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(UNITED NATIONS SUBCOMMITTEE)

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

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JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

United Nations Subcommittee

19 May, 2000 Friday, 19 May 2000

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

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

Senators and members in attendance: Senators Bourne, Ferguson, Gibbs, Payne and Quirke, and Mr Baird, Mr Hollis and Mr Price

Terms of reference for the inquiry:

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

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

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Subcommittee met at 9.14 a.m.

HEYWARD, Mr Peter, Director, Human Rights and Indigenous Issues Section, Department of Foreign Affairs and Trade

MERCER, Ms Beverly, Director, United Nations and Commonwealth Section, Department of Foreign Affairs and Trade

POTTS, Mr Michael, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade

ROWE, Mr Richard, Legal Adviser, Department of Foreign Affairs and Trade

TOMI, Ms Janet, Assistant Secretary, International Organisations Branch, Department of Foreign Affairs and Trade

CHAIR—I declare open this public hearing of the United Nations Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. This is the first hearing in an inquiry presently being conducted by the committee into Australia's relationship with the United Nations and the prospects for reform of the United Nations in the post-Cold War world. The United Nations is an organisation that grew out of highly idealistic circumstances at the end of the Second World War. Then, through structured processes of international law, it sought to put an end to the scourge of war and to reaffirm faith in human rights and the dignity and worth of the human person and to promote social progress. The original membership was 50 nations. It now has 188 members.

CRITICISM HAS BEEN LEVELLED AT THE UNITED NATIONS IN RECENT YEARS. CONFLICTS WITHIN NATION STATES HAVE ESCALATED AND CONSEQUENTLY PRESSURE HAS MOUNTED ON THE UNITED NATIONS FOR HUMANITARIAN INTERVENTION. THE EFFORTS OF THE UNITED NATIONS HAVE HAD MIXED SUCCESS. WARS WITHIN STATES DO NOT FIT NEATLY WITHIN THE CHARTER OF THE UNITED NATIONS OR WITHIN THE TRADITIONAL VIEWS OF NON-INTERVENTION IN INTERNATIONAL RELATIONS. THE SECRETARY-GENERAL OF THE UNITED NATIONS, KOFI ANNAN, HAS FLAGGED THE NEED FOR THE UNITED NATIONS TO RECONSIDER THE DEFINITIONS OF NATIONAL SOVEREIGNTY AND SELF-DETERMINATION AND THE WAY IN WHICH THE ORGANISATION RESPONDS TO CRISES. AS ITS AGENDA INCREASES, PRESSURE HAS MOUNTED ON THE UNITED NATIONS TO RESTRUCTURE AND REFORM ITS OPERATIONS AND ITS FUNDING ARRANGEMENTS. THE AIM OF THIS INQUIRY IS TO CONSIDER THE ROLE OF THE UNITED NATIONS WITHIN THE CHANGED CIRCUMSTANCES OF THE POST-COLD WAR ENVIRONMENT AND THE RESPONSE OF THE AUSTRALIAN GOVERNMENT TO ARGUMENTS FOR STRUCTURAL, PROCEDURAL AND FINANCIAL REFORM OF THE UNITED NATIONS. FURTHER HEARINGS WILL BE HELD IN BRISBANE, SYDNEY, MELBOURNE AND ADELAIDE. A FINAL HEARING WILL BE HELD IN CANBERRA AT A LATER DATE. THE SUBCOMMITTEE HOPES TO CONTRIBUTE TO THE DEBATE AND MAKE RECOMMENDATIONS TO THE GOVERNMENT EARLY NEXT YEAR.

I WELCOME REPRESENTATIVES FROM THE DEPARTMENT OF FOREIGN AFFAIRS AND TRADE. I MUST ADVISE YOU THAT THE PROCEEDINGS TODAY ARE LEGAL PROCEEDINGS OF THE PARLIAMENT AND WARRANT THE SAME RESPECT WHICH PROCEEDINGS IN THE RESPECTIVE HOUSES OF PARLIAMENT

COMMAND. ALTHOUGH THE SUBCOMMITTEE DOES NOT REQUIRE YOU TO GIVE EVIDENCE ON OATH, YOU SHOULD BE AWARE THAT THIS DOES NOT ALTER THE IMPORTANCE OF THE OCCASION. A DELIBERATE MISLEADING OF THE SUBCOMMITTEE MAY BE REGARDED AS A CONTEMPT OF PARLIAMENT. THE SUBCOMMITTEE PREFERS ALL EVIDENCE TO BE GIVEN IN PUBLIC, BUT SHOULD YOU AT ANY STAGE WISH TO GIVE ANY EVIDENCE IN PRIVATE YOU MAY ASK TO DO SO AND THE SUBCOMMITTEE WILL GIVE CONSIDERATION TO YOUR REQUEST. WE HAVE RECEIVED THE DEPARTMENT OF FOREIGN AFFAIRS AND TRADE SUBMISSION, AND IT HAS BEEN AUTHORISED FOR PUBLICATION. DO YOU WISH TO MAKE ANY ADDITIONS OR CORRECTIONS TO THAT SUBMISSION?

Mr Potts—No, thank you.

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

Mr Potts—Let me say first of all that the Department of Foreign Affairs and Trade welcomes this inquiry. We welcome also the opportunity to cooperate with the subcommittee in its proceedings over the course of the next year. We see this as a very useful opportunity to contribute to a national debate on the role of the United Nations. In these few opening remarks, I would like to highlight a few of the key points included in the DFAT submission. I do not want to go into detail on every issue. I think it is important to say up-front that, given Australia's size and place in the world, we need a functioning and effective mechanism for multilateral cooperation to complement and reinforce our bilateral and regional relationships. The UN is certainly an imperfect organisation, but it is the only organisation extant that can fulfil this need.

OUR SECOND OPENING POINT IS TO EMPHASISE THE NATURE OF THE UNITED NATIONS AS AN ASSOCIATION OF SOVEREIGN MEMBER STATES WHO CHOOSE TO COOPERATE ON VARIOUS ISSUES FOR MUTUAL BENEFIT. THE UN IS NOT A SOVEREIGN ENTITY IN ITSELF. IT IS A CREATION OF SOVEREIGN STATES—ITS MEMBERS. AGAINST THIS BACKGROUND, THE AUSTRALIAN GOVERNMENT IS COMMITTED TO ENSURING THAT OUR INVOLVEMENT IN THE UN AND IN OTHER INTERNATIONAL ORGANISATIONS SERVES THE NATIONAL INTEREST. WE FOCUS ON ACHIEVING PRACTICAL, CONSTRUCTIVE AND REALISTIC OUTCOMES WHICH WILL BE TO THE BENEFIT OF AUSTRALIA AND AUSTRALIANS, BOTH NOW AND IN THE FUTURE. WE ALSO SEE OUR MEMBERSHIP OF THE UN AS PROVIDING AN OPPORTUNITY TO INFLUENCE OUR GLOBAL DELIBERATIONS ON QUESTIONS OF IMPORTANCE TO AUSTRALIA, INCLUDING WITH RESPECT TO THE DRAFTING OF RELEVANT MULTILATERAL AND INTERNATIONAL LEGAL INSTRUMENTS.

I WANT TO TAKE UP TWO OR THREE OF THE THEMES FROM YOUR TERMS OF REFERENCE AND TO TOUCH FIRST OF ALL ON PEACEKEEPING. AUSTRALIA HAS TRADITIONALLY FROM 1945 ONWARDS BEEN A STRONG SUPPORTER OF THE VITAL ROLE THAT THE UNITED NATIONS HAS PLAYED AND CONTINUES TO PLAY IN RELATION TO THE PRESERVATION OF INTERNATIONAL PEACE AND SECURITY—THE BEDROCK AIM OF THE UNITED NATIONS—PARTICULARLY THROUGH ITS PEACEKEEPING AND PEACE ENFORCEMENT OPERATIONS. OUR INVOLVEMENT IN DELIBERATIONS ON INTERNATIONAL PEACE AND SECURITY ISSUES AND OUR CONTRIBUTION TO PARTICULAR OPERATIONS CONTINUE TO CONTRIBUTE TO GLOBAL SECURITY AND THUS TO OUR SECURITY. WE SHOULD ALWAYS REMEMBER THAT THE UN AND ITS PEACEKEEPING FUNCTIONS IN

PARTICULAR GREW UP IN THE CONTEXT OF THE HISTORY OF THE FIRST HALF OF THIS CENTURY AND THE FAILURE OF THE LEAGUE OF NATIONS. THROUGH THE DARKEST PERIOD OF THE COLD WAR AND SUBSEQUENTLY THE UN HAS PROVIDED A MECHANISM FOR THE DEVELOPMENT, MAINTENANCE AND IMPLEMENTATION OF INTERNATIONAL SECURITY, AND THE DEVELOPMENT OF GLOBAL SECURITY NORMS.

THERE HAS BEEN I THINK, AS YOU ALLUDED TO, MR CHAIRMAN, A REVOLUTION IN THE NATURE OF PEACEKEEPING MISSIONS. FOR THE FIRST 30 TO 40 YEARS THEY ADHERED FAIRLY RIGIDLY TO THE PRINCIPLES OF CONSENT, NEUTRALITY AND THE NON-USE OF FORCE EXCEPT IN SELF-DEFENCE. THESE SORTS OF OPERATIONS—I THINK UNFICYP IN CYPRUS IS A GOOD EXAMPLE—INVOLVE THE MONITORING OF BUFFER ZONES AND THE MONITORING OF A CEASE-FIRE IN PLACE WHILE MEDIATORS SEEK A RESOLUTION TO THE CONFLICT.

WE HAVE SEEN AN EVOLUTION OVER THE LAST DECADE SO THAT OPERATIONS DURING THE 1990S HAVE EXPANDED IN SCOPE AND COMPLEXITY AND HAVE COMMONLY UNDERTAKEN POST-CONFLICT PEACE BUILDING ACTIVITIES ASSOCIATED WITH THE IMPLEMENTATION OF PEACE AGREEMENTS. MANY OF THESE HAVE BEEN INTRASTATE RATHER THAN BETWEEN STATES. THIS EVOLUTIONARY EXPANSION IN THE SCOPE OF UN OPERATIONS IN CONFLICTS OF THE 1990S HAS HIGHLIGHTED THE NEED FOR REVIEW OF THE ROLE AND CAPACITY OF THE UN FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY. SO WE WERE PLEASED TO SEE ON 7 MARCH THIS YEAR THAT THE SECRETARY-GENERAL ANNOUNCED THE LAUNCH OF A MAJOR NEW STUDY TO EXAMINE AND MAKE RECOMMENDATIONS ON UN PEACE OPERATIONS. AUSTRALIA CONTINUES TO EXPRESS PUBLICLY ITS STRONG SUPPORT FOR THE PRINCIPLES BEHIND THE CURRENT REFORMS IN ITS STATEMENTS TO THE SPECIAL COMMITTEE ON PEACEKEEPING OPERATIONS AND TO THE FIFTH COMMITTEE, THE BUDGET AND ADMINISTRATIVE COMMITTEE OF THE UN.

WHILE THERE IS OFTEN A FOCUS ON THE MILITARY ASPECTS OF PEACEKEEPING, I THINK IT IS IMPORTANT NOT TO OVERLOOK THE IMPORTANT ROLE, THE CRITICAL ROLE IN MANY WAYS, OF CIVILIAN AND MILITARY POLICE IN PEACEKEEPING OPERATIONS. I WOULD CERTAINLY WANT TO RECORD THE MAJOR CONTRIBUTIONS MADE BY THE AUSTRALIAN FEDERAL POLICE IN THESE EXERCISES, PARTICULARLY MOST RECENTLY IN EAST TIMOR.

WITH MEDIA IMAGES OF EAST TIMOR BEGINNING TO FADE FROM YOUR CONSCIOUSNESS AND BEING REPLACED BY RATHER DIFFERENT STORIES COMING OUT OF SIERRA LEONE, I THINK THAT PROVIDES AN OPPORTUNITY FOR US TO RECALL THAT THE ISSUE OF ADEQUATE FUNDING AND RESOURCING OF PEACEKEEPING OPERATIONS REMAINS ONE OF THE CRITICAL FACTORS IN MAXIMISING THE EFFECTIVENESS OF UNITED NATIONS' OPERATIONS. ALSO FOR A MAJORITY OF STATES, FUNDING FROM THE PEACEKEEPING BUDGET IS A CRITICAL FACTOR IN THEIR BEING ABLE TO PARTICIPATE IN PEACEKEEPING OPERATIONS. WE HAVE ALWAYS HELD THE VIEW THAT PARTICIPATION BY A WIDE RANGE OF COUNTRIES IN PEACEKEEPING OPERATIONS ADDS LEGITIMACY AND SUPPORT FOR THOSE OPERATIONS.

THE QUESTION OF HUMANITARIAN INTERVENTIONS IN INTERNATIONAL RELATIONS AND THE RELATED ISSUE OF NATIONAL SOVEREIGNTY HAVE

BECOME ONE OF THE MAJOR ISSUES FACING THE COMMUNITY. WE BELIEVE IT HIGHLY DESIRABLE THAT INTERNATIONAL INTERVENTION TAKES PLACE WITH THE CONSENT OF THE HOST GOVERNMENT, AS WAS THE CASE IN EAST TIMOR, AND THAT IT BE AUTHORISED BY THE SECURITY COUNCIL.

THE ISSUE OF DEVELOPING A STANDING ARMY IN THE UNITED NATIONS IS A CONTROVERSIAL ONE, NOT JUST IN AUSTRALIA. FOR EXAMPLE, US CONGRESSIONAL REQUIREMENTS FOR THE PAYMENT OF UN DUES SPECIFICALLY NOTE THAT THE UN MAY NOT ESTABLISH A STANDING ARMY. QUESTIONS OF FUNDING, COMMAND AND DEPLOYMENT OF ANY STANDING ARMY HAVE ALSO COMBINED TO ENSURE THAT SUPPORT FOR THE CONCEPT REMAINS WEAK. NONETHELESS, THE SLOW RESPONSE RATE TO HUMANITARIAN CRISES HAS LED TO A CALL FOR SOME SYSTEM FOR THE RAPID DEPLOYMENT OF UN MANDATED FORCES. AND, IMPORTANTLY, THE US HAS NOW GIVEN SOME BACKING TO THIS PUSH. WE SUPPORT DEBATE ON MECHANISMS FOR A SPEEDING UP OF THE DEPLOYMENT OF PEACEKEEPING OPERATIONS.

I SHOULD SAY ALSO THAT, BESIDES CLASSIC UN PEACEKEEPING OPERATIONS, WE DO SEE CONSIDERABLE ADVANTAGES IN COOPERATION BETWEEN THE UN AND REGIONAL ORGANISATIONS WHICH WOULD ALLOW FOR THE DEVELOPMENT OF EFFECTIVE REGIONAL STRATEGIES FOR CRISIS PREVENTION FOR PEACEKEEPING, PEACE SUPPORT AND HUMANITARIAN ASSISTANCE. THESE SORTS OF ARRANGEMENTS ENABLE THE SHARING OF RESPONSIBILITY BASED ON THE COMPARATIVE STRENGTHS OF PARTICULAR PARTNERS LEADING TO COMPLEMENTARITY OF EFFORT AND AVOIDANCE OF COMPETITION.

LET ME TOUCH BRIEFLY ON HUMAN RIGHTS AND SAY THAT OUR APPROACH TO HUMAN RIGHTS ACCORDS PRIORITY TO PRACTICAL EFFORTS THAT CAN DIRECTLY CONTRIBUTE TO IMPROVEMENT OF HUMAN RIGHTS SITUATIONS, AND WE INCLUDE IN THIS DEVELOPMENT COOPERATION PROGRAMS. THE IMPORTANCE OF HUMAN RIGHTS GOES BACK TO THE BEGINNING OF THE UN—IT IS CLEARLY EMBEDDED IN THE CHARTER—AND IN FULFILMENT OF THIS MANDATE THE UN HAS BEEN DEVELOPING AND IMPLEMENTING A LARGE HUMAN RIGHTS TREATY BODY SYSTEM COMPRISING A SUITE OF TREATIES AND DECLARATIONS AND A RANGE OF MECHANISMS FOR MONITORING AND ADVISING STATES ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS. AS WITH MANY AREAS OF THE UN FAMILY, WE BELIEVE THAT THIS PROCESS IS NOW IN NEED OF SERIOUS REFORM. YOU WILL BE AWARE THAT THE MINISTER FOR FOREIGN AFFAIRS ANNOUNCED ON 30 MARCH THAT THE GOVERNMENT WOULD UNDERTAKE A WHOLE OF GOVERNMENT REVIEW OF THE UN TREATY BODY COMMITTEE SYSTEM AS IT AFFECTS AUSTRALIA. THE REVIEW IS UNDER WAY AT THE MOMENT, AND THE OBJECTIVE OF IT IS TO ASSESS THE RANGE OF AUSTRALIAN NATIONAL INTERESTS AT PLAY IN THE SYSTEM. THE GOVERNMENT WANTS TO ASSIST THE COMMITTEES TO BECOME LESS CUMBERSOME, LESS COMPLEX AND ALSO TO OPERATE EFFECTIVELY WITHIN THEIR MANDATES.

YOUR TERMS OF REFERENCE TOUCH ALSO ON THE INTERNATIONAL CRIMINAL COURT, AND WE SEE THE FORESHADOWED ESTABLISHMENT OF THE COURT AS A VERY POSITIVE DEVELOPMENT. IT WILL GIVE THE UN SYSTEM THE CAPACITY TO DEAL WITH THE MOST SERIOUS CRIMES OF CONCERN TO THE INTERNATIONAL COMMUNITY, AND IT HAS BEEN A LONGSTANDING GOAL OF AUSTRALIA. AUSTRALIA MADE A SIGNIFICANT CONTRIBUTION TO THE NEGOTIATION OF THE STATUTE OF THE COURT

THROUGHOUT THE PREPARATORY PROCESS AND ALSO AT THE ROME CONFERENCE IN 1998 AT WHICH THE STATUTE WAS ADOPTED WITH OVERWHELMING SUPPORT FROM THE INTERNATIONAL COMMUNITY. MY COLLEAGUE MR ROWE CHAIRED THE LIKE-MINDED GROUP OF OVER 60 STATES WHICH HAVE STRONGLY SUPPORTED THE ESTABLISHMENT OF THE COURT, AND IN FACT HE CONTINUES TO CHAIR THAT GROUP DURING THE PREPARATORY PROCESS.

IN TERMS OF REFORM OF THE UN AND ITS AGENCIES, I HAVE TO SAY THAT, LIKE THE SENSE I GOT FROM YOUR OPENING COMMENTS, MR CHAIRMAN, THE GOVERNMENT CERTAINLY IS IN NO DOUBT THAT THE UN REMAINS A VERY IMPERFECT SYSTEM DESPITE ITS MANY ACHIEVEMENTS. WE ARE A STRONG PROPONENT OF REFORM OF THE UN SYSTEM, NOT FOR REFORM'S SAKE ALONE BUT IN ORDER TO MAKE THE SYSTEM MORE EFFICIENT AND EFFECTIVE AND MORE ABLE TO CARRY OUT ITS MANDATES. PROGRESS HAS BEEN MIXED OVER THE PAST THREE YEARS, ALTHOUGH THE SECRETARY-GENERAL HAS TRIED TO PROPEL HIS REFORM PACKAGE THROUGH THE SYSTEM. BUT THE GOVERNMENT IS HAPPY TO ACKNOWLEDGE NONETHELESS THAT SOME NOTABLE GAINS HAVE BEEN MADE UNDER HIS ENERGETIC AND COMMITTED LEADERSHIP.

THIS YEAR WILL MARK THE MILLENNIUM ASSEMBLY OF THE UNITED NATIONS, AND THE MILLENNIUM SUMMIT OF HEADS OF STATE AND GOVERNMENT WILL TAKE PLACE FROM 6 TO 8 SEPTEMBER. THIS PROVIDES AN OPPORTUNITY TO MOVE THE PROCESS FORWARD AND TO ADDRESS WHAT KIND OF SYSTEM WE WANT IN THE DECADES TO COME. OUR POSITION ON REFORM OF THE SECURITY COUNCIL IS COVERED IN OUR SUBMISSION, BUT I WANT TO MENTION THAT IT HAS RECENTLY RECEIVED A SMALL NUDGE FORWARD WITH THE ANNOUNCEMENT OF SOME ADDITIONAL FLEXIBILITY ON THE PART OF THE US IN TERMS OF THE MAXIMUM NUMBER OF SECURITY COUNCIL MEMBERS THAT THEY ARE TO CONTEMPLATE. YOU WILL SEE ALSO FROM OUR SUBMISSION THAT REFORM OF THE ELECTORAL GROUP SYSTEM WITHIN THE UN IS ANOTHER AUSTRALIAN PRIORITY. WHILE THIS ISSUE IS YET TO BE ACCEPTED ON THE REFORM AGENDA, THE SHARP INCREASE IN UNITED NATIONS MEMBERSHIP AMONG THE SOUTH PACIFIC STATES OVER THE PAST FEW YEARS IS LIKELY TO WORK IN SUPPORT OF OUR OBJECTIVE OF ULTIMATELY BELONGING TO A GROUP MORE CLOSELY ALIGNED TO OUR GEOGRAPHY.

I FINALLY WANT TO TOUCH ON THE QUESTION OF FUNDING FOR THE UN AND TO SAY HERE THAT SINCE 1995 THE SYSTEM HAS FACED A SERIOUS FINANCIAL CRISIS, DUE MAINLY TO THE FACT THAT MANY COUNTRIES DO NOT PAY THEIR CONTRIBUTIONS ON TIME AND IN FULL. I AM PLEASED TO SAY THAT OF COURSE WE ARE NOT AMONG THEM. AUSTRALIA APPEARS YEAR AFTER YEAR IN THE SO-CALLED HONOUR ROLL OF UN MEMBERS WHICH PAY IN FULL AND ON TIME, AND WE ARE GENERALLY IN VERY LIMITED COMPANY. WHILE THE UN'S FINANCIAL SITUATION HAS RECENTLY IMPROVED LARGELY AS A RESULT OF PAYMENTS FROM THE US, THE LACK OF ADEQUATE AND PREDICTABLE SOURCES OF FUNDING MEAN THAT IMPROVEMENT IS LIKELY TO BE ONLY TEMPORARY. THIS SITUATION IS COMPOUNDED BY THE FACT THAT FUTURE AMERICAN ARREARS PAYMENTS ARE SUBJECT TO CONDITIONALITY LAID DOWN IN RECENT US DOMESTIC LEGISLATION.

THERE ARE NEGOTIATIONS UNDER WAY AT THE MOMENT ON A REVISED SCALE OF ASSESSMENTS. THIS IS BEING DONE IN THE FIFTH COMMITTEE, WHICH IS CHAIRED BY AUSTRALIA'S AMBASSADOR TO THE UN, PENNY

WENSLEY. THERE HAVE BEEN 12 POSSIBLE MODELS PUT FORWARD FOR REVISING THE SCALES, SO THERE IS A PLETHORA OF OPTIONS BEFORE THE COMMITTEE. WE ARE CONCERNED FROM OUR PERSPECTIVE TO ENSURE THAT ANY REALIGNMENT OF CONTRIBUTIONS DOES NOT RESULT IN A NET INCREASED FINANCIAL DEMAND ON AUSTRALIA. IN CONCLUSION, LET ME EMPHASISE ONCE AGAIN THAT THE GOVERNMENT BELIEVES THAT ACTIVE PARTICIPATION IN UN AFFAIRS REMAINS IN OUR BEST NATIONAL INTEREST. NEVERTHELESS, SOME MAJOR CHANGES ARE REQUIRED IN THE WAY THAT THE UNITED NATIONS AND ITS VARIOUS AGENCIES OPERATE IF IT IS TO REMAIN RELEVANT TO THE NEEDS OF MEMBER STATES INTO THE FUTURE. AUSTRALIA IS COMMITTED TO ENSURING THAT THE UN DOES REMAIN RELEVANT.

CHAIR—Thank you, Mr Potts. You spoke at some length about the role of the United Nations in peacekeeping, and of course that is probably the most public duty that the United Nations has performed in the last few years. When we talk about peacekeeping, it would appear that over the past few years you can only have peacekeeping forces when there is a peace to keep; you do not say anything about peace enforcement. In relation to systems of rapid deployment and all the other criteria that might be necessary to involve the United Nations more quickly in a peacekeeping role, do you have any views on how we can go about perhaps changing the rules that currently apply to allow for some peace enforcement within national boundaries? When you talk about preventative diplomacy, which you do in your submission, the only way that preventative diplomacy can work is that if the parties involved actually want it to work, and conflicts which have erupted in the world in the past 10 years have been in countries which do not want to cooperate. Do you have any views on how the structure could be changed or the rules by which the United Nations operates under could be changed to include some sort of peace enforcement and perhaps extend the area of preventative diplomacy to make sure that the human tragedies that we have seen do not occur again?

Mr Potts—There are a number of layers to that question. It really goes to the nub—

CHAIR—It was a bit long, I am sorry.

