’ Has there been any discussion in the Defence Force on this? Do we have a view on the possibility or the desirability of the UN having a standing army with, I guess, the secretary-general as the commander in chief?

**Capt. MacKinnon**—I will answer as best I can. Others may wish to add to this. I think Brahimi itself encourages the international community to steer away from what was previously the UN penchant for standing armies and has gone towards, as you describe it, the sort of regional focus of ready reaction. In fact, they talk about regional ready reaction brigades. That has some wider support in Europe and in Scandinavia. For instance, there is what is known as the Standing High-Readiness Brigade, which is a Scandinavian initiative headquartered in Denmark but with contributors largely from that region but including Canada, notionally available at short notice to deploy to hot spots to help stabilise the situation before the UN is able to move in and mount an operation. I think the jury is still out on the effectiveness of that system. Some Scandinavians I have spoken to suggest there is a fair amount of double if not triple counting of the troops that they have notionally provided to this force, such that actually providing them on the day is a bit more problematic. But that said, the Dutch, I think, were invited to contribute to Ethiopia and Eritrea, and have done so with a force that notionally might have been part of their SHIRBRIG force.

Those issues are perhaps more attractive in other parts of the world, but I would simply conclude by saying that I think notions of rapid reaction stand-by multilateral peacekeeping forces are not so favoured in our region; that notions of multilateralism in terms of peacekeeping are still, at best, embryonic.

**Col. Nagy**—If I could add to that from my own experience with the UN, I think you have hit upon one of the greatest frustrations for the UN in terms of peace operations, and that is this

issue of how it can more rapidly respond to emergencies as they occur in various points in the world. I think you will find that the overarching thrust of Brahimi is to address that very issue. And to do that, of course, member states are encouraged, as we said, to sign up to the UN stand-by arrangements and to declare more openly what forces they may be prepared to make available under certain circumstances—subject, of course, to government decisions—and also to undertake to ensure that those troops are appropriately equipped and logistically supported and, therefore, can make a ready contribution.

Brahimi also suggests minimum deployment times which, again, member states might wish to sign up to and encourage them to arrange their affairs accordingly so that they can react rapidly. I think that is a fairly realistic approach because, at the end of the day, the undoing of all of these initiatives such as the stand-by high-readiness brigades is the fact that they still consist of a coalition of individual member states and there still has to be political will. They will each retain the right, of course, to make up their own minds as to whether or not they will commit to a particular situation or circumstance depending on that mandate.

**CHAIR**—There are a couple of other issues that I want to raise. You are probably aware that, in a previous inquiry we did, there was a lot of discussion about whether or not our defence forces should be trained for highly skilled warfare and, in the event of peacekeeping operations being required, they can always scale down to the humanitarian requirements. I think that we generally agreed with that point of view. Can you anticipate any problems in regional peacekeeping operations where, in fact, we usually find ourselves in partnership with the New Zealand defence forces, if the New Zealand defence forces choose to restructure towards a peacekeeping instead of a war-fighting role?

**Mr Carmody**—Commodore Gately is well placed to respond.

**CHAIR**—I mean, if you have one defence force that is trained for highly skilled warfare and another one that is only trained for peacekeeping without the highly skilled warfare, I am wondering whether it might cause some problems.

**Cdre Gately**—Certainly at this point in time ourselves and New Zealand are probably trained to almost equitable standards. Where New Zealand choose to go in the future in relation to their force structure really is a matter for New Zealand. I believe we might get some advice to that effect in May when they put out their long-term strategic plan.

At this point, there is not a lot of difficulty in operating with New Zealand. We engage very effectively and very efficiently. And as I said, depending on where they choose to go with their force structure, that may make that a little more problematic in the future.

**CHAIR**—In the hypothetical case that they do restructure—because there has been talk about it—

**Mr HOLLIS**—The New Zealand Prime Minister made an announcement that they were going to train for a peacekeeping role rather than a combat role.

**Cdre Gately**—I am certainly not aware of that formal statement by the Prime Minister. But as I said, if they choose to go down that path, it could well present us with problems in terms of

our interoperability. Notwithstanding that they might view their strategic circumstances different from ours, we would still encourage New Zealand to retain forces at the higher end of capability so that we could draw mutual benefit from them in any coalition activity.

**Mr Carmody**—What we have heard most recently in our discussions with New Zealand and on a number of occasions is that they still intend to retain a well-equipped combat trained defence force. Their debate is really about breadth versus depth, and that is the issue they are dealing with at the moment. Certainly, I endorse what Commodore Gately said. That may well give rise to some issues that we would have to manage in peacekeeping operations. But I also endorse the fact of the significant—dare I say almost outstanding—contribution by New Zealand working with us in East Timor and elsewhere in the region and continuing to operate at that high end and be interoperable with us.

**CHAIR**—How highly skilled are the Fijian forces? They are currently in East Timor, are they not?

**Mr Carmody**—They are also highly skilled and have been very well trained. They are not only in East Timor, they are also deployed in the Middle East. They have retained—dare I say it—a strong interest in involvement in peacekeeping operations and peacekeeping activities. And because of that, they are quite well trained. They are quite an effective defence force.

**CHAIR**—We really do not have anywhere else to go apart from those two places if we are looking for partners in peacekeeping operations.

**Mr HOLLIS**—There is Vanuatu and Bougainville.

**Mr Carmody**—We have them in Vanuatu and Bougainville, as well. But yes, there are not that many players out there.

**CHAIR**—We heard evidence from the Australian Federal Police yesterday. We were talking at length with them about the fact that they do not carry any weapons. They perform their role without weapons. I think that is right, isn't it, except in East Timor? Is that the case? The reason I am asking that question is this: did the defence forces do any training, particularly for non-lethal combat? Wherever the ADF goes—I am not sure about East Timor; I cannot remember—it is not usually armed at all.

**Mr Carmody**—Do you mean the AFP?

**CHAIR**—Sorry, yes, the AFP. Is there any provision in Defence Force training for non-lethal combat, which is the sort of peacekeeping operation that is performed by the Federal Police?

**Cdre Gately**—Elements of our high readiness and combat elements do some training in non-lethal weapons.

**CHAIR**—Is the ADF well prepared to operate in urban areas?

**Cdre Gately**—That might be a question better placed to one of the Army officers. I am not entirely familiar with Army training per se. I could not make a comment on that.

**CHAIR**—Does anybody wish to comment on it?

**Col. Nagy**—It should be recognised that the police are not doing the same task as the military in peace operations. The police are primarily focused on law and order issues as opposed to dealing with internal or external security. It is quite common even for military observers to be customarily deployed unarmed. That is a UN prerequisite. So this circumstance in itself is not unusual.

**Col. Jobson**—We were unarmed in Bougainville.

**Mr Carmody**—Yes, we were unarmed in Bougainville and unarmed in the Solomon Islands. So it is very much the nature of the task.

**Col. Jobson**—Our military observers in UNAMET were initially unarmed, as is normal for the UN.

**CHAIR**—In relation to readiness and stand-by, what resources has the department offered to the United Nations under the stand-by arrangements system?

**Capt. MacKinnon**—I think we would probably want to provide that one on notice if I might say because it is quite a complex list. More importantly, my concern is that the list that we previously provided is now outdated. We can certainly give you a list of what we have previously told the UN, but quite frankly it is of little value. What we are working on right now is more importantly what we might provide in the future, which has not yet been, I have to say, fully endorsed. We could provide it on notice, but I wonder if you really want something that is old and about to be refreshed.

**CHAIR**—If it is about to be refreshed, it may not be of much use to our inquiry.

**Mr Carmody**—It is also in reality an element of the response to Brahimi. Over the next few months as that all comes together I think it would be more complete at that point than it would be now. We are doing a lot of work on it, but we are certainly in a process of transition from where we are to where we expect to be.

**Capt. MacKinnon**—In relation to our response this time, we expect to be giving the UN better ideas of the readiness time scales as well. You might be aware that Brahimi encouraged consideration of 30 days from the time of the Security Council mandate to deployment in the field for chapter 6 operations and 90 days for chapter 7. Our hope is that our response to the UN stand-by arrangements scheme this time will give indicative time scales along those similar lines—that is, a right-hand column that says we have already deployed these to somewhere else.

**Senator BOURNE**—In relation to the Department of Peacekeeping Operations in the UN, when we were there it seemed to us that while the top positions are well filled—very well filled—and there are an awful lot of people in the field, there seemed to be not enough

personnel in between the very top and the personnel on the field. Does the ADF have any view on that?

**Capt. MacKinnon**—I would have to say that I agree with you entirely having fleetingly visited the UN as well last year, and I am sure Colonel Nagy has a view on this too after having served there. There are about 404 people in DPKO running 50,000 in the field, which is the poorest headquarters to field ratio of any organisation in the world. This is of course what Brahimi is all about as well. One of the areas where the greatest focus has rested so far in the international community and the members of C34 is actually boosting the DPKO's manpower resources. I think they are currently going through the round of recruitment for 95 additional people, which we had input into. After the consultant's review I think there will hopefully be more human resources given to the DPKO as well.

**Senator BOURNE**—That is good, because that is one of the things that we identified as being well and truly a problem.

**Mr HOLLIS**—It is not usual for this committee to apportion praise or make comment, but as this is a UN inquiry and Senator Ferguson and I spent four months at the UN at the Australian mission last year, I must say how impressed we were and how well Australia is served by UN people, and especially the defence attache there. I believe that the former defence attache who was there during the whole Timor situation played a role which has never been fully recognised. The present defence attache was there during the Brahimi. He took us through the Brahimi and attended endless meetings and took part in negotiating fees. We were particularly impressed with the defence attache's work there and thought that Australia was getting value for money because he was doing an excellent job. We do not usually use this platform to praise people, but I think it is appropriate.

**Mr Carmody**—Thank you. I will take great delight in passing that back to the defence attache. I think we recognise, as you would from your time there, how complicated and difficult the task really is in the United Nations and how many relationships they need to manage and how important to our national interest the work is that they actually do with the UN. I thank you very much and will take great delight in passing that back.

**CHAIR**—I think Colonel Culleton is still there and David Creagh has returned, hasn't he?

**Mr Carmody**—Yes.

**CHAIR**—We were treated very well by them. They were very cooperative. I concur with everything that Mr Hollis says about our attaches there. There is one other area on our list of questions we asked Foreign Affairs, Defence and Trade. It is on the issue of gratis personnel. Was there a vote within the general assembly on the proposal to remove gratis personnel from the Department of Peacekeeping Operations? I know there was. Did we agree with it or not?

**Mr Carmody**—I know they have been removed.

**Col. Nagy**—Yes, that is a fact. As things stand at the moment, in terms of filling the vacancies that have now arisen in DPKO, the former practice of providing gratis personnel is just simply not on the table.

**CHAIR**—Did we support that position?

**Col. Nagy**—I cannot honestly answer that. We would have to take it on notice.

**CHAIR**—That would be interesting. What is the state of staffing within DPKO? They obviously have not been replaced by salaried officers, as was envisaged in the Brahimi report. Does that mean they are simply without staff?

**Col. Nagy**—In some cases, that is the case at the moment. In other areas, they have been recruited under contract. The UN seems to favour the contract approach as its primary means of filling these vacancies.

**CHAIR**—There is the issue of rules of engagement. You indicated earlier that you would be prepared to go in camera and discuss that briefly. We will go in camera, which means that people will have to leave the room except for the officers at the table.

*Evidence was then taken in camera, but later resumed in public—*

**Proceedings suspended from 12.04 p.m. to 1.05 p.m.**

**SIDOTI, Mr Christopher Dominic (Private capacity)**

**CHAIR**—I call the committee to order and I welcome Mr Chris Sidoti to the hearing, who would be well known to most members in his former role as the Human Rights and Equal Opportunities Commissioner.

I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect that proceedings of the respective houses of parliament demand. Although we do not require you to give the evidence under oath, you should be aware that it does not diminish the importance of the occasion and that any 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 will consider that request. We have your submission and it has now been made public by a motion this morning. You do not wish to make any additions or alterations to that submission?

**Mr Sidoti**—No.

**Mr NUGENT**—The penultimate paragraph I think has a typo.

**CHAIR**—With the ‘999’?

**Mr NUGENT**—Yes.

**Mr Sidoti**—My skills at using information technology are not high.

**Mr NUGENT**—I am not complaining. I am just saying that before it is published we need to take that out.

**CHAIR**—That should be deleted.

**Mr Sidoti**—The ‘999’ should go. I intended to actually get the pagination done—not necessarily a successful one, obviously.

**CHAIR**—Mr Sidoti, I invite you to make a short opening statement and then we will proceed to questions.

**Mr Sidoti**—Thanks very much. I should first apologise for the 11th hour nature of the written submission. Margaret Swieringa very kindly said to me that, if I did not manage to get anything in writing, it would still be a valuable opportunity to have a discussion with the committee. I thought that if I did put a few thoughts down in writing it might be helpful to the committee. As you know, it only arrived at the 11th hour, and I pass on my sincere apologies for that. For that reason I might just go through the principal thrust of the submission that I have presented and the recommendations so that the committee is aware of the views I have expressed.



Australia has had a very long and close association with the United Nations and its various mechanisms. We were, indeed, among the founders of the United Nations and among the first and most enthusiastic of its supporters. We had a particular view that the United Nations should not be crippled in the way the League of Nations was and that it should have a particular concern for human rights. For that reason, right from the start Australia was very closely involved in the human rights work of the United Nations.

