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JOINT STANDING COMMITTEE ON TREATIES
ATTORNEY-GENERAL'S DEPARTMENT

Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime

Mr Wilkie asked the following question at the hearing on 13 February 2004:

'Can the department please do some research and advise me how many people have been charged with people-smuggling in, say, the last 10 years and what sorts of penalties have they received?' (page 26).

The answer to the honourable member's question is as follows:

- People smuggling offences are covered by sections 232A and 233 of the *Migration Act 1958* (Cth) and Division 73 of the *Criminal Code Act 1995* (Cth).
- Prior to 22 July 1999, 'people smuggling' was covered by section 233(1)(a) of the Migration Act. Section 233 of the Migration Act makes it an offence to bring non-citizens into Australia in contravention of the Migration Act or to harbour illegal entrants. The maximum penalty under this section is 10 years imprisonment and/or 1,000 penalty units.
- Records indicate that from 1994 to 22 July 1999, 120 defendants were charged under section 233(1)(a). There were 118 convictions.
- A full analysis of statistics on people smuggling cases has only been compiled since the introduction of section 232A of the Migration Act on 22 July 1999.
- Section 232A of the Migration Act makes it an offence to organise or facilitate the bringing or coming to Australia, or the entry or proposed entry into Australia, of a group of 5 or more people. The maximum penalty under section 232A is 20 years imprisonment and/or 2,000 penalty units.
- Since 1999, 475 persons have been charged with offences against sections 232A or 233 of the Migration Act.
- 453 charges resulted in convictions. Trials are ongoing in 5 cases.
- In total, there have been 572 convictions for 'people smuggling' offences in Australia in the last 10 years.
- Persons convicted of offences against sections 232A or 233 generally receive a term of imprisonment. For section 232A, sentences have ranged from 8 months to 12 years. For section 233(1)(a) sentences have ranged from 4 months to 4 years and 6 months.
- In some cases, terms of imprisonment have been combined with fines and/or conditions not to enter Australian territorial waters for a set period of time following release from prison.
- There are currently 24 federal prisoners in gaol for people smuggling offences.

JOINT STANDING COMMITTEE ON TREATIES
ATTORNEY-GENERAL'S DEPARTMENT

**Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the
United Nations Convention Against Transnational Organized Crime**

Mr Wilkie asked the following question at the hearing on 13 February 2004:

'Can the department advise what has been done and what may still need to be done in the area of raising public awareness, to bring Australia into line with the terms of the protocol?' (page 26)

The answer to the honourable member's question is as follows:

- Article 15 of the People Smuggling Protocol provides that:

Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol [people smuggling] is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.

In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.

- The Australian Government already takes a wide range of measures to increase public awareness of the fact that people-smuggling is a crime and to cooperate in the field of public information for the purposes of preventing potential migrants from falling victim to organised crime. These measures would fulfil Australia's obligations under the Protocol.

DIMIA's information programmes

- The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) conducts a world-wide campaign to inform smugglers of the penalties and potential unauthorised arrivals of the considerable risks involved in people smuggling. The Overseas Information Campaign includes videos, radio news clips, posters and information kits translated into 12 languages.
- DIMIA also conducts campaigns in targetted areas. For example:
 - In January 2002 an anti-people smuggling campaign was conducted in Flores and Sumbawa, Indonesia. The principle audience was the fishing communities who are often targetted by smugglers to provide boats and crews. Subsequent smaller campaigns aimed at potential passengers were conducted in the Jakarta area in July 2002.
 - In March 2003 an information campaign targeting potential unauthorised boat passengers was conducted to provide information to several hundred people about legal options available and the dangers of attempting unauthorised movements by sea to Australia.

- DIMIA has assigned specialist compliance offices to Ankara (Turkey), Athens (Greece), Bangkok (Thailand), Beijing (China), Beirut (Lebanon), Colombo (Sri Lanka), Guangzhou (China), Hong Kong SAR, Islamabad (Pakistan), Jakarta (Indonesia), Kuala Lumpur (Malaysia), Manila (Philippines), Moscow (Russia), Nairobi (Kenya), New Delhi (India), Phnom Penh (Cambodia), Pretoria (South Africa), Shanghai (China), Suva (Fiji) and Taipei (Taiwan). These officers extend Australia's information sharing network and work with local police and immigration officials to identify and report on the activities of people smugglers and counter foreign nationals who may try to enter Australia illegally.
- DIMIA officials continue to deliver training to airline and immigration staff in the countries where they are located.
- Australia is an active participant in a number of international programs that work to combat people smuggling, including:
 - the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC)
 - Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants (APC)
 - an Irregular Migration and Migrant Trafficking in East and South East Asia forum
 - the Pacific Rim Immigration Intelligence Officers Conference.

