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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,  
DEFENCE AND TRADE

HUMAN RIGHTS SUBCOMMITTEE

**(Roundtable)**

**Reference: Reform of United Nations Commission on Human Rights**

FRIDAY, 12 AUGUST 2005

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

**Human Rights**

**Friday, 12 August 2005**

**Members:** Senator Payne (*Chair*), Ms Vamvakinou (*Deputy Chair*), Senators Ferguson (*ex officio*), Kirk, Moore and Stott Despoja and Mr Baird, Mr Danby, Mr Edwards (*ex officio*), Mr Sercombe and Mr Cameron Thompson

**Members in attendance:** Senators Ferguson, Kirk, Moore, Payne and Stott Despoja and Mr Cameron Thompson

**Terms of reference for the inquiry:**

Pursuant to paragraph 1 (b) of its resolution of appointment, the Joint Standing Committee on Foreign Affairs, Defence and Trade is empowered to consider and report on the annual reports of government agencies, in accordance with a schedule presented by the Speaker of the House of Representatives.

On 12 May 2005 the Human Rights Sub-Committee resolved to examine the annual report of the Department of Foreign Affairs and Trade, focusing specifically on reform of the United Nations Commission on Human Rights.

**WITNESSES**

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**Subcommittee met at 9.10 am**

**BRANDT, Mr Juan Carlos, Director, United Nations Information Centre, Australia and the Pacific**

**DOWD, Mr John Robert, President, Australian Section of the International Commission of Jurists**

**GLENN, Mr Howard, Executive Director, Rights Australia Inc.**

**JOSEPH, Professor Sarah, Director, Castan Centre for Human Rights Law, Faculty of Law, Monash University**

**LENEHAN, Mr Craig, Senior Legal Officer, Human Rights and Equal Opportunity Commission**

**MACDONALD, Mr Keir, Student, Australian National University; Intern, Australian Permanent Mission, Geneva, during 61st Session of Commission on Human Rights**

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**WRIGHT, Mr David Neill, Regional Representative, United Nations High Commissioner for Refugees**

**von DOUSSA, Mr John, QC, President, Human Rights and Equal Opportunity Commission**

**CHAIR (Senator Payne)**—Does anyone have any comments to make on the capacity in which they appear?

**Mr Dowd**—I am also chair of the Executive Committee of the International Commission of Jurists in Geneva.

**CHAIR**—I apologise to those of you who have enjoyed an encounter this morning in trying to get into the building; we will address that.

Good morning, ladies and gentlemen. I declare open this public roundtable hearing on the reform of the United Nations Commission on Human Rights by the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. On 12 May 2005, the committee resolved to undertake a review of the annual report of the Department of Foreign Affairs, Defence and Trade, focusing specifically on issues surrounding reform of the United Nations Commission on Human Rights. I refer to the department's annual report, where it makes several observations concerning human rights—in particular, the department's efforts to secure Australia's election as President of the UN Commission on Human Rights for 2004, and some comments on the commission, its nature and actions at the time.

The topic is timely in light of the upcoming September Summit of Heads of State and Government at the United Nations in New York, where a wide range of UN reforms will be discussed in the context of proposals set out in the UN Secretary General's recent report entitled *In Larger Freedom*. One of the Secretary General's proposals in that report is that member states replace the Commission on Human Rights with a smaller human rights council. In his address to this year's session of the commission on 7 April, the Secretary General noted that the commission in its present form does have some notable strengths, including its country resolutions, its special procedures and close engagement with civil society groups. He went on to say that, at the same time, the commission's ability to perform its tasks has been overtaken, in his view, by new needs and has been undermined by the politicisation of its sessions and the selectivity of its work to the point where the commission's declining credibility has cast a shadow on the reputation of the UN system as a whole.

The Secretary General believes that a human rights council would offer a fresh start. He has proposed a council that would be afforded a similar status to the Security Council and the Economic and Social Council; that would be a standing body able to meet when necessary rather than for only six weeks a year, as it does at present; and that should have an explicitly defined function as a chamber of peer review to evaluate the fulfilment by all states of their human rights obligations. The Secretary General also suggests that a new human rights council can be made more accountable and representative through having members elected by a two-thirds majority of the General Assembly.

Today the committee will hear evidence from and the views of representatives of UN agencies, NGOs and legal and human rights experts in Australia. In our first session we intend to focus on the commission today: its achievements, its shortcomings and the need for reform—which elements of the commission work well, what are the areas for improvement and to what extent reform is necessary. In the second session we intend to examine what form the commission might take in the future, if member states should vote at the September summit to replace the commission with a human rights council—for example, how would the council function; what support is there for the proposal as it stands; and will changing the structure of the commission deliver the desired changes?

I would like to remind witnesses that, although today's hearing will take the form of a roundtable discussion, all discussion should be directed as far as possible through the chair. That, happily, will mean that only one microphone at a time will work.

**Session 1: the commission today—its achievements, its shortcomings and the need for reform**



Let me move to the first session, which is the commission today: its achievements, its shortcomings and the need for reform. I welcome our representatives from the United Nations Information Centre, the United Nations High Commissioner for Refugees in Australia, the Australian section of the International Commission of Jurists, the Castan Centre for Human Rights Law at Monash University, the Centre for Public and International Law at the Australian National University, the Australian Council for International Development, Rights Australia, Amnesty International Australia, the Baha'i community, the Human Rights and Equal Opportunity Commission and one of our student interns from the Australian Permanent Mission during the 61st session of the commission.

As many of you know, having enjoyed the experience before, the subcommittee prefers that all evidence be given in public. But, should you wish to give evidence in private, you may ask to do so and the subcommittee will consider your request. Although the subcommittee does not require you to give evidence on oath, I do advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses.

We have chosen this format today, which the Human Rights Subcommittee has adopted previously—in fact, I think my first experience in the chair of this committee was chairing a roundtable on the link between aid and human rights—because we think it is more informal and a little more comfortable. Although we still have to sit in one of these committee rooms and we are still a fair distance apart, it does give us the benefit, hopefully, of a more free-flowing conversation. Before we begin the discussion itself under those informal headings I have set out, would any representatives this morning like to make any statement to the committee?

**Mr Wright**—I am grateful for the opportunity to make some observations to this roundtable hearing on behalf of the UNHCR. What refugees experience at all stages is affected by the degree of respect by states for human rights and fundamental freedoms. Refugee protection is a subsidiary form of human rights protection and comes into effect when national protection mechanisms fail. The UNHCR has always cooperated with the UN's human rights machinery and, therefore, would like to see it preserved and strengthened, regardless of the shape taken by future human rights institutions. I would like to open by reiterating UNHCR's firm commitment to cooperate with and contribute to the work of the UN's human rights institutions.

I have a variety of other points that I would like to raise, but I am not sure whether the first or the second session would be the most appropriate time. I note that the future, the reform, is more in the second session, if I am correct.

**CHAIR**—Yes, that is right.

**Mr Wright**—Perhaps I should hold the bulk of my introductory statement until that session rather than interfere with the first session, being the achievements, the shortcomings and the need for reform. I ask for your consent to talk again later when we move into session 2. At this stage I thank you for your attention.

**CHAIR**—Absolutely. Thank you very much. Anyone else?

**Mr Dowd**—Senator Payne and members of the committee, I have three preliminary matters. Because I am doing too much flying, I have blocked ears and, therefore, if I ignore any questions, it is nothing personal.

**CHAIR**—We will ask Craig to hit you in the arm or something.

**Mr Dowd**—It can be convenient. Secondly, I do not know whether the members of the committee have the paper that the ICJ prepared.

**CHAIR**—Yes, it has been circulated.

**Mr Dowd**—Thirdly, because of a medical emergency that arose at about midnight last night, I have to go back to Sydney this afternoon and I need to leave to get a 12.40 flight—and I hope that I find my car here when I come back.

Addressing the substance of the matter, the document prepared by the ICJ Geneva has two matters with which I significantly disagree; in a sense, they are tangential. The first is that there is a mantra in the United Nations about having a two-thirds majority to elect people. Such a matter, the politicians here know, gives too much power to people to get 34 per cent and therefore block anybody. Almost all governments are elected by majorities and I think the two-thirds majority is a dangerous mistake because it distorts the voting. As our paper sets out, we substantially agree with the establishment of a council and a permanent body and that it have a status that is commensurate with its importance; therefore, it will require a charter amendment. The problem, however, is in pretending that it is not a political body and will not operate like a political body. Many countries in the world have very great interest in not having things debated, and they have allies. Like-minded nations can get together to block debates and we must be careful to see that this vehicle, which may be the only vehicle available to discuss crucial matters, does not allow limited numbers of people—less than the majority or, in some cases, by coalitions of votes a majority—to prevent it discussing matters at all.

The UN structure has a basic flaw in that, when the Security Council is seized of a matter, the General Assembly may not debate it. There is a mechanism within the General Assembly that does allow a debate, which is rarely used; it is called bringing things to the Security Council's attention. This body must not have that restriction. Although it will not have the power to bring about results, it will be able to comment on, raise, discuss and publish them. But this body, whether it takes a higher status or a subordinate status to the General Assembly, must have the power to discuss matters because it may be the only way that matters can be raised.

We are strongly of the view, however, that it is important that we do not interfere with the other mechanisms. There is a tendency to say, 'Well, this will be the body and we'll get rid of all the other special rapporteurs, treaty bodies and so on.' The United Nations is like the world; it is like a corporation or a parliament. There are various ways of achieving a result. We should not, in doing this, interfere with those other mechanisms. Democracies work, and international democracies work, by having various means of getting things up.

The overriding matter is that, unless the system has a specific and well thought out voting system to ensure that some of the good guys—they are different people for different purposes, but they are those who are actually concerned about human rights principles—get up, we may

destroy something that is unwieldy and in many ways unworkable but that sometimes works and have in its place a body that becomes an elaborate farce. The voting system must be thought through. Remember that we Australians understand more about voting systems than almost any other nation in the world. We have to be prepared to use that expertise. You would never sell the Hare-Clark system to those responsible for this body. Most countries, like the United Kingdom, that have a first-past-the-post voting system have a very different political animal to countries that have a preferential system. Any body which allows voting but limits the number of votes you have or something like that can create a very different animal altogether. In working out the regions and all the representational issues, we have to be very careful that Australia puts in a saleable sophisticated system that allows more than just countries that want to stop debate about various issues—terror or whatever. If we do not think it through beforehand and try to sell something, we may end up doing a lot of harm.

**CHAIR**—Thank you very much, Mr Dowd. Mr Brandt?

**Mr Brandt**—First and foremost, allow me to offer my apologies for my late arrival.

**CHAIR**—It is not necessary, Mr Brandt.

**Mr Brandt**—I deeply misjudged the capacity of getting a cab in this town.

**CHAIR**—It happens to many of us.

**Mr Brandt**—I am delighted to be here and I am very happy to answer any questions any member of this committee has for the representative of the United Nations. I did prepare a brief statement but, on second thought, being in the company of so many people who have much more expertise than I do on the issue of human rights, I have decided that I will just be at your disposal in case there are any questions.

**CHAIR**—Thank you. We are trying to address the question of achievements, shortcomings and the need for reform. I encourage my colleagues to jump in at any stage with questions for our participants. Keir Macdonald might not be very happy with me, but I am going to ask him whether he has any observations to make. He was one of Australia's interns at our permanent mission at the 61st session of the CHR. It was there that I had the opportunity this year of meeting him and of participating in and learning a great deal about the CHR. On the question of achievements, shortcomings and the need for reform, Keir, do you have any observations you would like to share with us?