Certainly looking back on its 55-year history, the United Nations has had a very chequered record. Unfortunately, some of the more spectacular and horrendous failures of the United Nations, including those of the last decade in the Great Lakes area of Africa, in the Balkans and in Somalia achieved a great deal of public attention and, quite rightly, public criticism, whereas the successes of the United Nations are not subjected to the same kind of broad attention and so largely pass unnoticed. So its record is very much a mixed record; there have been some outstanding successes and some horrendous failures.

I do not think that we need to be defensive or apologetic about the failures of the United Nations; we simply have to recognise them and seek ways to address in the future the issues that generated failures in the past in a much more successful way. Certainly so far as I am concerned the United Nations remains the best and, indeed, the only universal mechanism for the advancement of peace and human rights. For that reason alone it deserves and needs Australia's continuing support and commitment and very close involvement in its operations. The philosophical position from which I start is that if we want to have influence then we must be engaged. The recommendations that I make in the submission are very much based upon that premise, the premise of engagement for the improvement of the United Nations system and, indeed, for the improvement—the increasing efficacy—of Australia's own role within the international system generally.

My submission is addressed quite explicitly to the human rights work of the United Nations. That is because that is the area that I know about and where I have been most closely involved. I am not qualified at all to speak about other parts of the United Nations operations because my knowledge is no more than that generated from the media, so no more than anyone else's. But I have been closely involved in the human rights work and so direct my comments to that area of the UN.

As I mentioned, so far as human rights are concerned, the United Nations has had as part of its explicit mandate support for the promotion and protection of human rights and right from the beginning Australia has been involved in that work. We were a foundation member of the Commission on Human Rights, we were a member of the drafting committee responsible for the preparation of a universal declaration of human rights—one of eight nations that were members of that drafting committee and an Australian, Dr H.V. Evatt, was president of the general assembly when the universal declaration was passed on 10 December 1948. We have been a member of the UN Commission on Human Rights for almost half of its total life—24 out of its 54 years—although we are not currently a member. We have played leadership roles within the Commission on Human Rights and within the general assembly on a number of important issues, including women's rights, the rights of children and indigenous rights. In recent years we have had principal responsibility for the annual debate in the Commission on Human Rights and the general assembly on national human rights institutions.

We have also been a party to all but two of the major human rights treaties, in most cases being an early party to those treaties. We have indicated that we have an intention to ratify the statute of the International Criminal Court. We have signed it but not yet ratified it. We have indicated that we would not ratify the migrant workers convention, that we would not ratify the new optional protocol to the women's convention and we have expressed no view on the two new optional protocols to the Convention on the Rights of the Child. My first recommendation is that we complete our hitherto perfect record of ratification of major human rights treaties by ratifying as soon as possible the statute of the International Criminal Court, the migrant workers convention, the optional protocol to the women's convention and the two optional protocols to the children's convention.

Australia has also contributed to the United Nations human rights system through the participation of eminent Australians in a number of the UN human rights committees and also the participation of eminent Australians in much of the work of the United Nations. In the latter case, I refer particularly to the work that Brian Burdekin, my predecessor as Human Rights Commissioner, has undertaken as the special adviser to the High Commissioner for Human Rights on national human rights institutions and regional arrangements for the protection and promotion of human rights. Through these eminent Australians on the various committees, Mr Burdekin and others who have played roles within the bureaucracy of the UN, we have certainly had over the 55 years an influence on the UN's human rights system far beyond our position as a small nation would have warranted. We have been, as the United Nations Secretary-General said when he visited early last year, a model member of the United Nations for much of the last 55 years.

My submission deals with the two principal areas of human rights work undertaken by the United Nations: that based on the UN charter and the organs and mechanisms under the charter and that based on the various human rights treaties that have been negotiated and adopted through the UN system.

The pre-eminent charter base body is the Commission on Human Rights, and I have mentioned already that we have been a part of the commission as a full member for almost half of its life. It is appropriate that nations rotate the role of membership of the Commission on Human Rights and, for that reason, Australia did not seek re-election at the time of the expiry of its second of its most recent terms in 1996. It is now, though, two terms since Australia was a member of the commission and so I recommend that Australia seek re-election to the Commission on Human Rights at the first feasible opportunity. That is more likely to be next year than this year because these things take a while to prepare. In my view, by next year it will be time for us to seek to go back on the Commission of Human Rights and to seek to play the greater—the more direct—role in the UN's human rights work that membership of that commission enables.

The subcommission on the promotion and protection of human rights, established by the Economic and Social Council, is a body that is subsidiary to the Commission on Human Rights but, because it is made up of individuals rather than governments, it plays a much more independent, non-political role. So far as I am aware, Australia has never had an individual who has been elected to that commission. So I recommend that we seek to have an Australian elected to the subcommission so that we can seek through the involvement of eminent, distinguished Australians the greater participation that that kind of membership enables.

My submission discusses the role of the High Commissioner for Human Rights since that office was established after the Vienna World Conference on Human Rights in 1993.

It is a matter of regret, I think, that the present High Commissioner, Mary Robinson, announced on Monday that she would be vacating her office at the end of her current four-year term in September. Mrs Robinson has been a dynamic human rights advocate and initiator. She has been outspoken and uncompromising and has certainly enhanced the position of human rights high commissioner so that it is now not only the pre-eminent advocate for human rights within the UN system but the pre-eminent advocate globally.

Importantly, Australian governments, both the former Labor government up to the mid-nineties and the coalition government since then, have been strong supporters of the high commissioner and her initiating role and have made a number of voluntary contributions towards those activities. Mrs Robinson's withdrawal from the position at the completion of her term gives rise to concerns about the nature of the succession. Her predecessor was not as successful or as outspoken or as initiating as Mrs Robinson has been.

**Mr NUGENT**—Can you remind us who that was?

**Mr Sidoti**—Mr Jose Ayala-Lasso.

**Mr NUGENT**—From Ecuador?

**Mr Sidoti**—From Ecuador. He had a background as a diplomat rather than as a national leader in the sense that Mrs Robinson was president in her country. I think he brought diplomatic skills rather than leadership skills, if I may make a distinction between the two, to the role of high commissioner. It is important that the next high commissioner also be an outspoken and uncompromising advocate for human rights, seeing the role in the way that Mrs Robinson has seen it. Australia should seek to ensure therefore the best possible appointee to succeed Mrs Robinson as high commissioner. It is also important to ensure that the areas of human rights work that we have considered top priority—and they have been the promotion of national human rights institutions and the promotion of national human rights action plans—continue to receive priority within the office of the high commissioner following the departure of Mrs Robinson. She has placed very strong emphasis on these two areas of work. They have been areas that Australia promoted strongly at the 1993 world conference on human rights and which Australia succeeded in having endorsed within the declaration coming from that conference, and it would be a great pity both globally and for our own national priorities to see a lower level of support given to those kinds of actions within the office of the high commissioner by Mrs Robinson's successor.

The office of the high commissioner itself is an important organ of the United Nations because it is the implementing arm of its human rights work. The office is very small and desperately underresourced. It receives only two per cent of the United Nations core administrative budget in spite of the constant fine rhetoric that we hear coming out of the United Nations at all levels about the centrality of human rights to the work of the United Nations. But unfortunately, the office of the high commissioner has always been and remains now desperately underresourced for the tasks demanded and expected of it.

The lack of resources is compounded by the fairly typical difficulty that the UN faces in the nature of its bureaucracy. Many of its staff are overworked. Many are inadequate to the task that is given to them. The bureaucracy itself tends to be stifling. The decision-making process is burdensome. The ability to take action is slow. The reform of the office of the high commissioner has been a priority of the present high commissioner, Mrs Robinson, but unfortunately she has not been as successful in making the office an effective arm of UN human rights work as she has been in carrying out her own role as high commissioner. Unfortunately, although improved, the office remains underperforming, stymied by bureaucracy and blocked in its effectiveness by the large number of inefficient staff who work there. There are also some very, very competent people—some who stay in spite of the frustrations they experience as part of the bureaucracy of the United Nations, others who go simply because they cannot tolerate the bureaucracy any longer. There needs to be a much greater emphasis on attracting highly competent staff in the first place and then retaining them by enabling them to work effectively within a properly functioning civil service—a properly functioning bureaucracy—rather than expecting them to endure the obstacles and the frustrations that they currently encounter there.

I see, therefore, a high priority for Australia as encouraging the further reform of personnel and management within the office of the high commissioner so that it can achieve the job that is expected of it. That is certainly going to involve a higher level of resources, so again Australia should be supporting increased allocations from the UN's core budget for the human rights work undertaken by the high commissioner and her office.

The office of the high commissioner also administers a number of voluntary funds, and Australia has been one of the small number of countries that has contributed regularly to the voluntary funds. I must say that our contributions generally have been modest, at least modest by international standards, but they have been significant as a proportion of the total budgets available to the voluntary funds and significant in terms of Australia's overseas aid budget. I firmly believe that Australia should continue its support through contributions to the voluntary funds and indeed that Australia should seek to have a greater influence over the way in which the voluntary fund moneys are spent, including through representation on the boards of the funds.

They are my comments on the first part of the UN's work—the charter based organisations. The second part of the work is based upon United Nations sponsored human rights treaties. The treaties are the products of UN processes, but they are very much owned and operated by the states that become full parties to the treaties. The UN has very little role in the operations of treaties other than servicing the committees that are established under the human rights treaties. I should say that the committees are underserved. They suffer as much as the rest of the office of the high commissioner suffers from the underresourcing available from the UN's core budget. So often the treaty committees work in very difficult environments with insufficient staff support, insufficient resources available for their meetings and therefore insufficient time and opportunity to inquire properly into the performance of treaty obligations.

For that reason, we need, as a party to the six major human rights treaties, to be supporting the committees in their work to ensure that they receive the staff support and resources necessary to carry out the jobs properly and to be supporting the treaty reform process that was commenced many years ago within the commission on human rights and through the treaty committees themselves. Although, as I have said, for much of the 55 years of the United

Nations and the 55 years of our membership of it we have been a model member of the United Nations, regrettably during the course of last year, 2000, Australia joined the ranks of the staunchest critics of the very mechanisms that we have been so instrumental in establishing—the ranks of those who would tear down what has been so carefully and arduously constructed over half a century. Unfortunately, the intemperate remarks of some ministers, including the most senior, aligned Australia last year with hardline states with appalling human rights records. That is a matter that I find most distressing, because Australia simply does not belong in that sort of company. Yet willingly or otherwise we placed ourselves there by the quite extraordinary attacks on the UN human rights treaty committees that we saw during the course of last year.

The problem, it seems to me, is the same as that which confronted the Australian Human Rights and Equal Opportunity Commission during my time as Human Rights Commissioner. It is a problem that can be simply stated. While every government is sensitive to criticism, the present Australian government is more sensitive than almost any other. It has not shown itself either mature enough to listen to the views of others or big enough to admit that what it has done in the past or what Australia has done in the past is wrong.

Over the last two years, Australia has been criticised repeatedly by every one of the six human rights treaty committees for shortcomings in our performance. Those shortcomings are not necessarily the performance only of the present Australian government. Many arise from historical factors that the present government inherited. But that fact does not take away from the defensive hypersensitivity of the present government to the criticisms when they have been delivered.

One of the difficulties is that much of the criticism has treated the committees as though they were going off on frolics of their own, inventing issues on which to criticise Australia. But there has not been a single issue on which Australia has received criticism from a treaty committee that has not previously been the subject of criticism by the Australian Human Rights Commission and by human rights groups within Australia. The committees have not gone off on some frolics of their own fabricating issues to embarrass Australia, as the rhetoric would have us believe, but rather have simply reflected the already repeatedly established views of existing bodies on those issues of human rights concern.

Secondly, not once has a treaty committee expressed a view on a particular Australian human rights issue that is at variance with the views expressed previously and repeatedly by the Australian Human Rights Commission itself and human rights groups within Australia. The simple fact is that if Australian governments had listened to the official Australian body set up by the parliament to advise on these matters, then the international treaty committees would have had no cause to criticise Australia. It is very much a matter of blaming the messenger in the attacks we have seen on the treaty committees.

Fortunately, those attacks and the review of Australia's cooperation with the treaty system do not seem to have resulted in irreparable damage to Australia's international relations and reputation. Certainly we have left much of the international community, including states that have been close to us in the advocacy of human rights for many years, confused and distressed at the stand Australia took last year. But the decision taken last September—the decision taken as a result of the review of cooperation with the treaty committees—represents a pulling back from the brink before it was too late. That is due, in my opinion, to the views of cooler heads,

such as the foreign minister and the Attorney-General, prevailing over those of many hot heads within the cabinet who would have taken a different approach.

I hope that our relationship with the international treaty system has passed its low-water mark and that we are now on our way back to becoming again a model member of the international community. Certainly we should be a model member. That is where we have been throughout most of the last half century, and that is where we belong. The challenge is to undo the damage that has been done and to regain that rightful place as a world leader in promoting human rights through the United Nations system.

We should now make clear our continuing unequivocal support for the human rights treaty system, including for the work of the committees established under that system. We should be a model state, cooperating willingly and honestly with the committee's inquiries. We should also support the positive reform recommendations that have been made well before we started to play the active role of the last 12 months in reviewing treaty processes.

Another Australian, Professor Philip Alston, as far back as the early 1990s made an enormous contribution to the process of treaty committee reform. Professor Alston made many recommendations that have not been picked up in full. We should be putting our weight behind those recommendations and those of others that would ensure that the treaty committees are better resourced in their work, that procedures are streamlined and that the reporting requirements on states are simplified and made more focused and less onerous. We should be supporting a stronger, more effective treaty committee system rather than seeking to undermine the system as it presently exists.