Mr Potts—No, that is all right. It is a key question in many ways, and it goes to the dilemma that a body like the United Nations faces in approaching complex issues. A first response is to say that one problem the UN faces is that, in approaching particular situations, there is not a one-size fits all approach to situations. That is recognised to an extent in the Charter, which gives at least three different options for peacekeeping or perhaps peace enforcement, depending on the situation. Chapter VII of course has the option about mandatory force and is obviously the most effective if political will can be summoned to bring about the consensus needed to adopt it. Chapter VI has the option of the more traditional type of peacekeeping. There is also the little used, at least through the UN system, chapter VIII, which has the option allowing for regional solutions to problems of international peace and security through regional organisations.

THERE ARE TWO DIFFERENT OPTIONS UNDER CHAPTER VII. ONE IS WHAT HAPPENED IN THE CONGO IN THE EARLY SIXTIES WHEN CENTRAL GOVERNMENT VIRTUALLY DISAPPEARED AND A UN FORCE WAS DEPLOYED WITH A STRONG MANDATE. AT THE RISK OF SOME SIMPLIFICATION, IT FOUGHT ITS WAY INTO KATANGA AND THEN DID NOT SO MUCH BROKER A PEACE AS IMPOSE A PEACE; BUT THE RESULTS OF THAT OPERATION WERE

VERY MIXED. THERE IS THE MORE RECENT USE OF CHAPTER VII THAT WE SAW IN EAST TIMOR, WHICH ALLOWED FOR THE DEPLOYMENT OF A FORCE WITH THE CONSENT OF THE GOVERNMENT—IN THIS CASE, INDONESIA, AT THE TIME—BUT WHICH HAD CHAPTER VII POWERS IF THEY WERE REQUIRED. SO THERE IS ALREADY SOME UTILISATION OF THE POWERS, BUT I DO NOT THINK THERE IS A CODIFICATION OF WHAT SOLUTION WOULD BEST FIT WHICH INDIVIDUAL SITUATION, AND I AM NOT SURE THAT THAT IS POSSIBLE. THERE IS A SYSTEMIC PROBLEM AS WELL: AT THE END OF THE DAY, ALTHOUGH THERE IS A SECRETARIAT AND SO ON, THE UN IS ESSENTIALLY A COLLECTION OF 188 SOVEREIGN STATES. GIVEN THE INHERENT LIMITATIONS OF THAT COLLECTION OF STATES, IT IS MORE LIKELY THAT ANY RESPONSE TO A PARTICULAR SITUATION IS GOING TO BE A PRAGMATIC ONE RATHER THAN A DOCTRINAL ONE. I THINK THAT IS THE SORT OF REALITY WITHIN WHICH THE UNITED NATIONS OPERATES.

CHAIR—You really highlighted the situation as it currently exists. Even in spite of what you said, the difficulties are actually in putting in place a structure which allows the United Nations to move quickly enough to prevent human tragedy.

Mr Potts—Obviously, the key to it is the Security Council and its effective operation. I think it is fair to say that over the last five to seven years the Security Council has made a big effort to lift its own game. It meets much more frequently, both in public sessions and in private sessions. Over the last two weeks it has probably had five or six meetings or consultations on Sierra Leone, and it has had a meeting on Tajikistan and one on Kosovo, I believe. It is much more like the sort of standing body that the charter originally envisaged back in 1945 but which fell into a high degree of rigidity during the Cold War years. The council is still not operating as effectively as we would like. It is not easy for non-members to influence the outcomes, although it can be done and done very effectively, as was demonstrated by the way Australia collaborated with the Security Council to bring about the mandate for INTERFET. But that does require a lot of heavy lifting. There is still a degree of lack of transparency in many of its procedures, and we have been pushing the Security Council to consider more closely its own internal working procedures. There have been some small incremental steps, but we would like to push that out further. The role of the Security Council is critical to the effectiveness of the United Nations' response to international crises, and there is still quite a lot of work required.

CHAIR—How serious does a crisis have to get before it becomes the subject of Security Council debate? For example, would the current situation in Zimbabwe be enough to trigger some Security Council discussion?

Mr Potts—It would be difficult to envisage that as things stand, given the way that most members of the UN attach importance to the principle of non-interference in internal affairs. I suppose that could change if developments in Zimbabwe went in one of two directions: one, if tensions within Zimbabwe somehow moved across state borders; secondly, if there were a complete breakdown of law and order and it came to be considered as a failed state or fairly close to a failed state such as we saw in Liberia and maybe in Sierra Leone. I do not think those situations are in prospect at the moment, so I would personally be surprised if the UN were able to take interest in Zimbabwe as it stands.

There is another reason why the UN would be pretty skittish about it, that is, there is already a high degree of international interest in events in Zimbabwe from other institutions. The Commonwealth is an obvious one. It is deploying election observers to Zimbabwe—there is action under way already. There are EU election

observers about to go into Zimbabwe and I think the US is fielding a delegation, and so on. It could be argued that there is already quite a wide international response to what is happening there.

CHAIR—Have those observers been invited to be there?

Mr Potts—I do not think they have been invited, but I think the government has said that it is open to people fielding observers. Certainly, in the case of the Commonwealth, President Mugabe made that clear when he saw the Commonwealth Secretary-General, Don Mackinnon, a few days ago.

CHAIR—As you said, unless there was a breakdown of law and order—I am not suggesting it might happen, but it is an example of where something may happen in the future—the real problem that the United Nations faces and that we face in looking into how the United Nations can be reformed is, if there was a breakdown of law and order, how long it would be before the United Nations could get in there. That is the real question.

Mr Potts—Yes.

CHAIR—Because the damage could be done by the time they get there.

Mr Potts—That is certainly a possibility. One other element that you might want to factor into your thinking is that, if there were a very significant breakdown of internal structures in Zimbabwe, rather than looking to a United Nations response, the countries of the region might well want to take the lead in responding. There is a Southern Africa Development Community, which is more than just an economic cooperation grouping. South Africa plays a very large role in that. They might well want to take a lead. While some countries like Australia might want to look to a UN response, the countries more closely touched might favour taking the lead themselves. Complex situations often have a complex series of options for response.

Mr HOLLIS—What part does the UN play in Australia's foreign policy formation? Is our foreign policy formation influenced by what is happening at the UN or do we use the UN as a vehicle to parade or to state our foreign policy?

Mr Potts—No, it certainly goes beyond that. I suppose the easiest structural way to look at the way we pursue foreign policy is to look at the three different vehicles for pursuing our interests: the bilateral angle, the multilateral angle and then the regional angle. The present government has been very keen to emphasise bilateral and regional aspects and it has certainly made it clear that that is not to the exclusion of multilateral aspects. In a sense, we pursue our goals pragmatically and we try to work to a mix of responses. Generally, we try not to put all our options in one basket but to maximise the levers we can pull. In many respects, the UN is a very good organisation for pursuing goals if they cover a wide range of countries and they are not focused on a particular region, but of course it has inherent limitations—188 members, difficult to get consensus, quite difficult in terms of mounting campaigns which can be expensive and demanding of resources, and so on. The best way of characterising it is that we do not rule out any option. Our instinct is to try to rule them all in, providing there is an appropriate availability for the particular question.

Mr HOLLIS—What is the benefit of having permanent membership of the UN Security Council? Now it is five and I see the Australian government would support expansion to eight

or nine. Has any consideration been given to having no permanent membership? What is the advantage of having the permanent membership now? There might have been an advantage in 1945 but, as your own submission says, it is a different world today from what it was in 1945.

Mr Potts—I suppose I would start by saying that it is obviously in the interests of all UN members that those few members who can make the most contribution to the system are heavily engaged and committed to the system, so that the system's effectiveness is maximised as a result. The inclusion of the five members in 1945 obviously reflected those countries' positions at that time. Things have changed, as we have said in our submission. On the other hand, we have to be realistic in exploring the notion that countries which are currently permanent members would voluntarily cede that power. Obviously, all permanent members have a veto power which extends to any change in the charter of the UN reducing their own role. We have thought it more useful to explore the notion of expanding the number of permanent members and also expanding the size of the Security Council itself. The present council of 15 members dates from the early 1960s—I think there were 10 members in 1945. There has been no change since the early 1960s. At that stage, there were fewer than 100 members. Now there are 188. It would be sensible to expand the Security Council but to a modest degree.

WE HAVE MADE IT CLEAR THAT CENTRAL TO OUR SUPPORT FOR AN EXPANSION WOULD BE SOME EXPANSION ALSO IN THE NUMBER OF PERMANENT MEMBERS. WE ARE NOT TOO PRESCRIPTIVE, ALTHOUGH WE HAVE GONE PUBLIC IN TERMS OF OUR SUPPORT FOR JAPAN AND GERMANY HAVING PERMANENT MEMBERSHIP. ALSO WE WANT A BIT MORE EXPLORATION OF THE NOTION THAT THERE COULD BE ANOTHER TWO OR THREE PERMANENT SEATS ALLOCATED TO REGIONS BUT WITH SOME FORM OF REGIONAL ROTATION WITHIN THOSE SEATS.

THE OTHER ASPECT OF PERMANENT MEMBERSHIP IS THE QUESTION OF THE VETO. IT IS SOMETHING WE INHERENTLY DO NOT LIKE BECAUSE IT IS OBVIOUSLY AN OBSTACLE TO RAPID DECISION MAKING. IT IS A REALITY NONETHELESS THAT THE SYSTEM IS BASED ON AND IT DATES FROM THE BEGINNING. WE WOULD LIKE TO SEE IT DISAPPEAR OVER TIME. THAT IS A VERY TALL ORDER. WE HAVE TO BE FRANK IN ACKNOWLEDGING THAT. WE THINK THE SYSTEM ON THE WHOLE WOULD BE BETTER WITHOUT IT, BUT IT IS A TALL ASK. WE WILL CONTINUE TO PUSH IT BUT IT IS NOT AT THE TOP OF OUR AGENDA BECAUSE, BEING A PRACTICAL AND PRAGMATIC COUNTRY, WE WANT TO LOOK AT THE MORE EASILY ACHIEVABLE PARTS BEFORE WE LOOK AT THE REALLY TOUGH BITS.

Mr HOLLIS—In theory, the five permanent members make the greatest contribution and then have the right to a permanent seat with a veto power, but in reality, the five permanent members who should be setting a lead have often acted as rogue members within the organisation. You are right in what you said at the beginning; we have a collection of 188 sovereign states and you do not have a sovereign body over those sovereign states. So often, when a decision is made that people do not like, they withdraw from one of the agencies. If you go through the records of the five permanent members, you see that they have been the real rogue states. The US had not paid contributions for years and years and almost sent the organisation bankrupt, and withdrew from the ILO many years ago. When Britain did not like a particular decision, it withdrew from UNESCO. I do not think France has actually withdrawn from anything, but these very countries, which, because of their status as members of the

Security Council, one would think would set an example of being good UN members, have, in many cases, as I would describe them, been rogue members.

Mr Potts—I am not sure that I would want to characterise them as rogue members.

Mr HOLLIS—No, but those are my words.

Mr Potts—I would start by saying that the writ of the Security Council is obviously effective for the permanent members in relation to the mandate of the Security Council, the maintenance of international peace and security. The UN system obviously covers a much wider range of mandates and spheres of influence than just global security. I think it is fair to say that, yes, there have been some individual responses by permanent members to particular agencies over which they ran into problems. I do not think that is specific to permanent members, on the other hand, and you can think of a number of withdrawals by non-permanent members from particular agencies as well. Australia certainly has withdrawn from UNIDO twice. That has been more of a question of prioritisation than anything else. Singapore also parted company with UNESCO because of a difference of opinion and there are other instances. So, while I guess it is more visible and more glaring in the case of permanent members, it is not unique to them.

Mr HOLLIS—Take the situation of Timor, for example. The UN is in there now with a specific role and is assisting in nation building. I think that there is always a difficulty—and this is coming out more and more in the case of Timor—with a model being imposed on a country that is not necessarily in accordance with that country's wish. On this committee and often in other parts of this committee we get people appearing before us, and a constant theme coming out is that the interim governing body now in Timor is carrying out a mandate without full consultation or involvement with the Timorese people. Even today, in today's paper, there is a taxation system being proposed to be imposed on Timor and the argument is that it will be self funding by the time the handover happens. One sometimes worries that the international bureaucracy that goes in under the banner of the UN is going to impose a system that is not always appropriate for the particular country. The criticism that is constantly being put to the overall committee on Foreign Affairs, Defence and Trade—whether it is right or not—is that the UN is there acting in a way without consulting the Timorese people. Do you have any comment?

Mr Potts—Yes, I have several comments. The first is that East Timor is a unique situation for the United Nations. It has certainly been involved in nation building exercises before. You could think of Namibia, during the transition from South Africa, or of Cambodia, during the period of 1993 to 1994, but in both those cases there was a functioning administration. In the case of East Timor, there is no administration: the Indonesians left and there was a clean slate. It is the first time ever that the United Nations has become the transitional administrator of a territory. Even Kosovo, which has some affinities, still has the residual sovereignty of Serbia or Yugoslavia as a factor in it.

AGAINST THAT BACKGROUND, I THINK THE AUSTRALIAN GOVERNMENT WOULD SAY THAT THE UNITED NATIONS SYSTEM HAS MADE A VERY DELIBERATE AND A VERY SUSTAINED EFFORT TO TRY TO WORK WITH THE TIMORESE. THERE ARE DIFFICULTIES WITH THIS, GIVEN THE HISTORY OF THE

COUNTRY AND THE BREAKDOWN OF CIVIL STRUCTURES AND SO ON OVER THE PAST FEW YEARS. BUT I THINK IN PARTICULAR THE TRANSITIONAL ADMINISTRATOR, SERGIO VIEIRA DE MELLO, HAS PERSONALLY MADE QUITE SUSTAINED EFFORTS TO WORK WITH THE EAST TIMORESE, AND HE IS HELPED IN THAT, OBVIOUSLY, BY BEING A FLUENT PORTUGUESE SPEAKER. HE HAS DEVELOPED CLOSE LINKS WITH GUSMAO AND WITH THE LEADERSHIP OF THE CNRT. BUT I THINK IT IS ALSO IMPORTANT TO EMPHASISE THAT HIS CONSULTATIVE STRUCTURE EXTENDS MUCH BEYOND FRETELIN OR THE CNRT ITSELF. THE FIRST DECREE THAT UNTAET ISSUED WAS IN FACT ONE TO ESTABLISH THE NATIONAL CONSULTATIVE COUNCIL IN EAST TIMOR—AN EMBRYONIC LEGISLATURE. THERE ARE SOME 15 REPRESENTATIVES: FOUR ARE FROM UNTAET; AND SEVEN ARE FROM THE CNRT, WHICH IS REALISTIC, REFLECTING ITS HISTORIC ROLE IN THE SITUATION THAT WE NOW HAVE. BUT THERE ARE ALSO THREE PRO-INTEGRATIONISTS AND ONE REPRESENTATIVE FROM THE CHURCH.

I THINK YOU WILL HEAR NOISES OFF-STAGE IN RELATION TO PARTICULAR DECISIONS THAT COME OUT OF THE NCC. WHILE IT WORKS—I THINK ESSENTIALLY BY CONSENSUS—THERE ARE SOME ELEMENTS, EVEN WITHIN THE NCC, WHO ARE NOT HAPPY WITH EVERY OUTCOME, AND SO THERE TENDS TO BE A BIT OF CARPING. BUT I HAVE BEEN STRUCK, JUST IN THE REPORTING FROM OUR MISSION AND FROM ANECDOTAL EVIDENCE THAT COMES OUT OF DILI, BY HOW CLOSELY THE UN HAS TRIED TO STAY IN TOUCH WITH TIMORESE OPINION; NOT JUST ON, IF YOU LIKE, PRACTICAL QUESTIONS—REBUILDING, INFRASTRUCTURE, AND SO ON—BUT LOOKING TO MUCH BIGGER PICTURE QUESTIONS SUCH AS WHAT FUTURE DEFENCE STRUCTURE SHOULD EAST TIMOR HAVE, WHAT SHOULD BE THE NATIONAL LANGUAGE, HOW TO REORGANISE THE BANKING SYSTEM, AND SO ON. I GUESS IN SUMMARY WHAT I WOULD SAY IS THAT WHILE YOU WILL ALWAYS HAVE SOME CRITICISM, I THINK, IN FACT THE UN'S RECORD IN EAST TIMOR IN TERMS OF CONSULTATION HAS BEEN VERY GOOD.

CHAIR—I want to follow on from what Colin said because one of our other committee members who cannot be here today has raised some concerns that in fact there are disputes between the UN agencies in Timor—covering some of the ground that Colin has mentioned—and also that the short cycles of appointment mean that there is too little continuity amongst the people that are involved in the leadership, particularly in this case in East Timor. Have you got any comments to make on that?

Mr Potts—I guess it is fair to say that the UN is not a monolithic structure; it is more a collection of families, in many ways. The UN secretariat in New York is obviously its heart, but there are a whole range of agencies based in New York, Geneva and other places as well. There are always going to be coordination problems between agencies. The current Secretary-General I think has made a real effort to try to minimise that.

CHAIR—He talks about disputes, not just a lack of coordination.

Mr Potts—Yes. He has weekly meetings I think with the heads of various agencies. That is an innovation—a very timely one; an overdue one, probably. But, yes, there have been disputes in the media in East Timor, and it is not easy to resolve these disputes, given that particular agencies have a mandate to pursue. Sometimes they see action that one part of the system is taking to have an impact—a negative impact perhaps—on their own mandate. Part of the problem also with deployments like East Timor is that they are generally a response to an

emergent situation, and rather than holding back all the resources in New York until you have got the team in place and then, in a sense, working out a blueprint in New York and then going in, the ad hoc nature of responses to these sorts of situations normally means that you get an advance party and then, over a period of some months, the mission fills out. So there are some people who have got a fair degree of background. Other individuals arrive much later, they are on a steep learning curve and you get this sort of cultural clash.

I AM NOT AN EXPERT ON WHAT IS HAPPENING IN EAST TIMOR, BUT I WOULD GUESS THAT THE RELATIVELY SHORT POSTING CYCLE TO EAST TIMOR DOES NOT HELP THINGS EITHER. BUT A SYSTEM LIKE THE UN HAS TO STRIKE A BALANCE BETWEEN HOW LONG THEY CAN ASK PEOPLE TO GO INTO WHAT IS STILL A DIFFICULT SITUATION, GIVEN THE SHORTAGE OF HOUSING AND MEDICAL FACILITIES, ON THE ONE HAND AND HOW TO ATTRACT THE BEST PEOPLE TO GO THERE ON THE OTHER. THAT IS A DIFFICULT BALANCE TO STRIKE.

Senator BOURNE—I have a couple of questions on East Timor, but I will leave them until a bit later. I have two short questions I would like to start with. First of all, I have a question on preventive diplomacy, which I know is being discussed at the moment. Are we putting forward any views as a country on that—what direction we think that should be going now within the UN?

Mr Potts—It is difficult to respond in a particularly concrete sense to this. What I would say first of all is that it is difficult to query the notion of preventive diplomacy. Obviously, if you can nip an emergent situation in the bud, well and good. It is much more cost effective than sending in blue helmets and the whole UN humanitarian relief structure. The practical problems then start to emerge, of course, when you approach it. The first one—and this is in no particular sense of priority—is the resistance of states, particularly if things are going wrong inside, to calling in outside help. It is a natural sort of instinct to say, ‘We’ll sort it out ourselves.’ We have seen instances of state after state which have gone through that mantra even when palpably they cannot cope with the situation.

THE SECOND ONE IS THE DIFFICULTY OF ENGAGING THE INTEREST OF THE INTERNATIONAL COMMUNITY—THE SECURITY COUNCIL, IF YOU LIKE—IN A SITUATION WHICH PEOPLE ARE AWARE IS DIFFICULT BUT WHICH HAS NOT GOT TO CRISIS POINT. YOU RUN UP AGAINST PERCEPTIONS OF SOVEREIGNTY, BUT YOU ALSO RUN UP AGAINST THE RELUCTANCE OF MANY STATES TO TAKE ACTIVE MEASURES WHEN THERE ARE OTHER, PERHAPS HIGHER, PRIORITIES THAT THEY NEED TO ADDRESS. A LOT OF WORK HAS BEEN DONE IN COUNTRIES LIKE AUSTRALIA, SCANDINAVIA, THE NETHERLANDS AND CANADA ON IDENTIFYING REGIONAL PROBLEMS AS THEY ARISE. THIS IS SOMETHING THAT CAN BE PURSUED THROUGH SECOND TRACK MEASURES WITH BODIES SUCH AS THE DEFENCE ACADEMY AND SO ON. THERE IS ALSO A ROLE FOR NGOS TO BRING SITUATIONS TO INTERNATIONAL ATTENTION. ONE BODY WHICH COMES TO MIND, FOR EXAMPLE, IS THE INTERNATIONAL CRISIS GROUP IN BRUSSELS, WHICH HAS DONE A LOT TO INFORM PEOPLE ABOUT THE SITUATION IN THE BALKANS. WITHIN THE DEPARTMENT OF POLITICAL AFFAIRS IN NEW YORK, THE SECRETARIAT HAS DEPLOYED RESOURCES ON PREVENTIVE DIPLOMACY, ON IDENTIFYING EMERGENT ISSUES. THE QUESTION COMES BACK, AT THE END OF THE DAY, TO TWO THINGS: FIRST OF ALL, ENSURING THAT A DIFFICULT SITUATION IS UNDERSTOOD TO BE ONE AND THAT IT REQUIRES ATTENTION; AND, SECONDLY, SUMMONING UP THE

POLITICAL WILL. THERE HAS BEEN PROGRESS, BUT IT IS FROM A VERY LOW BASE AND IT HAS A LONG WAY TO GO.

Senator BOURNE—Secondly, there is a series of millennium meetings going on with different groups. Does the department have any plans to do briefings for, say, NGOs for the NGO millennium meeting? The summit would be a very important one for us, I am sure. Also, does the department have any themes that they would like to see advanced at any of the separate meetings or one theme that they would like to see advanced throughout the series of meetings? Is there any planning going on for that?

Mr Potts—There are a few comments to make in response to that. First of all, we are taking this whole millennium process quite seriously. We are a member of a group of 16, led by Sweden, which, for the past year or year and a half, has been looking at how to influence the outcome of the meeting proceedings in a way that will impact very positively on UN reform. We see this summit as an important opportunity to focus the UN on the 21st century—how it is going to look, how it is going to approach it. A lot of work has been done over the past four to six months on the question of themes for the Millennium Summit. That is more or less finalised, although not quite. The overarching theme is the UN into the 21st century, but we have been keen and, I think, effective in ensuring that the concept of strengthening the UN remains one of the subthemes.

BEYOND THAT, I SUPPOSE IT IS FAIR TO SAY THAT WE ARE LOOKING AT THREE DIFFERENT LAYERS OF PARTICIPATION IN THE MILLENNIUM ACTIVITIES. FIRST OF ALL, THE NGO MEETING IS ABOUT TO HAPPEN. WE ARE HAPPY TO FACILITATE NGO ATTENDANCE, AND WE HAVE BEEN IN CONTACT WITH PARTICULAR NGOS ON THAT. SECONDLY, THERE ARE THE REGIONAL MEETINGS THAT WILL PRECEDE THE SUMMIT. FINALLY, THERE IS THE SUMMIT ITSELF, AND THE SUMMIT WILL HAVE QUITE AN INTERESTING STRUCTURE. IT WILL HAVE A PLENARY BUT IT WILL ALSO HAVE FOUR DIFFERENT WORKSHOPS, AND THE NOTION IS THAT EACH OF THE WORKSHOPS WILL PURSUE ONE OF THE SUBTHEMES AND THAT THE WHOLE MEMBERSHIP WILL DIVIDE BETWEEN THE FOUR WORKSHOPS SO THAT YOU CAN ONLY PARTICIPATE IN ONE RATHER THAN COVER THE LOT. WE WILL HAVE TO SEE HOW THAT WORKS OUT IN PRACTICE. JUST GOING BACK TO THE QUESTION OF THEMES, I WOULD NOT WANT TO PREJUDGE WHAT OUR INTERVENTION AT THE SUMMIT IS LIKELY TO BE, BUT I THINK IT IS QUITE LIKELY THAT WE WOULD WANT TO FOCUS SUBSTANTIALLY ON THE QUESTION OF THE RECONFIGURATION OF ELECTORAL GROUPS. WE WANT TO FREE UP THAT STRUCTURE. IT WILL NOT COME AS A SURPRISE TO PEOPLE, BUT WE REALLY WANT TO SHAKE THE TREE A BIT ON THIS AND SEE IF WE CAN MOVE THINGS ALONG. WE THINK THAT THE SUMMIT WILL PROVIDE A VERY USEFUL FORUM FOR THAT.

Senator BOURNE—Do you know yet whether the Prime Minister intends to attend that, or do you have no idea?

CHAIR—He does not have to say sorry.