**Mr Macdonald**—First, I would say that I think the consensus was that the CHR this year ran fairly smoothly and efficiently under the chair of Mr Wibisono. It was my first introduction to the CHR and to the UN as a beast. Overall I was very impressed. The delegations particularly were very open and accessible to the NGOs and civil society. Of the overall atmosphere of the commission, there was a willingness to get things done and I felt that it was a very good environment in which to be working in Geneva.

There were a few notable shortcomings. Particularly with the issue of country situations, there were quite a few shortcomings within this year's session, as were present in previous sessions. It has been raised already today that the willingness of countries to block discussion on certain

issues is another area that definitely needs to be addressed. But, as a general statement, I would say that the Commission for Human Rights definitely has and will continue to have a role to play. Obviously, I would advocate that we retain the CHR, but there definitely needs to be some tinkering with the structure—for instance, the voting systems and membership. But the commission as a whole and as a structure is definitely something we can move forward with. That is all I would like to say for now.

**CHAIR**—Thank you very much. Are there any other general observations in this area?

**Ms Scrine**—I think the committee has a copy of a discussion paper that was put together by a number of the organisations represented in this room. It identifies a number of areas as shortcomings of the current system. I will highlight those in terms of focusing some of our discussion.

There are claims that the commission has been undermined by action such as states seeking election to the commission not to strengthen human rights but to protect themselves against criticism or to use it to criticise others; by states using procedural ploys to prevent debate on legitimate human rights concerns—we have seen that trend increase alarmingly in the last couple of years; by the undermining and lowering of human rights standards and norms through the commission itself; and by the unacceptable selectivity and double standards that have seen many situations of great human rights concern ignored. As you are probably aware, the Baha'i community has a very broad interest in human rights and its promotion and in the United Nations and the like. But, with our specific experience in protecting the human rights of the Baha'is in Iran, we have seen each of these things play out and they are very real examples of how the commission has failed to address a human rights situation in recent times.

However, that said, there has also been development of the strengths of the CHR in recent years. I think in particular of the development of the special procedures and the involvement of NGOs. While we have all had some concern about the number of organisations that are not NGOs but government sponsored organisations that are using up more of the time of the CHR, the CHR is unique in the way it allows NGOs to have a role in the United Nations system. We would certainly see that as another of the achievements of the CHR. I might leave it now to some of my colleagues.

**CHAIR**—In terms of NGO participation, we have representatives here today who might want to make some observations, some people who do go to Geneva and participate in the process, or whose organisations most certainly do. Mr Wright?

**Mr Wright**—The UNHCR participates each year in the commission. This year on 17 March, in the high-level segment, the then Acting High Commissioner, Wendy Chamberlain, spoke to the commission on the issues of protection of internally displaced persons, the challenge of statelessness and the complementarity of human rights monitoring in the UNHCR's protection efforts.

I think it would be pertinent at this stage to come back to what Keir Macdonald said in his short comments. Commented on by many—I think it can be referred to for the purpose of this hearing—is the issue of peer review mechanisms. Although it is difficult to differentiate between the current situation in today's commission and the reform necessary with the proposal—if it

gets passed in September—for the future human rights council, it would appear that both exist, particularly when it comes to country reviews. It seems that the view or concern expressed is that states are primarily responsible for respect for human rights. Those very states are present in the institutions that are created to ensure respect for human rights. In addition, those very states form the peer review mechanism when they look at the reviews of different countries. Some of those states perhaps have been looking at their own interests rather than at the individual rights of the persons they are there to discuss. I think that issue should be considered in either this or the next session.

**CHAIR**—Mr von Doussa. I will come back to Howard.

**Mr von Doussa**—We have heard some criticisms of the existing system; they are well documented and I do not wish to address them. But, on the other side of the coin, the present structure has achieved many things. Over the last four decades, its standard setting has been remarkable in terms of establishing a set of international norms and it continues to develop norms. The special procedures have been a success. There are criticisms of them, which basically get back to resources and other matters that lend themselves to being rectified without changing the structure.

If one looks at the agenda for its meetings, the CHR's monitoring role in looking at thematic reports and thematic issues of human rights around the world is remarkable; it is very comprehensive. It is an organisation where NGOs have a significant input and make an enormous contribution. I think the role of NGOs is not to be underplayed at all; it is one area where they can have a big effect. I would add—perhaps out of self-interest—that national human rights institutions are now being given a greater say and a greater role also in that organisation. From our point of view, we think it would be a pity if any tinkering with the system meant that the role of national human rights institutions was reduced. They do have a different perspective from NGOs on many issues, and it is a perspective that I think is worth putting.

There is another less formal achievement of CHR which was referred to by Ambassador Mark Smith in his outgoing statement at the start of this year's meeting—namely, that the six weeks provide a space where virtually the whole of the international community concerned with human rights can meet and exchange views. There were, I think he said, 600 side events, for example. Although there were only 53 members of the human rights commission, in fact, virtually every state is represented, as are a wide range of NGOs and various other interest organisations—and they do get together and talk outside of formal sittings, and that is a very valuable aspect of it all.

Having referred to those achievements and without expressing a particular view on whether there needs to be a new body or not, I think one needs to reflect a little on whether there really is a need to pull down an existing structure and put up another one. Mr Macdonald, as I understood him, was rather supporting the maintenance of the existing structure with some tinkering. But many of the proposals that are being put forward involve an equal geographic distribution of membership, much the same number of people, exactly the same functions being taken over by the new body, a universal desire to preserve the special procedures and many other aspects of the existing system. Given that, one wonders whether you really need to pull down the existing structure or whether it is more a question of looking at how you can improve what you have by extra resources to special procedures, some change of internal rating mechanisms and so on.

There is a tendency in the documents that have been circulated and we have all read, I think, to jump to the immediate conclusion that you need a new body. All I want to do is flag the fact that perhaps people need to pause for a moment and think about whether you do need a new body. I think, on balance, we see some advantage in a new body simply to clean the slate and start again. If you have a dysfunctional board of directors in a company, you do not wind the company up, you change the board and you change perhaps the structure of it. That perhaps is the overriding advantage of having a new structure here. You would change the membership—new faces. I am not sure that I quite understand Mr Dowd's point. He keeps speaking of voting mechanisms, but I am not sure whether he is talking about the voting mechanism to appoint members or the voting mechanism within the new body, once the members have been—

**Mr Dowd**—It is the former; I am sorry.

**Mr von Doussa**—The former. That is another very important issue that needs to be addressed because, if the new body is to be a subsidiary of the General Assembly, those that are voting are quite different to the composition of ECOSOC, who are presently appointing the membership. I just raise those matters for consideration.

**CHAIR**—Thank you very much. Mr Glenn?

**Mr Glenn**—Thank you and thank you also to the judge for outlining some of the content I was going to talk about, which were some of the achievements of the commission, because I think they need to be remembered, and also the role that Australia has played in the commission over the years in contributing to those achievements. I think it would be good just to acknowledge the quality of our representation in Geneva. Under Ambassador Mike Smith most recently but over many years, we have had some very good people there. John Dowd commented that the expertise that we have in designing systems and voting systems is incredibly underutilised at the moment. The high-quality diplomats that we have there need a lot more marching orders from the government and the parliament about contributing in this reform process.

I find it disappointing that the government has not taken a more active role in the promotion of the reforms, with the expertise that we do have and with the centrality of the UN human rights system to our way of life here and our own domestic laws. It would be great to see a sort of a leadership role in sorting out some of those problems and to see Australia position itself for an ongoing role in either the commission or the council as it emerges.

As to a couple of key features that have been alluded to, I will just give some background. I have only attended two meetings of the commission but I have been following it for a number of years. This year I found it a very disappointing experience, because my characterisation of it anyway is that the first half of the meetings was waiting for the Secretary-General's speech and the second half of it was discussing it. When the boss gives you your marching orders that the commission is so politicised and so selective and that it damages the reputation of the UN, it is hard to ignore that. Unfortunately, countries are ignoring it and there has not been a lot of progress in the discussion of the alternatives. I am not sure, but I understand that cabinet is still to discuss Australia's view of the human rights council proposal and I think this committee's hearings are very timely for that reason.

The strength, as the judge said, is the annual focus of all nations on these issues and the gathering of nations and NGOs and international organisations to look at this agenda. It is a very invigorating experience to be amongst a whole lot of people for whom human rights concern is the norm—sometimes one feels peculiar by raising a lot of these issues. There is a strength in that. But there is also a frustration at the lack of urgency in the work of the commission—the most serious human rights abuses are not addressed because they are pushed off the agenda, states combine to block them and block discussion of them or they are delayed until another year. One of the reasons I support the standing council, a permanent body, is to make it a lot less easy to push aside these issues. Human rights are fundamental to the UN's charter but governments are only in the spotlight on that annual basis. Too many things slip from year to year without ever getting there. Yes, as the judge says, a whole lot has been achieved, but a lot more needs to be done and it just is so slow on the agenda. So the lack of urgency is a significant concern.

The quality of NGO involvement too needs to be addressed. At the moment we are pushing for a standard for states to be part of the new bodies, but I think there needs to be a standard for NGOs too. I think it is essential for the continuation of the council to have regular sessions—if it is a permanent body, a regular session with NGOs. But I think there needs to be a review of some of the mechanisms by which NGOs get accredited to the council as well or to ECOSOC, because there is a wide range of front organisations that take an enormous amount of space. One of the big disappointments at the commission is the enormous amount of time spent debating issues that are completely unresolvable or are going to be resolved somewhere other than in the commission. The Palestine situation and the United States versus Cuba are two examples where enormous energy and an enormous amount of time on the agenda are spent to very little purpose. An honest look at who is saying what and when and for how long would be worth while.

October to December is the crucial time both for this committee's work and for the government. It may well be that a human rights council is adopted in principle, but there may not be any detail until the negotiations in the third committee and elsewhere—October to December. That is where the Australian government could play an enormous role. Thank you.

**Senator STOTT DESPOJA**—Can just I start perhaps, Mr Glenn, by picking up that point. Clearly there are views around the table about the importance of maintaining a role for NGOs. We have heard about the contribution that NGOs make and the importance of what NGOs get from that process. So I was curious about, I guess, the issue of manageability and the number of participants that you see at the commission, including hundreds of NGOs. Howard, you have just talked about some kind of criteria for NGO participation, perhaps. Is that with a view to changing the number of NGOs involved to make the process more workable and manageable? What kind of criteria are you talking about? I think that specific point of NGO involvement is one that I would like the committee to have feedback on so that we can be, I would hope, very positive and strong on the issue of maintaining and enhancing that NGO involvement.

**Mr Glenn**—I think it is a dual point. First of all, I think there need to be standards for the states that are forming part of a new body—and we will come to that discussion later, I think—and standards for the NGOs. There are a number that are just government front organisations. The issue is probably unresolvable but I think it ought to be on the agenda. At the moment it is an accreditation process through a separate body, ECOSOC. If the human rights council is to be a standing body, then it ought to start to develop its own criteria for NGO membership—in some

cases which might give a greater range of NGOs some access, but it might also then suggest that there needs to be a higher standard than organisations which are merely a letterhead.