We do have as a small nation an opportunity to influence the UN's human rights work far in excess of our proportionate place in the world. We are a small nation but we have great influence in this area. We have played a major role over the last 55 years and we can continue to play such a role if we engage and if we are prepared to put our weight behind a more effective system, rather than seeking to tear down what has been so arduously constructed.

**CHAIR**—Thank you, Mr Sidoti. The statements you were referring to—last August—occurred a few days before I left to go to be at the United Nations for three and a half months. Some of the words you have used in your submission I certainly do not agree with, but that is my prerogative and your prerogative.

**Mr Sidoti**—Absolutely.

**CHAIR**—But then you talk about undermining the system. We put the issues, particularly in relation to treaty bodies, to representatives from the mission at the United Nations this morning. They were part of the Foreign Affairs, Defence and Trade contingent that was here and we put questions to them. I put that very question to our deputy permanent representative, who said that, apart from an initial reaction to media reports, Australia's position at the United Nations is not diminished. I think you said that there was not irreparable damage but that in the eyes of the international community our role had been diminished. David Stuart, who was here this morning, said that that simply was not the case and that, in fact, Australia's role at the United Nations and its standing amongst its international partners and the people we do business with was understood once the full details of what was said at that time were explained to them, rather

than just media reports. To suggest that Australia's position is to undermine the system I think is going too far. You might like to comment as to why you think Australia's position is actually undermining the system. They are the words that you used.

**Mr Sidoti**—I do not necessarily believe that it was intended to undermine the system. I have no knowledge as to what the intentions were at the key periods, but I have no doubt at all from my experience that the effect for the period between March and September was to undermine the system. Let me just give you three of the many examples I can draw on to show, first, the confusion and, second, the reaction to what Australia said or what Australian ministers said.

Within a couple of weeks of the first and most intemperate statements, in March last year, I was in Europe. I was in fact flying within Europe. A member of another human rights institution was on the same flight. Halfway through the flight he came down to me and said that the member of the race discrimination committee from his country was sitting next to him, that he was deeply distressed and could not understand what was happening in Australia in its response to this treaty committee and could I please swap seats with him in order to give him some background of where this came from. He was most concerned as to what Australia's intentions were going to be. So I spent the rest of the flight trying to provide some background and context for a member of the treaty committee.

**CHAIR**—Which statements were they? You said it was in March. I just cannot—

**Mr Sidoti**—It came after the CERD committee made its concluding observations on Australia's periodic report.

**CHAIR**—The CERD committee?

**Mr Sidoti**—The CERD committee. It concerned the native title amendment legislation, mandatory sentencing and the response to the *Bringing Them Home* report. It was in April that I had that experience.

In September, just before the results of the review were released, I was again in another European country, one that has been a very strong collaborator with Australia for many, many years in international human rights work through the UN system. I was addressing there a meeting of government officials and NGOs on the human rights role of the Australian Human Rights Commission—where it comes from and that kind of thing. I was questioned by the foreign affairs representative of that country as to what the review was and what had generated it. He asked: did the Australian government appreciate that the kinds of comments that were made about the treaty committee process were the kinds of comments made by some of the worst human rights violators? And did the Australian government appreciate that this would give a great deal of comfort to those countries? Those questions were asked in not a public meeting but certainly a meeting in which there were a number of human rights activists from a variety of non-government organisations and official bodies as well.

The third experience I had was in October, when I was in an Asian country providing human rights training to government officials in that country. It is a country that has been strongly criticised for its human rights performance. When I was talking about the importance of the UN treaty system and the need for all countries to be parties to the system and to cooperate with the

UN system more generally, particularly the special rapporteurs appointed by the Commission on Human Rights, I had quoted back to me statements made by Australian ministers which were almost word for word the kinds of statements that the official representatives of this particular country had made repeatedly about its unwillingness and reasons for its unwillingness to cooperate with UN processes. So I had to respond to those questions, to say that that did not necessarily represent the fullness of Australia's experience or its present position. Fortunately, that dialogue occurred in October, after the results of the review of cooperation had been announced in September. So I was able to take the questioner and the participants in this course to the Australian government's stated position on cooperation, rather than to what were clearly intemperate comments made on the spur of the moment by a very senior minister.

They are just three examples. I could refer to others where non-government organisations have raised these issues with me as well. So I have no doubt that there was certainly confusion as to where Australia stood and certainly concern that it represented a backing away from the position that we had always taken in relation to UN human rights treaty mechanisms and commission mechanisms.

In my view, we gave significant succour to those who have sought consistently to attack and undermine the UN system, even if that was not our original intention.

**CHAIR**—You used the words 'aligned Australia with hardline states'. The call for a review of the treaty system as such also aligns us with a considerable number of western countries who say that there is a need for a reassessment or a review of the whole structure of the treaty system. But there also is a considerable amount of support amongst member states, and the UN particularly, that the treaty body system should be reviewed.

**Mr Sidoti**—There certainly is, and with good cause. I have referred in my submission to the fact that there has been work under way for at least 10 years precisely on this issue. Professor Alston, in particular, in his role as chair of the committee on economic, social and cultural rights and, in fact, as chair of the chairs of the various committees—the six committee chairs meet annually, and Professor Alston, through that forum, pushed strongly for treaty committee reform. There is no difficulty with that at all, and I think we are in very good company.

The difficulty arises when senior ministers attack the members of the committees as being incompetent and partisan and biased against Australia—attack the treaty committees and their members as being representatives of their own governments rather than as individually elected experts, many of whom, I must say, were elected with Australian support.

**CHAIR**—They also thought that they were going beyond the mandate, too. That was the other word they used.

**Mr Sidoti**—Yes, gone beyond the mandate—that criticism; the criticism that they listen too much to non-government organisations; and the criticism that the committees do not listen enough to governments. These are precisely the forms of attack made by countries in this region in particular who have traditionally refused to cooperate with the UN processes, whether charter based or treaty based.



We can support reform of the treaty system with the best of intentions and for very good reason. The treaties are underresourced, they are understaffed. The reporting processes are onerous. They need to be streamlined. All these criticisms of the effectiveness of the treaty system are valid and have been taken by Australia in the past. But we do not need to go to the extent of intemperate language based more, I have to say, on emotion than on fact—the precise arguments used by many of those who quite deliberately do seek to undermine the international system. That is the company we do not belong in. But we do belong in the company of those who would like to see the system made more effective, and there are ways in which in the past, and now again, we are contributing to that work. But that does not involve attacks on the integrity or the credibility of the treaty system and presenting to the world the picture of a country that feels that it is being caught out and unfairly treated and, therefore, goes whingeing about the people who have delivered the message.

**CHAIR**—You talked about emotion and fact. It is also probably fair to say that some of the media comment was based on emotion rather than fact, as well.

**Mr Sidoti**—Certainly, that is the case. But if you look at the transcript of the actual words used in March last year, perhaps even some of those who used the words would now seek to back away a little from the positions that were publicly expressed at the time.

**CHAIR**—I have a couple of other issues to raise before I let my colleagues ask some questions. When you say that we have been a model member for much of the 55 years, I presume you are saying that, in your view, all except from March last year, we have been a model member.

**Mr Sidoti**—Those six months last year were the low points, yes. And there have been times in the past, too, when we have not performed as well as we should. But I think the secretary-general, when he was here in February last year, was quite right in referring to us as a model member of the United Nations. We can always do better. No model is perfect. But we have been, without doubt, one of the best performing members of the UN and one of the most responsive and constructive. And, as I said, that is the company in which we belong.

**CHAIR**—You talked about UN staff. I think I am right in saying that you were talking about the Human Rights Commission or the office itself, and you talked about how many UN staff are inadequate for their tasks and that there was inefficient staff in the office. One problem that seems to exist within the UN, from my observations, is that there is this geographical allocation of positions within the United Nations, which means that you may not necessarily get the most competent person for a job because there is the obligation to fill from some geographical areas. How do you think it is possible to overcome the inefficiency or the inadequacies of some people while we have to maintain a geographical balance on the appointment of staff to almost all UN bodies?

**Mr Sidoti**—I agree that the geographical balance is one of the major problems. It does mean that often the best person is not selected for the job. The difficulty, though, then becomes the difficulty of removing someone who has been appointed. The UN needs to have far better systems of recruitment and much greater flexibility in terminating the services of those who are simply not up to the job.

There needs to be some consideration given to geographical factors. But when the office of the high commissioner has only 200 staff, to have critical decisions about staff appointments made predominantly, or even in a significant way, on the basis of geographical consideration almost ensures that the office will never function as efficiently as it should. And an office with a mandate as broad as that of the high commissioner's office, and with the limited resources that it has, simply cannot afford to be carrying inadequate performers.

**CHAIR**—I am just not sure how we can overcome that problem. That is the point. If it is part of the UN's policy that they do have geographical allocations of jobs, which leads to some inefficiencies, I am not sure how—certainly in our recommendations—it can practically be overcome.

**Mr Sidoti**—I think that, practically, it can only be overcome by constantly arguing for appointment based on merit.

**CHAIR**—You also talked about an increased allocation from the core budget for human rights. From what other areas would you take an allocation to put it into the Human Rights Commission?

**Mr Sidoti**—I am afraid that I am not an expert on the UN's budget, so I cannot come before you and pinpoint areas where allocations should be removed.

**CHAIR**—It is very tight.

**Mr Sidoti**—I know it is very tight.

**CHAIR**—Especially when some people do not pay.

**Mr Sidoti**—That is what I was going to say. It is made even more difficult by the fact that its major contributor, the United States, is so far in arrears and has such an enormous debt to the United Nations that it makes it very, very difficult for the UN.

I must say that, personally, I think the UN will always be hidebound in its operations so long as it is dependent entirely upon its member states to provide its budget. I think there are strong arguments that the UN needs to have access to independent sources of funding. And the idea that has been advanced from time to time about a small levy on international air fares to provide direct funding to some of the UN's operations, or some other way of providing direct funding, is a very worthy objective, and it is the only way in which we will see the United Nations starting to be more independent in its operations and having the resources that it needs to go about its work. Unfortunately, most states like to see the UN hidebound by being constantly cash strapped in this way. The fact, though, is that the office of the high commissioner, with 200 staff trying to operate globally and with a number of staff—many staff—now located in small isolated offices in human rights trouble spots, that kind of office simply cannot do the job that is being required of it.

In her statement on Monday announcing her withdrawal from office, Mrs Robinson referred explicitly to the complete underresourcing of her office—the underresourcing in absolute terms—and the need to ensure greater equity within the UN system and more resources in

---

absolute terms than what it currently has. From my experience, I can only say that that is certainly the case. Her experience is far deeper than mine, and I rely on her words as well to say that it desperately needs more resources one way or another.

**CHAIR**—You obviously did not hear the head of the tourism task force talking about passenger movement levies this morning, because there is a proposal for another levy for another matter.

**Mr Sidoti**—I am aware of that. But I must say that where an individual, whether on business or for tourist purposes, is spending \$2,000 or \$2,500 even of our poor Australian dollars on international travel, another \$5 is neither here nor there.

**CHAIR**—That was not what was said this morning. In your recommendations, you talk a lot about moving to try to get Australians elected to bodies, to be part of commissions and to seek re-election to the Commission on Human Rights. My observations of the United Nations are that, in almost every instance, elections to UN bodies become a very political process and there are deals done. I am not sure that merit always counts in the positions—even elected positions—and they are usually formulated well in advance. For instance, if we were to try to become a non-permanent member of the Security Council, because the slot has already been agreed to amongst member states for a long time, if you try to miss out then it is some time before you actually get a go again. I think that is the same in some of these other proposals that you put forward about having Australians or Australia put on various bodies.

I do not think it would be feasible for us to try to do all of these things at once, because there is a sort of an allocation as to how you do things. I do take on board the fact that you are suggesting that we have not been on certain bodies for a certain time and it is time we at least get the slot in place to get in there in the future. My observation is that they are very political decisions.

**Mr Sidoti**—Your comments also meet my experience. For that reason, though, these areas, in my view, need to be given a high priority. Because trade-offs are done, in my view we should be prepared to trade support for other candidates for positions in parts of the United Nations that are not as important to us as the human rights bodies are. We should seek to have a major role in this particular area of UN work.

**CHAIR**—You raise the instance of human rights bodies. If you were to believe the Australian media and some of the press I saw in New York when the decision was taken not to renominate Dr Elizabeth Evatt and nominate Professor Ivan Shearer to the human rights committee, he was written off. I think he was even described as a non-entity by somebody back here in Australia. It does give some truth to the actual standing of Australia at the United Nations that Professor Shearer was the fifth person elected out of 17 members on that committee to the human rights committee. That would give us some inference that the standing of Australia within the international community, particularly at the United Nations, certainly has not suffered any long-term damage from any statements that may have been made last year. I do not know whether you would concur with that or not. He was an outstanding candidate, by the way.

**Mr Sidoti**—Yes, I certainly concur that there has been no long-term damage. As I indicated, in my view we pulled away from the brink before it was too late. I was greatly relieved in September that that was the case. Our standing, too, is due to the fact that we do nominate outstanding candidates for these positions. Elizabeth Evatt was an outstanding member of the human rights committee and extremely highly regarded for her contribution. From memory, when she was elected to her second term, she came in first or second in the voting list on that occasion. That was a reflection of the fact that during her first term she was recognised for the leadership role she played within that committee. Clearly, on any committee the calibre of members varies. Some are very good; some are less good. The Australians, whether it be Elizabeth Evatt in her roles on the women's committee or the human rights committee or Philip Alston in the role he played on the committee on economic, social and cultural rights, made outstanding contributions.