Mr Potts—I do not think we have a definitive answer yet. It is clear that the timing, which I think is 6 to 8 September, is going to be difficult for him. He has already told the Secretary-General that it is going to be difficult. He also told the Secretary-General that he recognised the desirability of high-level Australian participation, so he would approach his own participation

against that background. When he came to a final decision, he would write to the Secretary-General. I do not know any outcome at this stage beyond that.

Senator BOURNE—Can I ask one final question about East Timor and the UN. Funding is getting a bit better but it seems to be a perpetual problem, as you have pointed out. An awful lot of money was promised in that December meeting last year for the reconstruction effort in East Timor; last time I heard, less than half of that had actually come through. I hope that has improved by now. But, certainly, it was a very small amount to start with, and it has gone up to about half or less than half. Is there any way of getting that money a bit faster—or at all? Are you convinced that East Timor will get that money in the end to assist reconstruction? And is there any way you think we can learn a few lessons from this exercise to take to the next one—heaven forbid there is ever a next exercise, but I suspect there may be—next time this sort of thing happens and money is needed urgently for such a huge effort?

Mr Potts—My answer to the first question is that money always remains a problem for every UN operation. This one is no exception. I think, nonetheless, that significant progress has been made. I saw a report yesterday which indicated that there was well over \$US20 million in the trust fund, which is welcome progress. So, yes, I think there has been some material progress since December.

YOUR SECOND QUESTION, I THINK, IS AN IMPORTANT ONE AS WELL: WHAT DO WE DO WITH LESSONS LEARNED? THE ANSWER IS, I GUESS, THAT THIS IS A RESPONSIBILITY BOTH AT THE UN ITSELF AND OF INDIVIDUAL COUNTRIES. AS REGARDS THE UN, INTERESTINGLY THEY DO NOW HAVE A ‘LESSONS LEARNED’ UNIT IN THE SECRETARIAT—I THINK IN THE DEPARTMENT OF PEACEKEEPING OPERATIONS—WHICH ACTUALLY RAKES OVER THE EMBERS OF OPERATIONS TO SEE HOW IT CAN BE DONE BETTER NEXT TIME, AND THIS IS NOW BEING DONE ON A SYSTEMATIC BASIS. THIS HAS BEEN ONE OF THE SECRETARY-GENERAL’S RESPONSES TO THE FAILED OPERATION IN RWANDA. I THINK IT IS A VERY APPROPRIATE AND USEFUL INITIATIVE.

IN AUSTRALIA I THINK IT IS FAIR TO SAY AS WELL THAT WE DO NOT JUST MOVE ON TO THE NEXT CRISIS BUT TRY TO REFLECT ON OUR NATIONAL RESPONSE TO PARTICULAR CRISES. WITH INTERFET, I THINK IN MANY WAYS THAT WE HAVE RETROSPECTIVELY LOOKED AT WHAT WE HAVE DONE. I THINK WE ARE VERY SATISFIED IN MANY WAYS WITH THE EFFECTIVENESS OF OUR RESPONSE, BUT WE ARE ALSO A BIT CONSCIOUS THAT THAT WAS A PARTICULAR, PERHAPS UNIQUE, SITUATION, AND THAT WHILE WE DID HAVE GOOD SUCCESS AND THE WHOLE INTERNATIONAL COMMUNITY WAS PRETTY RESPONSIVE, WE MAY NOT NECESSARILY BE ABLE TO REPLICATE THAT NEXT TIME ROUND. SO I GUESS WE WOULD APPROACH THE NEXT REGIONAL PROBLEM WITH, FIRST OF ALL, THE CONFIDENCE THAT WE HAVE GOT THE DIPLOMATIC MEANS OF ASSEMBLING A COALITION OF THE WILLING, IF YOU LIKE, FOR A PARTICULAR SITUATION. WE HAVE GOT THAT UNDER OUR BELT, BUT WE CANNOT ASSUME THAT WE CAN COBBLE TOGETHER A SIMILAR COALITION IN THE FUTURE IN THE SAME WAY. WE MIGHT HAVE TO LOOK TO DIFFERENT WAYS OF ENGAGING COUNTRIES, AND SO ON. BUT LESSONS LEARNED IS, I THINK, AN INCREASING AND PERHAPS EVEN FUNDAMENTAL ASPECT OF MAKING PEACEKEEPING MORE SUCCESSFUL.

CHAIR—Following on the question of funding, which Senator Bourne raised, how great has the reduction been in the bureaucracy in the review of how the money gained by the United

Nations is spent? There were criticisms—there have been for years—over the top heaviness of the bureaucracy, and I understand cuts have been made. How great have those reductions been?

Ms Tomi—After Kofi Annan became Secretary-General—he had a strong background; one of his jobs in the UN had been director of the Budget Department, so he brought that experience to the top job—one way he addressed the financial difficulties was to leave, I think, 1,000 positions simply unfilled. In effect, these were positions that were vacant or that people had retired from, so what he did was simply leave those unfilled.

CHAIR—So you do not have any quantum of the ratio of expenditure on bureaucracy compared with the other—

Ms Tomi—I do not think we have got it here, but we can get it.

CHAIR—You have not got it in here.

Senator BOURNE—No, that is right. I remember for the 50th anniversary of the UN there were all these stats. If we could have those updated it would be useful.

CHAIR—Yes, if we could have those. Senator Quirke has a question on the same issue, I understand.

Senator QUIRKE—Yes, there are just a couple of things that I would like to tease out a bit further still. While you are taking that on notice, could you tell us what the total budget of the UN is? You may have that figure here. If not, if you could just add that question to the ones the chair has asked. I would be curious to know how much the organisation does cost. Thank you.

Mr Potts—We will take it on notice.

CHAIR—Perhaps you could tell us who is paid as well.

Mr Potts—We could do that.

Senator GIBBS—Actually I want to touch on funding also because I have noticed here that you say that some members have not paid their contributions on time. Are they outstanding contributions? Do they still owe quite a bit of money? Who are they?

Mr Potts—It is quite a complex question, but I guess the way to characterise it first of all is that, for the regular budget, which is essentially what we are talking about—there are two core budgets: the regular budget and the peacekeeping budget—the secretariat sends out a notice of assessment to countries at the end of the calendar year. Countries are required to pay within 30 days of receipt of the assessment notice, which essentially is by the end of January. Very few countries do that. We are talking about around 20.

Senator GIBBS—How many?

Mr Potts—Around 20.

Senator GIBBS—There are 20 who do not pay?

Mr Potts—No, there are 20 who pay on time. The majority of countries pay during the course of that calendar year but not within 30 days. There is also a substantial backlog in arrears of payments by a whole range of countries. I am just looking at some figures in front of me. These relate to the regular budget. The UN estimates that it is owed \$US244 million for the regular budget at the end of March. Of that amount, 69 per cent is attributable to the US. Then there is Brazil.

Senator GIBBS—So the USA owes 69 per cent of that budget?

Mr Potts—Yes, which is \$168 million. That is followed by Brazil—which has about 10 per cent of the amount owed, so it is in the early 20s—Yugoslavia and Argentina. The remaining 12 per cent is spread over about 59 countries.

Senator GIBBS—The USA is a permanent member of the UN. Do the other permanent members pay on time?

Mr Potts—Generally, yes. Russia has had some problems. I think they have been more related to its own difficulties. In terms of the regular budget, Russia is essentially up-to-date, but it has significant arrears in the peacekeeping budget.

Senator GIBBS—So the USA owes 69 percent of this budget. It sits on the UN as a permanent member and has the power of veto.

Mr Potts—Yes.

Senator GIBBS—How does the department feel about that? Should they have the power of veto? Should they be able to sit on the Security Council, seeing as they owe so much money?

Mr Potts—There are two points. Firstly, if a country is in arrears for more than two years, it loses its voting rights in the General Assembly. There is no provision in the charter for the loss of voting rights in the Security Council. The United States has problems in paying essentially because of the reluctance of Congress to provide full appropriation for a whole range of reasons. Part of it is due to congressional riders on particular United Nations policies, population policy or whatever, so the administration does not have enough money generally to bring its arrears up-to-date. But the United States has always been able to ensure that its arrears for the regular budget are paid within two years so that it has never lost its rights in the General Assembly. The Security Council is permanent, with five permanent members. There is no provision for loss of voting rights. That is simply the situation. In many ways, it would clearly be desirable to have some form of provision which would see the loss of voting rights on the Security Council. In the case of arrears that were egregiously outstanding there is just not that provision, and clearly there will not be while the five members have veto power.

Senator GIBBS—Tell me how the veto power works. Do all five have to veto, or is it just one country?

Mr Potts—No, it is an individual vote. A negative vote by a permanent member on a substantive motion results in that motion not being carried.

Senator GIBBS—So that is just one member?

Mr Potts—That is correct.

Senator GIBBS—So the USA can get away with not playing the game as other countries do? Other countries pay their dump, but the USA can be permanently in arrears and simply pay a little bit at a time so that it remains there? Are there no penalties or sanctions for this? It does not seem quite fair to me.

Mr Potts—The only sanction, as I mentioned, is the loss of voting rights in the General Assembly once arrears are outstanding by two years. There has been some consideration, particularly in the Fifth Committee I think, on the notion of applying interest to outstanding payments. Even that has been problematic. You can see the reasons why.

Senator GIBBS—Actually I think it is bizarre that one person can have a veto right. Of course, if it is going to affect your country you will veto it, won't you?

Mr Potts—I guess it goes back to the experience of the League of Nations. One problem with the League of Nations was that there was no veto power in the same way. There were permanent members but I do not think there was a veto power. While the veto power really hampers an organisation in some way by potentially frustrating a particular initiative, it does mean that if all of the permanent members either support it or at least do not oppose a measure, then you can be pretty sure that there is a fair amount of international political capital and maybe operational capacity to enforce a decision. So it has both positive and negative aspects to it as well.

Senator GIBBS—So how badly off is the UN at the moment with regard to finances—just approximately?

Mr Potts—I think it has been worse off in the past. The last couple of years have seen some improvement. I think we also need to make a distinction between the regular budget where things are a bit better and the peacekeeping budget where things are not. We are looking at arrears of about \$US250 million. It is a significant amount—

Senator GIBBS—It sure is.

Mr Potts—But it is not a crippling amount.

Senator GIBBS—There was talk about the peacekeeping budget and the problems there. With the regular budget that Senator Ferguson was asking about, you were saying that if positions came up for the bureaucrats they simply were not being refilled. Is this like a downsizing in the staff of the UN?

Mr Potts—It is clear that there has been a downsizing and that the UN is leaner than it was. In many respects, while Australia has taken a very prominent position in calling for a re-ordering of UN priorities, you can get some results which in some ways work against your own interests. We pushed essentially for targeted but real reductions in staffing in a whole lot of areas, but we have argued that it be done on a basis of prioritisation. Nonetheless, the way the UN system works and the way that vacancies have not been filled means it has impacted on some areas of particular interest to Australia so that the Department of Peacekeeping Operations is a bit too lean, in our view—we would like to see it staffed a little more adequately. I think the same applies also to the Department of Political Affairs, another key area of the Secretariat. So it is not easy in a sense to argue a general policy, as we do, for producing a leaner structure, but at the same time ensure that all of our interests are looked after.

Senator GIBBS—But usually downsizing and leaner structures, as you say, result in those staff members who are fortunate enough to keep their jobs have excess work, they are overloaded with work, and when that happens obviously it will not work properly. It is just simply not going to be structured or work as effectively as it did before. If this continues and the US and maybe other countries simply do not pay, is it worth keeping the UN?

Mr Potts—If you look, for example, at the Department of Peacekeeping Operations, certainly from our perspective it is too lean, it is understaffed. We have called for the Secretariat or the Secretary General to give adequate focus to it, and I think the reality is it is being built up again or it is about to be built up. So from that perspective I think we are beginning to see some welcome progress.

I GO BACK TO WHAT I SAID EARLIER THAT, WITH AN ARREARS OF ABOUT \$250 MILLION, IT CONSTITUTES A SIGNIFICANT IMPEDIMENT TO THE EFFECTIVE OPERATION OF THE UN SYSTEM BUT I WOULD NOT CHARACTERISE IT AS CRIPPLING. IT IS WORTH REFLECTING THAT THE UNITED NATIONS HAS OPERATED WITH ARREARS EVER SINCE THE EARLY 1960S. SO IT IS A CHRONIC SITUATION IN A SENSE. IT VARIES IN INTENSITY FROM TIME TO TIME; IT WAS MORE INTENSE THAN TWO OR THREE YEARS AGO. NOW WHILE THE SITUATION IS MANIFESTLY UNSATISFACTORY, IT CAN STILL BE WORKED THROUGH. I DO NOT THINK THERE IS ANY SENSE THAT PEOPLE WOULD WANT TO WALK AWAY FROM THE SYSTEM SIMPLY BECAUSE OF THE INHIBITING EFFECT OF THE ARREARS ON THE SYSTEM. IT CERTAINLY MAKES PEOPLE DESPONDENT FROM TIME TO TIME, BUT THERE ARE WIDER ISSUES AND THERE IS ENOUGH MOMENTUM IN THE SYSTEM TO KEEP IT DRIVING FORWARD.

Senator GIBBS—It is like a control mechanism, isn't it?

Mr Potts—That is one argument that proponents of lean rations or lean suppliers from the US are arguing: if we short pay them, they will be more responsive. It is a debatable proposition. We would not accept that in Australia. The US is crucial to the UN in that it provides 25 per cent of the regular budget—a big proportion.

Mr PRICE—On the funding issue, I think your submission talks about making up the arrears by borrowing from the peacekeeping fund. How does that work?

Mr Potts—I am not sure how it works. I might ask Ms Mercer. I think it is fair to say that there is not the need for that to happen this year. It has happened from time to time. I think the

way it works is that there are funds in the peacekeeping fund earmarked for reimbursement to troop contributors but, if there is a cash flow crisis in the regular budget, the secretariat withholds those payments and takes a cash advance from the peacekeeping fund to cover its immediate expenses and then back reimburses it to the peacekeeping fund.

Mr PRICE—So this is adding to the delay in payments that you referred to; it is exacerbating that.

Mr Potts—Yes. So countries like Fiji that are good contributors and rely on reimbursement from the UN system are penalised when that happens. They have to wait a bit longer.

Ms Mercer—Just to add to that, the situation at the moment is that the UN owes troop and equipment contributing countries around \$US774 million. That is the result of this cross-borrowing.

Mr PRICE—I'd have to say, 'Shit, that's a lot!'

Mr Potts—It is a lot and countries are waiting quite a long time. Although it can work two ways: if they have been a consistent and regular troop contributor, they have in a sense a pipeline of payments—that is, every three months or so they get a payment; but if they are an irregular contributor and go in for just one operation, in and out, then they can be waiting a long time for reimbursement—four or five years.

Mr PRICE—I notice Defence are adamant that they are opposed to a standing army arrangement. Is that the view of your department?

Mr Potts—Yes, I think we query the achievability of it, given the way the UN is constituted. There is also a whole range of practical questions: where would it be headquartered; what would be the command structure; what would you do with the forces during downtime, if you like; what would be the optimum size of the force? We think it would founder on the practical difficulties.

Mr PRICE—Given the great instability in our region, how well do you think our bilateral relations have held up in terms of preventive diplomacy in peacekeeping? And is there a lack of a regional organisation that can better coordinate responses to regional problems?

Mr Potts—I suppose our region—and by that I mean the Asia-Pacific region—has probably been late in developing regional mechanisms compared to most other regions. We have got the Council of Europe, the Organisation of African Unity, and the Organisation of American States in the other regions. We do not have the same architecture in Asia at this stage. We do have the ASEAN regional forum. It is embryonic. It is going to be built from the ground up, in a sense. It started off almost as a second-track operation. It is now clearly both first track and second track. It is still at the confidence building stage and the discussion stage. There is certainly no overt discussion at this stage of giving it anything like a regional security role. There would simply not be a consensus for it at this stage. But it is the only game in town in the region, and it is a game that Australia and I think most countries in the region are investing in very heavily. I would say also, just as a topical comment, that we are quite interested to see that North Korea,

the DPRK, has now sought membership in the ARF, and we think that is a very welcome development.

Mr PRICE—In the lessons learned from Timor did that issue come up? To what extent is the department fostering an initiative if a shortfall is seen?

Mr Potts—The ARF does not provide the structure for an emergency situation or a rapid response, at least not at this stage. It is essentially an annual consultation at high level with a series of thematic workshops in a number of different areas—things like people smuggling, money laundering and so on—all of which have an impact on regional security. The Australian government, I think, is on record as saying that we would like to strengthen the role of ARF and give it more regional teeth. That is going to be a long-term process. That is a reality. Certainly when we were looking at our response to the developments in Timor last August, early September, we looked to every possible regional or other mechanism and, while the ARF was not immediately available, we in fact used APEC very effectively. There was an APEC meeting in progress in Auckland at that stage. Mr Downer was there and used the umbrella that APEC provided to engage a whole range of ministers, including from Indonesia, to get consensus on the need for a multinational force to go into East Timor. So, whether it is a question of the ARF or APEC or whatever, the lesson learned is that we do not rule any out and we try to rule them all in if they are available and useful.

Mr PRICE—I have a last question on this subject. Does the department recognise a need to extend some of the multilateral arrangements they have in the region to better facilitate peacekeeping and preventative diplomacy? It seems to me the answer to the question ‘Is there any initiative?’ is, ‘Yes, we would like to have these things grow, but they are not growing fast enough.’ It just seems to me that we are biding our time. Yet, quite clearly, East Timor has come up, Bougainville is ongoing, and this is not going to be the last in our region.

Mr Potts—We have been trying to crack the pace within the ARF. We want to push out the envelope. We have been, I think, of all the members the one that has been most anxious to see as wide a role as possible. We have had considerable success. If you look at where the ARF started from—it has been in operation barely 10 years—it has developed a lot more underpinnings than we might have hoped by now. But we are also realists. This is a region that probably has less common ground than many others, so we have to work from that basis. Our initiative in a sense has always been pushing the envelope, to be trying to provide the intellectual underpinnings for exploring new and demanding roles for institutions like the ARF.

Mr PRICE—I did not quite understand your opening remarks about treaties and committees and the current review you are undertaking. How is the review progressing? Who is actually doing it, and are there any public submissions being called for?

Mr Potts—The review was announced on 30 March, and it is obviously a response to the recent history of Australia’s engagement with particular UN treaty bodies, particularly the handling of our periodic report to the Committee for the Elimination of Racial Discrimination. How is it being handled? It is being done interdepartmentally. The two main departments involved are my department and Attorney-General’s Department, but the Department of Immigration and Multicultural Affairs is heavily engaged in it, and the Department of the Prime

Minister and Cabinet obviously has an interest in it as well. There is no intention for Australia to disengage from the UN system.

Mr PRICE—There are a set of terms of reference for the IDC. Are they public?

Mr Potts—No, they are not public.

Mr PRICE—Do you want to make them public here today?

Mr Potts—I would have to ask the minister.

Mr HOLLIS—Be courageous!

Mr PRICE—Is there some reason why they are not public?

Mr Potts—I do not know that myself.

Mr PRICE—Could you take on notice a request for the committee to have the terms of reference of the IDC?

Mr Potts—Yes, I am happy to do so.

Mr PRICE—It seems silly, if we are reviewing the UN, that you have got a secret IDC going on involving the UN.

Mr Potts—Can I respond also to your question about the notion of public submissions. We are working to quite a tight time frame that has been dictated by ministers. We have been asked to have the review before the government by the end of May/beginning of June—the middle of June at the latest—and we are working to that. That has precluded a full process of public consultation, but we are open to submissions from civil society, NGOs and others and, in fact, have received several. We are happy to take that sort of contribution on board.

Mr PRICE—This government changed the way we dealt with treaties by setting up a treaty committee. Is the department intensely dissatisfied with that process?

Mr Potts—I will ask Mr Rowe to comment in more detail, but I think the short answer is yes. Last year we—that is, the government as a whole—reviewed the operation of the revised treaty system in Australia. The broad conclusions of that were that the system was working well. Richard might have more to add on that.

Mr Rowe—I confirm what Mr Potts has said in relation to the outcome of the review. The review, as I am sure you are aware, was of the 1996 reforms introduced by the government, which were principally intended to meet the perceived democratic deficit in treaty making. The key elements of the reforms were increased consultation and transparency in the process in addition to setting up JSCOT.

Mr PRICE—I am embarrassed to say that I opposed them, but I think they have worked well.

Mr Rowe—It was a very thorough review; it was a review which invited and considered very carefully a very large number of submissions from the public—from civil society. The majority of those submissions were very supportive of the reforms. The review itself, in terms of adding to those reforms, reinforced the need for more accountability and transparency, particularly in the area of what are called the national interest analyses, which are submitted to JSCOT and the parliament. The outcome of that review has been, firstly, to show that the reforms are very much on the right track and are working well in the interests of those two key elements of consultation and transparency.

Mr PRICE—Has the Joint Committee on Treaties been briefed on the reasons why the IDC was established and on the parameters of the inquiry?

Mr Rowe—No, I do not believe it has. The government probably took the view that the press statement which accompanied the decision spoke for itself.

Mr PRICE—And there has been no request for a briefing from that committee?

Mr Rowe—Not to my knowledge.

Mr PRICE—How would you respond if this committee sought a briefing?

Mr Rowe—I would ask the minister.

Mr PRICE—I might put that to the chairman, and you might take that on notice, please.

Mr BAIRD—I am interested in the UN's involvement in the human rights area and to the degree to which it is effective in that area. My first query is in relation to the continuing dialogue it has, for example, with countries such as China and the lack of what appears to be substantive advancements in this area. My second query is whether true human rights issues are often hijacked by special interest groups who give a fairly jaundiced view of issues within a country and pressure is put on because of that. I was speaking yesterday with a senator from Canada. She was talking about the problems that Canada has in terms of pressure in regard to their own indigenous population. This particular senator has a very strong track record on human rights, and her view was that it often overstepped the bounds which, she thought, was really the sovereign responsibility of that particular country—and Canada is not a country that you would say is subject to human rights abuses. How effective is it in this area of human rights? Overall, what would be your assessment?

Mr Potts—It is a complex question, and there is quite a lot riding on that in a sense. Let me start by saying that the UN's role in relation to human rights is probably a dual role in that it is both a standard setting body and it also has a monitoring role. So how effective has it been? I think you have to approach it from both angles. First of all, in terms of setting standards, I think it has been remarkably effective in many ways if you look at the different instruments that have evolved since the Universal Declaration of Human Rights. There is now a whole corpus of standards which are open for international accession. So the standards are there. The next

question is: how many countries are party to the various instruments? There, I think, the record varies. Western countries obviously have a very good track record in adherents. For many of the particular instruments, there is probably also a fair range of other countries which do adhere to the conventions—for example, the Convention on the Rights of the Child or the Convention on the Elimination of all Forms of Discrimination Against Women. More problematic conventions for some countries, not for us, such as the Convention Against Torture attract fewer adherents. So obviously the more adherents to a particular convention, the more effective it is likely to be.

THE SECOND ASPECT OF EFFECTIVENESS GOES TO THE QUESTION OF HOW EFFECTIVE IS UN MONITORING OF COUNTRIES' OBSERVANCE? THIS IS A VEXED QUESTION. IN MANY WAYS I THINK THE GOVERNMENT WOULD FEEL SOME SYMPATHY WITH WHAT I UNDERSTAND TO BE THE COMMENTS MADE TO YOU BY A CANADIAN COLLEAGUE. IN THE FIRST PLACE, OF COURSE, THE RESPONSIBILITY IS SHEETED BACK TO COUNTRIES THEMSELVES. IF THEY ADHERE TO A CONVENTION, THEY ARE REQUIRED TO REPORT PERIODICALLY UNDER EACH CONVENTION. SO THE FIRST QUESTION IS: DO THEY SUBMIT THE REPORTS? SECONDLY, HOW ENCYCLOPAEDIC OR DETAILED ARE THEY? THIRDLY, HOW DO THE RESPECTIVE COMMITTEES HANDLE THE REPORTS? DO THEY HANDLE THEM EFFECTIVELY AND FAIRLY? DO THEY GIVE THE GOVERNMENT, AS OPPOSED TO OTHER ELEMENTS SUCH AS NGOS, SUFFICIENT WEIGHT? WHAT ARE THE INTERNAL DYNAMICS OF THE COMMITTEE IN APPROACHING THE COMMITTEE'S RESPONSE TO THE GOVERNMENT'S REPORT? THESE ARE IMPORTANT QUESTIONS, AND I THINK THE REALITY IS THAT, COMMITTEE BY COMMITTEE, THE RESPONSES VARY. SOME COMMITTEES HAVE A BETTER TRACK RECORD THAN OTHERS. IT IS NO SECRET THAT THE GOVERNMENT IS UNIMPRESSED AND VEXED BY SOME OF OUR DEALINGS WITH PARTICULAR COMMITTEES. I THINK THERE IS A PERCEPTION THAT SOME OF THEM GIVE TOO MUCH WEIGHT TO NGO CONCERNS AT THE EXPENSE OF INFORMATION PROVIDED BY THE GOVERNMENT.