**Ms Richards**—I will quickly cover a few points because, like Howard, I have been at the Commission on Human Rights as a non-government representative for the last two years. Previous speakers have commented on the strengths of the commission in regard to its standard setting capacities, the engagement it has with civil society and non-government organisations, the profiling of human rights in an extended session and so on. I think it is very important that we do state those up-front, that we do have a commission which is not entirely in the corner on the mat. It does actually have a number of really important strengths. From my experience of having followed the commission and attended as a representative, I think there is a ‘but’ which sits next to all of those statements.

Perhaps just to answer your question first and then I will come to some other comments I want to make, I would probably take a slightly different view to Howard in regard to the criteria setting for non-government organisations. As for what are colloquially known as GONGOs—government owned non-government organisations—I have seen them readily out themselves as soon as they walk in the door. So there is actually a high degree of transparency in regard to who these organisations are. I would hate to see a process that would give legitimacy to states who would very much love to see non-government organisations of any ilk or colour excluded or closed down from having access to the commission by using the front of a government organised NGO from an opposing country.

We had a very real situation of this in 2004, when the state in question—and I am happy to name it; it was Pakistan—on the bureau of the commission was fighting very strongly to have a number of organisations excluded from the commission. It was really due to the chairperson at the time, Mike Smith, the Australian chair, and the extended bureau of the commission who really put up a very strong and in the end convincing argument that to use an argument to exclude all non-government organisations because a GONGO from India who was not approved by Pakistan was getting under their skin was going to close down that civil society for everybody.

So I think it is an important point that Howard is making around criterion standard sitting. I think we need to be clear, though, that the commission on human rights is a state body; it is state members. Whilst I will fight very strongly to ensure is that civil society engagement and non-government organisation accessibility is maintained, I would hate to see us get to the point where we say that we only have a commission on human rights so that we can have this fantastic bazaar of civil society organisations come along and have the opportunity to have side events. That is very important but that is not actually the role of the Commission on Human Rights. You have the civil society engagement, you have non-government organisations attend because a commission on human rights should be a standard setting body with states actually implementing those standards and ensuring the protection of human rights. So we have to make sure what is the central purpose of this commission and then how all these other things fit in.

In regard to some of the other strengths of the Commission on Human Rights where I intimated that we have all these strengths but we have a ‘but’ that falls underneath them, for me the most obvious weakness of the current Commission on Human Rights is around implementation. We have set standards. We have investigated human rights violations. We have



heard from special rapporteurs as to human rights concerns. And yet, as Howard said before in regard to the urgency with which the commission acts, we come to a grinding halt. When we start to move into perhaps the second session this morning, when we try to look at what it is that a commission on human rights could be doing to implement these standards and ensure the protection of human rights, we really have to look at the mechanisms and the relationships that a commission on human rights or a council on human rights has with the wider UN system.

One of the most crucial relationships I think really needs to be with the Office of the High Commissioner for Human Rights. That is something that we really should start to unpick. We should also look at the plan of action that the high commissioner released in May this year as to the relationship of country offices and representatives of the High Commissioner for Human Rights and how they are implementing and following through on recommendations or reports that are coming up from the Commission on Human Rights. There is a whole level of detail we could go into. For example, should the Office of the High Commissioner for Human Rights act as the secretariat for a new council or commission or should it maintain itself as an independent body but with a much closer link to following through on what things come out of the commission or council? We can talk about those questions in session 2.

But I use that to illustrate this point around relationships between a commission or a council. We cannot just have the premier UN body on human rights sitting out on a limb discussing and raising human rights issues without it being absolutely integrated with and integral to the rest of the UN system. So when we talk about mainstreaming human rights and integrating human rights issues, we are actually living and breathing that.

**Senator FERGUSON**—I do not profess to have a very good knowledge of the work of the Human Rights Commission in Geneva, but I did spend nearly four months at the UN General Assembly in 2000 for the millennium summit so I was able to see at first-hand just how the United Nations works as a body. I must say that I came away with a variety of views. One is that there are some things that the UN do very well and we would be the worse if they did not do it. I think of areas such as world health, education and the work of UNDP in educating emerging democracies. All of that work they do exceptionally well. But they are also abject failures in other areas. One of the greatest areas of failure was the solving of political conflicts, and that often involves human rights abuses.

We did an inquiry here about four years ago looking at the role of Australia in the United Nations in the post Cold War era. One of the issues that was raised there was the fact that the United Nations over its 60 years of history has rarely prevented conflicts. It has only ever gone in to clean up the mess, and it is partly because of the agreements that always have to be reached before the United Nations can act as a body to be able to prevent conflicts. I think that is one of its great downfalls.

I was very interested to read Ambassador Mike Smith's contribution to the Castan—the lecture or speech he gave there. He, as chair of this commission, highlighted some of the inadequacies as well. We ought to be looking at how we can overcome some of those inadequacies. We are talking about how the commission is today. The most interesting part that I read was that he sat down next to the late Sergio Vieira de Mello after the commission finished and they identified together almost identical deficiencies: a preoccupation of politics of issues rather than substance, out of touch with the real world and apparently oblivious to the impact or

not of decisions outside Geneva, inconsistent with what it addressed and what it did not address, inconsiderate treatment of speakers and a lot of verbal intimidation and other things. He identified those things, as the chair.

Then he went on to say a little later:

What the UN does best and what the Commission has done well in the past, is debate issues and identify and codify universal standards.

That, Mr von Doussa, I think was the statement that you made. He continued:

What the UN does not do well is to act swiftly or decisively or, make things happen on the ground.

My criticism would be that it is one thing to be good at standard setting and set the standards, but it rarely helps the worst cases of human rights abuses. There is a willingness of countries that have a history of human rights abuse to sign on to standards in the knowledge that they are never going to try to keep those standards anyway. So I think, while standard setting is good for public consumption, when it comes to actually helping those who we want to help the most, there is still total disregard and we are powerless to do anything about it.

The best thing that I have always thought about the United Nations—and I think a former Prime Minister once said that, if we did not have a United Nations, we would have to invent one; and it was not a Prime Minister that I always voted for, but he was dead right when he said that—is that it provides a focal point for world opinion where countries can get together in one venue to express their point of view when all other countries are there listening. I guess the Office of the High Commissioner for Human Rights in Geneva has a similar role, because it is that focal point for world opinion. But I must say that, when it comes to trying to prevent human rights abuses around the world—and I have had a chance to witness first hand terrible abuses in Zimbabwe and other countries—sometimes it is harder to identify the successes than it is to identify the failures.

In response to Mr Glenn's comment about the government taking a more active role: having been in New York for four months, I know that you have to be there to realise how difficult it is to take an active role when there are 189 or now, I think, 191 other voting members. While Australia is well respected, it is but one of many countries. Sometimes if you have outstanding people in a position they can have a greater influence. But as a country, we are still one of that great number of countries that are respected, but it is very difficult to have that role.

So I am really interested to see what your views are. I think we know what the shortcomings are of the existing commission. I am very interested to know what you think are the best ways to try and reform it so that it can be a far more effective body and can actually put into practice all of the decisions and standard setting and all of those issues that we all agree should be the standards for human rights around the world but are currently not being put into practice. It may mean having a council, a smaller group of people where decisions can be made more easily. I still do not know how that transfers to those countries that will ignore the standards of human rights that we believe in for the rest of the world. But I would be interested to hear what you think about a council because I think it is always fair to say that a smaller body has much more

chance than a body of 53 or 63 or 191 of coming up with some sort of agreement in a shorter time frame.

**CHAIR**—Thank you, Senator Ferguson. I recognise Mr Wright, Mr Dowd and Dr Mathew. We will perhaps seek some responses to some of those issues raised as we go around that discussion and then any other members who wish to make a contribution please do.

**Mr Wright**—I will try to respond to both to save time. Whilst I agree with Senator Ferguson's comments personally, I think the issue is in relation to the role of NGOs is how to make sure that the body, be it a commission now or a council in the future, is well informed. NGOs are certainly unusual and seldom the same. I do not think I have ever in all my experience come across two NGOs that were the same. They tend to fall into two categories: one is a technical advocacy role and the other is a field operational experience role. I think, like the UN agencies that also participate in the commission, it is very important to have both of those perspectives available to the members of the commission or members of the committee. If in the reform process, as other speakers have already said, we were to lose the perspectives that come from the technical expertise of NGOs and UN agencies or the operational grand truth—if I may put it that way—that they can bring to the forum, that really would be a big mistake.

**CHAIR**—Mr Dowd, do you wish to comment?

**Mr Dowd**—I will go back to Senator Stott Despoja's question: in terms of NGOs and those that go before the body, be it the existing body or otherwise, I think it is important that the criteria for accrediting NGOs should be done by another body, such as ECOSOC. I think human rights bodies are highly charged political organisations and always will be, and it will be impossible to set out criteria from their point of view that is not just aimed at knocking out the Tibetan representatives or the Falun Gong or whatever. If you have another body dealing with it, they do not have the same axe to grind, and if you establish criteria. In terms of representation on the new body, on balance—and I am very conscious of the significance of John von Doussa's comments about looking at making the present body work in case you just create something worse, and I think that is a very important thing to look at—we could establish criteria for eligibility for election to the body by setting minimum standards.

**CHAIR**—Do you mean of member states?

**Mr Dowd**—Member states. So, unless a country has ratified CERD, CROC—a series of fairly basic human rights conventions—they should not be eligible to be a member of the new body. You could also look at restricting the voting to only allow voting by countries to elect some country to the body that has signed certain minimum agreements. It will have two effects. One is that it will force some countries that have not now done so to actually sign on to conventions about torture, rights of the child and so on. It also entitles you to say, 'Well, you don't have an opinion because you haven't adopted these standards yourself.'

It would be an interesting exercise to see the different shape of the voting body electing states and the different shape of the eligible states if you established publicly clearly-stated criteria such as, 'If you've signed that, you are serious; if you haven't, you're not.' As I said earlier, the body is always going to be political. It is always going to fail—and this is Senator Ferguson's point—to solve the problems because I do not think a human rights body can. There is the old

question of how many divisions do you have? It will not have divisions. It is like courts. It does not have backup. It has public respect. So a human rights body will not solve the Darfurs and the Tibets and all that, but it will help focus public opinion on them by highlighting and articulating the problem.

I mentioned here earlier that it is very easy to manipulate on issues—and I mentioned to someone here the Brazilian motion two years ago to have a statement that people who are homosexual should not be disadvantaged—not promoted, supported or whatever. The like-minded countries, mainly Islamic and Catholic countries, got together and killed the motion because it somehow endorsed homosexuality.

**Senator FERGUSON**—Like they did with honour killings.

**Mr Dowd**—Exactly. So you are always going to be a political body. But the few things you can get through and the very important statements of general principle make the body worth while because all the baddies—and they are bad for different reasons and in different groups—would not go to so much trouble to get on if it were not an embarrassment to them.

**Senator FERGUSON**—I am just not quite sure whether that is the case. Those who sign on and still commit human rights abuses within their own countries can have the finger pointed at them and it can be said, 'But, look, you did sign this and look what you're doing.' If they are prevented from signing on or being part of the committee, they can just carry on regardless anyway. I just not quite sure what the point is in not allowing them to be part of the body.

**Mr Dowd**—The very fact that governments can ignore a condemnation does not mean that they will not work hard to solve the problem. For instance, in Australia we have for years held in our state prisons people who have served their sentences and are kept there by the federal government because it is convenient instead of letting them out into the community. So we have non-convicted people in state jails.