The greatest concern in relation to the decision to nominate Professor Shearer that I experienced among some of my colleagues was that it was thought to be difficult to get another Australian elected at that stage. There is a certain amount of momentum. It was not seen as being as difficult for Elizabeth Evatt to be re-elected as it would have been to have a new candidate, whoever it might have been, elected. That did not prove to be the case. I for one was very pleased when the nomination of Professor Shearer was successful, because it has meant that, again, we have an Australian on the committee. This is the third consecutive term that we have had an Australian on that committee.

**CHAIR**—I think it was a pity that even the chairman of the Australian United Nations Association should describe a candidate from Australia as a non-entity, which I thought was a very unfortunate intervention at the time when we were trying to get somebody elected.

**Mr Sidoti**—I know Professor Shearer and I have enormous regard for him. Certainly, there were some comments that I think could be described as having been intemperate—that is, those comments of the minister I referred to earlier. I was particularly relieved, as I say, that the pessimism as to the prospects of the candidate proved to be unfounded.

**CHAIR**—Due in fact by a lot of excellent work by our ambassador and some others over there as well.

**Mr Sidoti**—I commented earlier to you before we started formally that we have a very high calibre diplomatic group working in these areas. Penny Wensley and David Stuart in New York would be amongst the most effective representatives that we could hope to have at the heart of the United Nations.

**CHAIR**—I would concur. I have taken up enough time.

**Senator BOURNE**—First of all, I think you probably would have been heartened if you had heard the evidence from both DFAT and Immigration that we have had over the last two days. I must say it was very temperate when they were discussing the UN treaty system. I am sure I am thinking of exactly the same statements as you, which were made early last year and which shocked me. So I think that that is going along in a way that most Australians would want it to go along now, which has, I must say, pleased me a great deal. You mentioned Philip Alston's recommendations, which I recall were being worked on by DFAT at one stage in trying to push

those along. I do not know if they still are, and I have lost the opportunity now to ask them. Do you by any chance have a copy of any of those recommendations? There were two or three occasions on which he made them.

**Mr Sidoti**—There were a couple of reports. I do not have them at the moment, but I am sure I can find them or the department can find them.

**Senator BOURNE**—I think I can ask DFAT to try to find those.

**Mr Sidoti**—The department has been undertaking a review of the treaty committee operations to come up with recommendations for the government as to the policy positions that it should advocate. So far as I am aware, the results of that review have not yet been made public, but I would hope that it would pick up and endorse many of the recommendations that Philip Alston made so that we can see very strong Australian support for that direction of reform.

**Senator BOURNE**—Yes. You made a fair bit of the Office of the High Commissioner for Human Rights and the difficulties in that office. It strikes me that the office was only created seven years ago or something like that. Is it the geographical allocation of positions and the lack of resources? Are they the only two significant problems—and goodness knows they are significant enough—or do you think there are other problems in that office that we could look at trying to identify ourselves?

**Mr Sidoti**—Although the office in its present form was only established in the first year of Mrs Robinson's high commissionership, it did have a successor body in the Centre for Human Rights. The centre had existed for some time and was based in Geneva—in fact, I think for probably most of the 50 years, although I am not sure about that. When the high commissioner was appointed for the first time, the high commissioner was allocated a small personal staff who constituted his office. There was some division of accountability and responsibilities, so a decision was taken soon after Mrs Robinson became high commissioner to merge the small personal staff and the Centre for Human Rights into a single office reporting directly to the high commissioner.

What that means, though, is that the office, although only established four years ago, inherited the existing personnel and the existing management systems of the former Centre for Human Rights. The management systems themselves are antiquated. In part it is almost like the proverbial vicious cycle. There is very little devolution of decision making. It is necessary to get multiple approvals for even some of the most mundane decisions. That stymies the operation of the office. However, a lack of devolution is understandable if there is little confidence in the quality of the people who are making the decisions at lower levels.

What do you fix up first, the management system or the calibre of the personnel? I would not want to be thought to be saying that everybody there is ineffective, because that is not the case. There are some extremely good officials within the office. Almost all of the ones who are extremely good feel deeply frustrated by the bureaucracy, the poor management systems and the poor calibre of many of those whom they have to work with. Reform really requires a reform of management systems to introduce what we would consider to be contemporary management

systems rather than the fairly outdated mode of centralised bureaucratic decision making. There also needs to be changes in the personnel at many levels.

**Mr NUGENT**—In relation to the position that Mary Robinson is giving up, is that allocated on a geographical basis? In other words, will her successor have to come from a different region?

**Mr Sidoti**—Formally, no. The position is filled on the appointment of the secretary-general with the approval of the general assembly, as I understand it. I do not know whether that approval is formally through a resolution of the general assembly or consultation with the member states in their various geographical groupings. So there is no rigid rule of geographical rotation as there is, for example, in the position of secretary-general itself. Nonetheless, I would anticipate that there would be strong pressure, particularly from the Asian and African groups, in relation to the next appointment. The first high commissioner came from South America. The second high commissioner came from Europe. My knowledge of the workings of the UN system leads me to anticipate that the African and Asian groups will be strongly pressing for someone from their regions to fill the position.

I think the claim of the Asian group would be considered stronger, because the present secretary general comes from Africa first and, second, with the completion of the term of office by the high commissioner for refugees, who was from Japan, the Asian group does not have the same level of senior participation as it had previously. So there will be geographical considerations and arguments, although not necessarily a formal geographical rotation requirement.

**Mr NUGENT**—Given that you are representing yourself here and you have the luxury of having to answer to nobody and perhaps being more forthright than many of our witnesses, in your view and experience, given that you have already told us the sort of person you think should be selected, would there be an adequate pool of such people from the Asian region?

**Mr Sidoti**—I have no doubt that there would be an adequate pool of such people. In fact, I am sure that I could nominate a short list, on a couple of hours reflection, of excellent people whom I have worked with and know personally, let alone many others.

**Mr NUGENT**—So you do not have any worries about that?

**Mr Sidoti**—No, I do not have any worries about the adequacy of the pool. What I have worries about is that, because so many of the states in our region are not good participants in the human rights system, have not, in fact, ratified many of the core human rights treaties and would constitute some of the hardest line states in UN human rights forums, the candidates that they would be advancing from this region—

**Mr NUGENT**—Would not be on your list?

**Mr Sidoti**—Would not be the ones on my short list.

**Mr NUGENT**—Yes, all right. I take your point. On this whole vexed question of the treaties committees, we have talked about resourcing and about problems of staffing and so on. My

---

inclination is to say—and I would tend to agree with you if we are expressing personal opinions—that I think we need to be as involved as possible in these things. The more we put up nominees for different appointments—even if we do not get them—I think that we need to be seen to be active. I think one of the questions that has undoubtedly concerned this government and in its remarks last year was, in fact, its perception of the imbalance of influence of NGOs versus government input. It does seem that a lot of the people who are involved in those committees come out of that NGO background. In relation to those who are articulate, capable, competent and who perhaps have an agenda, because the committees are not adequately resourced or, in many cases, perhaps poor-quality individuals are running them, it means that those few competent activists, if you like, might have the ability to have undue influence. Would you care to comment?

**Mr Sidoti**—I would agree with many of the points you make. Certainly, a significant part of the problem is that the committee last year, the race discrimination committee—all the committees—are seriously underresourced and so have virtually no independent information gathering role of their own. They are almost totally reliant upon information provided to them by governments and by non-government organisations.

In part, it is understandable that they should be naturally suspicious of government reports on their own performances, because so many government reports are notably lacking in honesty. I need go no further than to refer to the way in which we prepare the reports in this country. Much of the implementation of human rights treaties lies within the responsibility of the states. The states and territories are asked to provide information to the Commonwealth in the course of the preparation of our country's report. The Commonwealth, understandably but incorrectly, takes the view that its most appropriate role is simply to pass on within the report the states' comments without any commentary, without any independent analysis of its own. So that even in areas where the Commonwealth is distanced from the actual area of implementation, the report plays no effective role in providing the committee with informed and balanced assessments. So we see, for example, defences of activities like mandatory sentencing or, in the past, Tasmania's anti-gay laws—those kinds of positions—contained within Australia's country reports.

One of the reasons why Australia historically has had a good reputation in UN human rights circles is that we are seen as having been more honest than most. Australian representatives, on behalf of our government, repeatedly have been prepared to talk about our shortcomings. The best way to ensure fair treatment by treaty committees, in my view, is to ensure that our country report is honest, balanced and represents the range of views about particular issues rather than seeking to be defensive or self-serving, or simply having the Commonwealth act as the purveyor of information given by defensive state governments. That is a far better way to address the problem of committees giving too much attention to non-government organisations—honesty in the reports themselves.

**Mr NUGENT**—But even if you accept that sort of premise, is there not a danger that in a liberal democracy like Australia, where NGOs can virtually do and say what they like—and I am not knocking that but it means that they have the platform and the funding, often with government assistance, to travel the world and appear before all sorts of organisations and committees—and the government itself, if it is an ideal government and is, as you suggest, frank and open about its shortcomings, and in my experience I think that still happens fairly

substantially in this country, is there not a danger, therefore, that because information is available on a country like Australia, and it would apply to other liberal democracies as well, it is easy, therefore, to look at issues there? They may be valid in their own right but they may not be on the scale of being bad, particularly compared with many others that run closed societies where NGOs cannot function, where governments do not cooperate and really where the treatment of individuals is quite horrendous. Therefore, I think that part of the concern of the government last year, as I understand it, was that there was a feeling that perhaps too much emphasis was being put on countries where it was easy to operate and not enough on countries where it is difficult to operate. One of the countries might be, for example, one where I know you have been doing some training of individuals of recent times—a recent addition to ASEAN. Could you comment on whether, in fact, there is an appropriate balance on those committees and the countries that they are looking at and whether they are really tackling the difficult issues or just taking the soft options, to oversimplify it?

**Mr Sidoti**—There is a risk that, simply because of the availability of information, more attention is paid to a country like Australia than to a country that has an appalling human rights record. That is certainly the case, although I would say that the strength of international NGOs is such that even countries that have particularly closed domestic systems find themselves being criticised and critical information being provided to the committees by international NGOs and often very, very good information. Perhaps, though, the greater difficulty is that some of the worst offenders are the least likely to have ratified the treaties. So they never actually come before the committees to be questioned. That is certainly the case with many states within our region that we consider to have the worst records. They are never, in fact, questioned about the system.

**CHAIR**—Or they do not report.

**Mr Sidoti**—Or they do not report. Although to be fair, our reporting record for much of the nineties was among the worst in the world on many of the treaties. Often we did not report, either. I think that because some of the worst offenders are not there, because there is less information, it is true to say that there may be a risk that we will attract greater attention than our human rights performance actually deserves on a relative scale.

**CHAIR**—Just finally—I know that we are out of time—the question has been raised about the composition of the various treaty body committees. They are often called a so-called committee of experts and the word ‘expert’ is often questioned. I guess the reason I would question it is that the members elected to some of these United Nations committees are elected through the same political process that every other body seems to go through. I wonder whether or not some of the members of these committees very loosely fall into the category of experts.

**Mr Sidoti**—No-one could deny that the calibre of members varies enormously. I certainly do not deny that. There are some members of committees who are extremely good. The title of ‘expert’ is properly applied to them, because they are experts. There are others who are not, whose election owes more to international politics than it does to individual calibre and expertise. At this stage, that is the nature of the international system. It is the luck of the draw.

For that reason, though, Australia has been quite active over the years and, as I understand it, remains so in trying to ensure the highest calibre of committee members through the election



process, although we, too, become involved in the politics of it. That is inevitable, because it is a political process. We have had a pretty good record in putting up good candidates of our own—and I have referred to them today—and having them elected because they are seen as being good candidates, but also in supporting the election of other good candidates. To the extent to which we play politics, I think the politics that the Australian government has played have been well intentioned and high minded and not at the seedier end of the international spectrum by any stretch of the imagination. But neither we nor anybody else can ensure the election only of people who are well qualified for the position.

**CHAIR**—I guess it is not unlike a number of other committees; if you can get a half a dozen people of very high calibre they tend to influence the committee, anyway.

**Mr Sidoti**—And that certainly has been the experience. I must say as well that some committees are of a higher calibre than others. There is not a uniform standard across all six of the human rights treaty committees.

**Mr NUGENT**—We are talking about UN committees, not parliamentary committees.

**CHAIR**—Senator Bourne and I were comparing Senate committees to reps committees.

**Mr Sidoti**—You will never find me casting the least aspersion on the quality of parliamentary committees.

**CHAIR**—We are out of time. I thank you very much for appearing before us today, Mr Sidoti. Your contribution is well respected and certainly we do take notice of your submission. It is one that we will be using when we are considering the details of our final report. You will be sent a copy of the transcript of your evidence and you can correct any errors of grammar or fact, and Hansard may wish to check some details of your evidence before you go. Once again, I say thankyou very much for giving us your time today.

[2.10 p.m.]