Ambassador for People Smuggling Issues

- The high priority the Government places on the fight against people smuggling is demonstrated by the appointment of an Ambassador for People Smuggling Issues in 2002.
- The Ambassador is responsible for promoting a coherent and effective international approach to combating people smuggling, particularly in the Asia-Pacific region, and to assist as appropriate in the negotiation of high-level return, readmission and resettlement agreements. The Ambassador is also tasked with following-up on the results of the highly successful Bali Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime.

Bali Regional Ministerial Conferences

- The Bali Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime have also strengthened regional awareness of the crime of people smuggling. Australia co-chaired these conferences with Indonesia.
- Representing nearly 40 countries, Bali Process members come from a broad spectrum of the Asia-Pacific region and bring the full diversity of views to the table. At the first Bali Conference, Ministers established two Ad Hoc Experts' Groups, ably co-ordinated by New Zealand and Thailand respectively.
 - Ad Hoc Experts' Group I focuses on regional and international cooperation, and particularly the area of information exchange. It is coordinated by New Zealand.

- Ad Hoc Experts' Group II focuses more on legislation, law enforcement cooperation and document fraud, and is coordinated by Thailand.
- As part of the Bali Process, Australia organised a legislative workshop in Port Dickson, Malaysia on 10-11 November 2003. This workshop focused on the need to improve the effectiveness of prosecutions of people smugglers and traffickers across the region. The overall objective was to continue working towards developing an effective regional system of law enforcement through encouraging the development of domestic legislation criminalising people smuggling and trafficking in persons and cooperation in mutual legal assistance and extradition or transfer of people suspected or convicted of these crimes. The two day workshop demonstrated the significant progress made by the Bali Process countries since the first Bali Regional Ministerial Conference in April 2002 and the first legislation workshop in September 2002, in drafting, enacting or amending existing legislation to criminalise people smuggling and trafficking in persons. The workshop highlighted that:
 - 19 countries now have criminal penalties in place for people smuggling and/or trafficking in persons,
 - 12 countries are currently considering implementation of legislation or are in the draft stage of implementing such legislation,
 - 18 countries have made use of the model legislation criminalising people smuggling and trafficking in persons developed by Australia and China as a result of the first legislation workshop, and
 - 15 countries have mutual legal assistance arrangements and/or extradition legislation covering people smuggling and trafficking in persons and related transnational crimes.
- The workshop also highlighted the significant amount of information that is already available for countries to draw on when developing their legislation.

Asia-Pacific Consultations

- Australia chaired the Inter-Governmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants (APC) in 2003. A number of activities undertaken through the APC process sought to raise awareness of and combat people smuggling and trafficking in persons.
- The APC was established in 1996 to provide a forum for the discussion of issues relating to population movements, including refugees, displaced persons and migrants. Its aim was to promote dialogue and explore opportunities for greater regional cooperation on these matters. The APC has operated as an informal, consultative, non-binding arrangement between countries in the Asia-Pacific Region and has established itself as a useful, broadly based discussion forum including anti-people smuggling and trafficking issues.
- At the 8th Annual Plenary on 8 -9 December 2003, a panel session took on the development of public awareness campaigns to facilitate the return and reintegration of victims of people trafficking.

Awareness Raising – Trafficking in Persons

Domestic Measures

- The Australian Government announced that it was developing a domestic community awareness strategy on trafficking in persons on 13 October 2003.
- The community awareness strategy aims to:
 - increase target audiences' awareness of the issue of trafficking in persons,
 - provide target audiences with factual information about the issue,
 - encourage target audiences, particularly victims, to report the crime,
 - encourage the media to report more broadly on the matters associated with people trafficking, and with increased understanding of the complexities of the issue.
- The strategy comprises four stages over four years.
- The select tender process for Stage One of the Strategy, comprising exploratory and developmental research, has begun. Stage One will commence in April and it expected to be completed by September 2004.
- The strategy has the following target audiences: owners, managers and receptionists of sex industry services, victims of trafficking, other sex workers, clients of the industry, brothel regulators, the media, community health, welfare and ethnic organisations, and law enforcement agencies.

Work with Regional Countries

- The Australian Government is also working with regional countries to prevent trafficking in persons, prosecute traffickers and help the victims of trafficking.
- The Government has placed a new Senior Migration Officer (Compliance) in Thailand to focus exclusively on people trafficking in the South East Asian region. Thailand is a primary source country for sex workers and victims of people trafficking and is also a focal point for regional anti-trafficking activity. The Senior Migration Officer will work closely with the Australian Federal Police in Thailand.
- Australia participated in an Expert Group Meeting on Prevention on International Trafficking and Promotion of Public Awareness Campaigns in the Republic of Korea in September 2003. The Meeting was convened as part of the Bali Regional Ministerial Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.
- The Australian Federal Police has conducted a wide range of cooperative activities with other countries to help combat people smuggling. In recent years these have included:

- training courses for senior police to discuss current investigation and best practice techniques,
- sexual offences investigation training programs with Philippine law enforcement bodies,
- gender awareness training with the Papua New Guinea Constabulary,
- training on the Code of Conduct for Law Enforcement Officials, ratified by the Office of the United Nations High Commissioner for Human Rights, and
- advising the Cambodian Joint Transnational Crime Investigation Team.