Mr BAIRD—What is your view, Mr Potts?

Mr Potts—I share that. I think on particular committees there is at least the possibility that one or more members who have got a particular interest in an issue can—I would hesitate to use the word 'hijack'—unduly influence their outcome. So these are real considerations. These form in many respects the core of the work that is being done on the whole of government review on the treaty body process.

Mr BAIRD—This really follows on from the general questions the chairman was asking before and relates to this speed of response. It seems at one end there is a slowness if we look at Timor or Guangzhou that has been looked at in the last couple of days; that is 20 years on. But the response of the UN in terms of the situation in Korea was very slow as well. So there is slowness of response and I know from Senator Bourne that you have talked about the peremptory nature in which you are looking at it. On the other end is the war crimes situation. So there are both ends of the equation in East Timor—though we have some action in terms of Indonesia with the other area of concern—but they do not seem to be terribly effective.

Mr Potts—In terms of war crimes in East Timor, the Australian government has always taken the view that the proper response to crimes against humanity or war crimes or whatever ought to be taken by the government concerned. That responsibility is first of all a national

responsibility. So, in the case of East Timor, we have believed it appropriate for Indonesia to look at taking action against individuals who may or may not be guilty of crimes against humanity.

THE ACTION THAT HAS BEEN TAKEN BY THEIR COMMISSION OF INQUIRY I THINK SO FAR IS CONSISTENT WITH THE VIEW THAT INDONESIA IS MOUNTING A CREDIBLE, AT THIS STAGE, NATIONAL RESPONSE. WE HAVE TO WAIT AND SEE WHERE THAT COMES OUT IN THE LONG TERM. BUT THERE IS A BROADER QUESTION OBVIOUSLY THAT LIES BEHIND YOUR QUESTION AS WELL, AND THAT IS: IF NATIONAL RESPONSES TO THESE SITUATIONS ARE NOT CREDIBLE, NOT ADEQUATE, WHAT MECHANISM IS THERE FOR THE INTERNATIONAL COMMUNITY TO RESPOND?

THAT IS WHERE THE INTERNATIONAL CRIMINAL COURT COMES IN, AND I MENTIONED IT IN MY INTRODUCTION. MR ROW IS ONE OF AUSTRALIA'S EXPERTS ON THAT, AND I THINK IT WOULD BE SENSIBLE IF HE WERE TO MAKE SOME COMMENTS ABOUT WHERE WE ARE AT WITH THE ICC AND HOW IT WILL MEET THE PROBLEM WHEN NATIONAL RESPONSES FALL SHORT OF CREDIBLE RESPONSES.

Mr Rowe—The first point I would like to make about the International Criminal Court for which the statute has been adopted—the court is not yet in existence physically, it has not yet come into actual effect because that requires ratification of the statute by 60 countries—is that its jurisdiction will be prospective. So it will only, in effect, deal with situations that arise after the establishment of the court.

IN RELATION TO THE QUESTION THAT YOU RAISED WITH REGARD TO ANY INTERNATIONAL ACTION THAT MIGHT BE CONSIDERED APPROPRIATE IN DEALING WITH A SITUATION IN A PARTICULAR COUNTRY THAT EXISTS NOW, IT WOULD REALLY BE FOR THE SECURITY COUNCIL TO DECIDE TO SET UP AN INTERNATIONAL TRIBUNAL TO INVESTIGATE WAR CRIMES AND CRIMES AGAINST HUMANITY, IF THAT WERE CONSIDERED APPROPRIATE. FOR EXAMPLE, THE TRIBUNALS THAT WERE ESTABLISHED FOR THE SITUATIONS IN FORMER YUGOSLAVIA AND RWANDA ARE SPECIFIC TRIBUNALS THAT THE COUNCIL ESTABLISHED. SO, AS OF NOW, THE INTERNATIONAL CRIMINAL COURT WOULD NOT APPLY BECAUSE IT HAS NO RETROSPECTIVITY.

Mr BAIRD—What would you recommend be done in the way of reform of the Security Council?

Mr Potts—In a sense, you are looking at two layers here: one is reform of the membership and secondly reform of internal working procedures. Reform of the membership I have spoken on already in terms of our wanting to see more members, although we do not want to see bodies which are too large. There are 15 at the moment. We would be reluctant to move much beyond 25. We want to see a few more permanent members—certainly Japan. It is the second largest financial contributor to the United Nations system. It pays 18 per cent of the regular budget, but it is not a permanent member. In terms of working methods, we would want to see a council which works really robustly in confronting particular crises. It has improved significantly. There is no doubt about that. It meets much more often, as I mentioned before. It also has a very well developed practice now of being briefed by the secretariat on situations. They have regular briefings on East Timor, Kosovo, and so on, not only when there is a crisis but regular reporting so that they have a good basis of knowledge on which to build.

WHERE THEY ARE STILL NOT PARTICULARLY GOOD IS IN SHARING THAT INFORMATION MORE WIDELY WITH THE REST OF THE MEMBERSHIP. IT IS NOT JUST THE 15 OR THE 25 MEMBERS OF THE SECURITY COUNCIL THAT HAVE RESPONSIBILITY FOR INTERNATIONAL PEACE AND SECURITY; IT IS ALL 188 MEMBERS. SO THERE IS A BIT OF A DISCONNECT BETWEEN THE COUNCIL, WHICH IN A SENSE IS A PRIVILEGED CLUB, AND THE REST OF THE MEMBERSHIP. THERE ARE WAYS AROUND THAT. WHEN WE WERE LAST ON THE SECURITY COUNCIL, WE REGULARLY BRIEFED A NUMBER OF FRIENDS—PARTICULARLY CANADA AND NEW ZEALAND, BUT SOME OTHERS AS WELL, INCLUDING SOME IN THE REGION—ON WHAT WAS HAPPENING IN THE COUNCIL, BUT THESE ARRANGEMENTS ARE ESSENTIALLY AD HOC. WE WOULD LIKE TO SEE A MUCH MORE CODIFIED APPROACH TAKEN BY COUNCIL MEMBERS TO INVOLVING THE WIDER MEMBERSHIP.

Mr BAIRD—In terms of the numbers of countries that sit on the council, dissemination of information and the right of veto?

Mr Potts—Certainly we are on record as expressing our discomfort with that, but it is not an early priority for us because there are other fish to fry. And getting rid of a veto is a very long-term project.

CHAIR—How many member countries have now ratified the ICC statute? Is it eight?

Mr Rowe—Nine. There is one more—Belize—since we submitted our submission.

CHAIR—Who are the other eight?

Mr Rowe—Fiji, Ghana, Italy, Norway, San Marino, Senegal, Tajikistan and Trinidad and Tobago. Those are the countries which, as of today, have formally ratified, but I would make the comment that many countries, including of course Australia, are very actively engaged in the ratification processes. There is a global effort being made, very strongly supported by the Coalition of Non-governmental Organisations, to bring about as many ratifications as possible in the near future, so that the International Criminal Court statute can enter into force and achieve the 60 ratifications required. Quite often we are asked when that is going to happen. It is very difficult to predict, but we are hopeful that in the next few years we will have achieved that full number of ratifications.

CHAIR—Is it possible that a number of those countries that you named do not have quite the lengthy processes that some of the other major countries have?

Mr Rowe—That is correct.

Senator QUIRKE—You were talking about payments made by the UN to member states that provide troops. How much of the INTERFET operation is going to be paid to Australia eventually?

Mr Potts—That is essentially a matter for the Department of Defence. We will take that on notice and get the response from them.

Senator QUIRKE—I am quite happy with that. Just so I have some idea of the body we are dealing with, what is our contribution to the UN?

Mr Potts—To the regular budget, we paid \$US15,599,503 for this calendar year.

Senator QUIRKE—It is roughly \$15 million US that we make as a regular contribution. Have you done any breakdown on the actual cost of the UN for Australia? That is our contribution to the UN bureaucracy, but what does the whole operation cost us?

Mr Potts—I could do a back of the envelope calculation now, but that would probably be a bit misleading. We are obviously looking at a much wider range of things than just the regular budget.

Senator QUIRKE—Take Timor out of it because Timor, we hope, is an aberration over a one-, two- or three-year period. I am just curious about what the total costs of our membership of the UN would be.

Mr Potts—To the regular budget—the peacekeeping budget—you would also have to add our voluntary contributions to bodies such as UNICEF, UNDP, UNHCR. It suggests to me that you are probably looking at pretty close to \$A100 million. But let me take it on notice for a better answer, and get back to you.

Senator QUIRKE—Sure. Does that figure include the ambassador and all those sorts of things?

Mr Potts—No. They are costs we bear all that ourselves.

Senator QUIRKE—Have you got any idea what all that costs? I am happy for you to take it on notice as well. I would just like to know what the whole shooting match costs us.

Mr Potts—Yes, certainly.

Senator PAYNE—Having been marooned in Sydney waiting for the fog in Canberra to rise this morning, I am concerned that I might ask questions which have been asked before. I only really have one, which relates to UNTAET. If it has been answered before, please feel free to tell me to read the *Hansard*.

IN RECENT WEEKS, I HAVE HAD SOME FEEDBACK FROM PEOPLE ON THE GROUND FROM PEOPLE IN EAST TIMOR—NOT ALL AUSTRALIANS BUT VARIOUS INTERNATIONAL REPRESENTATIVES—THAT THEY ARE NOT SURE THAT UNTAET IS AS RESPONSIVE AS IT SHOULD BE TO CHANGING SITUATIONS, SHALL WE SAY. THEY SET THEMSELVES ON A PARTICULAR PATH AND IT DOES NOT PARTICULARLY MATTER WHAT HAPPENS ANY WAY DOWN THAT ROAD—THEY ARE NOT PARTICULARLY INCLINED TO CHANGE THAT. THE KEY REALLY IS FLEXIBILITY. I AM WONDERING HOW RESPONSIVE WE THINK OPERATIONS SUCH AS THESE ARE AND IF WE HAVE ANY PARTICULAR VIEWS IN RELATION TO UNTAET.

Mr Potts—I answered an earlier question about lack of consultation between UNTAET and the Timorese. This is a slightly different question. I would say that UNTAET has done a very credible job in very difficult circumstances. That would be my bottom line judgment first of all. There are a number of points to make under this. Firstly, the UN is not in the business of colonial administration and yet that is really what it is being asked to mount in East Timor. In no other situation has it been directly administering people without some other government as backup. In Cambodia there was a Cambodian government. But there is no backup government. They are the government. That is a unique challenge for the UN in many ways.

THEY HAVE APPROACHED IT IN AN AD HOC MANNER BECAUSE THEY DO NOT HAVE THE INFRASTRUCTURE TO BE A COLONIAL ADMINISTRATOR. NOT EVERYBODY ARRIVED AT THE BEGINNING. THEY HAVE ARRIVED AT QUITE DIFFERENT STAGES. IT IS NO SECRET THAT THERE HAVE BEEN SOME DIVERGENCES OF OPINION WITHIN THE UNTAET OPERATION ITSELF. I THINK YOU WOULD HAVE SEEN IN THE PRESS LAST WEEK THAT THERE WAS LETTER TO THE TRANSITIONAL ADMINISTRATOR FROM THE MOST OF THE DISTRICT ADMINISTRATORS. I THINK YOU ARE FACING A UNIQUE AND DIFFICULT SITUATION HERE. THIS IS A COUNTRY THAT BASICALLY WENT CLOSE TO YEAR ZERO IN TERMS OF ADMINISTRATION, IN TERMS OF INFRASTRUCTURE, IN TERMS OF THE LACK OF BASIC ADMINISTRATIVE NECESSITIES SUCH AS JAILS, COURTHOUSES, PAPER AND THINGS LIKE THIS.

SO WHEN YOU LOOK AT THE UNIQUE CHALLENGES THAT UNTAET HAS FACED, I THINK THEY HAVE DONE A VERY GOOD JOB. I THINK THAT WOULD BE THE JUDGMENT OF THE GOVERNMENT AS WELL. YES, THEY COULD HAVE DONE BETTER—ANYONE COULD HAVE DONE BETTER, BUT THAT IS OFTEN WITH THE BENEFIT OF HINDSIGHT. THEY ARE CONTINUING TO LIFT THEIR GAME. EAST TIMORESE ON THE WHOLE I THINK ARE PRETTY HAPPY WITH UNTAET. AS I MENTIONED EARLIER, THERE WAS SOME CARPING AROUND THE MARGINS. THAT IS INEVITABLE AND IN FACT WE WOULD WANT TO SEE IT BECAUSE WE WANT TO ENCOURAGE A HEALTHY, DEMOCRATIC SOCIETY THAT HAS DIFFERENT OPINIONS IN EAST TIMOR. BUT NO, WE THINK THEY HAVE DONE A PRETTY GOOD JOB.

Senator PAYNE—I suppose that addresses a part of my question but I am more concerned about progressing the situation, that is to say that if it was to be advanced to UNTAET that one of the significant issues that the East Timorese feel is out there at the moment is the very simple question of malnutrition of children, for example, how flexible are they in altering their focus on whether food is still being delivered, how it is delivered, where it is delivered and things like that, because the feedback that I have been receiving is that they are fairly fixed on the processes that they have in place and are loath to respond to those sorts of concerns—not out of any perversity or anything like that; it is just not the way it works.

Mr Potts—I cannot comment on the detail of that but what I would say in some ways is that a lot of the criticism of UNTAET has in fact been in a reverse direction, that they have concentrated too much on delivery of basic services to people and the rehabilitation of infrastructure compared to the challenge of building a new political society. Many Timorese have said they are re-building bridges, they are building clinics and starting the school structure again, but they have not given us any sort of clear steer on what East Timor will look like as a state. So, against that background that is a little surprising, I think. It is possible that my colleagues from AusAID may have better information, and we would certainly consult them.

Senator PAYNE—There are other ways I can take that up. Thank you.

Mr PRICE—How many members of your department have served in Bougainville? How have they found that experience?

Mr Potts—Let me take the question of the number of members of the department who have served on notice. The answer is quite a number and, as a divisional manager in a sense, it has an effect on divisional operations as we make available several of our officers every rotation for service in Bougainville. How have they found it? I think they found it both professionally rewarding because it is a situation where individuals can make a difference, and personally very rewarding as well. The Bougainvilleans have given the operation a very good and positive reception. It is interesting to see the number of people who have sought to sign up for another rotation.

Mr HOLLIS—The question of non-intervention in domestic affairs is sacrosanct and in fact is covered within the charter. Earlier the chair asked a question about the situation in Zimbabwe and you gave an answer which one would expect from the UN perspective. In the department's view, what would be a case where domestic intervention would be warranted? Some years ago when we were talking about apartheid or racism, I remember that some people were saying chapter 2 article 7 of the UN charter over-rode that part of domestic intervention. Does the department have any views on a situation where, say, the charter principles regarding domestic intervention could be over-ruled?

Mr Potts—It is difficult to talk across the board, but there have already been some instances of it. I think Somalia is the best example. That was not only a sort of failed state in the end but also it did not have a central government so the question of getting state consent to intervention was pretty academic.

Mr HOLLIS—But what about when there is a state government? It is like the chairman said about Zimbabwe. When could the UN, even with the backing of, say, the General Assembly, intervene in a deteriorating domestic situation, however defined, within a sovereign state?

Mr Potts—It is difficult to conceive of a situation in which the Security Council would feel comfortable about interfering in internal affairs. You mentioned the General Assembly: there is the uniting for peace procedure available to the General Assembly. It is very controversial. I think it was only used once, in the Congo, and in a sense that became an object lesson for not repeating that. You have to look at the achievability of intervention in terms of looking at who are the permanent members and how they might be expected to react to an individual situation. We have seen that Russia had very strong views in relation to intervention in Kosovo. But it is probably a theological view across the board, not just Kosovo, although they had a particular interest in that, but they have a very strongly held notion of non-interference in internal affairs. Russia has the veto. China may well have a similar view in most situations. So I think there is, in a sense, a bit of space between a Somalia, on the one hand, and a classic situation on the other. You are only looking around the margins and you would be looking at perhaps a situation that we saw in Liberia some years ago where there was a central government but it was vestigial rather than active and so on. I think you are only looking at grey areas.

Mr HOLLIS—Or in short, not much?

Mr Potts—Not much.

CHAIR—Our time has expired well and truly. Mr Potts and your officers, thank you very much for your attendance here today and for your contribution. We are in the initial stages of this inquiry and there may be things that we might want to put to you after we have received a lot more evidence. If you would be available if it happens, that would be most appreciated. Would you forward any additional material that you have been asked to provide today to our secretary. You will be sent a copy of the transcript of your evidence, to which you can make corrections of grammar or fact if you so desire. *Hansard* may wish to check some details concerning your evidence before you leave, so please check to see whether it has any questions of you. Thank you once again for appearing before the committee this morning.

Mr Potts—Thank you, we would be happy to reappear.

[11.16 a.m.]

BEHM, Mr Allan, Head, Strategic Policy and Plans, Department of Defence

BORNHOLT, Brigadier Gary, Former Defence Attache, Department of Defence

CLARKE, Air Commodore Kerry, Director-General, Joint Operations and Plans, Department of Defence

EARLEY, Commodore Geoff, Director-General, Defence Legal Office, Department of Defence

KEAM, Lieutenant-Colonel Nick, Head, Australian Defence Force Peacekeeping Centre, Department of Defence

KELLY, Lieutenant-Colonel Mike, Director, Military Law Centre, Department of Defence

MACKINNON, Captain Andy, Director, ADF Operations/UN and Arms Control, Information Policy, Department of Defence

CHAIR—Welcome. Do you have anything to say about the capacity in which you appear before the subcommittee?

Brig. Bornholt—I appear as the former Defence attache to the United Nations mission in New York.

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

Mr Behm—No, I would like to make a couple of comments on it at the appropriate time.

CHAIR—I invite you to make an opening statement.

Mr Behm—The Department of Defence is very pleased to have an opportunity to speak to its submission before the subcommittee. The Defence submission is a pretty substantial submission. We have canvassed all of the issues that we think bear upon the department's role in meeting the government's objectives with respect to United Nations peacekeeping activities. It is a document which covers the interests of the whole of the Department of Defence—so it is an agreed document within our organisation—and it is a document where the main judgments move in alignment with those of the Department of Foreign Affairs and Trade, which of course has the primary responsibility for the management of our relationship with the United Nations.

On that matter, may I say that I am grateful to Mr Richard Rowe for staying here lest there be issues that need to be picked up or commented on by the Department of Foreign Affairs and Trade.

IF I MAY, RATHER THAN PRESENT TO YOU A LONG RECITATION OF ALL THE WONDERFUL THINGS THAT ARE IN THIS REPORT, I WOULD SIMPLY LIKE TO HIGHLIGHT A COUPLE OF JUDGMENTS THAT ARE CONTAINED IN THE EXECUTIVE SUMMARY, WHICH IS PAGE 3 OF THE DOCUMENT, IF THE MEMBERS HAVE IT. FIRST I WOULD LIKE TO TURN TO PARAGRAPH 3 OF THE EXECUTIVE SUMMARY TO UNDERSCORE THE POINT THAT THE ADF'S APPROACH TO ITS INVOLVEMENT IN PEACEKEEPING OPERATIONS IS DEEPLY FOUNDED ON THE PROFESSIONALISM OF THE AUSTRALIAN DEFENCE FORCE. IT IS THE DETERMINING CONSIDERATION WHEN WE ARE CONSIDERING HOW AND WHAT WE SHOULD SUPPLY TO SUPPORT THE UNITED NATIONS. I MIGHT ALSO POINT OUT, AS THIS PARAGRAPH SAYS REALLY ONLY IN A CLAUSE, THAT THAT PROFESSIONALISM IS DERIVED FROM THE PRIMARY FOCUS OF THE AUSTRALIAN DEFENCE FORCE ON THE ARMED DEFENCE OF AUSTRALIA. THIS IS AN IMPORTANT POINT, MR CHAIRMAN, IN THAT WE ARE NOT A DEFENCE FORCE PRIMARILY GEARED TO PEACEKEEPING OPERATIONS. OUR ABILITY TO SUPPORT UN PEACEKEEPING COMES ABOUT AS A CONSEQUENCE OF THE RANGE OF CAPABILITIES WE RETAIN FOR WHAT SUCCESSIVE GOVERNMENTS HAVE JUDGED TO BE THE HIGHEST POLICY REASONS.

THE SECOND POINT I WOULD LIKE TO MAKE IS WITH RESPECT TO PARAGRAPH 4 OF THE EXECUTIVE SUMMARY, THAT IS, THAT WE DO HAVE A TESTED POLICY ON DEFENCE PARTICIPATION IN PEACE OPERATIONS. IT IS A POLICY, AS WE NOTE HERE, THAT INCORPORATES DIFFERENT TYPES OF SCENARIOS—DIFFERENT SORTS OF PEACE OPERATIONS, DIFFERENT SORTS OF PLANNING PROCESSES AND COMMAND AND CONTROL ARRANGEMENTS, MILITARY PEACE OPERATION TASKS AND VARIOUS LEGAL CONSIDERATIONS. IN OTHER WORDS, I AM SAYING HERE THAT WE DO HAVE A BODY OF DOCTRINE THAT SITS BEHIND DEFENCE'S PARTICIPATION IN THESE THINGS, AND SHOULD THE COMMITTEE WISH ELABORATION ON THAT, LIEUTENANT COLONEL KEAM WILL BE ABLE TO ADDRESS THOSE SORTS OF ISSUES.

THIRDLY, IF I COULD TURN TO PARAGRAPH 5, THIS REALLY RELATES TO WHAT I THINK IS QUITE A BIG ISSUE, THAT IS, WHETHER OR NOT WE NEED TO MOVE FROM THE CURRENT STAND-BY ARRANGEMENTS TO OTHER SETS OF ARRANGEMENTS THAT MIGHT BETTER MEET THE RESPONSIBILITIES OF THE UNITED NATIONS. IT IS NOT FOR US TO JUDGE HOW THE UNITED NATIONS WISHES TO MAKE ITS OWN PREPARATIONS. OF COURSE, WE WOULD GIVE IT SOME ADVICE, BUT IT IS ULTIMATELY FOR THE UN TO WORK OUT HOW IT WOULD BEST WISH TO MEET ITS RESPONSIBILITIES. BUT FROM OUR PART WE HAVE SOMETHING OF A PREFERENCE FOR THE CURRENT ARRANGEMENTS. WE THINK THAT THE ABILITY OF CONTRIBUTING COUNTRIES TO JUDGE WHAT THEY MIGHT LIKE TO BE ABLE TO OFFER TO THE UN, BASED ON THE PRESSURES ON THEIR OWN DEFENCE FORCES AND THE AVAILABILITY OF ASSETS, IS PROBABLY A BETTER WAY TO GO THAN TO HAVE A SERIES OF STANDING COMMITMENTS. YOU WOULD NOTE OF COURSE THAT IN OUR CURRENT CIRCUMSTANCES WHERE WE HAVE A LARGE PART OF THE DEFENCE FORCE ON ACTUAL DEPLOYMENT TO EAST TIMOR AND A NOT INSIGNIFICANT GROUP DEPLOYED TO BOUGAINVILLE, AND WITH THE VERY SUBSTANTIAL DEMANDS ON THE AUSTRALIAN DEFENCE FORCE JUST DOWN THE PIKE—I REFER OF COURSE TO THE OLYMPICS—IT WOULD BE PRETTY HARD FOR US TO SUPPORT ANYTHING OTHER THAN STAND-BY ARRANGEMENTS. THERE ARE

VERY IMPORTANT NATIONAL INTEREST REASONS THAT LEAD US TO THAT CONCLUSION.

MY FINAL REMARK IS THAT THIS DOCUMENT WAS PREPARED AT A CERTAIN POINT IN TIME, AND THERE HAVE BEEN SOME SLIGHT DIFFERENCES TO THE NUMBERS THAT ARE CITED IN THE ANNEXES TO THIS REPORT. I KNOW THAT THE COMMITTEE WOULD NOT ACCUSE US OF MISLEADING THE COMMITTEE SIMPLY BECAUSE WE ARE OUT A LITTLE BIT HERE AND THERE, BUT I DO WANT TO SAY, SIMPLY FOR THE RECORD, THAT THESE NUMBERS THAT WE HAVE, PARTICULARLY IN ANNEX A, ARE A SNAPSHOT, REALLY, OF HOW THINGS LOOKED WHEN THIS WAS DRAFTED IN MARCH. SOME OF THE NUMBERS GO UP AND SOME GO DOWN—MAJOR GENERAL FORD, FOR EXAMPLE, REMOVED FROM OPERATION PALADIN, SO WE HAVE HAD A 100 PER CENT REDUCTION THERE. BUT IN OTHER CIRCUMSTANCES THE VARIATION IS IN THE ORDER OF 10 TO 20 PER CENT UP AND DOWN. MR CHAIRMAN, I WOULD LIKE TO CONCLUDE MY REMARKS THERE.

CHAIR—Although I asked you whether you wanted to make any additions or corrections, you have actually given us a different cost of operations from annex B. Does that replace the other one?

Mr Behm—That replaces the previous one.