**FROST, Ms Robyn Louise, Acting Assistant Secretary, Public International Law Branch, Office of International Law, Attorney-General's Department**

**HODGES, Mr Chris, Principal Legal Officer, International Branch, Criminal Justice Division, Attorney-General's Department**

**MARSHALL, Mr Steven, Assistant Secretary, International Branch, Criminal Justice Division, Attorney-General's Department**

**SKILLEN, Mr Geoffrey, Senior Legal Officer, International Branch, Criminal Justice Division, Attorney-General's Department**

**ZANKER, Mr Mark, Acting First Assistant Secretary, Office of International Law, Attorney-General's Department**

**CHAIR**—I welcome the officers from the Attorney-General's Department, who gave us evidence during a public hearing in May last year. I appreciate your coming forward again before the subcommittee. 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 we do not require you to give evidence on oath, you should be aware that it does not diminish the importance of the occasion and any deliberate misleading of the subcommittee may be regarded as a contempt of parliament. We prefer that all evidence be given in public, but if at any stage you wish to give any evidence in private then you may ask to do so and we will give consideration to that request. We have received your primary and supplementary submissions from the department and they have been authorised for publication. Are there any additions or alterations that you want to make to those submissions?

**Ms Frost**—No.

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

**Mr Marshall**—As part of the inquiry which this subcommittee is undertaking, the subcommittee is to examine the viability of the International Criminal Court. Within the Attorney-General's Department, the International Branch is responsible for that particular issue and we have provided the subcommittee secretariat with some further material relating to this aspect of the inquiry.

Since the general inquiry on Australia's relations with the UN commenced, the Parliamentary Joint Standing Committee on Treaties has undertaken a specific inquiry directed towards the question of Australia's ratification of the Rome statute to establish an International Criminal Court. That committee has now conducted three formal hearings into this matter and its inquiry is continuing. The joint standing committee is required to report on whether Australia should ratify the statute.

The government strongly supports the establishment of the ICC. Australia has a direct national interest in the establishment of a permanent International Criminal Court based on the role the court will play in enhancing international peace and security, including in our immediate region. The court's establishment has been one of the government's prime human rights objectives. The commission of serious international crimes poses a threat not only to individual countries but to the international community as a whole and the court will be a deterrent to individuals from committing these crimes.

The court is an international court which will have jurisdiction over the most serious crimes of concern to the international community, namely, genocide, crimes against humanity and war crimes. The court will have jurisdiction over the crime of aggression when an acceptable definition of this crime can be agreed. The court's purpose will be to bring to justice the perpetrators of these crimes where there is an inability or an unwillingness on the part of national jurisdictions to try them.

There is widespread support for the ICC in the international community. The statute has been signed by 139 countries, including Australia. Twenty-nine states have either ratified or acceded to the statute as of today. I have a document which I can provide to the secretariat which sets out the current ratification status of the statute. The court will commence operations after 60 states have ratified or acceded to the statute.

In conclusion, the International Criminal Court represents the international community's determination to put an end to impunity for the perpetrators of the world's most serious crimes. The government believes that Australia should join the widespread international support the court enjoys.

**CHAIR**—Thank you, Mr Marshall.

**Ms Frost**—Mr Chairman?

**CHAIR**—Yes, Ms Frost?

**Ms Frost**—I do not intend to make an opening statement. However, I was going to say two things. Firstly, we are obviously here to answer any questions that we can and to provide whatever assistance we can to the committee, particularly in relation to matters which particularly affect the Office of International Law, such as reform of the human rights treaty committee system. The other thing I was going to note is that earlier Senator Bourne asked about receiving copies of the Alston reports. We can certainly provide copies of those to her.

**Senator BOURNE**—That is terrific.

**CHAIR**—Thank you very much for that. It is obvious that there has been a lot of discussion about the International Criminal Court, particularly since the Joint Standing Committee on Treaties has undertaken its inquiry, but I think even prior to that. We have had evidence in this inquiry, particularly from a number of individuals rather than bodies, about certain matters relating to the criminal court. Whether their submissions were made out of a lack of understanding or a strong opinion I am not quite sure yet. An issue was raised this morning with the Department of Foreign Affairs and Trade—I think it was with them—about a person who is

tried in their own country and then there is a decision of the International Criminal Court as to whether or not the case has been properly investigated or dealt with. I raised the issue then of who decides whether or not a case within a national jurisdiction has been properly investigated or, for their intents and purposes, has been properly tried and justice appears to have been done. Have you got any comments to make on that, because it is one of the issues that I think needs some clarification?

**Mr Marshall**—Ultimately, the decision would be one which the court would have to take, but the basis for that decision is subject to certain conditions which are set out in the statute for the court. The court would have to be satisfied that the matter was not being genuinely dealt with by the jurisdiction which was seeking to prosecute the crimes. They would have to examine the way in which the country dealt with it, but that provision is essentially designed to prevent complete sham prosecutions. The government considers that, in circumstances where Australia was seeking to exercise jurisdiction, as it may over say, for example, the acts of its Defence officers, the conditions in the statute—

**CHAIR**—Sorry, it was Defence that I asked this morning. I was thinking it was Foreign Affairs and Trade, but it was Defence where we were discussing that, yes. Sorry. Go on.

**Mr Marshall**—The short answer is that formally the responsibility is upon the court, but the statute itself sets out certain conditions that the court has to be satisfied with as to whether or not the prosecution was a genuine one.

**CHAIR**—How does the prosecution generate it? If a case is dealt with within a national jurisdiction, is it a prosecutor of the International Criminal Court who then decides to take up the case in the first place? Is that upon a complaint by somebody else? Is the International Criminal Court going to monitor all of the cases that it believes come under the crimes that are laid down by statute? Are they going to monitor everybody who comes to trial under those sorts of crimes? I am really seeking information as to how it works practically.

**Mr Marshall**—In practice, it is contemplated that actions may be commenced in one of three ways. If a country is a party to the statute it could refer a matter to the court for its consideration. The UN Security Council may also refer matters to the court. Finally, there is provision for action to be commenced by the initiative of the court prosecutor, but the prosecutor's capacity in those circumstances is subject to the authorisation of part of the court. It is an institution known as the pre-trial chamber, which is made up of three judges of the court. So while the prosecutor may act upon his or her own motion, there still needs to be an approval or some form of sanction given to that action by part of the court.

**CHAIR**—So the international court can override a decision that is taken at a national level if they believe it has been inadequately dealt with or improperly investigated?

**Mr Marshall**—Technically, yes. The situation I understand that was intended to address would be cases in which a country which clearly is not genuinely addressing serious allegations turns around and claims that it has dealt with a matter in circumstances where that clearly is not the case.

**CHAIR**—I would not want you to think that I do not support the International Criminal Court, because I do. But there are many things that have been raised with us. A number of submissions have raised the concern that powerful member states will use their influence to pursue war criminals of other nations while their own citizens might escape prosecution because they are not in such a powerful position or such powerful member states. How would you respond to those concerns that have been raised by some people in submissions to us?

**Mr Skillen**—I might respond to that. One of the features of the statute of the International Criminal Court is that it is intended to basically ensure that that very situation does not recur. Historically, claims have been made that the establishment of the Nuremberg and Tokyo tribunals in the immediate aftermath of World War II represented an exercise of so-called victors' justice. The International Criminal Court is most assuredly not intended to operate in that way.

In answer to your previous question, Mr Marshall has elaborated on the way in which matters can be placed before the court. Certainly the fact that states' parties can make complaints themselves and, moreover, the fact that the prosecutor can act independently of his or her own motion in the absence of a complaint from a state party would suggest that there is, in fact, ample opportunity for the interests of what might be called the weaker or the less strong members of the international community to be taken into account.

**CHAIR**—What has the Attorney-General's Department done to try to inform the public about or inform people who might be interested in the content of the proposal so that people who, through no fault of their own who might not be well informed about what is intended can have some of their fears allayed?

**Mr Skillen**—The Attorney-General himself has, on a number of occasions, participated in public fora in which he has spoken favourably on behalf of the court and on behalf of Australia's plans to ratify the statute. The Attorney-General's Department conducts a regular forum for non-governmental organisations at which the ICC has been a standing agenda item for quite some time. I can assure the subcommittee that the department has answered numerous ministerial correspondence on the subject. In conclusion, I suppose I can point to this department's participation in this inquiry and in relation to the inquiry before the Joint Standing Committee on Treaties as further instances of the department's efforts at publicly exposing the government's position.

**CHAIR**—It would appear that a lot of the opposition in the United States to the International Criminal Court comes from within the defence forces because of their own particular views about American nationals being tried anywhere else under any circumstances. Have you made any special effort to make sure that the Australian defence forces do not have the same apprehensions about our being a signatory to this, should it come about?

**Mr Marshall**—During the negotiation process which led to the development of the Rome statute and since the statute was completed we have consulted quite regularly with the Department of Defence. In fact, Defence representatives participated in the negotiations as members of the delegation. We have had a lot of consultation with Defence throughout this process. The opinion of the Attorney-General's Department is that they have been fully informed, and our understanding is that they do support Australia's ratification of the statute.

**CHAIR**—It would appear that many of today's human rights violations actually occur within national boundaries in intrastate conflicts rather than interstate conflicts. Do you think that is going to provide any difficulties for the ICC to operate?

**Mr Marshall**—I suppose whether or not a given conflict or a given situation in a country has international ramifications might affect their ability to get involved and to investigate matters. It must be admitted that, if a country is determined to resist actions undertaken by a body such as this one, they can make it very difficult. I think, however, that when you look at how the tribunals for the former Yugoslavia as well as the tribunal for Rwanda have operated, there is a capacity for an international tribunal of this nature to try to take effective action in relation to conflicts, be they internal or whether they cross certain boundaries.

I suppose the short answer is that, while the question as to whether or not a conflict between states is occurring might complicate matters, provided that there is some goodwill at the international level to deal with a given problem, such as was the case in relation to Rwanda and the former Yugoslavia, then the court should be able to operate effectively.

**CHAIR**—Has consideration been given as to how the ICC is going to be funded?

**Mr Marshall**—Yes, it has. The court will be funded by a state's parties to the statute, which will make an annual assessed contribution to the court's running costs in accordance with the scale which is adopted by the United Nations for its regular budget. It is estimated that Australia's contribution to the court will be in the order of \$US5 million per year. That is how it is envisaged that the court will be funded.

**CHAIR**—Is that with or without a US signature?

**Mr Skillen**—My understanding is that those figures have been calculated on the basis that the US will not be a state party, because successive administrations have thus far made it clear, at least in the short term, that that is not their intention.

**CHAIR**—And only the first 60 signatories will get a vote on who the appointments are to the court, won't they?

**Mr Skillen**—Only the first 60 will be able to participate at the first election of judges.

**CHAIR**—Okay.

**Mr NUGENT**—I seem to recall reading in the media the chairman of the treaties committee talking about this International Criminal Court and making some suggestions that were what I can only describe, from memory, as drawing a somewhat long bow in terms of how that could be applied in certain situations in this country. Could you explain to us what safeguards there are within Australia against this being used in what we in normal terms would regard as ridiculous ways? I am sure that you would know the comments that I am talking about.

**Mr Hodges**—Yes. What the government has announced is that we will have a full regime in domestic law to cover the crimes within the jurisdiction of the court. That means that there will be within Australian legislation crimes to cover genocide, crimes against humanity and war

trials. They are extensively defined within the statute and our legislation will follow that fairly closely. That means that you have a principle of complementarity. That means that our sovereignty is one of the issues raised by the Joint Standing Committee on Treaties. That means that there is virtually no likelihood of Australia losing sovereignty. The reason for that is that Australia claims the first bite of the cherry, if you will, in the sense that we will have domestic legislation in place. That then brings in the statute provisions whereby a person has adequately already been tried in the requested country. Therefore, the ICC has no jurisdiction. So we would say, as we have been saying constantly, that the government's position is that sovereignty is not threatened by this institution.

**Mr NUGENT**—Thank you. So you say categorically that some of those more colourful suggestions that have been made around the traps would be baseless on that basis?

**Mr Hodges**—Yes.

**Mr NUGENT**—Thank you. That is all I have.

**Senator BOURNE**—I just have two questions. Firstly, an interim criminal code to be used in transitional civil administrations—that was in the Brahimi report. I asked a question of Defence similar to this this morning and the answer then was, I think, that—and I hope that I am not misquoting them—in Somalia they used a variation of the fourth Geneva Convention as interim law when they went in there. Has any consideration been given to that by Australia in considering the Brahimi report? Perhaps I am asking the wrong people here.

**Mr Marshall**—I am sorry, I do not see anyone here within this department who is across that particular issue.

**Senator BOURNE**—Okay. If you would not mind taking it on notice and if you can find someone in A-G's that would be fine. If not, we will find someone else.

**Mr Marshall**—We will.

**Senator BOURNE**—The second one that I wanted to ask was about the review of the treaty system. How are the interdepartmental meetings going? Do you have a timetable for when you expect to be able to report on that? Perhaps—in fact, probably not 'perhaps' but definitely, unfairly—you could tell me if there is any consideration going on, and you may well not be able to tell me, of our withdrawing from any of the treaties or protocols or anything that we are a party to?

**Ms Frost**—I can answer the second question first. There is absolutely no consideration being given to withdrawing from any of the treaties or any of the instruments to which we are already a party. Ministers have made that clear on a number of occasions. It has been one of the concerns that has been continually expressed by NGOs and we hasten to reassure them that that is not the case. In relation to the interdepartmental committees, perhaps I could clarify: the review itself, which was conducted last year, actually concluded in August when the ministers made their announcement and, as the ministers said in their joint news release, two interdepartmental committees would then be established, which essentially are standing interdepartmental committees—

**Senator BOURNE**—I see.

**Ms Frost**—one of which our department cochairs with the Department of Foreign Affairs and Trade and it is essentially to consider and review Australia's ongoing interaction with the UN human rights treaty committee system. The other IDC, which is chaired by the Department of Immigration and Multicultural Affairs, has as its mandate essentially to look at issues relating to the refugee convention. That was one of the other aspects of the treaty system review last year.