I raised this at a DIMIA meeting earlier this year. At the second DIMIA meeting, last month, it was said that there is no-one in Australia in a prison unless they are there for a legal reason. Nobody knew about this. It was not public. But the department said, 'We are being criticised.' All the states are delighted because they are no longer holding people who have been convicted but have not been sent overseas. So do not underrate the power of embarrassment. They may deny it, but very often they will do something about it.

**Senator FERGUSON**—It is just that Australians get embarrassed much more easily than President Mugabe does.

**Mr Dowd**—Sure. But if you talk to the ambassador, like the Syrian ambassador I spoke to the other night, he is conscious of issues that are raised about that country. So you should never underestimate the networks of power and the effects it may have.

**Dr Mathew**—I want to pick up on some of the interesting points that we are making here. It has been questioned whether states will pay any attention to the council or the commission if they are not on it. One of the great strengths of the commission has been that it can scrutinise any country's record, and that is one point we have not brought out too strongly yet. The treaty

bodies can only scrutinise those states that have become parties. I think that is a strength of the commission that needs to be retained.

As for the issue of who should be on it—and I would support Mr Dowd's view that we should have some criteria for states and also for their representatives, frankly; I think we should be looking to see that the people who represent those states should have some background and interest in human rights—there is another view. If you are talking about trying to alter the culture of respect or non-respect for human rights, one view is that it is important to have dialogue. So you can put the view, as Mr Dowd has in fact, that the amount of effort that states go through to take procedural points, for example, shows some limited commitment to human rights principles. So, for example, the fact that China runs around furiously putting no action motions in some way shows the importance of the human rights system. I tend to take the opposite view. I think there should be more scrutiny of who actually goes on the commission and scrutiny of who is actually representing people on the commission or the council—if we change to a council.

**Prof. Joseph**—I want to follow up on some of what John Dowd said. But, first of all, I am not sure whether people are aware but the *New York Times* a couple of days ago reported that the commission is likely to be abolished in September and not replaced immediately. I was not actually able to read the report myself. It was given to me and then I was not able to get through to it on the computer. Whether the commission is replaced by a council or some new body, the human rights movement will lose a lot of momentum if there is a gap between abolition of the council and replacement of it with something. This *New York Times* report seemed to be saying that that is perhaps a position that the US government wants—to get rid of the commission as soon as possible. That is just one point.

Following up on John Dowd and Penny Mathew: I agree that one should not underestimate the effect of embarrassment and even the long-term effect of embarrassment. Countries might not react immediately and it can take years and years, but no country likes it. Again, as Penny said, if there is no effect at all, why does a country as powerful as China even bother to try and stymie certain decisions in the commission?

On Mr Dowd's criteria for compliance, there is something very nice about the objective criteria of which of the core treaties a country has actually ratified. There are always going to be arguments if in fact the criteria were a level of compliance. They may be able to set some sort of bottom level. But one beauty of at least at first instance linking it to ratification is that that is a very objective measure. I would urge that, if there are going to be criteria of that sort, the two covenants would seem to me to be the ones that should be the requirements. If a country has not ratified either covenant, I think that indicates a lack of commitment to human rights, and, if they have only ratified one or the other, that indicates a lack of commitment to the indivisibility of human rights, something that is very heavily stressed in the report of the Office of the High Commissioner of Human Rights. I would also endorse what Penny said about the qualifications of members of any new body: that it would be good if some level of human rights expertise for members could somehow be introduced, rather than being only diplomats.

**Senator FERGUSON**—You have both raised the issue of criteria. Would you preclude China, where some people say there is considerable abuse of human rights? Some might even say that

you should preclude the United States. But how do you set the standards, the criteria? China has 1.3 billion people. It would be ludicrous not to have them there.

**Mr Dowd**—There can be no standard which requires an opinion about whether a country has complied or not; there can be no compliance standard. Until two years ago, the United States was one of the five nations in the world that executed children. Two years ago when their Supreme Court threw it out. The other four are obviously Islamic countries. They were never children when they were executed—they had grown out of childhood—but they were child offenders.

The only objective standard has to be ratification. You could set up as a minimum the two covenants, but you could set up something like the conventions on the rights of the child or on torture or something like that—not for compliance, but where they actually have to have ratified the treaty and become a body and therefore subject to all the treaty backup mechanisms which work. That would be a fairly minimal standard, depending on how many notches you put in—let us say torture, rights of the child and women and so on. They would be self-selecting and it might force some across into the treaty bodies. You have a fairly simple argument for saying that you could not even do that. So I do not think compliance will ever work, but self-adopting a treaty is an objective standard.

**CHAIR**—That is a different point. I want to take a couple of very quick comments from around the room, because this is engendering a fair amount of interest, and then we will take a break and resume with the second session. If you can make your comments brief, I would be grateful. I noted Mr von Doussa, Mr Glenn, Ms Scrine, Ms Smith, Keir and Dr Mathew. Let us just make them quick.

**Mr von Doussa**—Senator Stott Despoja, there is an accreditation process in place for national human rights institutions. There is a set of standards in the Paris Principles, and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights has an accreditation committee. There was a problem with national human rights institutions in the 60th meeting of CHR. Anybody that had the word ‘national’ in their title got admitted to speak under that particular item, which was quite inappropriate. So that has been tightened up there.

To Senator Ferguson: the implementation is really one of the critical issues which is of great concern to everybody. I think, though, when we are considering that, it is necessary to bear in mind that some steps have been taken. The mainstreaming of human rights into all the activities of United Nations agencies is well under way, and that is certainly one important step forward. The other is, I think, recognition that the Office of the High Commissioner for Human Rights has a very important role to play and it seems to be universally agreed that it needs much bigger resourcing, and it seems that some steps are being taken in that respect. Even in our own area, they are now about to open an office in Fiji to deal with the Pacific region. It seems that very positive steps are being taken in a number of areas of the world to increase the technical assistance that is being offered for implementation by that office.

**Mr Glenn**—I would endorse the idea that some standards—the covenants and the four major conventions, CEDAW, CERD, CROC and torture—ought to be the criteria for applying to be a member of the human rights council. Two other criteria have been put forward. One, which is in

the draft outcomes document now, is a willingness to be reviewed during the term of your membership of that council. Another one that we have advocated for in collaboration with a lot of other non-government organisations is to issue standing invitations to the various special procedures, to the treaty bodies, to be open to review and committed to respond to recommendations. So it is, as John Dowd has said, to set a high standard for oneself in terms of commitment but not compliance. There would be people who would argue that Australia should not be a member or the United States should not be a member because we do not comply with all of the treaties; we are not amongst that. I think we aspire to high standards and so consequently we should be part of the processes.

**Mr Macdonald**—There has been a lot of discussion and support for some sort of criteria. It has been mentioned that it cannot be subjective, so obviously the main way we can do that is by having ratification of the core human rights treaties. But I do not think we can overlook the strength of having engagement with all member states around the table—not just the good guys, not just the bad guys. Having them at the table and being able to engage them at the CHR is a huge strength. You have your Chinas, your Sudans there. They take active participation. They sit there and listen. They attend all the meetings. They have that involvement and, whether they sign on to treaties or not, they are there listening and the word gets back to their governments. Ideally we need some sort of criteria. But, if we cannot have that, it is better to have them at the table being able to be engaged than not at all.

**Ms Scrine**—I want to endorse Mr Glenn's comments. I think we should go further and that members of a future council, if it exists, who are shown, through peer review or whatever processes of review take place, to have violated repeatedly human rights standards should not be allowed to remain on the council. I take his point, but I think the current commission has lost strength because it has lost moral authority because human rights abusers have been members of the commission and have used that position to undermine its work. Unless we address that, we carry the problems of the current commission into a reformed commission or into the human rights council or whatever body we end up with.

Just quickly in regard to the point on NGOs: I think we are talking about an isolated number of NGOs that have specific problems. It would not be incredibly difficult to address the issues of those particular NGOs through ECOSOC or whatever rather than opening up the risk of all NGOs losing their right to consultation and being involved in these processes. But that does not mean we should not address these problems.

**Ms Smith**—Very quickly, on a point of healthy debate and divergence within the representatives: Amnesty is actually advocating for universal membership. We see that the strength of a council or a commission is to have everyone around the table, inside the tent, if you like. We all must remember that every state's human rights record is up for scrutiny. So that is the approach that we are taking and advocating towards the September summit.

I will just address a couple of other points in the discussion this morning. On NGO participation, Amnesty does support the current criteria under ECOSOC. Again, taking up Kathy's point, while I have not been on the ground in Geneva, my role is to work very closely with Amnesty's team and be the Canberra interface, if you like, so I do get a lot of daily feedback et cetera. We all know who the government fronts are; we all know who the GONGOs are. I think it is much healthier to participate with that knowledge than run the risk of excluding.

So I make that very quick observation too. Picking up on some of the discussions around the table about the strengths and weaknesses, I will not go into that in detail and I hope that all committee members do have a bit of a pack of Amnesty's current material.

**CHAIR**—We do.

**Ms Smith**—I would just like to table it as an exhibit for the committee's reference. We put together a paper on the human rights council back in April, so everyone should have a copy of that, and similarly have circulated comments on Mr Ping's draft outcome statement for the upcoming summit. So that goes into a bit more detail about our thoughts around the human rights council.

I will talk about some of the weaknesses, while not wanting to skip over the strengths—but I think there is a lot of commonality around the table on the strengths, so I will not go into those right now. I have one point about the ability to implement—and maybe we are skipping a bit into the next session, but I think it was something that was touched on quite a bit this morning. We are concerned about the issue of implementation—actually being ready to deal with the emergencies et cetera. That is why Amnesty would like to see a council which is in session throughout the year. While the six weeks do provide a focus, I think we can improve on that and have an ongoing body which scrutinises and objectively assesses human rights situations around the world.

**Senator FERGUSON**—You are really talking about an equivalent to the Security Council but in human rights.

**Ms Smith**—Yes, with that focus. So it would have that standing within the UN structure, yes.

**CHAIR**—We do need to be very quick. Mr Thompson, are you going to make an observation or ask a question?

**Mr CAMERON THOMPSON**—I was going to make an observation.

**CHAIR**—That is good because, if we ask more questions, we are going to get completely out of control.

**Mr CAMERON THOMPSON**—I was just thinking about what will happen if there is to be a high bar, and perhaps this is a reflection on the way things are now. There is this thought that there should be a high bar with these criteria as an entry point, but then you run the risk that you wind up with a very small group of people, albeit maybe a very active one. It may be a very active group, but it is only going to be a small representation. But, if it is a very wide group as is being proposed by Ms Smith, then you run the risk where you are just going down the path of a talkfest and you may be open to all those kinds of criticisms that we have heard from Keir about people being booted out, issues being booted off the floor and things not proceeding. You wind up with a position perhaps where the current thing is neither fish nor fowl; it is neither a broadly encompassing group nor a small active one. Perhaps that is a way of seeing it.

**Dr Mathew**—Just on the issue of universal membership: decision making will be a real problem with that. One thing you can say is that states that are not on the commission or were



not to be on the council would still get to participate as observers, as they currently do, so it is not as though they are knocked out of the picture entirely.

Secondly, on the issue of criteria: if you are going for ratification of particular treaties as the criteria, it is important to think about what the numbers of ratification are like. For example, you would not go for solely the Convention on the Rights of the Child, given that only two countries are not party to it. That would be a very low bar. Another interesting thing to think about might be whether you scrutinise the reservations to particular treaties as well. Some states have completely unacceptable reservations to treaties and so they really have not signed up to much at all.