Regional Projects Supported by AusAID

UNDP Inter-Agency Project: Trafficking in Women & Children

- This United Nations Development Program (UNDP) coordinated project aims to reduce the incidence of trafficking of women and children in the Mekong Subregion (Cambodia, China - Yunnan and Guangxi Provinces, Lao PDR, Myanmar, Thailand and Vietnam) by enhancing the capabilities of organisations and persons to support trafficking victims (especially women) and by improving subregional and national communication and cooperation. The 5-year project (from May 1999 to April 2004) is being delivered through the UNDP Regional Office in Bangkok. Total AusAID contribution to this multi-million dollar project is A\$950,000.
- The Project aims to develop:
 - Action-oriented networks and forums at local, national and sub-regional levels strengthened and supported.
 - Improved prevention through empowerment programs.
 - Improved protection programs.
 - Improved recovery and reintegration programs.
 - Networks of legal activists and institutions responsible for legislation, policy and law enforcement against the perpetrators of trafficking and for the protection of victims identified and strengthened.

IOM Return & Reintegration of Trafficked Women & Children

- The objective of the project is to establish a systematic and sustainable cross-border working arrangement for the return and reintegration of trafficked and other vulnerable migrant women and children within the six countries of the Mekong region - especially Thailand, Lao PDR and Cambodia. The project has so far assisted with the return, reintegration and protection of 785 victims in Cambodia, Burma, Laos and Vietnam. The project also aims to strengthen the ability of partners involved, both government and NGO, to provide assistance to victims; to promote necessary cooperation in the region to successfully counter trafficking through legal, administrative, policy and advocacy measures.

- This project commenced in September 2000 and will complete in February 2004. Australia's contribution to project costs is approximately A\$ 4.7m. Project staff includes three international officers (Team Leader - Bangkok, two project officers in Cambodia) and three national staff responsible for activities in Thailand, Cambodia and Vietnam. The International Organization for Migration (IOM) is implementing the project.
- A new phase of this project is about to be negotiated with IOM. The new phase will build capacity of referral agencies such as government agencies/NGOs in the home country to provide return and reintegration assistance for victims of trafficking deported from Australia. This will ensure services are available to all referred victims.

IOM Capacity Building on Protection of Trafficking Victims

- This project objective was to develop capacity to protect victims of trafficking, in particular women and children, according to standards established in legislation and ratified conventions in the countries of Thailand, Cambodia and Vietnam. This was to be achieved by establishing procedures for handling trafficking victims, through the drafting of Memoranda of Understanding (MOU) and the development of manuals and training to ensure the MOUs are understood.
- MOUs were to:
 - Facilitate coordination of efforts to assist victims of trafficking, and define the roles and responsibilities of each partner agency or organisation (who is doing what, who pays for which activity, how are the victims transferred from one entity to the next).
 - State the commitment of Thailand, Cambodia and Vietnam to work towards the eradication of trafficking in women and children. They were to contain guidelines on prevention, protection, prosecution, legislation, repatriation and reintegration. The focus of the MOUs was to be on prosecution, repatriation and reintegration, which require cooperation between the country of origin and the country of destination.
- MOUs were formulated within the basic philosophy underlying the project: a humanitarian approach in the treatment of trafficked women and children that considers them as "victims" rather than "offenders"; and the necessary need to "coordinate" approach, action and assistance.
- Thai national MOUs between the government and NGOs were signed in March 2003. A bilateral MOU between Thailand and Cambodia was signed in May 2003. Preliminary discussions have also led to 'in principle' interest in negotiating a Thai/Vietnam MOU. Cambodia is also working to negotiate its own bilateral MOU with Vietnam, based on the draft Thai/Cambodian MOU. Lao PDR is also considering a draft MOU, based on the Thai-Cambodian MOU.
- Funding of A\$300,000 has covered activities for two and a half years from July 2000. This project has also been implemented by IOM.