**Senator BOURNE**—So it is just ongoing and there is no—

**Ms Frost**—It is ongoing. There are no reports or anything that come out. I can say in relation to the IDC that our department cochairs with the Department of Foreign Affairs and Trade that that has been meeting once every couple of months. We have recently had our fourth meeting.

**CHAIR**—In looking at the statutes, are there any appropriate precedents in international law for a clear definition of 'genocide'?

**Mr Skillen**—The answer is an unequivocal yes. The term was first defined in the genocide convention of 1948 to which Australia has been a party since 1949. That definition has been picked up in identical terms in defining the crime for the terms of the statute of the International Criminal Court. The same definition has also been used in the statutes for the establishment of the international criminal tribunals for the former Yugoslavia and Rwanda.

**CHAIR**—The reason I asked the question is that in recent times I have heard the term 'cultural genocide' used.

**Mr Skillen**—We are aware that various individuals and bodies have attempted to make the argument that there is such a crime known to international law, but I think the preponderance of opinion in international legal circles is that that is not the case and there is certainly no recognition—

**CHAIR**—No precedents?

**Mr Skillen**—No, not to my knowledge in international law and it is certainly not the case in Australian law.

**CHAIR**—It is important that we clear that up, because it is a term that has been used in recent times, when people have talked about cultural genocide as being a crime.

**Mr Marshall**—It definitely does not appear within the definition under the genocide convention. My understanding was that that was, in fact, an issue when that convention was first negotiated, but upon concluding the convention the idea of cultural genocide was ruled out by the parties that negotiated it.



**CHAIR**—Thank you. I am pleased that that is on the record. How difficult is it to tell, or is it even possible to tell in some instances, the difference between a war crime and legitimate methods of warfare?

**Mr Skillen**—That is an interesting question. That might be one that our colleagues from Defence might be better placed to answer. I certainly would not want it to appear that this department was not trying to be helpful to the committee. In the context of the ICC statute, what I can say is that article 8 of the statute sets out in great detail what war crimes are for the purposes of determining the jurisdiction of the court. They are set out, as I have said, in considerable detail and with great specificity. Furthermore, there has been a text drafted which further elaborates those crimes. The text is known as the *Elements of the crimes*, and that sets out in even greater detail what the acts are that constitute those crimes. While I think that we would acknowledge that in the conduct of armed conflict there is plenty of room for grey areas, we believe that the way in which the war crimes have been defined for the purposes of the ICC statute will be adequate.

**CHAIR**—The statute as it currently provides no defence for higher orders or no defence for heads of state or politicians. With that in mind, it is possible to envisage an entire chain of command being indicted for one incident. Firstly, is that a realistic expectation? Secondly, if it is not the case, what mechanisms are in place to avoid a situation where only a scapegoat is prosecuted—in other words, one person for a whole range of chain of command crimes?

**Mr Marshall**—In answer to your first question, that is the case. You are correct. If you had a chain in which a number of people actively participated in war crimes or crimes against humanity and actively and willingly did so, then they would be subject to the jurisdiction of the court.

**CHAIR**—Is it realistic that they would all be prosecuted, all the way down the chain of command?

**Mr Marshall**—It is difficult. I suppose it would depend upon the situation, but I would imagine that in a given circumstance in which such actions were committed, and if the evidence was there, the prosecutor and the court would wish to assume jurisdiction in relation to grave crimes of that nature. In terms of the issue of finding a scapegoat, I suppose the only recent experience we can point to is the actions taken in relation to the international tribunal for the former Yugoslavia. The court there has indicated an intention to pursue those who they think are fundamentally responsible for those acts. The way in which the tribunal has appeared to do that is to go for those that are chiefly responsible in the first instance. That is, they are not likely to accept the putting up, say, of a scapegoat as an appropriate manner of dealing with the crimes.

**CHAIR**—Has any final definition been determined about crimes of aggression?

**Mr Marshall**—No, that has not yet been agreed to. During the negotiations for the statute there was a lot of discussion on an appropriate definition, and various countries could not reach agreement on that. The ICC statute now provides that the court will have jurisdiction once a provision has been adopted which defines it and sets out the conditions under which the court shall exercise jurisdiction, and that matter is now actively being considered by a preparatory commission, which is working towards developing an appropriate definition.

**CHAIR**—The crime of aggression was put in the original statutes and the final draft text does not make any reference to it. Is that because it is unlikely to get some agreement as to what a crime of aggression is?

**Mr Skillen**—Article 5 of the statute provides that the court will have jurisdiction over the crime of aggression at such time as an adequate definition of it can be adopted and the circumstances in which the court may exercise jurisdiction have been agreed. The reason that provision was arrived at in Rome was basically because of disagreement that could not be resolved over the desirability of including the crime within the statute. On the one hand, those who favoured the inclusion pointed to the fact that it had existed in international law since the establishment of the Nuremberg tribunal in 1945. On the other hand, there were arguments that the crime is inherently a political one and therefore not one which should be adjudicated by a judicial body.

Ultimately the resolution of that impasse was the one that we see in the statute, which we have described to you. The way forward seems to be for the preparatory commission to continue to make efforts, as it has been doing, to arrive at a consensus, but in any event the statute provides that the crime cannot be added by way of amendment to the core statute until at the earliest a review conference of the statute is convened, and that can only be after seven years following entry into force of the statute.

**CHAIR**—I understand that the ICC has the power to grant remuneration to victims. How on earth is it going to have the power to enforce a judgment like that?

**Mr Hodges**—Did I hear you correctly? You said ‘remuneration’ or ‘reparation’?

**CHAIR**—No, remuneration.

**Mr Hodges**—I am not sure about remuneration. Certainly reparation to victims is an issue to be covered by the statute. In any case the procedure set up has drawn closely upon the experience of the tribunal for the former Yugoslavia and also Rwanda. How that is to be funded is by the imposition of fines, which can be then levied against assets of the accused person, wherever they are located in the world. That of course then brings you into the international cooperation aspects of the court. So you could actually have reparations payable to a victim, funded from the actual assets of the perpetrator of that crime, no matter where they are located in the world.

**CHAIR**—And that could actually be put into force?

**Mr Hodges**—The procedures contemplated by the statute are that there should be no safe haven for the perpetrators or their assets. So under the international cooperation and enforcement aspects—that is, parts 9 and 10 of the statute—the court can make a request to a state party to trace, freeze and seize assets of a convicted person, of an accused, have those assets made available via a process involving a trust fund and via what is called the victims and witnesses unit and have those reparations payable to those people who have suffered crimes against humanity, war crimes or genocide.

**CHAIR**—Have you got agreement and cooperation from the Swiss banks?

**Mr Hodges**—Switzerland has at every stage of the process indicated its support for the court.

**CHAIR**—It is not a member of the UN, though.

**Mr Hodges**—It has nevertheless indicated its support for the court.

**CHAIR**—What about if those assets are in a country that is not a signatory to the ICC? If I was a perpetrator I do not think I would be rushing off to Denmark or Norway or Sweden. I would probably be heading for a country that is not a signatory.

**Mr Marshall**—You are correct. There will be practical difficulties in relation to how the court can implement some of the powers which the statute purports to confer upon it. All I can really say is that that unfortunately is a feature of international cooperation in criminal matters generally. Australian authorities frequently encounter difficulties in trying to trace down the proceeds of Australian crimes, and to some extent it really does depend upon the willingness and the ability of the jurisdiction in which the money has gone in order to give effect to any Australian seizure provisions. I suppose all I can say beyond that is that in that area the number of countries that are prepared to act as safe havens has shrunk over the years, and one would hope that with broad support for the International Criminal Court a similar situation would apply.

**Mr NUGENT**—I am almost tempted to ask which category Australia might fall into.

**CHAIR**—We might have a world full of Christopher Skases—but people who have probably perpetrated far more serious crimes than he has. I mean, if there are only 29 signatures so far—and once it gets to 60 it can be ratified—that leaves a further 129 countries. I am not saying that more will not sign, but there are obviously going to be a number of countries who do not sign anything else so they are not going to sign this and who would be safe havens for people who have perpetrated heinous crimes.

**Mr Skillen**—In addition we can say three things very briefly in response to Mr Nugent's reference to Spain. Spain is in fact already a party to the International Criminal Court statute, but the two additional matters are that non-states parties can on a case-by-case basis volunteer to cooperate with the court. If assets of a perpetrator were located in the territory of a non-state party and for whatever reason that non-state party chose to cooperate with the court in its attempt to gain access to those assets, that could be done. The final thing is that one of the three methods by which the jurisdiction of the court can be enlivened is by reference from the Security Council. When the Security Council does that, in accordance with the terms of the UN charter, all nations are obliged to cooperate. Therefore, on that basis and in relation to cases put before the court by the Security Council, membership of the statute would be irrelevant in terms of a state's obligation to cooperate with the court.

**CHAIR**—As there are no further questions, thank you very much for appearing before us again in this inquiry. There were a number of issues that were raised with us that we wanted to get comment on from your department. In relation to the additional material, you can provide it to the secretariat and the secretariat will make sure that we get a copy of it. You will get a copy of today's transcript of the evidence to which you can make corrections of grammar or fact. Thank you very much for your cooperation and for appearing before us today. It will no doubt

assist us as we draw this inquiry to a conclusion and get down to writing our report and recommendations. Thank you very much.

**Proceedings suspended from 2.47 p.m. to 2.57 p.m.**

**CALLAN, Mr Peter, Director, Multilateral Agencies and Human Rights Section, AusAID**

**DARVILL, Mr Steve, Program Manager, Humanitarian and Emergencies Section, AusAID**

**DAWSON, Mr Scott, Assistant Director General, East Asia Branch, AusAID**

**GILLIES, Ms Ali, Assistant Director General, International Program Branch, AusAID**

**SCOTT, Mr Keith, Manager, UN Program, Multilateral Agencies and Human Rights Section, AusAID**

**SHIPLEY, Ms Ellen, Acting Assistant Director General, Humanitarian and Community Branch, AusAID**

**TAPP, Mr Charles, Deputy Director General, Pacific, Humanitarian and International Division, AusAID**

**CHAIR**—I call the committee to order. Our final witnesses today are AusAID, whose officers have returned after appearing before us in August last year. Your evidence will most likely be the last that the subcommittee takes as part of the inquiry before we bring down our report. I welcome all of you. I must advise you that proceedings here today are the legal proceedings of the parliament and warrant the same respect that proceedings of both houses of parliament demand. Although we do not require you to give evidence under oath, it does not diminish the importance of the occasion. You should be aware that any misleading of the subcommittee may be regarded as a contempt of parliament.

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

**Mr Tapp**—No.

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

**Mr Tapp**—We provided the substance of our position at the hearing on 14 August and in the submission that we put before the committee. We are more than happy to take any questions arising from the committee's deliberations since that time but would perhaps just touch on a couple of points which may be of some interest to the committee.

It has been a very busy period for AusAID's engagement with the UN system since we last appeared before you. I would just like to take the committee through a few of these areas of activity on our part. The UN is, as we well know, preparing for a further series of major conferences over the next few months and into next year and the Australian aid program is

engaged in a very strategic way in preparations for these conferences. In June we have the conference on HIV-AIDS in which Australia has a key role as a co-facilitator in the form of our Ambassador to the UN. The special session of the UN General Assembly in September on children is obviously of significant importance to the aid program. We have the financing for development conference early next year and, importantly, the World Summit on Sustainable Development, or Rio plus 10, to review the agenda 21 agreement on the environment and development, which is also being held towards the end of next year.

In August we highlighted our interest in and engagement with the reforms going on within the UN and performance in the UN development system. We have continued to work with others over the past months to support and encourage these reforms and increasing performance. This has included: active engagement at executive board meetings, including the executive board of UNICEF on which, the committee may be interested to know, our counsellor development in New York is currently a vice-president. We have had significant bilateral engagement with agencies such as UNDP and we have developed further our multilateral assessment framework, including a presentation to UNICEF and other donors in New York. Earlier this year our MAF—the multilateral assessment framework, which we refer to as the MAF—review of UNICEF field level assistance in our region was very well received by UNICEF and other donors.

In this context as well I thought it would be useful to also mention our development in recent weeks of a new engagement strategy for the World Health Organisation. This strategy proposes a more strategic and regionally focused engagement with WHO and, if the committee is interested, later I would be very happy to expand on this. Similarly, I should also mention our recent development of the new humanitarian strategy for AusAID, which has recently been approved by Mr Downer and will be released shortly. This also proposes a more strategic and regionally focused engagement for the agency with a particular focus on a number of key United Nations organisations within the context of that strategy.

Since August last year we have also seen the publication of the UN Secretary-General's Brahimi report, a very key document. We welcome the report as a very positive contribution to enhancing effectiveness of international peacekeeping operations. Peace building is already a very important cross-cutting theme in AusAID's programs, and we discussed that a bit when we were in front of you last year. It underpins much of our work in the critical areas of poverty alleviation and good governance. We aim to integrate further conflict prevention and peace building perspectives into our programs through a closer examination of the role of aid in peace conflict dynamics. This is a major area of work that the agency is currently engaged in at the moment.