CHAIR—So this is actually an alteration, isn't it?

Mr Behm—That is an alteration, yes. That is annex B.

CHAIR—Is it the wish of the committee that the document be tabled? There being no objection, it is so ordered.

MR BEHM, YOU MAY BE AWARE THAT WE HAD THE DEPARTMENT OF FOREIGN AFFAIRS, DEFENCE AND TRADE AS OUR FIRST WITNESSES THIS MORNING. THE ROLE OF PEACEKEEPING WAS DISCUSSED AT LENGTH WITH THEM. THE FIRST THING I PUT TO THEM WAS THAT BEFORE YOU CAN HAVE A PEACEKEEPING FORCE YOU HAVE TO HAVE A PEACE, AND VERY LITTLE HAS BEEN SAID ABOUT PEACE ENFORCEMENT; IT IS MOSTLY ABOUT PEACEKEEPING. ONE OF THE THINGS THAT WERE THE GENESIS OF THIS INQUIRY WAS THE INEFFECTIVENESS OF THE UNITED NATIONS TO BE ABLE TO DEPLOY TO AN INTRASTATE CONFLICT UNTIL A HUMAN TRAGEDY HAD OCCURRED. TO SOME EXTENT THAT IS THE SAME CASE IN EAST TIMOR, THOUGH THAT WAS VERY RAPID DEPLOYMENT COMPARED TO OTHER AREAS AROUND THE WORLD. I UNDERSTAND FROM YOUR SUBMISSION THAT YOU SAY THERE IS LITTLE SUPPORT FOR A STANDING ARMY, AND I UNDERSTAND THAT, FOR A VARIETY OF REASONS. YOU THEN HAVE THE HIGH READINESS BRIGADE, WHICH IS A PROPOSAL. WHAT IS THE DEFENCE DEPARTMENT'S VIEW ON HOW WE SHOULD PERHAPS MAKE SOME RECOMMENDATIONS TO THE UNITED NATIONS OR TO THIS REFORM PROCESS THAT WOULD ENABLE A HIGH READINESS BRIGADE TO BE ABLE TO MOVE INTO ACTION MUCH MORE QUICKLY OR WITHOUT THE INVITATION OF THE COUNTRY INVOLVED WHERE THERE IS A CONFLICT WITHIN NATIONAL BORDERS?

Mr Behm—That is a monty of a question, isn't it, Mr Chairman?

CHAIR—It is one we may need to try and find some answers to.

Mr Behm—I realise that. I listened to the last part of Michael Potts's answers dealing with the hypothetical that you or Mr Hollis put forward to him. It is a very difficult question to answer because the circumstances of each of these operations change. Not only are they different as between the different operations that the UN conducts but even internally the situation is so fluid usually that it is very hard to give a precise answer to that question in advance of the situation occurring. I noted very much the approach that Mr Potts took, and that was that it is a situation for discussion by the UN, and particularly by the Security Council, and that it is on the basis of those deliberations that some pattern of a solution is found. At this point I do not think I can give much further density to the answer to that question. I might ask my colleagues, firstly, Air Commodore Clarke, who is the Director-General, Joint Operations and Plans, in the Defence headquarters.

Air Cdre Clarke—A point that is germane to what you are driving at is the speed of UN response. There are a number of ways in which you can improve that. One is having standing forces available. The other, of course, is to change UN process, both in their mechanisms for deployment approval and their planning to support deployment. It is true that the UN's processes have been recently reshaped, and I would suggest that some of that has been to advantage and some may be to disadvantage on the point you are try to get to, the speed of deployment. We have some views on that and perhaps they could be teased out in questions subsequently. Brigadier Bornholt spent time on the floor there. I would not like to presuppose what he says, but in my experience, which is directly related to the INTERFET and East Timor deployment specifically, we were able to get the UN to respond very quickly when we were in a position to provide forces to support them. I think that is a combination which is particularly useful and is something which might bear some following up, certainly in a sphere where Australia is interested in interventions of the sort you referred to.

CHAIR—But in fact Timor has been the exception rather than the rule. There have been conflicts within national boundaries in the past 10 years which the United Nations has not had the ability to become involved in, so it does not matter how rapid your ability to respond is, you have not had the opportunity to respond. That is the difficult situation where we think there needs to be some reform in the way the United Nations is able to operate.

Air Cdre Clarke—Yes, I think that is a little out of my sphere where we are talking about one nation, or a group of nations in the United Nations case, intervening in the affairs of another state. That is something which I think is an international issue rather than one of a pure military nature, which is my area of expertise.

CHAIR—Brigadier, would you like to comment?

Brig. Bornholt—It is, as Mr Behm said, an extremely complex proposition that we are trying to deal with here. I believe a national government's first responsibility is to ensure the safety of its own people, including the peacekeepers that it may intend to send along. The problem with rapid deployment is that usually you are wanting to deploy rapidly into a situation which is likely to require some form of combat. When you ask yourself the question, 'How rapid is rapid?' from a strategic perspective and you have to answer all those questions about the safety of your own citizens, the problem that you are trying to confront, and whether or not they will be confronted with a combat situation, there is no way of codifying all of that ahead of time. You are working in a consensus environment in the United Nations, where the Security Council

indeed imposes its own delays because of national requirements. The United States, for instance, has delays imposed in terms of the notice that it requires to approve the use of peacekeeping funds. So it is a very difficult proposition.

YOU WILL FIND THAT MOST OF THE PROPOSALS TO DO WITH RAPID DEPLOYMENT ESSENTIALLY DEAL WITH THE LOWER ORDER OF CONFLICT, CONFLICT WHICH IS USUALLY DEALT WITH UNDER CHAPTER 6 OF THE CHARTER, WHERE YOU HAVE INTER-STATE CONFLICT, USUALLY, AND YOU HAVE CONSENT INVOLVED. IN THOSE OTHER AREAS, WHERE THERE ARE HUMAN RIGHTS VIOLATIONS—AND STOPPING THOSE IS A LARGE REASON FOR THE WORLD TO SEE THE NEED FOR RAPID DEPLOYMENT—YOU ARE USUALLY IN AN INTRA-STATE ENVIRONMENT, WHERE CONSENT IS A TOTALLY DIFFERENT PROPOSITION. CONSENT BETWEEN STATES ACTUALLY CAN BE DEALT WITH AT STRATEGIC THROUGH TO TACTICAL LEVELS. IN INTRA-STATE CONFLICT, IN CIVIL WAR SITUATIONS, STRATEGIC CONSENT DOES NOT NECESSARILY TRANSLATE TO TACTICAL CONSENT. SO YOU ARE ACTUALLY ENTERING INTO A VERY DIFFICULT AND COMPLEX ARENA. YOU COULD BE IN THE SITUATION WHERE YOU RAPIDLY DEPLOY TROOPS AND CAPABILITIES INTO AN ENVIRONMENT WHERE THEY THEN GET THEMSELVES INTO SERIOUS TROUBLE AND YOU ARE BACK WHERE YOU STARTED FROM. THAT IS A ROUNDABOUT WAY OF GIVING YOU SOME IDEAS ABOUT WHAT I BELIEVE IS A VERY COMPLEX ISSUE.

Mr Behm—I would like to pull together an attempt to answer what is a very tricky question. Situations vary, of course, around the world. There are obviously many tragic situations where events proceed for long periods of time before the United Nations, or anybody else, is able to intervene. I think it is important to bear in mind that the interests and capabilities of neighbouring states is quite an important factor in the way which the United Nations does consider these things. Our experience during the whole of the management of the East Timor issue really did have Australia very closely linked with the United Nations in looking at what would be appropriate force levels and timings to meet the problems in East Timor. I would certainly acknowledged the really outstanding work that Brigadier Bornholt, seated on my left, performed in New York during July, August, September last year.

THE SECOND POINT I WOULD LIKE TO MAKE IS TO REINFORCE A POINT THAT BRIGADIER BORNHOLT HAS MADE TO YOU, AND THAT IS ABOUT RISK. TO MOVE A FORCE VERY QUICKLY OFTEN MEANS THAT YOU ARE MOVING A VERY LIGHT FORCE. THAT CAN IN MANY CIRCUMSTANCES WHERE COMBAT IS NOT ONLY PROBABLE BUT INEVITABLE MEAN THAT THE UN FORCE, OR THE PEACEKEEPING FORCE, COULD SUSTAIN QUITE UNACCEPTABLE CASUALTIES. IN FACT, IT COULD TOTALLY FAIL. THAT IS, FOR ALL OF THE PLANNERS, INCLUDING OURS, A VERY SIGNIFICANT FACTOR THAT WE NEED TO TAKE INTO ACCOUNT. ALTHOUGH YOU ARE COMPLETELY CORRECT IN SAYING THAT THE EAST TIMOR OPERATION WAS EXECUTED WITH TERRIBLY IMPRESSIVE SPEED, THE PLANNING CYCLES THAT LED TO THAT TOOK ABOUT FIVE MONTHS, AND THAT REALLY IS AN IMPORTANT CONSIDERATION.

OUR PREFERRED APPROACH TO DEALING WITH THE SORT OF GENERAL QUESTION THAT YOU HAVE PUT IS TO SEE THE PLANNING MECHANISMS OF THE UNITED NATIONS ITSELF STRENGTHENED AND IMPROVED, RATHER THAN HAVE SIMPLY A LIGHT STANDING FORCE WAITING TO BOARD LARGE AIRCRAFT AND BE DEPOSITED IN DANGEROUS SITUATIONS. WE IN DEFENCE HAVE IN FACT LENT VERY SIGNIFICANT SUPPORT TO THE DPKO OVER A GOOD

NUMBER OF YEARS NOW, GENERALLY AT OUR EXPENSE, WHERE WE HAVE PARTICULARLY PUT IN HIGH-LEVEL OPERATIONAL PLANNERS AND LOGISTICS PLANNERS TO SUPPORT WHAT IS A VERY THIN ORGANISATION IN MEETING WHAT ARE, AFTER ALL, VERY COMPLICATED TASKS. WE PUT OUR MONEY ON THE QUALITY OF THE PLANNING IN THE FIRST INSTANCE, BECAUSE WE THINK THE BETTER THE PLANNING, THE BETTER THE EXECUTION.

CHAIR—If I could move to one issue in relation to peacekeeping, and it probably crosses over another inquiry that is going on with another subcommittee into the structure of the Army, amongst the issues that were raised with us, both in the Timor and the other inquiry, was the training of forces for peacekeeping operations. There are two schools of thought: one is that if you have a highly skilled and trained force for warfare it is easy to scale down to do the humanitarian and peacekeeping operations; and two, the other school of thought, which is also quite strong, is that in fact people require specialist training to be successful in all theatres of peacekeeping operations. Does the department have a view on which of those two schools of thought should predominate?

Mr Behm—Could I start by saying that I do not think they are opposed positions.

CHAIR—Possibly not, but it was suggested to us by the people involved that in fact the training should actually branch off at some stage to specialise in peacekeeping while others might continue with their highly skilled warfare.

Mr Behm—I certainly understand that, and I will ask Lieutenant Colonel Keam from the Peacekeeping Centre to speak about our approach to that. But let me say—and this is why I picked on that particular paragraph in the executive summary—that our force is a force which is designed for warfare, and that is an issue of continuing government policy. It is not a force designed for peacekeeping. But that is not to say that the point that you are making is other than a very important point when you are actually in the business of deploying war fighting forces to in fact keep the peace or perhaps to enforce it. So we do provide some specialist training for those who are going on peacekeeping operations, but it is almost always provided in the particular circumstances of the operation itself. If you allow me, I will ask Colonel Keam and Air Commodore Clarke to put the detail in there.

CHAIR—Yes, certainly.

Lt Col. Keam—The training focus is correct, that is, we train for war, and in circumstances where we are warned for deployment and the opportunity is there, force elements undergo specific to deployment issues, whether it be into the Middle East where they get background briefings on the crisis, the opposing forces and so on, or in more detailed operations such as East Timor. The lead-on time specifically for large force elements is part of their integral training. For instance, 3 Brigade as part of its training regime would touch on some of the many principles that are needed to be worked around and how to work with humanitarian agencies and the like. The Peacekeeping Centre looks at operational and strategic level education, primarily, where we try to educate trainers from both Australia and our region about some of the key principles and issues and considerations that need to be addressed in any consideration for a deployment from any nation. We then do specific training as we do for the Federal Police. We assist them in their training. So it is specialist training short of deployment that is the area that we focus on.

Mr PRICE—I think the point that was made to us in East Timor is not that we should not train for war fighting—that has stood us in good stead; not that we should not get the specialist in-country information about what you are likely to hit and what is required, but that prior to deployment you actually have to start re-orienting towards the mission—that is, the more time you have to start exercising your particular body of troops the better you will be prepared. That does not seem to be standard practice.

Lt Col. Keam—There are a number of exercises at brigade level and so on where they do have the environment of assistance to humanitarians and so on where—

Mr PRICE—I agree that exercising is good, but if there is a known deployment to Kameronia or wherever and you provide the in-country specialist information, the point that was made to us was that, prior to deployment, it is good to start exercising for however long a period of time those troops have before the mission that is inevitably going to follow.

Lt Col. Keam—That is true, and I think you will find the rotation of force, the force preparation for the follow on force, UNTAET went through that very process.

Mr PRICE—Yes, but not the initial one.

Lt Col. Keam—It happened rather quickly.

Air Cdre Clarke—There was some training. You will recall the readiness notice changes for 3 Brigade were specifically focused on East Timor operations and for peacekeeping. We did try to go down that line. There is no doubt that we learn as we go on here. The focus of what we intended to do in East Timor and what went on the ground form part of our lessons. The ability to look at a particular culture, the structures of the people on the ground and how you are going to better relate with those, is easy in theory but in practical terms when you put the people on the ground you actually learn some things about doing it. And I think this that is probably true for no matter where you go in the world.

Mr PRICE—But I suppose this is the question. If you accept that proposition, that is the degree of exercising for the particular mission as far in advance of deployment as you can is a worthwhile thing, what has changed in the instructions to Army to accommodate that? Because one particular commander took it upon himself to do that.

Air Cdre Clarke—Are you suggesting that the commander of 3 Brigade did that independently?

Mr PRICE—No-one of the other ones did it. And I think he is been commended for doing it.

Air Cdre Clarke—I think he should. That sort of initiative —there is a degree of—

Mr PRICE—No, what have you changed in terms of the ADF practices now to accommodate? You have got the agreement of the committee. We are mere pawns in your palm, but what have you done now?

Air Cdre Clarke—I do not think we have really changed practice. The issue here is if you were to take that model and we were to look at our area of interest over the next two years, which would be a typical training session, you would choose five or six countries where operations might be possible should this government so choose to go down this path. You then say, ‘All right, all of our Army people are either going to be trained in the background for those locations on the basis of they are more likely to where we might deploy, ’ or you would divide your force up and say, ‘We will send this brigade to that area and another brigade to another area.’ It actually narrows your options rather than expanding your options. Yes, there is always a compromise between the level of broad based readiness and that which is specific for the theatre you are going to go to. Until you can be prescient and determine exactly where you are likely to go to in the next six months or so, it is going to be quite difficult to do the specific sort of training that you are talking about.

Mr HOLLIS—This is where we will be in future at various variance with New Zealand and I actually agree with the approach that the Australian defence forces are taking in their preparation, but whereas the New Zealand Prime Minister has stated and I have been seen other state that New Zealand will be specifically trained in peacekeeping roles, as indeed Canada was a few years ago with some say disastrous results. So it is going to be interesting with this close cooperation or so-called close cooperation between Australia and New Zealand if the basic training of the defence personnel are on two different tangents.

Air Cdre Clarke—If the New Zealand Defence Force goes down the path which is in the public arena, I think that inevitably there will be some variation between us. There will be some things that we can do that they cannot. Similarly, if as you correctly point out, if they go down the peacekeeping role they may provide some skill sets which we can learn from as well. So there is going to be a balance, but that is what partnerships are about, to some extent.

Mr PRICE—Can I get back to the training issue? I am not asking that we identify the three regional hot spots in our region. What I am saying, I suppose, is, once that five month planning starts and there is a high probability that you may be deploying forces should the government so determine, we will not only have to alter the peacekeeping centre for their specialist contribution but we need to have for those units that may be deployed as much time as possible to start exercising for that deployment. I do not believe that that currently—we do not adapt from what we are doing in war fighting exercising in that situation to the likely deployment. This is the key issue I think the chairman is raising. What I would like to be satisfied with is that there has now been some change to take this into account.

Air Cdre Clarke—The only change that I am aware of is that which related to the deployment of 6RAR, which replaced 5/7 about a month ago. That was specifically focused on East Timor on rotation.

Mr PRICE—That is disappointing.

Air Cdre Clarke—I do not know that answer.

CHAIR—Perhaps I can take this one stage further. If the Australian armed forces are going to be involved in peacekeeping operations within our region, they are not likely to be doing it on their own; they are likely to be doing it as part of a coalition of regional forces. Have you

ever done or are you likely to do in the future any regional exercises which are particularly directed at peacekeeping operations in cooperation with the people that we are likely to be involved with?

Mr Behm—Mr Chairman, I will take that in the first instance and then I will ask Lieutenant Colonel Keam to talk about how we try to handle the regional dimension. A critical issue in all of this is cost. We have a defence budget—and I do not have to tell you this—that is under a bit of pressure and the preparation that would go into a high level of expertise and readiness for such forces could be very extensive. One of the reasons that we do tend to hold back a bit is that even three months out from the actual initiation of an operation it is by no means clear that we are actually going to execute such an operation. We do our planning for it, and in the case of East Timor our planning began pretty early; it began about the same time as the change in the readiness state for 1 Brigade. That planning initially was on a pretty wide base because we had no real feel for the texture of the operation. But, as we got further through the year, it became clearer what kinds of operational environments we would find ourselves in. It also became clear that we may have a force which is opposed, and it was for that reason that, when the mandate was actually written, we had a chapter VII mandate, as distinct from a chapter VI mandate. That is a very important point because a chapter VII mandate really requires a force which has a high level of protective capacity in it. That is a war fighting capacity, if I can put it in really bleak terms. So all the time we keep a very close eye on how much it is worth investing how far out. I guess that from time to time we will get that wrong but at this stage I think it is fair to say that our deployment at least to East Timor was pretty successful, notwithstanding relatively short training cycles. There are a lot of other things that one could say about that, and I appreciate that.

TO TAKE THE ISSUE OF THE REGIONAL EXERCISING, WE DO NOT DO REGIONAL EXERCISING FOCUSED SPECIFICALLY ON PEACEKEEPING. IN OTHER WORDS, WE DO NOT GET LARGE NUMBERS OF PEOPLE TOGETHER AND TAKE THEM THROUGH WHAT IT WOULD BE ACTUALLY LIKE ON THE GROUND. WE DO SOMETHING SHORT OF THAT, BUT IT IS STILL VERY IMPORTANT. I WILL ASK LIEUTENANT COLONEL KEAM IF HE WILL GIVE YOU A BIT OF DETAIL AS TO WHAT WE DO WITH REGIONAL DECISION MAKERS AND COMMANDERS AT THE PEACEKEEPING CENTRE AT WILLIAMTOWN.

Lt Col. Keam—There a couple of activities that we conduct. In fact, there is one starting in June which is the second iteration of a bilateral exercise planning conducted with the Royal Thai Supreme Command. This is a CDF directed activity which looks at, in the coming circumstances, an international border dispute requiring a chapter VI coalition force responding prior to the deployment of a UN one because of UN engagement. So we are engaging, at the upper command and control and planning staff level, with Thailand, providing it with assistance and guidance in planning coalition operations and we are also conducting training for the Singapore Staff College later this year, at its request, on issues of planning and the conduct of operations. From purely the focus of a peacekeeping centre, again I refer to our seminar, which is conducted in focusing on the ADF but with lots of elements of regional nations, particularly our inner area of interest; we provide them with all the basic information on UN issues and provide them with material to conduct planning tasks for deployments including humanitarian issues.

THERE IS A MAJOR SEMINAR COMING UP IN MANILA AT THE END OF THIS MONTH, WHICH AUSTRALIA HAS BEEN ASKED TO SPEAK AT, COVERING ISSUES OF TRAINING AND PREPAREDNESS FOR PEACE OPERATIONS. A DECADE AGO THERE WAS A LOT OF INTEREST IN PEACEKEEPING WITH THE RISE OF SOMALI AND YUGOSLAVIA, THEN THERE WAS A DOWNTURN AND NOW WE ARE BACK UP TO A LARGE INVOLVEMENT IN BOTH UN AND COALITION OPERATIONS AROUND THE WORLD. WE ARE SEEING INCREASED INTEREST IN PEACEKEEPING, CERTAINLY WITHIN THE REGION. WE ARE DOING A LOT WITH NATIONS WITHIN THE REGION TO HELP THEM PREPARE AND UNDERSTAND BETTER.

CHAIR— I understand what you're saying and where you are coming from. The reason I asked the question is that regionally we do exercises in relation to warfare to keep our defence forces as highly tuned as they possibly can be. I guess it would be fair to say that the likelihood of hostile forces invading Australia is on the lower end of the scale, yet the likelihood of our forces being involved in peacekeeping operations is at the higher end of the scale. We are quite happy to have regional exercises to tune our troops to be very highly skilled in warfare operations. It would appear as though, because there is a greater likelihood of them being involved in peacekeeping operations, some regional emphasis could be placed on making us ready to work with other countries through some sort of operation.

Air Cdre Clarke—You are right. However, in relation to our bilateral relationships our exercise program is focused specifically on skills that those countries are comfortable in working with. You would be aware that a number of regional countries are less than comfortable with interventionist operations, so we can only bilaterally exercise when the other party actually wants to play the game—if I can use that terminology. Our relationship in the Five Power Defence Arrangement, for example, looks specifically at air defence of that environment. That is something that those countries are interested in, see a role for it, and see that they can learn some skills from us and us from them. Offshore intervention is something that none of the Asian countries are particularly comfortable with, although the proof is that they were in East Timor and still remain there. So, if you like, there are new areas for us to now start exploring, and it may well be that in future exercise programs we will be looking at the sorts of things that you talk about.

Senator BOURNE— I have questions on two areas. I will try to be quick because I know you are getting to the end of your time. Does everybody in the defence forces go through Colonel Keam's centre or at least have basic training directed at peacekeeping, as well as the basic training directed at the defence of Australia? And on the same subject, I know everybody is given the Geneva Convention but are they given basic training in what is actually in it and what is expected of them as a result of all of that. Secondly, as far as the standing army goes in SHIRBRIG, I noticed in paragraph 62 of your submission that you mention what it is composed of and that you have some problems with it. Are those 5,000 personnel from the 10-member nations virtually a little standing army sitting in Copenhagen or are they coming from somewhere else, and would they be gathered together within that 15 to 30 days? You have mentioned that you have difficulties with SHIRBRIG itself. Can you tell me what those difficulties actually are?

Mr Behm— Senator, to answer your first question, I will ask Air Commodore Clarke; and to answer your second, Brigadier Bornholt.

Air Cdre Clarke—I will share this with Lieutenant Colonel Keam. What we try to work with our warfare centre—it is not possible in throughput to put every person through—is train the trainers. So the key executives in battalions, in squadrons and on ships get that overseas training. Of course, we also train those who are looking for deployment or who are going to be deployed overseas. That is a necessary condition before they go.

SO YOU HAVE A TARGET AUDIENCE OF PEOPLE WHO LEARN THOSE SKILL SETS WHO THEN TAKE THEM BACK AND INTEGRATE THEM INTO THEIR OWN DEVELOPED EXERCISE PROGRAMS, JUST AS THE LIEUTENANT COLONEL YOU SPOKE OF IN EAST TIMOR DID FOR HIS PERSONNEL. HE WAS TRAINED; HE SAW AN OPPORTUNITY; HE SAW A FOCUS. HE HAS SUFFICIENT FLEXIBILITY IN HIS TRAINING PROGRAM TO BE ABLE TO DO THAT. THOSE BUILDING BLOCKS ARE THEN ALL PUT TOGETHER IN THE BROADER CONSTRUCT OF DEFENCE FORCE TRAINING. WE TRY TO GIVE INDIVIDUALS THE SKILLS. THAT IS THE INTENT.

Lt Col. Keam—The focus that we take is at the officer level, primarily between major and lieutenant colonel, because they are the ones that either conduct the training or implement or conduct the planning for implementation. Training at the soldier, seaman or airman level is the responsibility of the unit commander. Based on his directive, there is latitude for them to conduct training in preparedness, as the lieutenant colonel in East Timor did. He could see that that was a most likely task and went on to do that. Similarly, both one and three brigade undertook work-up training for specifics for operations.

Senator BOURNE—And the Geneva Convention?

Air Cdre Clarke—The second part of the question related to the Geneva Convention. There are two parts. One, there is generalist training, right at the basic level. As soon as a person comes into the ADF they are taught what is possible, what is not, what is controlled use of force. The second part of the equation relates to specific operations where rules of engagement are framed in accordance with the Geneva Convention. Then, our personnel are briefed and in fact are very much focused on only applying force—or not applying force, depending on how the rules are structured—in accordance with that. So we have two thrusts at ensuring that our people are involved with and work within the framework of the Geneva Convention.