Asia Regional Cooperation to Prevent People Trafficking

- This project seeks to strengthen regional cooperation and legal policy frameworks through identified ASEAN + China (Yunnan Province) national points of contact, and build national and regional capacity to more effectively prevent trafficking in women and children. The project will extend for 3 years from April 2003; expected cost is approximately \$8.5 million.
- Under support from this project, specialist anti-trafficking units are being established within national law enforcement agencies in the four selected focus countries: Burma, Cambodia, Lao PDR and Thailand. The Project also actively supports strategies to develop communication and collaboration between the various specialist anti-trafficking units across national borders. It is anticipated that, over time, these units will become the anchor points for successful national and regional strategies against human traffickers.
- While the specialist trafficking response units are a key focus for training and technical assistance delivered under the Project, it is essential to ensure that improvements in one part of the system (law enforcement, for example) are not 'blocked' by on-going weaknesses elsewhere (such as prosecution and the judiciary). In order to avoid this, the Project is supporting other relevant parts of the criminal justice system on the basis of a detailed assessment of needs and capacities. This includes support for cooperation / information exchange between different components of the system as well as support for law reform where this is necessary and accepted.
- Successful investigation and prosecution of traffickers is commonly reliant on victim testimony. Accordingly, the Project recognises the crucial role that government and non-government victim support agencies (VSAs) can play in improving the criminal justice response to trafficking through their support for trafficking victims as witnesses. The Project promotes cooperation and collaboration between law enforcement agencies and VSAs as well as cross-border collaboration and cooperation between VSAs.
- In addition to these regional and cross-border activities, the Project envisages specific initiatives aimed at promoting closer cooperation and collaboration between Project countries, other member countries of ASEAN and China. Activities include support for the development and implementation of MOUs and other formal cooperation agreements. The Project also works closely with the ASEAN Secretariat on issues and activities of common interest.
- The project seeks to help reduce the number of people who become victims of people traffickers in Southeast Asia (with an initial focus in Cambodia, Lao PDR, Burma and Thailand) by facilitating regional cooperation and the development of a regional strategy. The aim is to build on work that is already being done in the field, and to strengthen high-level commitment to more effective prevention of people trafficking. Initial country components emphasis capacity building, drawing lessons from experience across the region, information exchange with the expectation that this could lead to more successful prosecutions, and an active process of regional consultation. All countries in South East Asia will be able to benefit from and participate in project activities focused on developing regional level policy coordination and training.
- An important step in the development of a regional policy is informing ASEAN policy makers about the experience gained from project activities. To this end, presentations about project activities will be made to ASEAN committees and other appropriate regional bodies.

Preventing the Commercial Sexual Exploitation of Children Through Tourism Industry Training

- The objective of the project was to heighten awareness of child sex tourism within the tourism industry in each country, and to provide tourist professionals with practical strategies to combat it. "Preventing the Commercial Sexual Exploitation of Children Through Tourism Industry Training" involved development of a training module aimed at the tourism sectors in Cambodia, the Philippines and Indonesia. The training module included an information booklet, teaching guidelines developed for each country, and a train the trainer program. The module was designed to train tourism students, educators and industry personnel, and focused on providing locally produced materials to equip workers in the hotel and tourism industry to address sexual exploitation of children. The project extended from January to September 2000 at a cost of \$140,000. The project was managed by ECPAT Australia (End Child Prostitution in Asian Tourism).
- Australia provided all funding for this project. Recipient countries participated through consultations held with tourism training institutions (public and private), government tourism authorities and law enforcement agencies.
- The benefits of the project were: improved action to combat child sexual exploitation in the tourist industry, greater knowledge of the problem, and stronger networks among community, government and tourist industry stakeholders.

Preventing Child Abuse in ASEAN Tourism Destinations: Building Capacity of National Tourism Administrations

- Objectives of this current project, also managed by ECPAT Australia, are to build capacity of National Tourism Administration staff and trainers, and develop regional policy options on international standards and tourism industry guidelines, on the protection of children from sexual exploitation in tourist destinations. The project also seeks to contribute to longer-term improvement in the protection of children in participating countries (Burma, Cambodia, Indonesia, Lao PDR, the Philippines, Thailand, and Vietnam) and more generally in the region. Total project budget is \$350,000 over two years from April 2002.

The Australia-China Human Rights Technical Cooperation Program (HRTC)

- Since 1997, Australia has provided \$4.8 million for activities under the HRTC, which has assisted in strengthening the promotion, protection and administration of human rights in China. This has included a number of training activities and workshops (total value \$227,672 to date) for officials and community-level workers on practical methods to combat trafficking of women and children. In 2003/04, Australia will provide a further \$1.4 million for the HRTC, including \$117,800 for further anti-trafficking activities.
- The HRTC has also supported many other activities in the legal reform and justice sector, including training for Chinese prison officers, design of a workshop/seminar by and for judges on rules of evidence, and a training course on reasoned judgements for senior Chinese judges.