Finally on East Timor, we continue to work very closely with the UN in East Timor where the UN special representative is overseeing a very complex and rapid process of transition to independence. As far as providing significant support and assistance to build the capacity of the East Timorese administration, we are working closely with other bilateral donors and multilateral institutions to ensure the transition process stays on track and, importantly, is adequately resourced. An important step in this process will be a meeting of international donors to be hosted by Australia in Canberra in June of this year, which again we would be happy to expand on a bit further if the committee would like us to.

As I said at the very beginning, it has been a very busy few months for us in our engagement with the United Nations and also, I think, a very productive period as well. On that point I end our opening statement.

**CHAIR**—Thank you. Before asking questions, I might take the unusual step of placing on record and complimenting the work of your representative at the UN, Jacqui DeLacy. She is doing an absolutely outstanding job at the United Nations. I am sure that, if Mr Hollis was here—who was with me there for three months—he would agree wholeheartedly with what I am saying. She is the most approachable person you could ever meet. She worked hours that we certainly did not keep up with. Her position of responsibility and the way that she was respected by the people with whom she worked, both in our mission and throughout the whole of the United Nations system, I think makes her an outstanding person in the mission over there and I would just like to place that on record. We spent a lot of time working with her and we certainly appreciated it.

**Mr Tapp**—Thank you for that. If I may, I will pass that on to her.

**CHAIR**—Thank you. There obviously were some lessons learned in East Timor. I am just wondering how you might have applied any lessons learnt when you are planning any future operations.

**Mr Tapp**—Perhaps I might answer initially on that in broader terms and then maybe some of my colleagues, particularly Mr Dawson, might comment on some of the specifics. I think it is quite interesting how the Brahimi report has highlighted and echoed a number of the issues which, for Australia, were very important in the planning and implementation of our engagement in Timor. From the aid program's perspective, it has underlined something that we had already identified as being particularly important, and that is the whole question of looking to work at conflict prevention and trying to build some of those activities and those themes into our ongoing activities.

Very specifically, we have taken many of the lessons we have learnt from Timor into the way that we are developing our programming in a number of other countries in the Pacific and Indonesia within the arc of insecurity that we often talk about. We have also looked to be further developing what were already, I think, very good relations that we had with the Australian Defence Force. Perhaps Mr Darvill might add some more specifics on that. I think the committee will be quite interested in some of the initiatives that we have been taking with the ADF in that regard in terms of that whole linkage between the civilian/military dynamic within conflict.

In AusAID we consider it is very important to learn lessons and not just to document them but to actually start doing things with them. Within the context of our humanitarian strategy, one of the things that we are proposing to do is to take much of the experience that we have gained in Timor and in other parts of our region in terms of Indonesia, Bougainville and the Solomon Islands, for example, and to bring those experiences where we have been engaged very significantly in conflict prevention, post-conflict reconciliation work as well as the 'picking up the pieces' humanitarian work itself, and to bring some of those lessons learnt into the international debate.

In so doing, hopefully, we will increase the engagement by other donors and multilateral agencies in our own region, which we consider to be a very important thing. It is important that we have various UN agencies and other international agencies, such as, for example, the ICRC, with a capacity to be able to respond and work with Australia and others within our region in times of crisis. And as we have seen in the last 12 months, there are quite a number of crises actually happening or brewing.

In summary, it really is a question of looking through the optic of conflict prevention and also getting the right mix in terms of the civil/military relationships when conflict occurs and also the way that we can engage other international partners, both bilateral and multilateral, in those programs. But perhaps Mr Dawson might like to make a couple of specific comments from Timor and then, if we may, the committee might be interested in a little bit of what we are doing with the ADF.

**Mr Dawson**—I think the issue of civil/military relations was one that certainly confronted us quite early in the East Timor context. It was important to ensure that the liaison between the peacekeeping operations and the humanitarian operation was a professional one and one that was properly resourced. I think that is an area which in our future relations with the ADF and in any sort of future peacekeeping operation we would be looking to pay particular attention to.

I think one of the very important lessons for us in terms of managing a humanitarian operation which was so close to us and where we were really expected—Australia—to take a lead role, if not the lead role, in the immediate response was the importance of having good people on the ground, getting them there quickly, getting them adequately resourced and with enough delegation to do the work properly and quickly. From our point of view, we were able to put people initially in Darwin and then as soon as possible, or as soon as the situation was secure enough, to put them in Dili. Having those people on the ground, having competent people there, giving them enough flexibility in their management arrangements and their delegations were very important things in responding quickly. I think it is a major lesson that we have learned from the exercise.

A lesson which I think is perhaps more broad than simply Australia's experience was the way in which humanitarian operations relate to local partners. I think one of the criticisms which has been made of the initial humanitarian response was that it did not do enough to identify competent East Timorese partner organisations at an early date to identify how to work with them, to give them authority and really to empower them to be organising communities and to carry out humanitarian relief work at an early stage. I think that is something which, clearly, has come through in the United Nations' own assessments of performance.

**Mr NUGENT**—Did they exist?

**Mr Dawson**—They existed to a degree. There were certainly church organisations which were well organised. But there were a number of other organisations. Although they were in a somewhat fractured form on the ground, the individuals were there and, certainly, there were a number of very competent individuals who could have taken a much more significant role.

I think some of the other issues are perhaps to do more with the big picture relationships in a peacekeeping operation between the immediate humanitarian phase and subsequent peace-



building and nation-building phases. Particularly the importance of looking to use those early humanitarian operations to do things like create employment was a clear lesson that has come through. Many of the criticisms of the situation in East Timor relate to the slowness in providing opportunities for East Timorese to become engaged in the work of the UN, to be employed and to start to be able to pick up their lives through earning some basic income through income-generating activities. I think one of the important lessons through the process for us was to make sure that our initial humanitarian response provided enough of those longer-term development activities at the same time. And then I think there were issues to do with the nature, mandate and funding arrangements for United Nations missions generally in these sorts of circumstances where it is an integrated peacekeeping operation and nation-building operation. I think we are still very much learning about how that nation-building element can get sufficient attention in the way in which the mission overall is resourced, particularly to make sure that the people who are the key mission members have the skills that allow them to carry out some very important tasks in terms of building up of local capacity.

**CHAIR**—Perhaps Mr Darvill might care to comment in relation to the ADF?

**Mr Darvill**—Yes. Perhaps leading on from what Mr Dawson was saying, I think the East Timor operation involving AusAID, the ADF and many other players really focused a lot of our attention on how critical this military/civil interface is in the peacekeeping operations. For several years, AusAID has been participating in the international peacekeeping seminars that are run by the ADF peacekeeping centre in Williamstown. But it is quite clear to me, having participated in these seminars both before and after East Timor, there was a shift, particularly in AusAID and some NGOs, in the civil side of these operations. There was a greater awareness of how critical it is to be able to coordinate and speak the same language, if you like.

One of the things that has developed recently which has involved AusAID, the ADF and ACFOA, the non-government sector, is a series of discussions exploring opportunities to strengthen civil/military cooperation. There are plans in hand at the moment for a joint workshop in Sydney in mid-July on civil/military cooperation where there will be an opportunity for the aid side of things, both the NGOs and donors, to put our perspective on how we see civil/military cooperation operating, as will the ADF. We are also hoping that we can have some UN representation there to perhaps flesh out a longer term plan for training in that civil/military cooperation area.

It was generally recognised from Timor that the response was quite a good one in terms of cooperation. Australia was invited to participate in a lessons learned seminar looking at the use of what is known as the Oslo guidelines. These are guidelines which were developed in 1994 about the use of military and civil defence assets in disaster response. This seminar in Brussels about a year ago looked at the scope for expanding the existing guidelines—updating them—but also expanding them to move from times of peace as they are now to actual complex emergency situations. That is a process that is ongoing. OCHA, the Office for the Coordination of Humanitarian Affairs, is heading that process. It is at the stage where there is almost a first draft. AusAID and the ADF have been participants in that process so far and will continue to be so. In recognition of some of the expertise that we were able to build up in East Timor, we have been nominated as a member of the draft review team for those guidelines. That process will continue and is likely to conclude later this year or early next year.

**CHAIR**—What ongoing assistance is AusAID providing in the Solomons?

**Mr Tapp**—The Solomons is a significant focus of our attention. We worked extremely closely throughout the current crisis with our colleagues in Foreign Affairs, Defence, the AFP and PM&C in providing a very focused whole-of-government response. We also worked very closely with our colleagues from New Zealand and also with the United Nations. There are a number of levels to our assistance in the Solomons. We are providing substantial support to the peace process to assist with the implementation of the Townsville peace agreement. A second rotation of Australian monitors has been provided to the International Peace Monitoring Team. The IPMT came straight out of the Townsville peace agreement. We are providing communications, logistical and advisory support to the Solomon Islands Peace Monitoring Council. Quite interestingly, the latest Australian adviser to the Peace Monitoring Council is actually an AusAID officer. The first two were DFAT officers. The most recent one is a very experienced AusAID officer.

Since April we have also provided a little over \$1.2 million worth of support to the peace process and conflict resolution activities. We have launched a significant program to help the Solomon Islands government restore law and order, strengthen the Royal Solomon Islands Police, the prison system and the judiciary. We are currently working with the AFP on increasing its support in that regard as well. We have provided \$2 million to the regional delegation of the ICRC and committed \$1.7 million to maintaining essential drug supplies over the next six months. We have also established a community peace and restoration fund. This is very much geared to some of the issues we have been learning about in relation to post-conflict work. This provides small grants for community generated activities for communities that have suffered from civil unrest and is very importantly providing employment for former combatants.

We have also acted as a major leader in the coordinated donor effort for engagement with the Solomon Islands government on coordinating assistance to the Solomon Islands and ensuring that the Solomon Islands government is putting in place responsible budget and fiscal measures. We are finalising a significant financial assistance package at the moment. As I say, we have been very much at the forefront of that initiative. Indeed, there was a major meeting on 26 February in Honiara.

With particular reference to the UN's involvement in the Solomon Islands, we actually very specifically approached the UNDP in July of last year to see whether they were interested in supporting a disarmament process within the Solomons given the UNDP mandate and special expertise in that area. In short, the UNDP was very responsive in getting some of the initial assessment work on the ground. They have had difficulties in developing an agreement with the Solomon Islands government for their activities and operations.

**CHAIR**—Do they have permanent people in the Solomons?

**Mr Tapp**—They have people there in the Solomon Islands. We saw the disarmament process as complementary to our work on the capacity building and other aspects of the peace process. Essentially, they actually had a presence established in November after they had done some initial assessment work. However, as I say, they have experienced difficulty in reaching agreement with the Solomon Islands government on their proposed programming framework. We hope that that will develop further. However, the disarmament process, as I think you are

well aware, has been moving forward very strongly through the Peace Monitoring Council and the International Peace Monitoring Team. I should have added that on the International Peace Monitoring Team there are DFAT officers, AFP officers and AusAID officers, as well as contributions from New Zealand and now from some other countries, including a Commonwealth representative on the IPMT as well.

**Senator BOURNE**—You mentioned the international donors meeting in Canberra in June this year to do with East Timor. Can you give more details about that?

**Mr Tapp**—Absolutely.

**Mr Dawson**—That will be the fourth meeting, which have been held at roughly six-monthly intervals. The first was in Tokyo. There have been subsequent meetings in Lisbon and Brussels. They have provided an opportunity for the donor community to talk with the East Timor transitional administration, the World Bank and the United Nations about the progress of transition to independence. At the last meeting a range of key transition issues was identified, such as the progress towards creating a competent, sustainable public administration and what needed to be done in terms of training, mentoring and building the capacity of senior East Timorese civil servants. There was discussion about the political transition strategy, such as the timetable for elections, the likely ground rules surrounding those elections and what sort of international assistance was required for that.

There was discussion about a range of sectoral sustainability issues, particularly things such as what needed to be done to improve the climate for private sector activity in East Timor and what needed to be done in areas such as rural development, and there was a very useful discussion about the overall question of financial sustainability, budgetary sustainability, which touched on things such as revenue raising measures, where they could be improved, what role donors could play in really bridging, I suppose, a gap between what is a current and fairly modest level of expenditure but a lower level of revenue over a period of time to really bring the East Timor budget into balance in the medium term. So they were some of the issues which were looked at, for example, at the Brussels meeting.

At the Canberra meeting I think all of those will continue to be on the table. But since now some of the key decisions have been made about the political timetable, I would anticipate that the issues the meeting will focus most on will be the questions of capacity building—what needs to be done still to build the capacity of the East Timorese civil service in the period up to and immediately after the date of the independence—and this other question of financial sustainability. I think the issue of resources for capacity building and resources to maintain the normal ongoing functions of the administration will be key questions to look at at the Canberra meeting.

**Senator BOURNE**—And that is in June?

**Mr Dawson**—That is right.

**Senator BOURNE**—There is always a lag between a country promising to give money to something like this and the money actually occurring. How much of that has come through at the moment and how much is still to come, do you know?

**Mr Dawson**—The position is really quite good at the moment. There was a significant amount of funding which was pledged for the World Bank-Asian Development Bank jointly managed trust fund, which is mostly looking at reconstruction activity. The bulk of that has now been provided. The actual cash contributions and promissory notes which can be drawn down as required total, as at a few days ago, approximately \$US114 million. That is matching very closely the sorts of pledges which were first made about 18 months ago. The work program that the World Bank and the Asian Development Bank are managing is not at all running ahead of those pledges. So there is still a substantial amount of capacity there to continue to implement new programs of a reconstruction nature.