Senator BOURNE—And there is actual training in there? They are not just given the booklet and said, ‘Now go and read that’.

Air Cdre Clarke—No. The rules of engagement training is particularly specific because it is the control that government puts upon us, the ADF, in the use of military force either offshore or onshore.

Mr Behm—There is a lot of investment in it.

Senator BOURNE—That is good. Thank you.

Brig. Bornholt—The second part of your question related to the stand-by high readiness brigade. Could I lead into that by making a connection to whether you invest in combat capability or whether you invest in pure peacekeeping. Over the last three years in visiting various missions around the world and looking at those that had been successful and those that

had not, my experience is that you can generally put together a successful mission when you actually give it a military capability that has some muscle. It is required to be impartial, remember; it is not neutral. It is an impartial issue and it really has to intimidate both sides to be impartial. If you do not give it that amount of muscle then you invite adventurism. The failure of those missions that have not done well—in Angola and the current problem in Sierra Leone—is essentially related to this lack of muscle, because that is all connected with lack of commitment and on it goes. If you enter a mission area with your rifle and your boots, then I believe you have a problem—unless it is an interstate conflict where both parties consent and they keep their sides apart, where we actually get into the old fifties idea of the unarmed observers and so on. That is the lower end of the scale. If you want to be armed, then you have got to be able to ensure that you can see off the challengers without being dragged into combat.

THAT LEADS US INTO THIS ISSUE OF THE STAND-BY HIGH READINESS BRIGADE. IT IS A DANISH INITIATIVE. IT HAS BEEN ON THE CARDS FOR ABOUT FIVE YEARS. IT HAS MET A LOT OF RESISTANCE AMONG THE UN MEMBER STATES, PARTICULARLY FROM THE NON-ALIGNED MOVEMENT. IT IS COMPOSED OF TROOP AVAILABILITY AS OPPOSED TO TROOP CONCENTRATION. THE COUNTRIES WHO ARE PARTS OF IT MAKE THESE TROOPS AVAILABLE AS REQUIRED. THE DIFFICULTY WITH THE CONCEPT IS THAT THE COUNTRIES THAT ARE INVOLVED ESSENTIALLY PROVIDE TROOPS WHO ARE FROM UNITS THAT ARE IN THEIR ONE-YEAR NATIONAL SERVICE FOR THOSE COUNTRIES. THEIR MILITARY CAPABILITY IS CONSEQUENTLY NOT HIGH. IT ESSENTIALLY LACKS DEPLOYMENT ASSETS. IT LACKS COMBAT LOGISTICS AND IT CAN ONLY BE OPTIMISED FOR LOW-END CHAPTER VI OPERATIONS. IT IS NOT A PROPOSITION FOR RAPID DEPLOYMENT. IT HAS TO GO THROUGH THE SAME PROCESS OF CONTRACT FOR MOVEMENT, AND ON AND ON IT GOES. THERE ARE A NUMBER OF ADDED DIFFICULTIES WITH IT.

Mr PRICE—What do you mean by logistics?

Brig. Bornholt—In combat, there is basically a requirement for tactical and operational level logistics able to manoeuvre with the combat force under fire. Because logistics assets in every country are of extremely high value, it is unusual for member states to actually apply these high value assets to what may not be a like-minded commander and to then manoeuvre them under fire and lose them. If you cannot manoeuvre logistics under fire, you cannot manoeuvre combat elements under fire.

Senator BOURNE—So these people would not be appropriate for chapter VII?

Brig. Bornholt—Absolutely not.

Senator BOURNE—Are we looking at ways that there could be some sort of high readiness integrated response to chapter VII?

Brig. Bornholt—My experience—and I would link it to what happened in East Timor—is that if you want to respond rapidly in a potential combat environment under chapter VII then you need to gather together countries whose national interests coincide with the difficulty that you are presented with. That leads you back into this regional business, and then you get an impartiality problem as well. It starts to get a bit tricky. The bottom line is that you need to find countries which have a national interest and which are willing to move quickly to deal with the

problem. In Africa, rapid deployment has been successful in West Africa, where Nigeria has applied virtually its total national capability through ECOMOG to deal quickly with problems. Why did Australia become quickly involved in East Timor? Again, it was because national interests coincided with the problem that was presented. If East Timor had happened in the middle of the Atlantic, Australia probably would not have been involved. That is the key to it, I think.

Senator BOURNE—That is a good point. Thank you.

Mr PRICE—I notice in your annex B that East Timor is a footnote. Is there any reason for that? Also, you have ‘actual achievement’ and ‘budget estimate’ but you do not follow that for East Timor.

Air Cdre Clarke—There is a reason for that. The East Timor figures are still continuing.

Mr PRICE—But so is Bougainville.

Air Cdre Clarke—Agreed. If you look at the revised annex B, I believe that the Bougainville figures for supplementation have changed, for example.

Mr PRICE—What supplementation are you going to receive for East Timor?

Air Cdre Clarke—The government has given us an understanding that the expenses which we can directly relate to East Timor will be supplemented by government. The initial bid was some \$780 million, of which I understand some \$120 million has been returned to government under arrangements whereby if it was not needed it should be sent back.

Mr PRICE—What has been the total cost of East Timor to date?

Mr Behm—Could we take that on notice, because we are in a very good position to mislead you on this. It is very complex question of what we mean by total cost.

Mr PRICE—Mislead me against your best wishes and intentions!

Mr Behm—No, but if we take it on notice we will give you an answer very quickly. We do not want to just pluck a figure out of the air.

Air Cdre Clarke—I am aware of some figures that were provided to a committee a week or so ago. We could get access to those.

Mr PRICE—I notice that in your statement to the subcommittee you emphasise point 4 in the executive summary, which I think is all about the defence of Australia.

Mr Behm—The defence of Australia was my first point.

Mr PRICE—Are we still locked into that?

Mr Behm—I am not sure whether we are locked into it.

Mr PRICE—Are we moving to the inner arc?

Mr Behm—Yes—it depends. We have a white paper, which is on its way.

Mr PRICE—When is that coming out?

Mr Behm—The minister has said that it is due out in the next few months, but it will be for the minister to decide once it goes through the cabinet. I cannot answer that question precisely. It is fair to say that the policy concentration of successive Australian governments has been on the national task of defending Australia. That for us is the driving force of all other considerations relating to the use of armed force.

Air Cdre Clarke—It does not necessarily mean that you defend from only inside the moat.

Mr PRICE—I guess it is also true to say that increasingly it looks as though we need to be able to sustain two significant peacekeeping operations. That should be within our capability.

Mr Behm—I think it is fair to say that at this time the government, and we as the people who carry out the government's decisions, are faced with some quite serious problems about concurrency and duration. The government made a decision in the early part of last year to try to address that by the change in readiness states of 1 Brigade. The ADF still has a very considerable amount of pressure on it. As we look down the track for the rest of this year, particularly with the Olympics, I think we will be kept fairly busy.

Mr PRICE—Are those peacekeeping and peace enforcing operations a force structure determinant? How do you handle that in planning your force structure?

Mr Behm—They are not a force structure determinant in that we do not actually acquire force for the specific employment in peacekeeping operations or in peace enforcement operations. The forces that are applied to those are drawn from forces whose sort of creation is predicated upon those key policy drivers. In a way, Mr Price, it is not quite as black and white as that because our policy does recognise that we have not only the tasks of defeating attacks against Australia, which the chairman pointed out has a pretty low probability at this point, and defence of regional interests, which might extend a little further beyond the inner arc, but we also extend to the need for Australia to make contributions to its global security interests, and they are often our contributions to the United Nations. So while they are not determinants of how we structure, they are certainly considerations which are brought into account. It is not as though we go blindly to a peacekeeping or a peace enforcement operation saying, 'Oh shucks, we're going to have to use something really dramatic here. We might have to use 3 Brigade, which we've really structured to be a light infantry force for defeating attacks against Australia.' It is taken into account both in force structuring and in the development of doctrine.

Senator GIBBS—What is the system of actually committing our troops to a UN request? How do we actually go about that?

Mr Behm—I will give you a short version because it is really quite complicated. Once a situation is evolving, our intelligence sources will make sure that we are pretty well aware of it, no matter where it is—whether it is in Africa or East Timor. So the first stage is knowledge. Almost inevitably, the Department of Foreign Affairs and Trade will take quite early responsibility in bringing to government the broad range of implications of those developments for Australia. Again, to use black and white, as Brigadier Bornholt said, had East Timor been located in the middle of the Atlantic, we might have had a somewhat different approach to the contribution of Australian forces. But where Australia's national interests or our strategic interests are engaged in an issue, then the government will direct foreign affairs and Defence, and a couple of other departments usually, to get to work in sketching out what the range of options for government might be. Generally speaking, that range of options is pretty broad. It goes all the way from, 'Let's do nothing,' to 'Let's get really deeply engaged,' and in between there are many ways of cutting the cake.

WHAT GENERALLY HAPPENS IN DEFENCE IS THAT THE CHIEF OF THE DEFENCE FORCE WILL BE TASKED BY THE MINISTER TO PROVIDE ADVICE TO THE CABINET, AND THE CHIEF OF THE DEFENCE FORCE WILL THEN GET THE CHIEFS TOGETHER AND THEY WILL DISCUSS THE ISSUE. STEMMING FROM THAT WILL BE A NUMBER OF DIRECTIONS GIVEN BY THE CHIEF OF THE DEFENCE FORCE PRINCIPALLY TO MY COLLEAGUE ON MY RIGHT, BRIGADIER BORNHOLT. SO A VERY COMPLEX SERIES OF PLANNING ACTIVITIES THEN TAKES PLACE. ADVICE IS FED BACK TO THE GOVERNMENT AT EACH STAGE SO THAT THE GOVERNMENT KNOWS EXACTLY WHAT WE ARE PLANNING AND VERY OFTEN GIVES US FURTHER DIRECTION TO REFINE THE NATURE OF THAT PLANNING. ONCE ALL THAT IS DONE, THE CABINET WILL TAKE A DECISION ABOUT WHETHER OR NOT TO COMMIT AUSTRALIAN FORCES TO A UN OPERATION, AND AWAY WE GO.

Senator GIBBS—So it is up to the individual country. The UN puts out a request from different countries, and it is up to each individual country to decide whether it will participate?

Mr Behm—That is correct.

CHAIR—On the same issue, which provisions of the Defence Act cover the deployment of soldiers on United Nations missions?

Mr Behm—I cannot answer that question. If any of my lawyers have it on the top of their heads—

CHAIR—I know that Senator Payne has some questions too, but they are on the same issue. We have had a significant number of submissions to this inquiry referring us to section 68 of the Constitution. Section 68 demands that:

The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

He only, and no one else, may allow our armed forces to be engaged. The United Nations or an international court or any other authority has no right of authority over our armed forces. There is a fear amongst these submissions, which are from individuals and some grassroots organisations, that proper constitutional processes are being totally ignored and that there is

even a chance the United Nations may use such an army against Australian interests. This is the fear of some of the people who put in submissions. Somebody has suggested that the federal government has no right under the present Constitution to transfer control of all or part of its military forces to the United Nations without an alteration to the Constitution by referendum. I think it is only right that we raise this here.

Air Cdre Clarke—Yes, it is.

CHAIR—We have had a significant number of submissions along these lines. That is why I asked you about the provisions of the Defence Act. It is generally felt that the Governor-General acts on advice of ministers through the Executive Council—under section 62 and 63—to direct the forces on what they should do. How do we allay the concerns of those people who say that section 68 of the Constitution is being ignored in the constitutional process?

Mr Behm—It is a very important question. I would like to take it on notice because it requires something more substantial than what I could fire at you off the top of my head. We will provide that information without delay.

CHAIR—Is there a chance that section 68 is being ignored?

Mr Behm—I do not believe so; but I would like to be able to have that demonstrated to you rather than simply give it to you as an assertion. To fraction your question a little, there is a part—that is, on the matter of command and control of Australian forces—that I can ask Air Commodore Clarke to talk about right now.

Air Cdre Clarke—Without exception, Australian forces always remain under the full command of Australians regardless of where they are employed. In East Timor and in other locations around the world there is a designated commander of Australian forces for each of those units or groups of people. That commander is vested by the Chief of the Defence Force with the ability to provide forces under operational control for specific tasks and for specific durations. That is the sort of mechanism the UN has for using the forces we provide to them. However, the commander has the power of veto, and those forces operate specifically under Australian rules of engagement—which goes back to Senator Bourne's concern. The thread of the submissions that you have had is well accounted for under that command arrangement. We have very much control over what Australian forces are doing, how their force is being applied and what their tasks are.

CHAIR—So the person in command of our troops in East Timor could refuse to obey any of the instructions of the UNMO.

Air Cdre Clarke—And has already done so.

CHAIR—That answers a lot of the questions they have raised.

Air Cdre Clarke—Yes.

CHAIR—There has been a suggestion that the control has passed on to somebody else. Perhaps you could look at that in detail and respond.

Mr Behm—I think I would prefer to do it that way. I have some notes here, they are pretty short, and I will just make them available to you. I am advised that section 8 of the Defence Act vests general control and administration of the Defence Force in the Minister for Defence, and that this section empowers the minister to authorise the contribution of parts of the ADF to UN peacekeeping operations. As I am further advised here and as Air Commodore Clarke has said, we do not surrender command over the forces when we contribute them to UN peacekeeping operations. The UN has operational authority that allows the contingent commander to make a request to Australia, but the orders are actually given by Australian officers.

CHAIR—We would appreciate your giving us a considered response. We may need it to respond to the concerns that have arisen.

Mr Behm—I appreciate that. That is why we do see it as a very serious question.

Mr PRICE—In support of all recent deployments, there have been resolutions of both houses of parliament. In terms of greater accountability and public confidence building, would you see value in having a change to the Defence Act that requires both houses of parliament to agree to those deployments?

Mr Behm—Mr Price, you have asked a question that is well above my pay grade and I am afraid I cannot answer it. I think I know somebody who possibly can, but I would have to ask the minister first.

Mr PRICE—Getting back to force determinants, notwithstanding how well our ADF performed in East Timor, there were clear shortcomings and difficulties in a whole range of areas. Whilst you do not want to restructure the defence forces around East Timor, won't it be the case that we will have to make some changes in the light of that experience in terms of force structure?

Mr Behm—Absolutely. I would not expect that we will be making profound changes to our force structure because, as I said earlier, that is driven by a whole lot of other considerations. But, under way right at the moment—and I hope this does not surprise you—we have quite a number of studies relating to the total conduct of the operation in East Timor, particularly with the purpose not of learning how to do East Timor again—that would be a bit dangerous—but of learning where we can make improvements in the way in which we do business more broadly. Some of those studies are well under way. You would understand that most of them are pretty highly classified because they go right into the sorts of innards of both decision making and operational planning. But I expect that in due course, as the parliament looks into some of this, plenty of advice will be given to the parliament as to what the results of those studies might mean.

Mr PRICE—Just so that we are not misunderstanding one another, could the defence subcommittee or this committee be briefed when those studies are concluded?

Mr Behm—The standing committee and the subcommittees have standard procedures for getting those briefings. Once we are authorised to give them, we would be very happy to give them.

Mr PRICE—So you will take the request on notice?

Mr Behm—Absolutely.

Mr PRICE—Given the investment that Defence makes in our bilateral relationship—one of the gurus has estimated that we have invested about \$1 billion or something—it must have been a bit disappointing that, at the height of events in East Timor, calls from the Australian Minister for Defence were not returned by the Indonesian Minister for Defence.

Mr Behm—Yes, it is disappointing. I daresay that General Wiranto at the time had a fair bit on his mind and I do not know the circumstances that led him not to return my minister's calls. But, in any consideration of what benefit Australia might have derived from the management of its relationship with Indonesia over quite a period of time, I personally do not think it is all black. The fact is that one of the very significant contributions to both the speed and the success of the initial deployment into Dili was the cooperation of the Indonesian armed forces and the presence at Dili of a number of senior officers of the Indonesian armed forces simply to ensure that the initial lodgment went well. That is not insignificant because I do not think I have to tell this committee what the consequences would have been of an opposed lodgment, and that certainly did not happen.

ALSO, IN THE LEAD-UP TO THE DEPLOYMENT OF OUR FORCES, NOTWITHSTANDING THE VERY CONSIDERABLE TENSION THAT DID EXIST ON THE GROUND IN EAST TIMOR, THERE WAS QUITE A HIGH LEVEL OF POLICY AND COMMAND COOPERATION BETWEEN AUSTRALIA AND INDONESIA IN JAKARTA AND ON THE GROUND IN EAST TIMOR. OUR DEFENCE ATTACHE STAFF, BRIGADIER MOLAN AND TWO OF THE OTHER THREE, WERE ON THE GROUND IN EAST TIMOR AND GOT A VERY HIGH LEVEL OF COOPERATION FROM THEIR INDONESIAN COUNTERPARTS. I THINK THAT IS AN IMPORTANT CONSIDERATION. I DO TEND TO THINK THAT—ALTHOUGH, AS THE PRIME MINISTER HAS SAID, THE RELATIONSHIP WE MIGHT HAVE WITH INDONESIA IN THE FUTURE IS GOING TO BE PRETTY DIFFERENT FROM THE ONE WE HAVE HAD IN THE PAST—THE PARTICULAR DYNAMICS OF THE DEFENCE RELATIONSHIP DID HELP TO CREATE A SUCCESSFUL DEPLOYMENT OF AUSTRALIAN FORCES WITH NO COMBAT CASUALTIES.

Mr PRICE—This is similar to a question I asked of the foreign affairs department. In terms of the ADF being able to respond quickly in coalition to problems within our region, it seems to me that we are short of formal regional infrastructure to allow that to happen. To what extent does Defence see opportunities for the future, if you like, to develop that infrastructure? It seems to me to be very important that we just do not wait another 10 or 15 years for something to grow and—

Mr Behm—Again that is a very focused question and it is a very important one. Rather than simply running for cover and saying 'Well, that's really a foreign affairs issue'—which it is—I would just make a couple of observations.

Mr PRICE—In which you have a vested interest.

Mr Behm—I certainly do. I would make a couple of observations on this matter because we do work very closely with the Department of Foreign Affairs and Trade in trying to position our capacity to meet the demands of our national interests over time.

ONE OF MY COLLEAGUES EARLIER SAID THAT THERE IS A RELUCTANCE IN SOUTH-EAST ASIA TO GO DOWN THE PATH OF WHAT MIGHT LOOK LIKE INTERVENTIONIST POLICIES WITH RESPECT TO THE PROBLEMS OF NEIGHBOURING STATES. THAT IS A GIVEN, AND WE HAVE TO ACCEPT THAT. WE TRY TO MEET THAT BY SUPPORTING PARTICULARLY THE FOREIGN MINISTER IN THE BROADER CONTEXT OF HOW WE WORK WITHIN ASEAN, PARTICULARLY WORKING IN THE CONFIDENCE BUILDING AND OTHER PARTS OF THE VARIOUS ASEAN-PLUS SUBCOMMITTEES THAT MEET ON THESE MATTERS. DEFENCE OVER THE LAST FOUR OR FIVE YEARS HAS CONTRIBUTED PRETTY SIGNIFICANTLY TO THE WORK OF THOSE COMMITTEES ON CONFIDENCE BUILDING AND SO ON. THEY HAVE NOT YET LED TO ANY FORMAL INFRASTRUCTURES WITHIN THE REGION—AND I WOULD HAVE TO SAY, AT A PERSONAL LEVEL, I THINK THAT IS QUITE A LONG WAY OFF.

NONETHELESS, I THINK WHAT WE HAVE BEEN ABLE TO DO IS JOIN WITH REGIONAL COUNTRIES IN OPENING UP SOME OF THE ISSUES AND SO BEGIN THE PROCESS OF DEVELOPING SOME COOPERATIVE POLICIES ON HOW WE MIGHT HANDLE THESE. COLONEL KEAM STATED EARLIER SOME OF THE THINGS WE ARE DOING BY WAY OF HELPING IN THE PROFESSIONAL DEVELOPMENT OF REGIONAL MILITARY COMMANDERS AND LEADERS; THAT IS IMPORTANT. WE SUPPORT DFAT IN THE CONDUCT OF THE VARIOUS ACTIVITIES THAT ARE NOW BEING CONDUCTED UNDER THE ASEAN REGIONAL FORUM, AS IT IS CALLED. THOSE, ONE HOPES, OVER TIME WILL LEAD TO SOME SORT OF FURTHER DEVELOPMENT IN THE CAPACITY OF REGIONAL COUNTRIES TO WORK COOPERATIVELY IN THE INTERESTS OF THEIR OWN SECURITY.

Senator PAYNE—I want to follow up on some questions Senator Bourne asked in relation to the Peacekeeping Centre. In paragraph 43 of the submission it refers to extensive specialised training in the field of international humanitarian law for ADF personnel. I am wondering whether that training is provided in-house from Defence or whether you import specialists to do that.

Lt Col. Keam—When it comes to humanitarian law, we do not specifically address, during the peacekeeping seminar, issues of humanitarian law. We have presentations from defence specialists on rules of engagement and the issues as they pertain to operations. What we normally speak specifically about is the role of humanitarians and humanitarian agencies in conflict, and we spend a day of a 10-day seminar trying to understand and appreciate their roles and the role that the military should or can have with them. There are other venues of international humanitarian law and that may be best addressed by them.

Mr Behm—Senator Payne, your question with respect to the detail at the Peacekeeping Centre has been answered by Lieutenant Colonel Keam but it is a broader question, of course, and I wonder if Commodore Earley, the director-General of our legal office might like to take up the broader question.

Cdre Earley—The question of humanitarian law training is one which we take very seriously in the ADF. We have a fairly well developed regime for approaching that. Lieutenant Colonel

Mike Kelly on my left is the Director of the Military Law Centre which has responsibility for that and he can give you some detail on how we go about that.

Lt Col. Kelly—We have a level of regime training which is based on our Defence Instruction General 33-1 which sets out levels A through to C for non-legal personnel in the ADF. Level A is the entry level training requirement for all members of the ADF, and we are exploring new ways of delivering that training. One of the measures that we have taken recently is the production of a multimedia instructional CD format, which is quite extensive, which puts the international humanitarian law issues in the context of the peace operations, dilemmas and issues that are faced as well, introducing those extra issues of general international law principles and self-defence points of view. We also take the soldiers and personnel through detailed outdoor scenario-based training where they are confronted with human rights and humanitarian law issues and work through those issues where they have the opportunity to ask questions, and we vary the scenarios to address specific issues in that way. So they are given very extensive, outdoor, scenario-based training in that respect.

ALSO, WE HAVE DEVELOPED CURRICULA THAT WILL BE DELIVERED THROUGH THE CO-LOCATED STAFF COLLEGE AT WESTON CREEK WHICH WILL ADDRESS WHAT WE CALL THE LEVEL C TRAINING WHICH BRINGS INTO ACCOUNT ALL OF THE INTERNATIONAL HUMANITARIAN LAW ISSUES THAT ARE RELEVANT TO THE COMMAND STAFF AREA—THE PLANNING AND CONDUCT OF OPERATIONS AT A HIGHER LEVEL. WE ALSO RUN THE OPERATIONS LAW COURSE AT WILLIAMTOWN WHICH ADDRESSES THE OPERATIONS LAW ISSUES FROM THAT BROAD SPECTRUM, INCLUDING THE PEACE OPERATIONS CONTEXT. IN ADDITION TO THAT, WE HAVE BEEN HEAVILY INVOLVED IN THE NON-LETHAL TECHNIQUES ASPECTS OF TRAINING TO PUT THINGS WITHIN THE CONTEXT OF THE GRADUATED LEVEL OF FORCE REGIME WHICH IS PARTICULARLY IMPORTANT IN THESE HIGH SENSITIVITY, LOW LEVEL OPERATIONS. IN PARTICULAR, WE HAVE DELIVERED NON-LETHAL TECHNIQUES TRAINING FOR 1RAR AND 6RAR TO PREPARE THEM FOR THEIR DEPLOYMENT IN EAST TIMOR.

WE PUT IT ALSO IN THE DOCTRINAL SPECTRUM. WE HAVE LAND WARFARE DOCTRINE 1, A DOCUMENT WHICH SETS OUT THE SPECTRUM OF CONFLICT AND THE ISSUE OF LEGITIMACY AND HOW THAT RELATES TO THOSE AND HOW DIFFERENT LEVELS OF CONFLICT CAN ALL BE OCCURRING WITHIN THE ONE TYPE OF OPERATION, AND HOW YOU CAN USE THE LAWS OF ARMED CONFLICT AS A METHOD OF ACHIEVING YOUR MISSION OBJECTIVES. WE HAVE PUT THAT TO GOOD USE IN SOMALIA. WE IMPLEMENTED THE FOURTH GENEVA CONVENTION WHICH SPECIFICALLY RELATES TO THE RELATIONSHIP BETWEEN THE MILITARY AND CIVILIAN POPULATION IN CONTROL ASPECTS THERE, AND WE USED THAT FRAMEWORK ONCE AGAIN TO HELP US PREPARE FOR TIMOR IN THE AREA OF CREATING THINGS LIKE THE DETAINING MANAGEMENT UNIT. SO WE HAVE AN EXTENSIVE REGIME IN PLACE WHICH ADDRESSES ALL THOSE ISSUES.