Australian Support for Regional Trafficking Conferences

- Australian bilateral aid programs provided approx \$50,000 to assist Asian government representatives to attend the February 2002 Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime.
- Australia (AusAID) will provide a further \$280,000 to assist developing country representatives (including Cambodia, East Timor, Fiji, Kiribati, Laos, Mongolia, Nauru, Papua New Guinea, Philippines, Samoa, Solomon Islands, Thailand, Vanuatu and Vietnam) attend the second Regional Ministerial Conference on People Smuggling, Trafficking in persons and Related Transnational Crime ("Bali II"), to be held in Bali 29-30 April 2003 and the Preparatory Meeting to be held in Jakarta 27 March, 2003.
- AusAID's support forms part of a whole of government approach to these issues coordinated through Her Excellency, Ms Caroline Millar, the Ambassador for People Smuggling Issues (Department of Foreign Affairs and Trade). The purpose of the Bali II process is to reach a consensus on ways and means to continue to promote and encourage regional efforts to combat people smuggling, trafficking in persons and related transnational crime following upon Bali I, and will include reports from the two Ad Hoc Experts' Working Groups (AHED I on Regional and International Cooperation and AHEG II on Policy Issues, Legislative Framework and Law Enforcement).
- Legislative drafting assistance has also been provided under AusAID's bilateral aid program to Cambodia in relation to the domestic immigration laws project. The project is designed to draft stand-alone legislation to enact people smuggling as an offence in Cambodian law. The project is due to commence in March 2003 and will be funded by AusAID (up to A\$50,000) and managed by DIMIA
- Australia provided approx \$5,000 (through Asia Regional aid funds) to assist regional representatives to attend the ASEAN Workshop on Trafficking in Women and Children held at Pattaya, Thailand, in June 2002. The workshop was chaired by Police Major General Amarin Niemskul, Deputy Commissioner of Special Branch, Royal Thai Police, having been organised through the support of Major General Krerckphong Pukprayura (of Thai Immigration Bureau, Royal Thai Police) who is chair of the Ad Hoc Experts' Group on Policy, Legislation and Law Enforcement, one of the two working groups set up for the Bali Follow Up Process. This workshop was initially proposed by Thailand at the First Annual ASEAN Senior Officials' Meeting on Transnational Crime (SOMTC) held in Bangkok in March 2001. The workshop aimed to strengthen capacity building of law enforcement authorities and practitioners, and to focus on measures to implement related UN Convention and Protocol agreements among ASEAN member countries, law enforcement and immigration formalities, and cooperation in victim treatment.

Vietnam : Human Rights Small Grants Scheme

- In May 2003 Hanoi Post approved funding of \$44,000 to provide support for the rehabilitation of trafficked women returning from Thailand and China to the northern border area of Vietnam (specifically to Quang Ninh Province). Project delivery is through the Centre for Reproductive and Family Health. Project objectives are: to improve the social relations, economic condition and rights of trafficked women and their reintegration in to society; and to raise awareness of trafficking.

Other NGO/Post-initiated Small Activities

- **Small Activities (Thai Post):** Activities delivered between 1996-98 provided for: interpreting services for Burmese women and girls in Thai detention centres and NGO shelters; a booklet in Cambodia to help raise public awareness on trafficking; and assistance to help document cases and support young Burmese women trafficked into Thailand. (Total Expenditure: \$14,146)
- **Human Rights Small Grants Scheme – Thailand:** Assistance was provided between 2000-2002 for three activities helping victims of child trafficking in Bangkok, promoting the human rights of refugee and migrants in Thailand and working with migrant children. (Total Expenditure: \$113,363)
- **Protecting Exploited Child Labourers in the Philippines:** This 5 year \$2.3 million activity (1995-2000) implemented through UNICEF focused primarily on child labour, but also addressed trafficking. Assistance was provided for the protection and rehabilitation of abused and exploited child victims of trafficking, sexual exploitation and child labour (Expenditure: \$600,000 attributable to child trafficking).
- **Traffic in Children in Greater Mekong Area:** This activity provided training programs to prevent and monitor trafficking in children in the Greater Mekong Area (Total Expenditure: in 1995-96 of \$48,324).

JOINT STANDING COMMITTEE ON TREATIES
ATTORNEY-GENERAL'S DEPARTMENT

United Nations Convention Against Transnational Organized Crime

Dr Southcott asked the following question at the hearing on 13 February 2004:

'I asked about Indonesia before, and I am sure the committee would be especially interested in Singapore, Indonesia, Vietnam, Malaysia and Thailand – in how far their processes have got and how close they are to acting ... We would be interested in Cambodia as well' (pages 20-21).

The answer to the honourable member's question is as follows:

Cambodia

- Cambodia signed the Convention on 11 November 2001. The Department will provide the Committee with information on Cambodia's progress towards ratification as soon as possible.

Indonesia

- Indonesia signed the Convention on 12 December 2000. The Department will provide the Committee with information on Cambodia's progress towards ratification as soon as possible

Malaysia

- Malaysia signed the Convention on 26 September 2002 and aims to ratify the Convention in the first quarter of 2004. Malaysia's Money-Laundering Act was amended to comply with the Convention and final agreement to sign the Convention is currently with the Secretary-General of the Ministry of Home Affairs.