**Prof. Joseph**—Very quickly and following up from Mr Thompson's comment: I think that, with criteria that focused on just the two covenants, it would sit somewhere in between. If the criteria were all six treaties, it could end up being quite a small number of countries—certainly right now it would be a small number of countries and maybe a small number of countries for a while. And, in response to Senator Ferguson's question, that would exclude China at the moment. It is not a party to the ICCPR. It would also exclude the United States. But they have both signed the relevant covenants, so they are halfway there.

**Senator FERGUSON**—But only halfway.

**CHAIR**—Thank you all very much for that discussion. I think it has given the committee some very interesting thoughts to work with as we develop our views on this matter.

### **Proceedings suspended from 10.25 am to 10.36 am**

#### **Session 2: the commission of the future; the proposed human rights council**

**CHAIR**—Ladies and gentlemen, I am aware that some participants do have to leave early, both my colleagues and around the table, for flights out of Canberra on a Friday; it is always best not to miss those. So why don't we start with session 2. We want to talk about the commission of the future, if you like, and the proposed human rights council and where the various organisations represented here today think that might go. Some of you have touched on that this morning. That is the purpose of a roundtable—to keep it all moving. So it is quite dynamic and there no problem with that. But, in terms of the suggestions put forward by the Secretary General and the upcoming summit in September in New York, what are the key points that you think we should be addressing or that the summit itself, rather, should be addressing—I wish we were that important—and what are the major issues? We will start with Mr von Doussa and move around the table.

**Mr von Doussa**—We thought about this and tried to distil in what we see to be a number of essential issues which I think have to be addressed sequentially. If I could just mention them, some of them have already been discussed. The first is, do you change the system at all? There seem to be some reasons to think there are risks in dismantling something unless you really are quite confident that something else is going to immediately take the place.

Secondly, if you are going to change it, there seems to be in all the papers an issue that needs to be resolved upfront. Do you, as the President of the General Assembly suggests—and I think

the Secretary General suggests—establish a very sketchy skeletal structure and then leave it to the new body and its members to work out the detail of how it will operate and exactly what its mandate is and so on; or do you, as some of the nations who have contributed to this say, not do anything and wait until we have all the detail on the table? That is a very difficult issue to decide. But our view is that, if you are going to wait until every last detail is on the table, you will never get a change and someone has to jump off the springboard at some stage if you are going to have change.

If the change is in favour of some skeletal framework, a number of critical things will have to be decided to make the skeletal framework work at all. First of all, there is the size—do you have a universal one, do you have 30 or do you have 50 or whatever it is? You have to determine the size before you can have a new body. For what it is worth, we see a number of arguments in favour of the universality. They have been mentioned this morning, I think—the importance of getting everyone there to work the name and shame game and so on. Ambassador Mike Smith, I think, is a supporter of universality, he putting the argument that everyone is there anyway so why draw an artificial line between some of the members and others?

It is necessary to determine what the appointment process will be, and that is the voting issue which has been discussed. If you are going to have less than everybody, then you have to determine that issue. You then also, I think, need to determine the standing of other organisations like NGOs, national human rights institutions and so on—or you need to consider their position—then are you going to have a permanent body or one that meets only annually, that aspect of standing?

It has certainly been a view expressed by some NGOs and definitely by the human rights institutions that it is difficult enough to find the resources to get to Geneva once a year. If you had to monitor a continuous process and get there frequently, it would be very difficult. Then, on the appointment and membership process, again if you are going to have less than everybody you have this terribly difficult question of qualification—what sort of bar do you impose, how high is it and so on? There would also be a need to determine what the relationship of this new body is to the rest of the UN structure: is it subsidiary to the General Assembly, is it a principal body et cetera. Practicalities suggest that it would have to start off as a subsidiary to the General Assembly, otherwise you would need to amend the charter.

There is a very difficult issue next that I think will have to be grappled with as one of the essential preliminary points, and that is whether you have an evaluation process of the kind envisaged in paragraph A subparagraph (iv) of the president's outline of outcomes for the upcoming exercise. Do you permit this new body to engage in a broad-ranging evaluation process? Another issue which it seems to us is essential to be determined at the outset is the role and relationship of this new body with the Subcommission on the Promotion and Protection of Human Rights. Do you have that body or do you have a body of 15 experts, which was suggested in one of the proposals? And what is the continuing relationship with the Office of the High Commissioner for Human Rights?

The final issue that we identify is something that everyone would need to pay regard to and that is the question of resources. There is no point in designing something which is beyond the resources that are available through the UN system to implement it. I do not know whether those observations are helpful but they seem to us to be the issues that we need to address.

**CHAIR**—They are very helpful. I might just throw into the pool that a couple of the papers which are floating around suggest that, in terms of capacity to participate, a way to engender greater participation might be to move the whole thing lock, stock and barrel to New York, where member states are already by and large represented, and it would halve their costs et cetera. So I think there will be some debate around that as well, which will be interesting to see. Mr Wright?

**Mr Wright**—I would just make the four additional points, as I mentioned earlier, that I wanted to bring attention to. On behalf of the High Commissioner for Refugees, obviously we would hope to see a future forum in which human rights violations, especially those which are root causes of refugee flows, are examined and analysed and addressed by states; which, secondly, can advise states on a proper understanding and implementation of their human rights obligations and which promotes enhancement of their national protection regimes and capacities in ways that make sustainable returns of refugees in safety and dignity a reality; and which, thirdly, through complementary standard setting efforts in relation to asylum seekers, refugees, internally displaced persons and stateless persons can support UNHCR's role and work.

UNHCR, as I have said, contributes to and welcomes the High Commissioner for Human Rights May 2005 plan of action entitled 'Protection and empowerment', which foresees a unified standing treaty body and invites states party to the seven human rights treaties to an intergovernmental meeting in 2006, since that forum could address many of the root causes of population displacement. The UNHCR, as others have mentioned here today, wishes to see the special procedures, often a close ally in UNHCR's protection endeavours, maintained and strengthened.

A number of important initiatives taken at the Human Rights Commission have been of direct relevance to UNHCR in the past and should be continued, irrespective of the reform process. These include the commission on internally displaced persons, mass exoduses, arbitrary deprivation of nationality, protection of human rights while countering terrorism and children's rights.

Finally, UNHCR further welcomes the proposal in that plan of action to give more attention to implementation and to double the capacity of the Office of the High Commissioner for Human Rights in the next five years and enable it to develop a more significant operational field presence, providing a stronger protection partner with which UNHCR can cooperate in the future, particularly where the repatriation and return of refugees and internally displaced persons is taking place, where the importance of a protection presence to enhance both their security and respect for their basic rights at a time when they are seeking to restore their future is present. Other potential areas of increased field cooperation include capacity building and administration of justice.

**CHAIR**—Thank you Mr Wright. Howard Glenn.

**Mr Glenn**—I want to concentrate on three areas where I think this committee could recommend action which is within the Australian government's power to effect rather than going to some of the detail of the treaty and alternative negotiations that are going on in New York. The understanding I have from some discussions in New York at the moment and the negotiation is that there is an expectation, as Professor Joseph said, or there is a possibility that paragraph

100 of the draft outcomes document, which talks about the doubling of the budget of the office of the high commissioner, may get substantial support, but the machinery motions further down in this document might be left behind for later—an effect which would mean a doubling of activity but an awful lot less accountability. That is something that I think is of potential serious concern coming out of the summit in September.

I think it would be good if this committee recommended to the government that Australia take a role, in principle, in support of strong international machinery for human rights without going into a lot of the detail of the negotiation—that it take a strong and active role in terms of making sure that this machinery continues without gaps. The idea that the Commission on Human Rights might not meet next year, until all the negotiations go on about a new body or reform, would be quite disastrous—so a position of advocacy for a continuation of the commission while this sort of stuff is being sorted out. But then, thirdly, I recommend that the government play an active role in promoting the strengthening of the machinery. I take Senator Ferguson's point that we are one of many nations. But, in the human rights field particularly, it has often been remarked how much Australia fights outside its league in terms of its special place as a country that has been key in all of these documents and key in the development of human rights, in the chair when the universal declaration was developed and a solid role since—that, if we are there advocating for substantial and effective change and bringing nations together to work on that, we do have a solid role to play.

They would be the three principal things that I would recommend the committee look at. Then of detail in my submission there was a set of 10 principles and three subsidiary sort of motions that I recommend to the committee too. But those are the three things: support for a strong international machinery, support for continuation and support for an active engagement in these issues.

**CHAIR**—Thank you very much. Mr Brandt.

**Mr Brandt**—About 2½ years ago in a speech to the General Assembly, the Secretary General referred to the need for reform of the international organisation and he used that expression about reaching a fork in the road. As a result of that, a number of reports were commissioned by the Secretary General, one of which is the one where the issues of threats to peace and security and safety were studied and analysed by a distinguished panel of experts which produced a report which was released in December of last year. After that report, the Secretary General—as a result of this—also commissioned a report that had to do with ways to eliminate poverty and the issue of poverty and development in particular. That report was also brought forward and released earlier this year, headed by Professor Jeffrey Sachs. We are all familiar with the result of that and how he called for implementable measures, true measures that could help in alleviating and indeed solving the problem of poverty throughout the world.

Based on those two reports, the Secretary General produced *In Larger Freedom*, which takes all the ideas that were contained in those reports. It is clear from the report that the Secretary General released that the United Nations needs change. There is no question about that. In that report he, the Secretary General, called the attention of the world community to four areas where in his opinion reform is particularly critical: development, human rights, security and strengthening the UN.

We are here today to focus on human rights, but we have to be very mindful and clear that each of these areas that I have mentioned before carries equal weight and all are interlinked. As the Secretary General has stated, we will not enjoy development without security, we will not enjoy security without development and we will not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed.

Since 1945, much of the focus of the international system has been on articulating, codifying and enshrining the rights of the people. That effort has produced a remarkable framework of laws, standards and mechanisms, including the Universal Declaration of Human Rights. In fact, some 60 human rights treaties and declarations have been negotiated at the United Nations, but there is obviously a problem. The gap between what we promise—we the international community, we the peoples in the international community promise—and what we in the international community are able to and actually deliver has grown. So there exists a strong foundation of declaration but in 2005, and in the years to come, our focus must be on implementation.

Major changes have been proposed in the three central pillars of the human rights system: the treaty bodies, the Office of the High Commissioner and the intergovernmental machinery. The third—and that is the one that we are commenting on here today—which is the most dramatic, is the proposal that member states replace the current Commission of Human Rights with a smaller new human rights council. Let me briefly comment about the role that such a council will have and why the Secretary General thinks it is necessary. The commission in its current form has some notable strengths. It can take action on country situations, it can appoint rapporteurs and other experts and it works closely with civil society groups. On the other hand, the commission's ability to perform its tasks has been overtaken by new needs and undermined by the politicisation of its sessions and the selectivity of its work and therefore significant change is called for. The main intergovernmental body concerned with human rights should have, in the opinion of the Secretary General, a status, an authority and a capability that is commensurate with the importance of its work.

So, because the UN already has councils that deal with security—like the Security Council—and with development, creating a council for human rights makes sense within this framework. A human rights council would be a standing body elected by the General Assembly, situated higher in the United Nations structure—higher than in the current commission. It would be located in Geneva. I am not sure that the government of the United States would be very happy with the proposal of moving the current structure to New York, especially in those circles who would like to see the United Nations leave the current headquarters in New York.