The other main area of funding support was more in the nature of recurrent cost support for the East Timor administration. The figures I had indicate that the total contributions to that are in the order of \$US40 million. But the position with the East Timorese budget at the moment is somewhat paradoxically quite sound, particularly because the rate of employment of people in the civil service has been rather slow. In fact, expenditure is running somewhat behind what the projections were. There is a temporary budgetary surplus. There is no particular requirement for additional funds at the moment.

**Senator BOURNE**—When we were at the UN there was a lot of mention of the Sphere project, of a humanitarian charter and minimum standards in disaster response. Do you have a point of view on that?

**Mr Tapp**—The Sphere humanitarian charter and minimum standards is something that has evolved over a fair amount of time. It principally has been led by some of the key non-governmental organisations that have been working in the humanitarian field. I think the genesis of this was the Great Lakes crisis in the mid-1990s, when this was highlighted in the multi-donor evaluation of the international response to the Rwanda crisis. It flagged the fact that there was just an immense diversity in terms of the sorts of standards, approaches and performance of different agencies working in the humanitarian response.

The driving force then behind the development of the Sphere minimum standards came from a group of agencies referred to as the Steering Committee for Humanitarian Response, which has its secretariat actually in Geneva. The membership of the steering committee consists of some of the principal humanitarian agencies. It includes the Red Cross federation, as well as the likes of Oxfam International, Save the Children International, CARE International, Caritas, CRS and some of the large American agencies as well.

Funding for developing the humanitarian charter and minimum standards was provided by those agencies themselves and also by donor countries. The Australian government contributed to the development of Sphere. I think Sphere was actually launched at the end of 1998 or the beginning of 1999. Having produced its charter and minimum standards, it then moved into a stage of actually promoting it amongst other agencies, with UN organisations and also with donor organisations and looked at how the Sphere standards could be actually implemented in the field. A number of very specific case studies were conducted in this regard. I think Sphere is a hugely important process, and the Australian government has shown its view on that by the funding that it has provided and also by the fact that many of the key Australian NGOs have been very involved in this process. So I think it is a very important thing.

**Senator BOURNE**—And we are still funding?

**Mr Tapp**—Yes, we are still providing funding to it at the moment.

**Senator BOURNE**—In your submission, which was written a while ago of course, you mentioned threats to humanitarian workers. Since then we have seen those dreadful murders of UNHCR people in West Timor. At the bottom you say that the UN humanitarian system should continue to examine ways to strengthen security and that the international community should significantly strengthen efforts to bring perpetrators to justice. Do you think there has been much progress in either of those areas since you wrote this submission?

**Mr Tapp**—It depends how you define ‘progress’ but, yes, I think there has been. I think there has been a very significant focus on this issue. It is of profound importance to agencies and donors alike. It has been an issue that the United Nations Office for the Coordination of Humanitarian Affairs has been particularly keen to take forward. As you could imagine, UNHCR has been also very keen to have this taken further. The different arms of the Red Cross have had this very high on their agenda for a while. Some of the strands of that were also of relevance in some of the work conducted under the Brahimi report. It is going to be a very difficult one in terms of what in concrete terms one is able to achieve. In many of the complex humanitarian emergencies in which agencies and donors are engaged, we are involved in not interstate conflict but intrastate conflict, where one is often totally dependent on the local institutions of law and order to provide appropriate protection for workers and also particularly for the internally displaced people. Again, I would describe it as a work in progress, but I think it is an area in which we are seeing a more robust discussion in a more robust debate.

I think we are seeing some progress being made and some very key lessons learnt that we can all take from this, often at a very simple level in terms of the effectiveness and efficiency of communication systems, adequate training, proper briefing—as we talked about earlier—and the linkage between the civil/military sides of the operations. These are all very, very important issues and, from an AusAID perspective, that is one of the things that we are taking very seriously, as are our colleagues within the ADF, in the discussions and the collaboration that we are having with them. It is not a very precise art, unfortunately.

**Senator BOURNE**—Certainly not.

**Mr NUGENT**—I want to ask a couple of questions, really against the background that we have been there twice: we went there 15 months ago and we went there again last month. So we met a number of players and had a bit of a look. I think generally there is no question that the committee has been very happy with the Australian contribution in Timor in all its aspects. Having said that, Scott Dawson, I think, has made the comment about one of the early problems being: what do you do with all the manpower that is around the place and trying to get the locals involved? It certainly seemed to most of us that that was a major problem right up front in the early days but was still an ongoing problem when we went back last month. There just has not been enough involvement of local population, particularly the young men who are tending to sit around with not enough to do—and idle hands make mischief, of course.

You talked also about your relationships with the military and the military’s relationship generally with aid organisations. But, again, a number of aid organisations that are in Timor

have said to me that there was a lot of confusion between aid agencies and NGOs themselves—not just the military/civil thing, but civil to civil, if you like. I accept that it was under the auspices of the UN and it was not your responsibility—I am not suggesting that. But given that background and given that the UN administration granted that there were all sorts of very fundamental, basic problems, it does not appear to have made a lot of progress in reconstruction—a personal statement. Could you give us your overview or assessment of how you think the reconstruction is going? What is your assessment of the UN's effectiveness in managing the transition over the last year?

**Mr Tapp**—I will ask Scott to comment specifically on that. If I may just comment, there is an extremely key issue, or a couple of key issues here, that for us are very important within AusAID and we are looking to work on them further. The first one, as you talk about, is the engagement of the local communities and local population at a very early stage. This is a particularly difficult issue when you are working in an environment—what one might call a failed state environment—where there is a limited array of institutional mechanisms or what have you within which you are actually able to mobilise the local community support. That is something, I think as Scott mentioned earlier, that is an important lesson learnt and one that we are looking to apply very specifically in some of the other operations that we are engaged in.

On the civil/civil coordination in the humanitarian emergencies, that is an area where we are of the view that much more work needs to be done. Further progress needs to be made very much looking at the UN system in that regard. I should just add that one of the very specific things that we are now seeking to do within the aid program is to increase the capacity of the United Nations Office for Coordination and Humanitarian Affairs—UNOCHA—within our region because of their critical importance when problems occur and, more than that, to ensure that we do have adequate capacity from other key agencies such as UNHCR, the World Food Program and the ICRC within our region as well, as well as engagement with NGOs and with other parts of government here in Australia. An awful lot of the confusion and lack of coordination can be dealt with by actually doing a certain amount of preplanning, dealing with some fairly standard operating procedures and ensuring that the key players have the capacity. One could perhaps venture so far as to suggest that the international donor community has been very focused in terms of the humanitarian agenda, particularly the complex emergencies in the Balkans, Africa and, to some extent, the Caucasus region.

Timor has been something of a wake-up call to our region. It is, we believe, extremely important in learning lessons from some of the other parts of the world and very much in Australia's national interests that we keep—

**Mr NUGENT**—A lot of the players that we met in Timor—the individual people involved—had, in fact, worked in those other parts of the world. So I am surprised to hear you say it is a wake-up call when a lot of the players had been through this experience elsewhere and should have been bringing that expertise with them.

**Mr Tapp**—What I am saying is that it has been a wake-up call. These issues are very much an issue within our region. I am speaking from a personal perspective, having worked for many years in Africa and in a number of complex emergencies. There are some lessons learnt and some similarities, but there are also some differences. You need to have a level of local understanding and knowledge. You have got to have your capacities in place to be able to

respond. You tend to have a different military element than you might have, for example, in some of the African conflicts. The Australian role is particularly important within Timor. I think it has been universally accepted that while, yes, there is much that can be learnt from Timor, the experience that we have gained there has been a very, very good step forward compared to some of the programs that have been going on in other parts of the world.

I suppose the point I am just wanting to highlight in a broader generic sense is the fact that a lot of this development of standing capacity and planning and training together ahead of time does actually become very important and very useful when a crisis arises. I will use the example again that some of the work we have done with other donors in the Solomon Islands has been very important in ensuring a better level of cooperation on the ground. But perhaps Scott can talk more specifically, though, on the reconstruction question.

**Mr Dawson**—Your question raised a number of issues there. They are related, but I will try to respond on each of the main ones that you raise, which really as I heard it were, for example, what had happened about employment, what was the position with regard to the coordination of various aid players, particularly non-government organisations, and I suppose a broader overlay of what did the general pace of reconstruction activity say overall about the performance of the United Nations?

**Mr NUGENT**—Putting it simply, we went there 14 months apart and I would have expected on the second visit to see an awful lot more reconstruction to have occurred than we actually saw, given the resources that the world has put in there—the amount of money and expertise and population in Dili has gone up by umpteen thousand and a lot of those are overseas experts, sort of thing. In the 14-month period you could have almost rebuilt Dili. But there is very little evidence that substantial reconstruction has gone on. There is no agreed law, no agreed language, no agreed currency and all the rest of it. As you say, the Public Service is extremely lacking, as is the physical reconstruction. Given that there is so much manpower available—untrained and unskilled in large measure—that could be put to actually rebuilding physical infrastructure, I would have expected to see much more happen in more than 12 months, given the amount of attention, resources and money it has got. That is my assessment. I do not claim to be an expert in these areas, but I am interested in your professional assessment as to whether the UN has done what it should have done.

**Mr Dawson**—I think our assessment would be that in the circumstances the UN has done a good job—in the circumstances. I think we put the assessment against the position on the ground of large-scale physical destruction and an absence, to a large degree, of trained people who are capable of picking up and running an administration and administering basic services. But let me elaborate on that a little bit.

On the issue of employment, for example, I think it would be wrong to place the problems of employment wholly at the doorstep of the United Nations. It is neither the function of the United Nations nor the East Timor transitional administration to employ people; it's function is to get a job done. It should employ as many people as it needs to do that job. I do not think we can say the fact that there may be a very large number of people who are out of work in Dili is the responsibility of the United Nations. What needs to happen to reduce that employment problem is for private sector activity to begin.

We must remember, I suppose, that we are looking at a situation where there was always a very high residual degree of unemployment. Much of that unemployment under the Indonesian administration was soaked up by a very heavily overstaffed public sector. As you have noted, since the crisis there has been a very large drift of people to Dili. It is not the responsibility of the United Nations to solve the unemployment problem.

That said, I think there was a concerted effort, and an effort which still goes on, to create as many jobs as quickly as possible in activities which were basic reconstruction activities. So there was a lot of work which went on in terms of simply clearing up the rubble out of the streets, clearing drains, cutting grass on the sides of roads—those sorts of things. Donor funding from Australia, the United Kingdom, the United States as well as funding through the World Bank and UN agencies was devoted to those sorts of temporary employment programs. But at the end of the day what is going to be important is establishing a property system, establishing a system of dispute settlement, and establishing a commercial law which is accepted. Those are the things which are going to help to encourage private sector activity and a general lift in employment locally.

You raised the issue of, for example, the legal system and the currency. A number of those things are in one form in place. Indonesian law is applying by incorporation at the moment. There are several currencies in operation—

**Mr NUGENT**—They are default positions?

**Mr Dawson**—Exactly. But a number of things, such as the property law, are extremely complicated problems. There are several overlays of possible property arrangements which apply, and sorting those out is something which at the end of the day is a political question and I do not think is going to occur until there is a home-grown parliament and properly elected representatives who take can those sorts of political decisions.

On the issue of the pace of reconstruction generally, yes, I would agree that it has been slower than many people would have hoped for. I think there are, again, a number of reasons for that and ones which bear looking at in terms of future operations. One thing comes back to the fact that the UN mission was configured as a peacekeeping operation with a number of administrative elements attached to it. It was not configured as a government. For example, the UN procurement procedures are not ones which lend themselves to particularly rapid action. So I think that people have identified for some time that procurement arrangements, which were originally centred in New York but have since been devolved, are still not as flexible as is necessary to make a lot of simple purchases happen quite quickly. That is one thing, I think, which generally does need looking at.

With the World Bank and the Asian Development Bank, you have the management responsibility for the reconstruction trust fund, not the UN. So in that sense I think we have to look broader than at the performance of the United Nations, as well. By all measures of performance elsewhere, I think they have done very well in terms of getting those reconstruction programs up. They are perhaps not as fast as people would like; and I think that in terms of the rapid planning and the rapid implementation of those programs, those organisations will have learnt some lessons from it.



The pace of reconstruction activity has been increasing recently. If you look at the disbursements from the World Bank Trust Fund—they have been increasing rapidly over the last several months. I think they are now running at close to \$US3 million a month worth of reconstruction activity. That is starting to pick up a lot of the things which have been slow in terms of community facilities, school reconstruction, health facility reconstruction, et cetera.

**Mr NUGENT**—I think what you are saying is that all the highly sophisticated developed nations have learnt a lot of lessons over this, and the Timorese people have been significant guinea pigs. That is my interpretation. You do not have to respond.

**CHAIR**—It is a statement rather than a question.

**Mr NUGENT**—Yes. I am not having a go at you.

**CHAIR**—Some of us do have to catch aeroplanes, so thank you very much for appearing before us at the conclusion of this inquiry. You are our last witnesses. We can now settle down and finish writing our report and recommendations.

You will be sent a copy of the transcript of the evidence, which you may correct for matters of grammar or fact. Hansard might want to check with you some details of your evidence before you leave, so please check with the Hansard people in case there are any things that they want to speak to you about.

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

That this subcommittee authorises the publication of evidence, other than that taken in camera, given before it at this public hearing this day.

**CHAIR**—That concludes the public hearings of the UN subcommittee. Any further questions that may need to be asked will have to be put in writing to those people concerned. I declare the hearing closed.

**Subcommittee adjourned at 3.55 p.m.**