Singapore

- Singapore signed the Convention on 13 December 2000. Singapore's Ministry of Foreign Affairs has advised the Department of Foreign Affairs and Trade that there is an inter-agency process under way in Singapore to consider what changes are required domestically so that Singapore may ratify the Convention. Officials said that Singapore views ratification very seriously and wants to ensure that all domestic measures are in place to ensure compliance. Singapore could not give a time-frame for ratification.

Thailand

- Thailand signed the Convention on 13 December 2000. Thai officials have advised the Department of Foreign Affairs and Trade that Thailand intends to ratify the Convention. The Thai Criminal Law Institute is finalising a report outlining new laws and amendments to existing laws required for Thailand to implement the Convention. The Government is required to undertake a public consultation process before submitting the package of draft laws to Cabinet and then Parliament. Thai officials are not in a position to estimate a timeframe for the conclusion of this process.

JOINT STANDING COMMITTEE ON TREATIES
ATTORNEY-GENERAL'S DEPARTMENT

United Nations Convention Against Transnational Organized Crime

The Hon Southcott MP asked the following question at the hearing on 13 February 2004:

'Going back to the declaration, have any other state parties to the protocol included a declaration such as this on signature?' (page 23)

The answer to the honourable member's question is as follows:

- Four states in total have made declarations to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (the Protocol) (whether on signature or on ratification, acceptance, approval or accession). Seven states have made reservations to the Protocol.
- Other than Australia, two states (Belgium and Saudi Arabia) deposited a declaration on signature.
- No state has made an interpretative declaration similar to Australia's declaration.
- For your information, all the declarations and reservations made to the Protocol are attached.

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, acceptance, approval or accession.)

Australia

Upon signature:

Declaration:

"The Government of Australia hereby declares that nothing in the Protocol shall be seen to be imposing obligations on Australia to admit or retain within its borders persons in respect of whom Australia would not otherwise have an obligation to admit or retain within its borders."

Azerbaijan

Declaration:

"The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Protocol in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation."

Reservation:

"In accordance with paragraph 3 of Article 15 of the Protocol, the Republic of Azerbaijan declares that it does not consider itself bound by paragraph 2 of Article 15."

Belgium

Upon signature:

Declaration:

The French, Flemish and German-speaking Communities and the Regions of Wallonia, Flanders and Brussels-Capital are also bound by this signature.

Ecuador

Reservation:

Exercising the powers referred to in article 15, paragraph 3, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Government of Ecuador makes a reservation with regard to article 15, paragraph 2, relating to the settlement of disputes.

El Salvador

Upon signature:

Reservation:

The Government of the Republic of El Salvador does not consider itself bound by paragraph 2 of article 15, inasmuch as it does not recognize the compulsory jurisdiction of the International Court of Justice.

Lao People's Democratic Republic

Reservation:

"In accordance with paragraph 3, Article 15 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, the Lao People's Democratic Republic does not consider itself bound by paragraph 2, Article 15 of the present Protocol. The Lao People's Democratic Republic declares that to refer a dispute relating to interpretation and application of the present Protocol to arbitration or [the] International Court of Justice, the agreement of all parties concerned in the dispute is necessary."

Lithuania

Reservation:

"AND WHEREAS, it is provided in paragraph 3 of Article 15 of the Protocol, the Seimas of the Republic of Lithuania would like to declare that the Republic of Lithuania does not consider itself bound by paragraph 2 of Article 15, which provides that any State Party may refer any dispute concerning the interpretation or application of the said Protocol to the International Court of Justice."

Saudi Arabia

Upon signature:

Declaration and reservation:

The public order of the Kingdom of Saudi Arabia prohibits trafficking in persons for the purpose referred to in paragraph (a) of Article 3 of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.

The Kingdom does not consider itself bound by paragraph 2 of Article 15 of the said Protocol. It makes reservations regarding the contents of paragraph 3d of Article Six and paragraph 1 of Article 7 of the said protocol.

Tunisia

Reservation:

In ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly of the United Nations on 15 November 2000, declares that it does not consider itself bound by article 15, paragraph 2, of the Protocol and affirms that disputes concerning the interpretation or application of the Protocol may be referred to the International Court of Justice only after it has given its prior consent.

JOINT STANDING COMMITTEE ON TREATIES
ATTORNEY-GENERAL'S DEPARTMENT

United Nations Convention Against Transnational Organized Crime

Mr Wilkie asked the following question at the hearing on 13 February 2004:

'I am curious as to what the procedure would be if someone felt that we were in breach of paragraph 2 of article 11' (page 22).