This commission would exercise universal scrutiny of the implementation by all member states of their human rights obligations through a peer review mechanism, as we heard before. This would not duplicate or replace the treaty or the reporting system and it would be based on fair, transparent and non-selective procedures. The council will also serve as a forum for human rights dialogue, conduct normative work, respond to crises and promote technical assistance.

The Secretary General is mindful that a human rights council will not overcome all the tensions that accompany the handling of such a delicate and sensitive issue; a degree of tension is inherent in this. But it will allow for a more comprehensive and objective approach and

ultimately it will produce more effective assistance and protections for those who really need them and who really deserve them.

**CHAIR**—Thank you very much, Mr Brandt. Are there any other contributions at this point? We have some issues on the table. We have, as we have discussed, papers from Amnesty, the ICJ, Rights Australia, Baha'i and most of the groups around the table looking at where we go forward. My assessment of a number of the comments that have been made, both in the first session and now, is that one of the key issues is membership quantum and determination thereof. The Secretary General seems to advocate a smaller standing body with a view that that will allow for a more focused debate, but Amnesty, for example, advocates full representation. So is there a middle road through that? Is there a way to address the dual challenges of effective debate and discussion and operation and maximum representation and participation?

**Ms Smith**—Perhaps I could comment. I suppose on the back of Mr Thompson's observation before our break, it is obviously a balancing act and you need to get, as everyone around the table would know, every part of the puzzle, if you like, right to ensure that we have the most encompassing body that we have can get but also an effective body. The proposal that Amnesty is putting forward just as maybe a discussion opener—to address some of those issues about segmentation and some of the issues about no action motions and all those sorts of things—is an increased resourcing and role for special procedures within the council. So Amnesty would see special procedures of a much higher standing, that there would be perhaps greater criteria for the experts surrounding special procedures, much better resourcing, so that that in a sense can assist setting the agenda and it is a much more objective process of assessment to assess some of those issues that were raised.

**Mr Dowd**—When I considered the universal proposal by Amnesty some time before I realised that was their position, although shifting to New York would reduce some cost, we cannot expect a massive increase in funding for CHR itself because a lot of the other human rights bodies are underresourced. We are not going to suddenly, with the way the UN is operating, be able to say it ought to be doubled or whatever.

To answer Senator Payne's question about whether there might be some middle course, anything which involved every nation would be crippling for some nations—if they had to have somebody there all the time or if it met four times a year as a universal body. The housing resources, support and so on for it would be really quite massive. The NGOs, which can do four-week stints and could perhaps handle two stints in Geneva or New York, just cannot have representatives there at the relevant time. If you had the agenda staggered—say you had a council which met four times a year and in February they dealt with certain issues and in May they dealt with certain other issues and so on—that would make it easier, but human rights matters are happening all the time and need to be raised at various times when issues come up.

That is why, although I very strongly support the view that the present structure must remain until a new structure is worked out, the impetus of a new council, be it a body of 30-plus and so on—because, to get proper regional representation, you just need a certain number of bodies, to make sure that Oceania gets one and Europe gets two and all of those issues—or whatever, gives an opportunity to look at the standing orders. We need to specifically deal with those. I think that ought to be separately addressed as an issue before we move forward—how you can interfere and use blocks, the 1503 issues. I have already mentioned the need to have very clever criteria to

make people eligible and to establish a voting system that does not allow blockages to keep out certain people.

I do not think it matters if even a country like China is left out, if it forces China to ratify. The fact that you are not on the council is going to be the result for 170 nations throughout the world: if you are going to have 30 nations represented, 170 just do not get there. It is very interesting that a country like Japan stays in the International Whaling Federation even though it does not have to. Countries like China work very hard to have international respect. If we can force China to sign a few more treaties, well and good. Remember that they have an Olympics coming up in 2008 and they do not want Falun Gong demonstrators out in front of the tourists.

**Senator FERGUSON**—There probably will not be.

**Mr Dowd**—As I keep telling the Tibetans: get the tourist agents to get them to get up to Tibet. They cannot cover every part of China and stop demonstrations. But do not underrate the power to embarrass. Sure, we want the United States in, because they are the world power. But a 30-nation, 40-nation committee will leave out a lot.

There is still an awful lot of work to be done. I think we should remember that the CHR can achieve just so much. But what it can achieve is important. If we took it away, those issues would not be raised or dealt with. So we are not going to solve all the problems, but we will solve a significant number with a new body. I think it should be a permanent council that meets about four times a year, so that people can send their representatives in—those that have the budgets to do so. We should prune them back with minimum standards, as we have discussed before, but unquestionably NGOs should be represented at it—not in it, but at it—on the criteria established independently, because the NGOs do have the power to embarrass. Never underestimate the significant power of embarrassment.

I do not think Australia should be apologetic just because we get criticised for this and criticised for that. Remember, we are the standout nation in the world in resettlement of refugees. Proportionally we are No. 1. In absolute numbers we are No. 2. No. 3 is Canada and No. 4 is daylight. So we do have an opinion and we ought to be proud to stand up and represent our views. But I cannot emphasise enough that we should have more input on selection criteria and voting criteria and they should be established before we get to what the body is, otherwise we may end up with a very funny organisation.

**Senator FERGUSON**—I want to respond to a couple of things you have said. Firstly, I cannot conceive a world human rights body without 1.3 billion people represented on it—China. I just cannot conceive that, regardless of their current situation. I have some sympathy for Rebecca Smith's proposition about including everybody, because I read a submission that we had from Freedom House, which rates people. Of the 53 member states, 14—which is more than a quarter of them—are ranked as not free, and six of those are on the lowest level of the order of human rights. The six—China, Cuba, Eritrea, Saudi Arabia, Sudan and Zimbabwe—are all members of the commission. Nepal, I think it said, suspended its parliament just recently. So you have a situation now where a number of countries that do have oppressive regimes are simply there, but they are part of the dialogue.

I have some sympathy for the proposition that, a bit like at the UN itself, there should be a general assembly of people where everyone would be represented and would have a chance to have their say over a short period—not the three months that the UN General Assembly sits but maybe a two- or three-week period. Matters that are of concern could be raised, with the country there while they are being raised. I do have some sympathy for the position that some of the poorer and smaller countries can only support one mission and that mission is in New York. I think there is some argument for shifting from Geneva to New York. I do not think it will ever happen, but I do think there is some argument for doing that, because it would mean that small countries and poor countries that have a mission could be there and could have a say without an enormous cost.

But, if you set up a council and you say that China does not make it because they do not meet the criteria and you have groupings and you have a representative of Oceania, I think it would be ludicrous to think that perhaps Tuvalu, with 14,000 people, could be representing Oceania, while China, with its population of 1.3 billion, could be locked out, when we consider they have quite an oppressive regime in certain areas. I just do not think it is commonsense to even contemplate having a council where a country that size could represent Oceania—I am not saying they would, but they could conceivably—and yet we might not admit the largest country in the world to be a full member.

I take your point, Mr Dowd—I really do—about the fact that sometimes, if they are not there, the effect of the body—that is, the council—will have an impact on those countries and the council's decisions might be reflected in the reaction of China, as per the Olympics and things like that. But I have always been of the view that, if you have a disagreement or you do not agree with somebody, it is much better to have them inside the tent than outside the tent. I am very much personally, without knowing anything else, in favour of everybody being able to be a member where they get the opportunity to have their say, but a council that is not too large—I think 30 is pretty big actually—and can meet on a regular basis or be called together is one way of overcoming some of the problems. I am no expert on the human rights commission, as I said when I started. I am not intimately aware of the detail and structure of the human rights commission, but my involvement in New York means that I do understand some of the ramifications of the way the United Nations works.

**Mr Dowd**—There is no evidence that anything that the CHR has done has changed anything in China.

**Senator FERGUSON**—No, that is true.

**Mr Dowd**—China has used its position on the CHR to yell down the Tibetans trying to put their case, and the Tibetans have not oppressed the Chinese for about 800 years. It is the Tibetans who have a say. There are other mechanisms for China. When I demonstrated on Tiananmen Square as Attorney-General of my state, the Chinese went to the Premier to get him to discipline me. He sensibly declined to do so; he sent a message but it did not reach me. The Chinese Consul General spent a year or so trying to meet me at functions. They have other ways of doing things. But, if they are embarrassed by the new council that is set up, they will be embarrassed and that is of some effect. If they are there, I think it will create a body that is so big that people will get bored sitting around waiting for something relevant to be said—and the cost would be enormous.



**Senator FERGUSON**—I understand that, Mr Dowd, but I do think that sometimes we have to be cognisant of political realities. China is an emerging world power; it will be a world power very soon. I simply cannot imagine Australia or half of the countries in the world, particularly those that are involved in trading negotiations and a whole range of other things, saying, ‘Well, listen, I’m sorry, we love dealing with you but we’re going to make sure you do not get on the human rights council.’ Political realities mean that simply will not happen. That is my view anyway; I could be wrong.

**Ms Richards**—I will be quite brief. I want to draw the committee’s attention to two points concerning membership. First, the proposal is that the council will comprise members serving for a period of three years, so this ideally should be a cyclic rotating membership. Of course, we should also consider quasi-permanent membership and look to the United States, which has always been on the commission—except for a couple of years. But, from my way of thinking, ideally, if we are going to incorporate minimum standard setting and have a limited council, it is very important to note that this is something that should be rotating and should have new members coming in and members taking time to have a break.

The other point to draw your attention to is what Dr Mathew said before regarding observer states. I have had experience at the last two commissions, and one very real example was Canada, which was not on the commission in 2004. As an observer state, they can still put up a resolution, as they did on violence against women. They can still make a statement. They are still able to co-sponsor any resolution. They are not able to vote. They do not have the time to speak, as member states do; they do not have first cab off the rank status in negotiating text and what not. But that is not to say that, if you are not a member of the commission, you are completely excluded from these processes. Actually, I have seen how some states who are not members have been able to operate a little more freely and speak a little more frankly; they have been able to negotiate on things with more strength because they have not necessarily been in the firing line of having to vote for a resolution. That is just something to keep in mind about how the commission would work with limited membership.

One other point I want to draw your attention to again is what I alluded to before regarding the relationship between the current commission or the proposed council and the Office of the High Commissioner for Human Rights. My thinking is that this is crucial and we really need to tease it out a little more. Despite its limited resources—and even if we are able to get through a doubling of the budget for the Office of the High Commissioner for Human Rights—I think the implementation of the standards that a commission or council is setting is in large part going to rest with those who are in the direct service and employment of the Office of the High Commissioner for Human Rights or who are receiving resources and assistance from the high commissioner. They would be country and field officers or even the people involved with the special procedures and special mechanisms receiving assistance through the high commissioner. So I think that is one of many crucial relationships we need to look at that I would like to see us maybe tease out a bit more. A recommendation perhaps for this committee would be for the Australian government to continue support not only for expansion of the budget for the Office of the High Commissioner for Human Rights but also for clarification as to where those relationships lie.

**Mr CAMERON THOMPSON**—I was listening to what Alan Ferguson was saying a minute ago. Alan, you cannot have a situation where you say that, on the one hand, China has to be

included because it has 1.3 billion people and, on the other hand, we cannot include them because they are among the worst human rights offenders. This sort of hints at the kind of divergent path that we are looking at here. At one end of the scale, there is criticism at the moment because of a lack of action—and I think that is a serious thing that needs to be addressed—and at the same time there is lack of inclusion—and that is a serious thing that needs to be addressed and that Ms Smith has highlighted.