Senator PAYNE—Thank you, that is helpful. Just to give me some idea of how these various aspects of the ADF's efforts in this area link together, does what you do link up with what the Peacekeeping Centre does? Is there a relationship or an involvement there?

Lt Col. Kelly—Yes. We are closely involved with the Peacekeeping Centre. We participate in the peacekeeping seminar in delivering the training in relation to the rules of engagement and

the laws of armed conflict issues and how they apply to peace operations. We will be participating with the Peacekeeping Centre in the upcoming activity in Thailand. We were the principal deliverers of the ARF seminar in Williamstown in December last year, which had representatives from 22 different countries at a senior level. So we are closely involved with the Peacekeeping Centre.

Senator PAYNE—The Peacekeeping Centre refers to similar training centres abroad and to maintaining an awareness of what they are doing. How broad is that network? How many other countries have peacekeeping centres?

Lt Col. Keam—In the region there is only one other, and that is actually in Malaysia. It has had its capacity curtailed as a result of the economic crisis that hit South-East Asia. It does training more at a tactical level, including preparing military observers, running assistance training for the civil police and doing some logistics training. Outside of the region there are many. The Swedish and Nordic countries have a number of institutions that they share. They have a regional approach and that regional approach is normally to try to share the burden of training, whether it be contingent training, civil police training, military observer training or training assistance with non-government organisations. They share that around the Scandinavian countries. There is certainly an interest in Thailand to perhaps establish a regional peacekeeping centre and also in Fiji. It seems that Fiji will develop with assistance from the United States—

Senator PAYNE—It is timely, I suspect.

Lt Col. Keam—Yes, and so it may appear.

Senator PAYNE—It is perhaps in fact a little late.

Lt Col. Keam—The US are in fact funding a centre that is initially focussed at their own training, but you would have to assume further down it would become perhaps a South Pacific approach. We try to develop commonalities. We look at, from my centre's perspective, operational and strategic understanding and education, and others may do specialities in the tactical level conduct of operations. And of course the Americas, the UK and other nations have peacekeeping training centres.

Senator PAYNE—Annexure C in your submission says:

The ADFPKC produces pamphlets on peacekeeping, which concentrate on the planning and management of UN and multinational peacekeeping operations.

For whom do you produce the pamphlets?

Lt Col. Keam—Our main focus for the publications is the ADF.

Senator PAYNE—So they are internal publications.

Lt Col. Keam—Yes, they are doctrinal. We are also a major player in the development of the United Nation's handbook for military observers, which is issued from the UN. We have also

assisted in providing other inputs into other publications and training venues or options for training to other nations as they have come to us.

Senator PAYNE—Finally, my last question is in relation to the Civil-Military Operations Centre, which is again referred to on page 48. Several members of this committee met with members of the CMOC in East Timor when we were there in December last year. They highlighted for us some of the difficulties they were having in operational terms with other members, such as the US leaving, some equipment problems and things like that. It says at the end of that paragraph:

The INTERFET operation has provided valuable practical experience in that area.

I am wondering whether it would also be described as a successful effort or as one from which we have much to learn?

Air Cdre Clarke—We were very lucky that the US provided a deal of expertise in the CMOC for us. I think it is an area which we have not yet explored to the fullest and is one, as a result of East Timor, that we intend to pay a lot more attention to. That said, as you are well aware, it is a difficult circumstance on the ground in integrating the objectives of a securing force at the same time as making sure that humanitarian relief meets and gets to those who most need it.

I THINK THE ROLE THE CMOC PLAYED IN ENSURING THOSE TWO GROUPS WERE AT LEAST TOGETHER AND ABLE TO TALK TO EACH OTHER IS PIVOTAL TO GOOD PEACEKEEPING OPERATIONS. IT IS SOMETHING THAT WE WILL TAKE ON BOARD AND FOCUS MORE ON INSIDE OUR OWN ORGANISATIONS. TO GO BACK TO MR PRICE'S QUESTION, THAT IS ONE AREA WHERE WE ARE LOOKING AT CHANGING OUR BUSINESS AS A RESULT OF EAST TIMOR.

Mr BAIRD—The presentation this morning has been excellent and I thank you for that. In terms of your performance in Timor, I think the whole of the Australian community is giving you plaudits. I just have one general question, regarding our relationship with the UN—which is of course the focus of our inquiry. In retrospect, what would you say we should be doing differently in terms of the relationship with the UN, the decision making, how we interface with them, what we should be doing differently and, most importantly what we could think about in terms of possible inclusion in our report?

Mr Behm—I will begin an answer to that question, but I am very conscious of the much greater expertise of the brigadier on my left. Having been very much on the Defence Canberra end of the management of our policy development with the UN, I can make a couple of comments.

FIRSTLY, YOU PROBABLY CAN ALWAYS IMPROVE ON WHAT YOU HAVE DONE IN THE PAST BECAUSE YOU ACTUALLY KNOW WHAT YOU WERE DOING AT THE TIME ONCE YOU SEE BACKWARDS. BUT I WOULD HAVE TO SAY THAT WE DID HAVE A PRETTY GOOD RELATIONSHIP WITH THE UN AND I CANNOT SEE ANYTHING THAT NEEDS REMEDIATION. THERE ARE A COUPLE OF REASONS FOR THAT. I THINK THE PRIMARY REASON WAS THAT WE HAVE AN EXTREMELY ABLE—THOUGH PERHAPS IT MIGHT BE SOMETIMES RESOURCED A BIT BETTER—MISSION TO THE UNITED NATIONS, WHICH DFAT RUNS. IT IS A

VERY STRONG AND COMPETENT MISSION. THE ABILITY OF THE THEN COLONEL BORNHOLT TO DO HIS BUSINESS WAS OF COURSE DEEPLY RELATED TO HIS ROLE WITHIN A WHOLE-OF-MISSION APPROACH TO HOW WE MANAGE OUR RELATIONSHIPS WITH THE UNITED NATIONS. THAT IS A VERY IMPORTANT POINT.

THE SECOND POINT I WOULD MAKE IS THAT WE RECOGNISED QUITE EARLY IN OUR PLANNING CYCLES THAT WE WOULD NEED TO MANAGE A VERY EFFECTIVE DAY-TO-DAY RELATIONSHIP WITH THE DPKO. TO MEET THAT, THE CHIEF OF THE DEFENCE FORCE IDENTIFIED A SENIOR OFFICER, WHOM HE PULLED OUT OF HIS NORMAL JOB IN ARMY OFFICE, THE THEN BRIGADIER MIKE SMITH. HIS JOB WAS TO CONDUCT VERY INTENSIVE DISCUSSIONS WITH THE UNITED NATIONS ON THE ACTUAL CONDUCT OF OPERATIONS AND THE SHAPING OF THE APPROPRIATE FORCE. I THINK HE HAD HIS FIRST VISIT TO NEW YORK AROUND APRIL, IF I AM NOT MISTAKEN, AND WE DEPLOYED THE FORCE IN SEPTEMBER. THAT IS WHAT I MEANT EARLIER ABOUT MAKING A GOOD INVESTMENT IN YOUR PLANNING CYCLES EARLY.

THE THIRD POINT I WOULD LIKE TO MAKE IS THAT PLANNING IS DIFFICULT. IN OUR ORGANISATION WE HAVE MANY THINGS TO BEAR IN MIND. THE ABILITY OF OUR STRATEGIC COMMAND DIVISION—THE DIVISION FROM WHICH THE AIR COMMODORE COMES, WHICH CONDUCTS STRATEGIC LEVEL PLANNING—THE HEADQUARTERS OF THE COMMANDER AUSTRALIAN THEATRE AND BRIGADIER SMITH TO WORK VERY COLLABORATIVELY TOGETHER TO DELIVER A QUALITY RESULT TO THE GOVERNMENT WAS ALSO VERY MUCH PART AND PARCEL OF HOW WE MANAGED OUR RELATIONSHIP WITH THE UNITED NATIONS. THE KEY TO THAT WAS THAT OUR POLICY DIVISIONS DID NOT WORK TO CHECK EACH OTHER'S PERFORMANCE; THEY ACTUALLY WORKED TO COMPLEMENT AND SUPPLEMENT EACH OTHER'S PERFORMANCE. SO WE HAVE GOT A VERY HIGH LEVEL OF POLICY EFFICIENCY OUT OF THAT.

THE FOURTH POINT I WOULD MAKE REALLY RELATES TO THE REMARKABLE ABILITY OF BRIGADIER BORNHOLT TO DO WITHOUT SLEEP. THE FACT OF THE MATTER IS THAT, IN THAT PERIOD FROM JUNE THROUGH TO THE END OF OCTOBER, BRIGADIER BORNHOLT AND HIS ONE SUPPORTER WERE UNDER ENORMOUS PRESSURE AND THE AMOUNT OF TIME THAT ACTUALLY WENT INTO THAT WAS EXTRAORDINARY. THEY WERE ABLE TO DO THAT BECAUSE OF THE EFFECTIVENESS OF THE DAY-TO-DAY WORKING RELATIONSHIP BETWEEN OUR UN STAFF IN NEW YORK AND THE PEOPLE WHO ARE IN CHARGE OF THE DPKO.

THAT BRINGS ME TO MY FINAL REMARK ON THIS MATTER. MUCH EARLIER IN MY PRESENTATION I DID SAY THAT OUR PREFERENCE FOR REJIGGING THE UN'S APPROACH TO PEACEKEEPING LARGELY FOCUSES ON THE DPKO. WE THINK THAT IS WHERE THERE COULD BE SOME REINVESTMENT BY THE UN AND PERHAPS SOME CONTINUED INVESTMENT BY SUPPORTING NATIONS, SUCH AS AUSTRALIA AND OTHERS, TO SUPPLEMENT AND COMPLEMENT SOME OF THEIR WEAKNESSES. IN PARTICULAR, THE OPERATIONAL PLANNING AND LOGISTICS AREA IS ONE PLACE WHERE A RELATIVELY SMALL INVESTMENT—BECAUSE WE ARE NOT WELL ENOUGH OFF AT THE MOMENT TO MAKE A BIG ONE—COULD ACTUALLY HAVE QUITE SIGNIFICANT RETURNS. I MAY HAVE SAID A BIT TO MUCH AND I WANT TO SEE WHAT THE BRIGADIER THINKS.

Brig. Bornholt—I find it hard to follow that act. I absolutely support what Mr Behm said.

Mr Behm—Which part?

Brig. Bornholt—Not the plaudits. I think the key to our connection with the United Nations rests in the whole of government connection, that it is not a Foreign Affairs and Trade issue or a Defence issue or a PM&C issue. What we do with this whole of government connection through the mission is actually bring strategic coherence to a focal point in the UN. One of the problems that the UN actually has is this coherence issue; it actually gets into baton changing between the political affairs department, the peacekeeping department and the other agencies. I think that our relationship in New York through this period was actually characterised by a mission approach supported by a whole of government approach in Australia and we were all singing the same sheet of music. I think that the UN actually recognised the power that that brought to the process. We were in the position of being able to shape their strategic thinking, and I think that was very, very important. From my experience, that has not actually been done by other member states when they have been confronted by these problems, so it really brought a power to the entire process.

CHAIR—As there are no further questions, I thank you very much for your attendance today and also for your contribution to the inquiry. There may be some questions that some members may like to put on notice, either ones that they have not had a chance to ask today or things that may arise from other comments that are made. We will not require as prompt an answer as perhaps Estimates might in a week or two's time because the inquiry is ongoing, but if you would be prepared to take questions on notice at a later stage that would be helpful.

Mr Behm—Certainly.

CHAIR—I think it is easier for you to give a considered response than to have you back here, ask the questions verbally and then you may not have the information.

Mr Behm—Thank you.

CHAIR—Would you send to the secretary any additional material that you have promised to provide. You will be sent a copy of the transcript of all of the evidence, to which you can make corrections of any grammar or fact that you so desire. Hansard may wish to check some details before you go but they will let you know if they need to do so. Once again, thank you very much for your contribution. It was most worth while.

Proceedings suspended from 12.43 p.m. to 1.35 p.m.

FROST, Ms Robyn Louise, Principal Legal Officer, Public International Law Branch, Office of International Law, Attorney-General's Department

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

JENNINGS, Mr Mark Brandon, Senior Adviser, Office of International Law, Attorney-General's Department

LEON, Ms Renee, Assistant Secretary, Public International Law Branch, Attorney-General's Department

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

CHAIR—I call the committee to order. Before welcoming our next witnesses, I would like to welcome the Chinese delegation who are here and who will be in Australia for the week. I hope you have a most informative and enjoyable time while you are in Australia. I understand you are looking at the various aspects of our Australian Parliament. We wish you well and welcome you to this inquiry.

ON BEHALF OF THE SUBCOMMITTEE, I WELCOME THE REPRESENTATIVES OF THE ATTORNEY-GENERAL'S DEPARTMENT. I MUST ADVISE YOU THAT THE PROCEEDINGS HERE TODAY ARE LEGAL PROCEEDINGS OF THE PARLIAMENT AND WARRANT THE SAME RESPECT AS PROCEEDINGS OF THE RESPECTIVE HOUSES OF PARLIAMENT DEMAND. ALTHOUGH THE SUBCOMMITTEE DOES NOT REQUIRE YOU TO GIVE YOUR EVIDENCE UNDER OATH, YOU SHOULD BE AWARE THAT THIS DOES NOT ALTER THE IMPORTANCE OF THE OCCASION. THE DELIBERATE MISLEADING OF THE SUBCOMMITTEE MAY BE REGARDED AS CONTEMPT OF PARLIAMENT. THE SUBCOMMITTEE PREFERS THAT ALL EVIDENCE BE GIVEN IN PUBLIC, BUT SHOULD YOU AT ANY STAGE WISH TO GIVE EVIDENCE IN PRIVATE YOU MAY ASK TO DO SO AND THE COMMITTEE WILL CONSIDER YOUR REQUEST. WE HAVE RECEIVED THE DEPARTMENT'S SUBMISSION, AND IT HAS BEEN AUTHORISED FOR PUBLICATION. DO YOU WISH TO MAKE ANY ADDITIONS OR ALTERATIONS TO THAT SUBMISSION?

Mr Marshall—Yes, thank you, Mr Chairman. We would like to draw the attention of the committee to a small amendment to our submission. It relates to part one of the submission, which deals with the International Criminal Court. I am referring here to paragraph 1.52. In that paragraph we deal with—

CHAIR—Can you wait for one minute until we find it.

Mr Marshall—Certainly. It is submission 87. In that paragraph we stated that there were over 86 signatories and six ratifications for the statute of the International Criminal Court. Those figures were correct at that time we prepared the submission, but since then the latest figures available indicate that there are now 96 signatories and nine ratifications. For the record, the

three additional countries which have now ratified the statute are Norway, Belize and Tajikistan. Thank you.

CHAIR—I think that similar information was given to us this morning by the department. Thank you. I invite you to make a short opening statement and then we will proceed to questions.

Mr Marshall—The Attorney-General's Department is pleased to appear before the committee concerning its inquiry into Australia's relations with the United Nations in the post-Cold War environment. We have presented submission No. 87. In my opening statement, I will deal with part one of that submission which addresses the committee's term of reference relating to the viability of the International Criminal Court.

THE CHANGING INTERNATIONAL CLIMATE SINCE THE MID-1980S ENCOURAGED RENEWED INTEREST IN THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT. IN 1989 THE GENERAL ASSEMBLY SPECIFICALLY REQUESTED THE INTERNATIONAL LAW COMMISSION, THE ILC, TO ADDRESS THE ISSUE OF THE COURT. THE SECURITY COUNCIL'S ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA IN 1993 AND THE SUBSEQUENT ESTABLISHMENT OF A TRIBUNAL FOR RWANDA REINFORCED THE VIEW THAT A PERMANENT COURT WAS NECESSARY. THE ILC WAS GIVEN A MANDATE BY THE GENERAL ASSEMBLY TO PREPARE DRAFT STATUTE AS A PRIORITY. THE ILC COMPLETED THIS DRAFT STATUTE IN 1994. THAT DRAFT STATUTE PROVIDED THE STARTING POINT FOR SUBSEQUENT NEGOTIATIONS IN THE UN. THE NEGOTIATIONS WERE INITIATED IN AN AD HOC COMMITTEE IN 1995 AND CARRIED ON IN A PREPARATORY COMMITTEE BETWEEN 1996 AND EARLY 1998. THE TEXT OF THE STATUTE PREPARED BY THAT COMMITTEE PROVIDED THE BASIS FOR NEGOTIATIONS AT A CONFERENCE IN ROME IN WHICH COUNTRIES DISCUSSED THE STATUTE FOR AN INTERNATIONAL CRIMINAL COURT. ON 17 JULY 1998 THE STATUTE WAS ADOPTED BY A VOTE, WITH 120 COUNTRIES, INCLUDING AUSTRALIA, VOTING IN FAVOUR; SEVEN COUNTRIES OPPOSING IT; AND 21 COUNTRIES ABSTAINING.

SUBJECT TO YOUR VIEWS, MR CHAIR, I CAN ADDRESS IN MY STATEMENT THE STRUCTURE OF THE COURT AND A FEW ISSUES LIKE THAT, OR WE ARE HAPPY TO TAKE QUESTIONS ON IT. MOST OF IT IS DEALT WITH IN OUR SUBMISSION, BUT I AM IN YOUR HANDS.

CHAIR—Perhaps you could give us just a brief outline of the structure of the court. And, while you are doing that, to save us asking questions later, you could perhaps explain to us the difference between the proposed international criminal court and the International Court of Justice.

Mr Marshall—Sure. I will defer to one of my international law colleagues on that immediately after finishing my statement. So far, as I mentioned, nine countries have ratified the statute. It will not enter into force until 60 countries have done so. The seat of the court will be at The Hague in the Netherlands. It will, however, be able to try cases in other venues where this is considered appropriate. The court will have jurisdiction in relation to genocide, crimes against humanity or crimes of aggression. The court will not be able to exercise jurisdiction in relation to aggression until the states parties have adopted a provision which defines the crime and sets out the conditions under which the court's jurisdiction can be exercised.

THERE ARE THREE WAYS IN WHICH THE COURT MAY HAVE CASES REFERRED TO IT. FIRST, THERE MAY BE A REFERRAL TO THE PROSECUTOR BY A STATE PARTY OF A SITUATION IN WHICH ONE OR MORE CRIMES WITHIN THE COURT'S JURISDICTION APPEAR TO HAVE BEEN COMMITTED. SECOND, THERE MAY BE A REFERRAL TO THE PROSECUTOR BY THE UNITED NATIONS SECURITY COUNCIL ACTING UNDER CHAPTER VII OF THE UN CHARTER OF A SITUATION IN WHICH ONE OR MORE CRIMES WITHIN THE JURISDICTION OF THE COURT APPEAR TO HAVE BEEN COMMITTED. THIRD, THE COURT MAY HAVE CASES DEALT WITH BY THE INITIATION OF AN INVESTIGATION DIRECTLY BY THE PROSECUTOR. THE COURT WILL HAVE 18 JUDGES WITH PROFESSIONAL COMPETENCE IN CRIMINAL LAW AND PROCEDURE AND THE NECESSARY RELEVANT EXPERIENCE IN CRIMINAL PROCEEDINGS. IN ADDITION, THE JUDGES WILL HAVE COMPETENCE IN RELEVANT AREAS OF INTERNATIONAL LAW SUCH AS INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW. TO ENSURE THAT THE COMPOSITION WILL BE TRULY BALANCED AND INTERNATIONAL, A JUDGE'S ELECTION MUST TAKE INTO ACCOUNT FACTORS SUCH AS THE NEED TO REPRESENT THE PRINCIPAL LEGAL SYSTEMS OF THE WORLD AND EQUITABLE GEOGRAPHICAL REPRESENTATION. NO TWO JUDGES MAY BE NATIONALS OF THE SAME STATE, AND JUDGES MAY ONLY SERVE ONE NINE-YEAR TERM. THEY WILL BE ELECTED BY SECRET BALLOT BY THE HIGHEST NUMBER OF VOTES BUT NO LESS THAN TWO-THIRDS OF THE STATES PARTIES PRESENT AND VOTING. A JUDGE MAY BE REMOVED FROM OFFICE IF HE OR SHE IS FOUND TO HAVE COMMITTED SERIOUS MISCONDUCT OR A SERIOUS BREACH OF HIS OR HER DUTIES. ALL OF THESE SAFEGUARDS ARE INTENDED TO ENSURE INDEPENDENCE, INTEGRITY AND COMPETENCE AND TO PREVENT OUTSIDE POLITICAL INFLUENCES OVER THE COURT. THERE ARE OBLIGATIONS ON STATES PARTIES TO COOPERATE WITH THE COURT IN ITS INVESTIGATIONS AND PROSECUTIONS.

I SHOULD POINT OUT THAT THE ADOPTION OF THE STATUTE DOES NOT SIGNAL THE END OF THE NEGOTIATING PROCESS. THE ROME CONFERENCE ALSO AGREED TO ESTABLISH A PREPARATORY COMMISSION WITH THE MANDATE TO PREPARE DRAFT TEXTS ON A RANGE OF FURTHER INSTRUMENTS, INCLUDING THE RULES OF PROCEDURE AND EVIDENCE FOR THE COURT. IN CLOSING, I SHOULD NOTE THAT AUSTRALIA HAS PLAYED A LEADING AND CONSTRUCTIVE ROLE IN THE NEGOTIATIONS ON THE COURT. IT WAS A MEMBER OF THE SO-CALLED 'LIKE-MINDED GROUP' OF MORE THAN 60 COUNTRIES WHICH STRONGLY SUPPORTED THE ESTABLISHMENT OF AN EFFECTIVE COURT. AUSTRALIA CHAIRED THE LIKE MINDED GROUP DURING THE ROME CONFERENCE AND CONTINUES TO CHAIR THAT GROUP AT THE PREPARATORY COMMISSION WHICH IS PREPARING THE RULES OF PROCEDURE AND EVIDENCE. I MIGHT NOW DEFER TO MY COLLEAGUE, MR JENNINGS, ON THE QUESTION OF—

CHAIR—When you talk about the adoption of the statute, that is as distinct from the ratification?

Mr Marshall—Yes. It was I think at a plenipotentiary conference, the adoption of the statute.

Mr Jennings—Mr Chair, the Rome conference was a diplomatic conference, a plenipotentiary conference attended by I think around 160 countries. In a sense, when you use the term 'diplomatic conference', it indicates that those delegations attending have the power to adopt a text of a convention at the end. Some of them may also have the power to sign it, but essentially it is the adoption of the convention and then it is open for signature and subsequent

ratification. Diplomatic conferences are the mechanism used internationally to facilitate the negotiation and adoption of multilateral conventions, which this is.

CHAIR—Were you going to comment on—

Mr Jennings—The ICJ is a court which has jurisdiction in relation to states. It is a principal judicial organ of the UN. Its predecessor was the Permanent Court of International Justice established during the course of the League of Nations. It deals with disputes between states, and I am sure that members of the committee will be aware of appearances that Australia has made before the International Court of Justice in the last 20 to 25 years, going back some time. The disputes relate to alleged breaches of treaties and so on, and, as I said, concern states.

THE INTERNATIONAL CRIMINAL COURT, ON THE OTHER HAND, IS SOLELY CONCERNED WITH INDIVIDUALS—THE INVESTIGATION AND PROSECUTION OF INDIVIDUALS FOR CRIMES WITHIN THE JURISDICTION OF THE COURT. IF YOU WANT TO LOOK FOR AN EXAMPLE OF HOW THE INTERNATIONAL CRIMINAL COURT MIGHT OPERATE—IN THE BROAD, BECAUSE THEY ARE NOT EXACT PRECEDENTS—YOU SHOULD LOOK TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, BOTH OF WHICH WERE ESTABLISHED BY THE SECURITY COUNCIL ACTING PURSUANT TO CHAPTER VII OF THE UN CHARTER. THOSE ARE TRIBUNALS WHICH DEAL WITH INDIVIDUALS FOR THE CRIMES WITHIN THE JURISDICTION OF THOSE TRIBUNALS WHICH, AS WITH THE INTERNATIONAL CRIMINAL COURT, ARE CRIMES AGAINST HUMANITY, WAR CRIMES, GENOCIDE AND SO ON.

THE FUNDAMENTAL DISTINCTION IS THAT ONE IS A CRIMINAL COURT DEALING WITH INDIVIDUALS AND THE OTHER IS A COURT WHICH DEALS WITH DISPUTES BETWEEN STATES AND DOES NOT HAVE JURISDICTION IN RELATION TO INDIVIDUAL COMPLAINTS. IS THAT IS A BROAD ENOUGH DISTINCTION, MR CHAIRMAN? I WOULD BE HAPPY TO GO INTO IT FURTHER, BUT I THINK THAT PROBABLY ILLUSTRATES THE DISTINCTION.