The answer to the honourable member's question is as follows:

- Article 11, paragraph 2 of the United Convention Against Transnational Organized Crime (TOC Convention) provides:

Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
- For the Committee's reference, the Prosecution Policy of the Commonwealth states that 'throughout a prosecution the prosecutor must conduct himself or herself in a manner which will maintain, promote and defend the interests of justice'.
- In the event that Australia becomes a Party to the TOC Convention and another State Party felt that Australia had not complied with its obligation under Article 11(2), the largely aspirational nature of the obligation in Article 11(2) means that it is extremely unlikely that this concern would become the subject of a formal dispute under the Convention. If anything, a State Party that felt that Australia was in breach of its obligation under Article 11(2) would raise the matter with the Australian Government through diplomatic channels.
- However, the Convention does set out a formal dispute resolution mechanism for States Parties. Article 35 provides that States Parties shall endeavour to settle disputes concerning the interpretation or application of the Convention through negotiation.
- If a dispute cannot be settled through negotiation within a reasonable time, the dispute may be submitted to arbitration at the request of one of the disputing States Parties. If, after six months after the date of the request for arbitration, the States Parties are unable to agree on the organisation of the arbitration, either state may refer the dispute to the International Court of Justice. The International Court of Justice is the principal judicial organ of the United Nations. Only states may apply to and appear before the Court.
- A State Party with concerns about another country's implementation of the Convention could also raise the matter at the Conference of the Parties. The first Conference of the Parties is scheduled for 28 June to 9 July 2004. A core function of the Conference is in '[r]eviewing periodically the implementation of this Convention' and '[m]aking recommendations to improve this Convention and its implementation' (Article 32).
- Under Article 32, a State Party also has an obligation to provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement the Convention, as required. This reporting mechanism provides another check on state practice.

- The TOC Convention is an agreement between states and does not provide for dispute resolution between states and individuals. However, if an individual felt that Australia was in breach of its obligations under paragraph 2 of Article 11 the issue could be raised with the Government in the same way as any other issue of public concern.

JOINT STANDING COMMITTEE ON TREATIES
ATTORNEY-GENERAL'S DEPARTMENT

**Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the
United Nations Convention Against Transnational Organized Crime**

Dr Southcott asked the following question at the hearing on 13 February 2004:

'Paragraph 24 of the national interest analysis refers to article 17 of the protocol, which relates really to state parties considering bilateral or regional agreements to enhance the provisions of the protocol. Can the committee have some information on what efforts Australia has made to this end to conclude bilateral or regional agreements or operational arrangements or understandings?'
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The answer to the honourable member's question is as follows:

Law Enforcement Cooperation Program

- The Australian Federal Police's (AFP) Law Enforcement Cooperation Program is based on the AFP's international liaison officer network. Officers in the network form the link between countries, facilitating the exchange of information as well as enhancing communication and understanding by attending international conferences and seminars, promoting the Program and building a rapport with law enforcement officers of their host country.
- The AFP has an overseas liaison officer network of 41 officers at 24 posts in 23 countries.
- The AFP also has a range of memoranda of understanding with law enforcement agencies addressing cooperation on issues including transnational organised crime. The AFP currently has MOUs in place with:
 - Indonesia National Police
 - Royal Thai Police
 - Colombia
 - Colombian National Police
 - Department of Administrative Security
 - Fiscalia (Attorney-General's Department)
 - Philippines
 - Philippines National Police
 - Philippines Drug Enforcement Agency
 - National Bureau of Investigations
 - United States Drug Enforcement Administration
- The AFP is currently negotiating arrangements with

- The Royal Malaysia Police
- The Singapore Police
- The AFP also participates in initiative such as Interpol's Project Bridge. Project Bridge assists law enforcement agencies share vital information and interpret and analyse that information to use it attacking organised people smuggling activities.

Department of Immigration and Multicultural and Indigenous Affairs (DIMIA)

- A key component of Australia's success in combating people smuggling to Australia has been the establishment of the Regional Cooperation Arrangements (RCA) in place in Indonesia, and, on a smaller scale, in Cambodia.
- The RCA provide for intercepted Prospective Illegal Immigrants (PIIs) to be cared for by the International Organization for Migration (IOM), any potential protection needs assessed by UNHCR and voluntary return is encouraged.
- DIMIA's programme of capacity building with Indonesia and other priority countries in Asia is aimed at assisting countries to strengthen their border management capability to assist them in combating people smuggling, trafficking in people, combating terrorism and other forms of transnational crime. Without effective border management and control, people smugglers and others involved in facilitating the illegal movement of people will continue to take advantage of poorly managed borders to move freely through the region.
- DIMIA's approach to international engagement to combat people smuggling and other forms of transnational crime is multifaceted and includes:
 - Developing and/or enhancing cooperative, ongoing relationships with source, first asylum, transit, donor and destination countries,
 - Negotiating bilateral and multilateral agreements aimed at disrupting illegal migration and people smuggling,
 - Promoting a greater international awareness and appreciation of people smuggling,
 - Participating in international fora that address issues of international protection, unlawful migration and people smuggling,
 - Developing capacity building initiatives, including facilitating access to technical advice and training, such as document fraud training, English language and other specialised training to priority countries' selected immigration officials and others involved with managing border control and entry. Some examples of capacity building are:
 - provision of fully equipped document fraud laboratories to immigration bureaus in Indonesia, Laos and the Philippines, and
 - English language training and public administration scholarships to selected Indonesia immigration officers in Australia.