That diversion shows to me that we are falling between two stools. If you continue down that path, if you remain in between those two courses, you still wind up with all the criticism of both being heaped upon you. Naturally, if you are going to try to make progress towards greater action, you are going to need a smaller group that will be more active and less subject to veto. That is one side of it. On the other side of it, I think there is a place for China, no matter what its failings, to have a say. So I think there is the once-a-year kind of model that can and should perhaps proceed to give people a voice—to give all nations a voice in what their position might be—but there also needs to be this kind of group that can link with the high commissioner and be more active or proactive. As you said, I think, you need very early on to be in a position to be able to try and forestall problems in relation to human rights. I do not see how that could possibly happen if you were including all nations and allowing all the kinds of negativities that can go with that. I think if there are 53 current members, that means there are 150 that really are not seeking involvement or have not taken an active part in that too. Their attitudes then in relation to all of this may skew it even more, if you are going to involve them all in an all-in debate.

I would advocate, I think, that there be two. We should follow that path and allow everybody an opportunity to speak, but at the same time you need a very small group that has high entry standards and that members in general—or countries in general—should be aspiring to be part of. If you fall in between those two paths, you will be condemned by the arguments on both sides and they will all be heaped upon you. Is everyone catching what I am talking about here? I just think the problem at the moment is that we are copping both criticisms and both are valid. You are better off to go after one side of the argument so that you at least fulfil the goals of that side. I am saying that we have two mutually diverging paths and, in my view, in the perfect world you would pursue both. You would set up one that can encompass everybody's view, but you would set up a group that can be far more proactive.

**Senator FERGUSON**—Let me just clarify my position. What I said was that the political realities are that there are not enough countries in this world that would not support China being on there. That is just the simply reality. They are an emerging world power. Powers have alliances. People want to be friends with them. There would simply always be enough votes to get a country like China on. Mr Dowd has come up with a solution, which I do not know whether you want us to talk about, but perhaps the council could consist of the existing five permanents and elect the rest. I do not know what we do when we get more than five permanents. But I think that is a way around it. Countries either seek favours or want to curry favour, and the practical and political realities are that a country like China would always get enough support to be on it.

**Ms Scrine**—I would like to make the point that, in a sense, we have an incredible historic opportunity at the moment to make a huge leap forward. Australia in the past has played a role that we can all be proud of at these moments in the history of the UN. I would strongly urge

Australia to play such a role again. It would be naive to assume political realities were not going to influence this process. But I think, if we do not set a brave ideal towards which we are working, we are going to get to a much lower place than we might otherwise have reached.

It cannot continue to be acceptable for countries like the ones you listed earlier, who have such a low standard of human rights domestically, to be the arbiters of standards internationally. That just undercuts everything that those bodies stand for. If we go ahead and entrench a process that allows that to continue, we have not achieved anything. That does not mean though that the members of a human rights council who had met some defined standards that did indicate a higher level of behaviour and acceptance of human rights norms could not set in process ways of working with other countries, like China, to reach membership. I think they would be highly motivated, if they were not able to be on these bodies, to make those steps; whereas, if they were allowed to come in without making those steps, there would be no incentive.

I guess the reality of what happens comes when we look at the commission and at who the nations are who are putting up no action motions and deliberately using the commission to undercut human rights progress and the protection of human rights for various minorities and the like. I think there are ways around this and I strongly believe we should not allow political realities to stop us from taking the steps that we need to take. Dialogue is valuable, but whether the forum for dialogue is the human rights council is a different sort of question. I think we find other ways to help countries such as China achieve a greater level of human rights compliance.

**CHAIR**—Thank you very much.

**Dr Mathew**—Just picking up on Tess Scrine's point, I would absolutely endorse the view that we should have a bold outlook and not let political realities, real as they are, stop us from setting out a bold plan. I think it would be very interesting to see, if you made it a requirement that a state be party to both covenants before being a member of the council, whether the PRC did not very rapidly ratify the ICCPR. That would be a fantastic result in and of itself.

**CHAIR**—It is a bit hypothetical.

**Dr Mathew**—It is a bit hypothetical but it would be very interesting. So far, the process of signing and ratifying the Covenant on Economic, Social and Cultural Rights has had a lot to do with workings through the commission. That would be a very interesting possibility.

Secondly, on the issue of a broad forum where everyone is represented, it is worth just remembering, of course, that the General Assembly has the power to discuss anything within the terms of the Charter of the United Nations. Under articles 10 to 14, they can and do discuss human rights issues. The discussion is not always terribly enlightening and I do not think we want to see that kind of discussion in the human rights council.

Thirdly, just on the interesting but I think probably fairly scary possibility that we have the P5 represented on the human rights council as a matter of course, I would just say that the reason those states are permanent members of the Security Council is that there was a recognition that, in order to use force, you would need them on board. Human rights generally is not about using military force and I would be very reluctant to see that sort of connection being made. While I recognise that human rights and security are interrelated, I do not want to see that sort of

connection being made where they automatically get a place on the council. I think they should be required to prove human rights credentials. It is not an issue about just power and military power in particular. So I would be very reluctant to see the P5 automatically on the council. It is worth pointing out that the Security Council is the only place where they have that special status. They do not have a special status on the General Assembly; they get one vote, as does every other state, so we would be creating something quite unusual for a body concerned with human rights, I think.

**Senator FERGUSON**—I would not want to argue with you, Dr Mathew, but the reason they are there is because they were the victorious nations at the end of the Second World War. Things have not moved on since then and we have taken 60 years trying to rectify that. The fact that they do have a veto means that it may be a long time before we ever do rectify it. When you say that we should put on a bold front—and I know Ms Scrine did too—I was there at the time of a vote in the United Nations to elect Professor Ivan Shearer. The wheeling and dealing that goes on on such occasions has nothing to do with whether a person has a good record on human rights or whether they will do this, that or the other. It is, ‘You vote for me and I’ll vote for you for the next thing,’ or ‘We’ll get this group together because it means we’ll do something else.’ There is absolutely no justice at all in anything that happens in an election at the United Nations. That is why I said that, if it came to a vote, you could be absolutely sure that China would be on, because that is the way the system works. While we might want to be bold and say that we want a nice, pure, clean system where everybody gets every position on merit, it simply does not happen, and it never will.

**Mr Macdonald**—I will just return to Mr Thompson’s comments for a second about the possibility relating to pursuing universal membership and the standing body. I think they are both proposals that, whatever camp you sit in, have strengths and weaknesses, so pursuing both is definitely something I see creditability in. I advocated earlier expanding universal membership. We have heard comments that, whether you are there in observer status or as a member, you are there anyway. Ambassador Smith did make the statement referred to earlier: Why draw the distinction? They are there anyway. Why have members and non-members? They will attend the meetings and they will discuss and interact with member states. I think that is something that definitely should be moved towards: universalising membership of the commission.

But, in saying that, I think the problems with creditability do really need to be overcome. That is where we might be moving towards eventually—obviously, both cannot be actioned immediately—a standing, smaller sized body in the vicinity of the Security Council size, maybe 18 states, mobile and easy to sit in action and see the implementation of these resolutions that are passed at CHR and that special crises that either the high commissioner can have access to the Security Council or that council and draw their attention to the specific urgency crises. There have been examples in the past where situations have been brought up by the special procedures and just the delay and the inability to act have caused more of a response to these actions rather than a preventive mechanism. So I think there is great strength in pursuing both ideals and I think that is something that could receive support from many states.

**CHAIR**—Thank you. President von Doussa.

**Mr von Doussa**—Can I just take up some of the matters raised by Senator Ferguson, to start with. Kathy Richards raised a very important issue that, if you are setting standards, you need to have rotation. Whilst the idea of having high hurdles and limited membership of people only who have a particular standing might work for the first or second session, in due course rotation is going to put the ones that you are trying to keep off back on. You are just deferring the problem, to some extent. On the issue of political realities, which seem to attract Senator Ferguson—

**Senator FERGUSON**—They do on a daily basis.

**CHAIR**—That is what makes him a good politician.

**Mr von Doussa**—One of the political realities that might have to be faced is the difficulties of getting any agreement about the hurdles or qualifications that will be imposed on membership. When one reads the papers, there is an enormous variety of ideas being put up. For example, if you compare Australia's situation against some of those standards, Australia would not pass them; it is not a signatory to the optional protocols and so on. As you go through the list, it is going to be very difficult, I would have thought, politically to get any agreement about that at all. If you have anything short of universal membership, there may be a real risk of derailing the whole thing and getting no agreement at all; whereas universal membership would have the advantage of avoiding all those issues and going straight into the next phase of looking at what the powers and functions of a new body would be.

As to Mr Thompson's position about their being two different types of establishment, the recommendations to the high-level panel on threats, challenges and changes did come up with a proposal that underlying the new council—although they had a different structure to the council—would be a panel of 15 experts. It is not quite the same sort of thing, but you would have a panel of 15 people, perhaps as advisers rather than decision makers, who would have a function of investigating urgent matters and, indeed, all matters and would be another adjunct to special procedures. Such a panel could have a function of reporting to the Office of High Commissioner for Human Rights as well as to the commission itself. If a really urgent situation was found to have some factual base, the high commissioner could refer the matter to the General Assembly. There may be means that are within the documents that have been discussed of having a two-level system.

**CHAIR**—Thank you. Professor Joseph and then Mr Lenehan.

**Prof. Joseph**—Whatever form the new commission or the council takes, it is clearly going to remain somewhat politicised—hopefully less politicised than the current body—but governments will always operate that way. Senator Ferguson has given us perhaps a realistic—and pessimistic—view. At the risk of sounding like a broken record, I will quickly say one thing. If you were to put up as a—and I still think it is a minimal—requirement of ratification of both governance, it would be to hear the arguments against it. Even if it does not get through, just to hear those states explain why they will not commit to the two—okay, the universal declaration is the pillar—things you can actually ratify, why they will not commit to it. I personally think that would be a useful process anyway.

Just following on this point about this extra body of 15 people, it brings up: wherefore the subcommission? I think, given that this new body or revised body will inevitably be somewhat political, and we cannot get away from that, I think there needs to be a strong presence of some adjunct non-governmental expert body. That role is not necessarily fulfilled by the treaty bodies, because they all have limited mandates and they are in a process of flux as well. You want another body with the same type of broad mandate.

The subcommission has had a cantankerous relationship at times, but it has brought some very important issues that fall outside the treaties to the commission's attention. Very recently, for example, it was the issue of business and human rights. So I think there has to be some sort of successor or maintenance of the subcommission. The subcommission also as a body of, say, a number of experts—whether it be 23 or 15—has a greater status than the special rapporteurs and the special procedures that tend to be of single people or small groups. I think there needs to also be, given there will be inevitable politicisation, ways of these adjunct independent bodies injecting more influence into the agenda or into the decisions of this new body—of having some real influence rather than just being able to be swept aside.

**Senator FERGUSON**—I have to go. I just want to thank people who have been involved. It has been very interesting for us—when we make our report under your good guidance and experience. But I have to be at Moonta by 6.30 pm—and probably only Mr von Doussa knows exactly where that is.

**CHAIR**—In general terms, it is in South Australia. Mr Lenehan.

**Mr Lenehan**—I have two quite minor points. The first is the locations of meetings. The ICJ in its very helpful paper has suggested that consideration be given to meeting outside both Geneva and New York, which, in terms of NGO and national institution participation particularly, would make things easier for those potential participants in terms of costs.

Second, Kathy Richards has mentioned the importance of the relationship between any new body and the office of the high commissioner. Without wanting to make self-serving statements, another relationship that we consider some attention might be given to is the relationship between the commission and national institutions. That sort of informal interaction already takes place and, in fact, as the president has mentioned, national institutions do play a part in the current commission.

A more substantive and perhaps formal role has been seen in the optional protocol to the Convention against Torture, where you actually have an international monitoring mechanism combined with a domestic monitoring mechanism, which is required under the protocol to be compliant with the Paris Principles—essentially a national institution. Some thought might be given to those possibilities in terms of any new body.

**CHAIR**—I am interested in encouraging you to explore two questions. First—not in any particular order—the question that Kathy Richards raised about the interaction between the proposed council and the role of the Office of the High Commissioner for Human Rights and where organisations and individuals think that might go, what direction that might take. Secondly, I Howard Glenn raised a question earlier this morning about what I would summarise I guess as responsiveness—that is, the capacity of anybody charged with these responsibilities to

address particular human rights situations as they arise and what role or opportunity there is to do anything in the redevelopment and the reform process to take that up. I do not know whether anyone wants to make any comments on that or either of those points.

**Prof. Joseph**—On the first point, I am not going to make a specific comment maybe yet on the relationship between the body and the Office of the High Commissioner; I might just say a couple of words about the relationship between it and the treaty bodies, and that is this issue of peer review, which seems to be one of the great proposed strengths that it will get rid of selectivity. I think that is a very good thing. I think, however, that really the relationship between that process and the reporting process under the treaty bodies has to be investigated. I think there is a very real danger, given that the treaty bodies are independent non-governmental—this is a governmental body—that its findings could undermine or even forestall certain concluding observations by the treaty bodies. They might not forestall it, but they might completely somehow deprive them of credibility. That is a danger. I am not arguing against peer review. I am just saying it is something that has to be watched out for.

**CHAIR**—Ms Scrine, and then Mr Wright.

**Ms Scrine**—I note that the Secretary General has called for more resources to train country teams within OHCHR and to establish a strong field presence. We see this as quite important in both these processes. It enables a more immediate and effective response on the ground. If this presumably is in tandem with a body that meets for more than six weeks in a year, the capacity to address issues as they arise is greatly enhanced.

But another important aspect of that is appropriate budgetary resources for the OHCHR and concomitant with that the special procedures. At the moment, I think most of us are aware that they operate on a shoestring, particularly the special procedures where you have experts working pro bono with some support. They play a very important role in alerting the world to particular crises and aspects of human rights abuse and the like. But the capacity exists for that to be greatly enhanced with some material resources and it is raised in the draft outcome document and the like, but it needs to be followed through. Certainly, Australia has a role to play in making sure these issues are on the table and strongly supported.

**CHAIR**—Thank you. Mr Wright and then Kathy Richards.

**Mr Wright**—I have just a couple of reflections that may or may not be helpful to the committee. On the Office of the High Commissioner for Human Rights—I remember when it was formed—it has a mandate. It has yet to receive the resources it needs to fulfil that mandate. I think part of the debate that needs to take place is how operational do you want it to be. Like what was the Department of Humanitarian Affairs and became the Office of Coordination of Humanitarian Assistance, some people saw it as a secretariat or part of the UN secretariat and non-operational and other people wanted it to be very active in the field.

As I mentioned earlier, I think from my own experience and from UNHCR's input so far particularly to the plan of action, it is important that the Office of the High Commissioner for Human Rights be present at the field level. The UN country teams, as Tess has just said, need that expertise on their membership. There needs to be some targeting. I think it would be

ludicrous to think, even if you doubled the capacity or the resources available to the High Commissioner for Human Rights, that you would not need to target where they were used.

UNHCR has suggested in its contribution so far that it should focus on situations of transition, particularly in post-conflict situations, where there is a tendency to find more widespread abuses of human rights, where there is a need to have that presence of the international protection actor, including the Office of the High Commissioner for Human Rights. The focus in those situations should be on transitional justice mechanisms, on the establishment of the rule of law, perhaps the promotion of Amnesty's vetting of officials from previous regimes, truth commissions and promotion of reparations and compensation. These are just some of the suggestions that we have made as an organisation into what the future role might be and how that might be targeted at the field level, but I think it is an important consideration.

**CHAIR**—Thank you. Kathy Richards.

**Ms Richards**—Mr Wright has picked up some points I wanted to make. But regarding the area of technical assistance, this is one where the Commission on Human Rights, for good and bad reasons, has increasingly directed resolutions. We should not ever pretend that issues of human rights violations are merely of a lack of capacity or a lack of technical capacity; there are often very real political reasons. But, in pre-empting and preventing many human rights violations, providing technical assistance at that country level is a very important role that I think the Office of the High Commissioner for Human Rights is increasingly being expected to play and that a commission or council is increasingly requesting that it play. So there is another real example of how a relationship between a commission/council and then the actual field presence of the High Commissioner for Human Rights should be explored. Just to pick up on a particular interest of the Australian government, which is really looking for practical outcomes in human rights, technical assistance is one that has very much been at the forefront with the Australian government.

**CHAIR**—They are very keen. Any further comments in either of those areas? The process from here, which I thought we might spend a couple of minutes discussing as far as your organisations are concerned—which is literally a process question—is: what is your level of participation in discussions? A number of organisations have produced papers and documentation, much of which we have. But in terms of engagement moving forward to the September summit, talking to the departments and so on, are there any comments or observations you wish to make in that regard?

**Ms Richards**—I might just make a brief comment about discussion with the Department of Foreign Affairs. On behalf of the Australian Forum of Human Rights Organisations and the Australian Council for International Development, we have been able to arrange a roundtable with the Department of Foreign Affairs. It is a day-long consultation on 19 August. It is actually invitation only and it will be limited, I believe, to about 30 participants. That forum will be discussing UN human rights issues. It will also discuss a little concerning the Security Council and some of the development of a peace-building commission, but hopefully it will have more of a focus on human rights reform.

As non-government organisations, we are very much hoping that we will be able to come to that forum and have a two-way dialogue and be able to hear, if not definitive positions, at least



options as to where the Australian government is considering it will go in supporting some of these—either the very specific issues of the make-up of the new council or even the broader issues of human rights reform in general. We wait to see how that discussion will unfold. That is in a week's time.

**CHAIR**—Mr Brandt.

**Mr Brandt**—I just want to thank you and the members of the committee for convening this meeting and for giving all of us this opportunity to raise these issues and to bring forward and promote these issues. I think this is indeed the real way in which participation, learning about the process and acting on it, can actually move in a successful way.

We try to be present in as many forums and as many meetings as possible to raise these issues. In this case, it is human rights. But, since the Secretary General's report was released, we have been trying as much as possible to call attention to the need for people's participation, to call attention to the need for people to be aware and to be involved. In that connection, we are delighted that the response from the general public has been quite intense. There has been a level of interest on the report by the Secretary General—quite substantial—and we just want to encourage as many people as possible to learn about it, to read the reports, to be aware of what those reports involve. I completely agree that this is a once in a lifetime opportunity for the international community and for the peoples of the world to effect change and to make this opportunity work for the betterment of mankind. Thank you again for this opportunity.

**CHAIR**—It is a pleasure. President von Doussa.

**Mr von Doussa**—There will be a meeting of the Asia Pacific Forum of National Human Rights Institutions in Ulaanbaatar, Mongolia, at the end of this month, where the issue of reform, I am sure, will be discussed. There are usually many representatives of NGOs and the like there. It is followed immediately afterwards in Beijing by a UN workshop for the promotion and protection of human rights in the Asia-Pacific region, which is a state party symposium or workshop but, again, at which there will be a big presence of national human rights institutions and NGOs, and I am sure this will be a topic for discussion there. Hopefully the Australian government will be a participant at that particular workshop.

**CHAIR**—Good. Ms Scrine.

**Ms Scrine**—Because they are not represented here today, I think it is also important to acknowledge the role being played by the United Nations Association of Australia in holding forums to discuss issues that are arising. Senator Stott Despoja spoke at one of them held in Parliament House on the anniversary of the signing of the charter, and they have a conference tomorrow. While that is not a process that is directly contributing to government dialogue, it is helping to engender community awareness and education on these issues and allowing NGOs and other actors in civil society to discuss the issues. The other fact is that many of the organisations represented here today have international representation at the UN through our international bodies who are also representing our views directly in those processes as they take place at that level.

**CHAIR**—Thank you. Are there any final observations?

**Mr von Doussa**—Mr Lenehan has suggested to me that I kick a ball in from left field.

**CHAIR**—I am not sure that I will thank him for that.

**Mr von Doussa**—If we are looking at an overall reform of various structures of the UN, there is the Commission on the Status of Women that sits there as quite a separate organisation; yet it is concerned fundamentally with human rights but of a section of the community. Possibly, there ought to be some consideration given to whether that ought to be incorporated in some way into the functioning of a wider human rights commission.

**CHAIR**—Thank you very much for that. You are forgiven! Mr Wright.

**Mr Wright**—On that issue, if my reading of the plan of action is correct, the High Commissioner for Human Rights has asked in her proposals that it be merged with all the other relevant bodies.

**Senator MOORE**—There needs to be discussion on that.

**CHAIR**—Yes, there is some way to go, I think. Dr Mathew?

**Dr Mathew**—It might just be worth saying that there is always a risk when you get rid of specialist bodies, particularly when they are concerned with women's rights. So I do not think this is something that we should just automatically assume is going to be a terrific result for women's rights.

**CHAIR**—Thank you all very much for your time. I quite like the format of a roundtable. I think it is much more constructive, for a discussion such as this in particular, than the formal taking of evidence back and forth across the table with separate witnesses and with very little interaction. I hope that you have found the arrangements conducive to discussion and amenable to your personal views in terms of the opportunity to participate and make comments.

I know that we have all found it very interesting. I neglected to mention earlier that Senator Ferguson of course is the Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade, under which the Human Rights Subcommittee sits. We are very grateful for his presence here this morning. Given that there are four subcommittees, he has plenty to do, so it is a great pleasure to have had his participation here today. He also has an ongoing interest, as was clear, in relation to the United Nations broadly speaking and, therefore, the reform question.

As Keir Macdonald in particular will know, this roundtable arose out of a roundtable held in Geneva in April this year convened by Ambassador Mike Smith during the 61st commission with Australian participants and members of the permanent mission in Geneva over lunch one day. It was also a very constructive discussion. They had a victim parliamentarian sitting in the room that they could pick on. As we went around, it became clear that there was an opportunity to pursue this further in Australia. I owe a debt of gratitude to Mike Smith for many things but that in particular as motivation for bringing today together. I think in many observations the strength of Australia's leadership in Geneva in recent times has been noted and Mike Smith is a very important part of that in particular.

Thank you very much for your time. Thank you to all of my colleagues for their time. I also want to thank the secretariat staff for putting together material for us and compiling information that you have provided to us. When your chair wanders around the world and then comes back with a great idea about a roundtable and says, 'How about that?' it is not up to the chair to pull it together; it is up to the secretariat staff. So I am very grateful to Sara Edson and to Kate for their assistance and to all the other staff in that process. We will send you a copy of the transcript of today's proceedings. If there are any corrections you wish or need to make to matters of grammar or fact, please do so and return your transcript to us.

Resolved (on motion by **Senator Moore**, seconded by **Senator Stott Despoja**):

That this subcommittee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

**Subcommittee adjourned at 11.50 am**