- Australia has increased levels of information exchange and cooperation with other countries affected by this illegal trade, including UK, France, Italy, Austria, Switzerland and the United Kingdom.
- In October 2002 and again in June 2003 DIMIA officers from the Intelligence Analysis Section met with Intelligence Officers in the United Kingdom, France, Italy, Austria, Switzerland and England, to exchange information on people smuggling and related issues, and to form and enhance networks important to the fight against people smuggling.
- DIMIA continues to actively participate in international fora such as the Inter-Governmental Consults on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC) Analysts Group and Pacific Rim (PACRIM) Immigration Intelligence Officers Conference.
- A list of DIMIA's current bilateral agreements on co-operation to combat people smuggling and trafficking is attached.

DIMIA's bilateral agreements on cooperation to combat people smuggling and trafficking

Country	Agreement	Title	Status	Date
Afghanistan	MOU	Memorandum of Understanding between Afghanistan and Australia on the Voluntary Return of Afghan Refugees and Asylum Seekers from Australia to Afghanistan	Signed	16 May 2002
Afghanistan	MOU	Memorandum of Understanding between the Transitional Islamic State of Afghanistan And The Commonwealth of Australia for Cooperation on Issues Relating to Irregular Migration And People Smuggling.	Signed	6 May 2003
Cambodia	MOU	Memorandum of Understanding between Kingdom of Cambodia and the Government of Australia Concerning Mutual Cooperation in Combating Irregular Migration, People Smuggling and Trafficking.	Signed	4-Mar-02
Canada	Arrangement	In July 1999, DIMIA signed an "Arrangement on Mutual Cooperation In Combating Illegal Immigration" between DIMIA and Citizenship and Immigration Canada. This arrangement provided for cooperation on the exchange of information on illegal migration and smuggling activities, priority for prosecuting smugglers, and mutual support and training.	Signed	July 1999
China, People's Republic of	MOU	Memorandum of Understanding Between the Government of Australia and the Government of the People's Republic of China on Cooperation in Combating Crime.	Signed	8 Sep 1999
China, People's Republic of	Minutes of Discussions	Minutes of Discussions Between the Department of Immigration and Multicultural Affairs of Australia, the Australian Federal Police and the Ministry of Public Security of the People's Republic of China Concerning Strengthening Law Enforcement Cooperation and Combating Illegal Immigration Matters.	Signed	16 May 2000

East Timor	MOU	MOU between the Govt of Australia and the Govt of East Timor on the exchange of information and mutual cooperation in combating illegal immigration and people smuggling	Signed	28 Feb 2002
East Timor	MOU	MOU between the Govt of Australia and the Govt of East Timor on regional cooperation arrangements for combating illegal immigration and people smuggling	Signed	28 Feb 2002
Fiji	MOU	MOU on mutual cooperation between the Government of Australia and the Government of Fiji on migration, refugees, irregular migration and people smuggling	Signed	29 April 2003
IOM	Exchange of Letters	Exchange of Letters Between the Government of Australia and the International Organisation for Migration for Activities in Indonesia to Support the Implementation of the Regional Cooperation Model to Combat People Trafficking and Irregular People Movements	Signed	20 Jul 2000
Iran		Memorandum of Understanding on Consular Matters between the Government of Australia and the Government of the Islamic Republic of Iran	Signed	12 March 2003
Laos	MOU	Memorandum of Understanding between the Lao People's Democratic Republic and the Government of Australia Concerning Mutual Cooperation in Combating Unlawful Migration, Trafficking in Humans and Smuggling of People.	Signed	29 April 2003
Papua New Guinea	MOU	Memorandum of Understanding on Illegal People Movements in the Torres Strait	Signed	9 Feb 1994
Papua New Guinea	MOU	Memorandum of Understanding on Mutual Cooperation between the Government of Papua New Guinea and the Government of Australia on Migration, Refugees and People Smuggling.	Signed	1 July 2003
Sri Lanka	JMS	Joint Ministerial Statement in Support of Mutual Cooperation in Combating Illegal Immigration, including return agreement.	Signed	29 April 03

Thailand	JMS	Joint Ministerial Statement in Support of Mutual Cooperation in Combating Illegal Immigration.	Signed	6-Jul-01
Vietnam	JS	Joint Statement in Support of Mutual Cooperation in Combating Illegal Immigration.	Signed	14-Sep-00