CHAIR—No; that is sufficient.

Mr Jennings—Before we go on, might I ask my colleague Renee Leon to make some introductory remarks on the other part of the department's submission?

Ms Leon—I propose to make a few brief remarks in relation to part 2 of the Attorney-General's Department submission. This part of the submission relates to the committee's term of reference which concerns the proposals for reform of the structure of the UN including, amongst others, the supporting bureaucracy.

OUR CONTRIBUTION IN THIS RESPECT OUTLINES BOTH THE IMPORTANCE OF THE WORK OF THE HUMAN RIGHTS TREATY BODIES AND THE ONGOING NEED FOR FURTHER REFORMS TO THE OPERATIONS OF THOSE BODIES. AS THE COMMITTEE MAY WELL BE AWARE, AUSTRALIA IS A PARTY TO THE SIX MAJOR UNITED NATIONS HUMAN RIGHTS TREATIES. IN ADDITION, AUSTRALIA HAS ACCEPTED THE COMPLAINTS MECHANISM FOR INDIVIDUALS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, THE RACIAL DISCRIMINATION CONVENTION AND THE TORTURE CONVENTION. EACH OF THE SIX HUMAN RIGHTS TREATIES OBLIGES STATES PARTIES TO SUBMIT

PERIODIC REPORTS ON THE MEASURES THEY HAVE TAKEN TO GIVE EFFECT TO THE RIGHTS RECOGNISED IN THE TREATIES. THESE REPORTS ARE THEN CONSIDERED BY COMMITTEES OF INDEPENDENT EXPERTS ESTABLISHED UNDER EACH CONVENTION.

AS THE NUMBER OF STATES PARTIES TO EACH OF THE TREATIES HAS GROWN, SO NECESSARILY HAS THE WORK OF THE TREATY BODIES IN CONSIDERING THOSE REPORTS. IN ADDITION, A GROWING NUMBER OF STATES HAVE ACCEPTED THE COMPLAINTS MECHANISMS FOR INDIVIDUALS. CONSEQUENTLY, THE WORKLOAD OF THE THREE COMMITTEES THAT ARE COMPETENT TO CONSIDER COMPLAINTS HAS GROWN. THIS INCREASE IN THE WORKLOAD OF THE COMMITTEES HAS OCCURRED AGAINST A BACKGROUND OF REDUCED OR STATIC RESOURCES, LEADING TO BACKLOGS IN THE CONSIDERATION OF REPORTS AND COMPLAINTS. AT THE SAME TIME AND FROM THE PERSPECTIVE OF A STATE PARTY, THE RESOURCE INTENSITY IN PREPARING REPORTS NEEDS TO BE RECOGNISED. FOR EXAMPLE, OVER 100 FEDERAL, STATE AND TERRITORY AGENCIES HAD TO BE CONSULTED IN THE PREPARATION OF AUSTRALIA'S THIRD REPORT UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS. AUSTRALIA, LIKE A LARGE NUMBER OF STATES PARTIES, HAS BEEN OVERDUE IN SUBMITTING A NUMBER OF ITS REPORTS UNDER THE HUMAN RIGHTS TREATIES—ALTHOUGH I SHOULD NOTE THAT OUR REPORTS ARE NOW COMPLETELY UP TO DATE. TO AVOID THIS PROBLEM INTO THE FUTURE, THE GOVERNMENT HAS DECIDED THAT OUR REPORTS UNDER THE TREATIES SHOULD BE MUCH SHORTER, MORE FOCUSED ON ISSUES OF PARTICULAR CONCERN AND DRAFTED THEMATICALLY RATHER THAN ARTICLE BY ARTICLE.

AS NOTED IN OUR SUBMISSION, THE UNITED NATIONS ITSELF HAS INITIATED REVIEWS OF THE OPERATIONS OF THE TREATY BODIES WITH THE AIM OF INCREASING THEIR EFFECTIVENESS. AUSTRALIA HAS BEEN SUPPORTIVE OF THESE INITIATIVES. HOWEVER, WE ALSO BELIEVE THAT IT IS IMPORTANT THAT STATES PARTIES WORK IN PARALLEL TO FORMULATE THEIR OWN CONSTRUCTIVE SUGGESTIONS FOR FURTHER REFORM OF THE SYSTEM. TO THIS END, AUSTRALIA HAS SUGGESTED REFORMS TO THE TREATY BODIES DIRECTLY BY WORKING CLOSELY WITH OUR TRADITIONAL PARTNERS CANADA AND NEW ZEALAND AND ALSO BY PURSUING REFORM SUGGESTIONS AMONG A WIDER GROUP OF INTERESTED STATES.

THAT IS ALL I INTEND TO SAY BY WAY OF OPENING REMARKS. I AM HAPPY TO EXPAND UPON ANY ISSUES THAT THE COMMITTEE WISHES TO PURSUE OR TO ANSWER ANY QUESTIONS YOU MAY HAVE.

CHAIR—Is the United States of America refusing to sign the International Criminal Court statute? If they are, what reasons are they giving for doing so?

Mr Jennings—It is my understanding that the United States remains engaged in the process in New York and the preparatory commission. It has expressed concerns at the statute. It expressed concerns in Rome in relation to the jurisdictional regime and the coverage that might extend to the nationals of non-parties. I am no longer directly involved in the negotiating process—I was until after the Rome conference—but my understanding is that it continues to participate in the efforts in New York to produce rules of procedure and evidence. It has made known its concerns about aspects of the statute.

CHAIR—I understand that the Australian government is working through the processes with the aim of ratification.

Mr Marshall—Yes, that is correct. Their government has also announced that it is doing so, subject to the usual treaty consultation processes.

CHAIR—Having met with like-minded bodies over the past few years, what are we doing to encourage other like-minded bodies to do the same thing?

Mr Marshall—To ratify?

CHAIR—Yes.

Mr Marshall—In the context of our negotiations for the rules of procedure, evidence and other instruments, we have been directly liaising with countries and exchanging views on the ratification process. I believe there was an earlier report from a parliamentary committee which encouraged Australia to try to encourage other countries, particularly within the region, to take appropriate steps towards ratification, particularly through the Pacific Island Law Officers Meeting arrangements. We have been following up on that but by and large, with that many countries having adopted the statute and indicating their readiness to ratify, it is a process whereby not too much encouragement has been necessary at this stage.

CHAIR—In relation to treaties, in your submission you say:

Australia ... is convening a meeting of like-minded countries to agree on a strategy for encouraging and implementing further constructive, practical reforms to the treaty body system.

Who are the like-minded countries that you are seeking to cooperate with?

Ms Leon—Ms Frost actually intended that meeting as Australia's representative, so I will ask her to answer that question.

Ms Frost—I would have to take it on notice if you would like a precise list of the countries that attended.

CHAIR—You do not need to be precise. Just give me some examples.

Ms Frost—We sent out an invitation through our mission in Geneva to 21 other states representing countries in all the regions of the world. Countries who attended that meeting, just off the top of my head, included Canada, the United States, the United Kingdom, New Zealand, Japan, Brazil, Argentina and Chile. There were also representatives there from Norway, Sweden, France, Ireland, Japan, Latvia, the Netherlands, South Africa, and Hungary. The purpose of the meeting was, as Ms Leon earlier said, to seek to engender support for the reform of the treaty bodies. A number of countries produced papers for that meeting. Australia and Canada produced papers. Poland, Austria and Germany were also at the meeting.

Mr BAIRD—Can I clarify that we were the hosts of this meeting?

Ms Frost—Yes, Australia hosted the meeting at its mission in Geneva. Basically, apart from seeking to engender support, the aim of the meeting was to seek to get agreement amongst the states that were there to some of the recommendations that we felt could be implemented fairly easily in the short to medium term and very much within the existing resources of the office of the High Commissioner. The other state that I forgot to mention that was there was South Africa, representing African states. Overall, the meeting was reasonably successful. There was a wide degree of support and concern that things needed to be done and that more needed to be done with the encouragement of states parties, both in the office of the High Commissioner for Human Rights and on the part of treaty bodies themselves.

THE AIM COMING OUT OF THAT MEETING IS TO CIRCULATE A SUMMARY PRODUCED BY THE CHAIR OF THE MEETING, THAT IS BY AUSTRALIA, AND ALSO A REVISED PAPER ON A LIST OF SHORT TO MEDIUM TERM RECOMMENDATIONS, WHICH WILL THEN GET CIRCULATED TO A WIDER GROUP OF INTERESTED STATES PARTIES AND MEETINGS WILL BE CONDUCTED WITH THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS AND ALSO WITH THE TREATY BODIES THEMSELVES, WITH AN IDEA OF PROGRESSING THE REFORM AGENDA.

CHAIR—How did you determine which were the like-minded countries?

Ms Frost—It was partly determined through our mission in Geneva consulting with other missions in Geneva. The other thing that had happened was that the International Commission of Jurists holds a meeting once every year to consult, usually amongst western European states plus other states such as Australia and New Zealand, on issues relating to human rights. I actually attended that meeting in Copenhagen last year because Australia and Canada had lobbied and had talked to the ICJ about putting the issue of treaty body reform on the agenda because we regard it as being quite important. The degree of interest that was displayed at that meeting encouraged us to try to take the initiative further. As I said, the mission in Geneva then engaged in consultations with other missions to see who were interested and who would be interested in coming along to the meeting that we convened in February.

CHAIR—What is the department's opinion on criticisms that the United Nations human rights committees are unaccountable, that members come from authoritarian regimes and take their views from NGOs?

Ms Leon—Mr Chairman, as you are probably aware, the question of the relationship of Australia to the UN treaty bodies is a matter that is currently under review by the government. It may well be that those issues are addressed by the government in the course of that review. Prior to that time, the department does not really have a position to state as to what the government's view on those matters is.

Mr HOLLIS—What about a departmental view?

Ms Leon—I believe that we are generally not expected to address questions of policy before the committee.

CHAIR—That is true, Mr Hollis.

Mr HOLLIS—If they are not going to answer questions, it is hardly worth asking them.

Senator GIBBS—It seems that, even though we sign treaties, we can be selective on whether or not we carry them out at various times. This happens with all countries in the world, I take it, or is it just us?

Ms Leon—In international law, when we ratify a treaty we have binding obligations to comply with the treaty's terms. Unless the treaty itself indicates that certain aspects of it are optional, those obligations are binding. However, most treaties are also drafted in terms that allow, and also international law allows, a margin of appreciation as to how treaty obligations are implemented. That means that states have a degree of discretion as to how they implement their obligations under the treaty.

Senator GIBBS—Say a country signs up way back for a treaty. How often are these treaties resigned? Once you sign, is that it?

Ms Leon—Unless the treaty itself provides for any form of sunset clause, which is not to the usual case, states remain parties unless they take an active step of withdrawing, where that is permitted by the treaty itself.

Senator GIBBS—So if you sign a treaty way back, say in the 1950s and, now that we are in the year 2000, with a bit of progressive thinking we look back and say, 'That's not really suitable now. That's probably quite stupid in this day and age. Our policies want to go another way,' can we simply withdraw from these treaties?

Ms Leon—It depends on the terms of the treaty. Some treaties allow for withdrawal and others do not. International law indicates also the situations in which withdrawal can be effected where the treaty is unclear on the subject. For example, even if a treaty does not expressly provide for denunciation, which is the term for withdrawal, a state can withdraw by the agreement of all the states parties. If there were treaties that we thought were no longer appropriate, there is more than one option in that respect. One is that some treaties do provide mechanisms for review by the parties. For example, in the maritime area, treaties that set limits for liability in respect of compensation for accidents and incidents at the sea, provide a mechanism whereby those limits can be raised over time to reflect changing values. Others provide for a mechanism for review of the whole convention if states request. For example, the refugee convention can be reviewed by a procedure that requires the calling of a conference of states parties.

SO IF AUSTRALIA FELT IT HAD OBLIGATIONS THAT WERE NO LONGER APPROPRIATE, ONE OPTION WOULD BE TO UTILISE MECHANISMS FOR REVIEW THAT MIGHT EXIST UNDER THE CONVENTION ITSELF. IF AUSTRALIA FELT THAT OBLIGATIONS IT HAD UNDERTAKEN WERE NO LONGER APPROPRIATE, A SECOND OPTION WOULD BE TO WITHDRAW, WHERE THAT IS AVAILABLE.

Senator GIBBS—I see. What if the treaty does not have those options and we simply want to go another way? Is there a penalty? They cannot put us in jail.

Ms Leon—International law is founded upon a principle of compliance with treaty obligations. While there is no international police force or international jail in which a state can

be placed, nevertheless there are international legal mechanisms that are designed to ensure that states comply with their obligations. For example, my colleague Mr Jennings has mentioned the International Court of Justice, which is a forum for the resolution of disputes between states parties. Depending upon the matter at issue, were Australia to breach obligations under a treaty in cases where another state had recourse to the International Court of Justice, there could be proceedings taken in that court. At a more fundamental level, were states simply to ignore their treaty obligations on a widespread basis, that would call into question the whole foundations of international law which is that states make agreements with each other and honour those agreements.

Senator GIBBS—That is very interesting because a lot of people have said that Australia is breaching the treaty when it comes to the treatment of our indigenous people.

Ms Leon—To which treaty are you referring?

Senator GIBBS—In submissions, quite a few people have actually said that we are very selective in terms of international treaties and we seem to ignore the censure of the UN bodies in regard to the way in which Aboriginal people are treated in this country. So according to a lot of people, we are ignoring that treaty, but on the other hand, in my opinion, the ridiculous treaty on drugs that we have we are not ignoring because it is the policy of the government and therefore the country at the moment that that is acceptable.

Ms Leon—In relation to the racial discrimination convention, I will make a general and then a specific comment. The first is that whether Australia is in breach of its obligations is not something that can be determined by the fact that some people have asserted that view. In relation to the criticisms that have been made of Australia's treatment of its indigenous people, the only one which I think can be the subject of those references is the committee established under the racial discrimination convention which recently expressed concern at the extent to which our amended Native Title Act is consistent with our obligations under the convention. Australia has taken issue with a number of aspects of that view expressed by the committee, not in terms of simply disagreeing with the view for policy reasons but in terms of international law applicable to the convention in question. There is a principled legal basis for the dispute that the government has with the committee over its interpretation of the convention.

IN RELATION TO THE CONVENTION ON DRUG USE—I THINK YOU WERE REFERRING TO THE ISSUE OF SAFE INJECTING ROOMS—AGAIN, THAT TREATY IS FAIRLY CLEAR THAT IT IS DIRECTED TO THE ELIMINATION OF THE USE OF ADDICTIVE DRUGS, INCLUDING HEROIN. IF AUSTRALIA FELT THAT THAT WAS NO LONGER AN APPROPRIATE POLICY, THEN IT WOULD BE FREE TO REVIEW ITS PARTICIPATION IN THAT CONVENTION; BUT, NEVERTHELESS, THEY ARE THE TERMS OF THE CONVENTION TO WHICH AUSTRALIA HAS UNDERTAKEN OBLIGATIONS AND AUSTRALIA IS BOUND BY THE OBLIGATIONS IN THAT CONVENTION.

Senator GIBBS—I understand that. But, say, we suddenly became extremely enlightened and we said, 'No. Actually we want to do this, and that's it. We're just going ahead with it because as a country we are entitled to do this.' We have a government in place which is elected by the people and the government usually reflects what the people want, so we as a country say, 'This is what we're going ahead to do and to hell with the treaty. That's it. We're going to

withdraw from being a signatory.’ Surely we have a right to do that. That leads on to my question that treaties are not that binding, are they? It is just a matter of whether countries apply and agree to stay with it, but surely each country should have the right to say, ‘No, we’ve decided that is the wrong decision and we’ll go our own way.’

Ms Leon—I do not have with me the Single Convention on Narcotic Drugs so I cannot express a view as to whether we are free to withdraw from it or not, but I would expect that it is possible to withdraw from it. If we were to decide, as a matter of policy, that we no longer adhered to the policies reflected by that convention, then, assuming that the convention itself did not prohibit it, the proper course for Australia could be to withdraw from it, rather than to say that it still considered itself bound but then breach its obligations. I was discussing before how the binding nature of treaties means that states have undertaken obligations to each other to comply with the treaties that they sign; it is a sovereign act of a government to express its will to be bound by those obligations. If states were to undertake that process of becoming bound by international obligations and then freely ignored them, they would be breaching their duties to other states—and the principle on which international law is based is that states will honour their obligations.

CHAIR—At what stage does it become binding—when they become signatories or when it is ratified?

Ms Leon—When it is ratified.

CHAIR—So we are now signatory to a lot of treaties that have not been ratified?

Ms Leon—I could not comment on the number. The Department of Foreign Affairs and Trade might be able to assist you. There is always a period of time in between signature and ratification, where that occurs. In that period of time, while we are not bound by the obligations per se, we are required by international law not to take action that would be inconsistent with the spirit and purpose of the treaty or that would fundamentally make it impossible for us to ratify at the time that comes around.

Senator GIBBS—Thank you very much for that. In that case, what is the Attorney-General’s Department doing to encourage Australia to comply with the UN’s decision on human rights towards our indigenous people? Obviously, we are not adhering to that treaty but we are adhering to the one on the drugs policy, so we have a little bit of a conflict here.

Ms Leon—In my earlier answer I indicated that the government’s view was that it disagreed with the view that had been taken by the Committee on the Elimination of Racial Discrimination in relation to the Native Title Act. So in the government’s view there is no issue of lack of compliance with that convention.

CHAIR—Senator Gibbs, it is not fair to ask if the department holds a view if it is a policy decision.

Senator GIBBS—Okay.

CHAIR—Questions, Mr Baird?

Mr BAIRD—Yes, thank you very much, Mr Chairman. I am interested in this whole question of the treaties and the conference that you had in Geneva. The purpose of it was reform of the treaty process. Which aspects in particular are you focusing on? I think a lot of that goes to the core of what this particular committee is about.

Ms Frost—If I could perhaps take a step back. As Ms Leon said in her opening remarks, the UN itself has initiated a number of reviews of the operations of the treaty bodies. One of those was completed in 1997. It was actually undertaken by Professor Philip Alston, who is an Australian academic. He is working in Florence at the moment. Over a number of years he had reviewed the operation of the treaty bodies, he actually being a member of the committee on the economic and social cultural rights covenant. He made a number of recommendations in his reports, most of which focused on the reporting process and the fact it was so burdensome for the UN and also for states parties. So we actually took Professor Alston's reports as a starting point for developing our own recommendations, because some of those have been taken up by the UN and some of them have not.

Mr BAIRD—So when you say the 'burdensome' reports, what do you mean by that? What is the definition of 'burdensome'?

Ms Frost—For example, Professor Alston, in his 1997 report, made the comment that if every state in the world were to put all their reports in on time, the whole system would collapse from the simple weight of reporting—it would grind to a halt. Also, as Ms Leon commented, it is actually quite burdensome, even for developed states like Australia, to produce these reports.

Mr BAIRD—Okay.

Ms Frost—So we looked at issues regarding reporting and the fact that the six treaty bodies all have slightly different requirements in terms of the information they want and how they deal with that information. The other issue that we were particularly interested in, because of our being party to the complaints mechanisms, was how the treaty bodies actually deal with the complaints from individuals. Some years ago with Canada and New Zealand we actually put a paper to the treaty body suggesting that perhaps one way of streamlining their dealing with complaints was to form a series of chambers, so rather than the committee as a whole having to look at each individual complaint they could form subcommittees or chambers to look at those.

THE THIRD ISSUE IS WHAT WE DESCRIBED AS BEING OVERARCHING ISSUES; FOR EXAMPLE, THE FACT THAT THE SYSTEM DOES NOT HAVE ENOUGH RESOURCES, IN OUR VIEW, TO FUNCTION, AND THAT THE OFFICE OF THE HIGH COMMISSIONER SHD CONTINUE TO SEEK ADEQUATE RESOURCES FOR THE FUNCTIONING OF THE TREATY BODIES.

Mr BAIRD—It sounds more to me that it is not the nature of what they are reporting on but rather just the administration. It sounds like you should have had a group of MBAs there instead of people from the Attorney-General's about the reporting and organisational way in which they carry out their function.

Ms Frost—That might be something that is appropriate.

Ms Leon—We in the Public Service are also very well skilled in matters of administration.

Mr BAIRD—Thank you, Ms Leon. Is that a put-down?

Ms Leon—No, I am merely offering our combined expertise to the committee.

Mr BAIRD—But it is important for us to recognise whether you are having a dispute in terms of a matter of principle or it is the question of administration. From what I hear, it is the matter of administration—

Ms Frost—Yes.

Mr BAIRD—that you have been on about. Senator Gibbs has been talking about matters of policy in many ways. Your committee has really been about the administration and the way in which they conduct that, and obviously that needs to be part of our report in terms of the whole administration question. But, in relation to this human rights committee on which there has been some media focus—the one that Philip Ruddock, the Minister for Immigration and Multicultural Affairs—

Ms Leon—The Committee on the Elimination of Racial Discrimination.

Mr BAIRD—Yes. In terms of the people, I am not actually discussing the question of what they recommended, but more in terms of who decides on who is going to be on this committee. There was one person who seem to be particularly outspoken—and this is not meant to be a party political statement—and got quite a lot of focus and attention. I was curious as to the background of this person who seemed to be a former official and not of international stature in a way. It seemed to me to be that, in terms of the people that were chosen, it was hardly an impartial group that was on this committee. I may be wrong, and I may be judging it wrongly, but if you are going to listen to committees and so on, you are also going to look at the credibility of people who are making those judgments: are they impartial or do they have a particular viewpoint which is the reason that they are chosen to do it? I am not actually making value judgments in terms of the finding, rather the selection process of those who are on particular committees.

Ms Leon—Thank you for that. The members of the committee are elected by member states. They are not elected as representatives of their country; they sit on the committee in their own personal capacity, and they are on that committee by virtue of some background in the area. The requirements in the convention are that they are to be experts of high moral standing and acknowledged impartiality, elected by states' parties from among their nationals. So the process is that a state can nominate one of its nationals to the committee and that nomination is then subject to an election process amongst states parties, in which Australia, like all other states participates.

Mr BAIRD—What type of people, for example, have we nominated, and who has been successful in getting onto that committee?

Ms Leon—I would have to take on notice the background of Australia's dealing with that committee. The only Australian that we currently have serving on one of the international committees is Elizabeth Evatt, who is on the Human Rights Committee. Committee members, I expect, would be familiar with her background. She has held high judicial office in Australia

and was head of the Law Reform Commission, amongst other positions. That is the kind of person whom I imagine we would nominate. We might also nominate experts in international law, whether from an academic or a bureaucratic background—but people who have had some work or other experience that enables them to demonstrate their expertise in these areas.

Mr BAIRD—I am certainly not in any way debating the credentials of Ms Evatt, but it seems to me that it is not like having a judge, *per se*, because it seems that the people who are appointed already bring their particular reference points with them. They are chosen because they have been outspoken on certain issues and they come to notice, and therefore their judgments could be seen as being less than impartial.

Ms Leon—I do not believe that states would necessarily select people who have been outspoken on particular issues. They are people who have developed an expertise, and they may have done so without being particularly outspoken on issues but by virtue of working quietly away in an academic or professional context. Some people who are appointed to the committees come from a long background in the diplomatic service of their country, so they would be the equivalent of our Department of Foreign Affairs and Trade Legal Branch, or something like that. So they are not people who have necessarily been outspoken at all; they are people who have got a background and an expertise in the area.

CHAIR—It is all very well to talk about our own nomination, but are you sure that other member states of the United Nations are as rigorous in their assessments of the nominations that they bring forward?

Ms Leon—Well, the people have to get elected. So a state may put up someone who has no legitimate claim to the position and no credentials in the area, and other states can make their own judgement about the worth of that person to serve on the committee.

CHAIR—That is true, but when there are elections within the United Nations there are certain groupings and pressures that sometimes have some effect on who gets elected, aren't there?

Ms Leon—Perhaps that is more a question for the Department of Foreign Affairs and Trade.

CHAIR—I understand. I should not even have asked you that. I apologise.

Senator BOURNE—I have a couple of questions. Is it not the case—and I seem to remember this from being on JSCOT for a while—that all of the treaties that we have signed have some legislative background, either federal or state, around Australia to back them up? So there are few treaties that we do not have some basis for in our own legislation.

Ms Leon—In respect of all treaties into which Australia enters we always undertake a review of our existing laws, to ensure that we are in compliance with the treaty before we become a party to it. In some cases it may be that legislation is required to implement the treaty obligations. In some cases we may have existing legislation that implements the treaty obligations, and in some cases the nature of the obligation will not be one that requires legislation. For example, some treaties oblige the state to provide certain human rights that really are an expression of the state not doing something. For example, the torture convention

requires us to not torture people. We do not need a law to make the government not torture people. The government can comply with that obligation simply by not torturing people.

TO GIVE THAT CONVENTION AS A FURTHER EXAMPLE, BEFORE WE RATIFIED THAT CONVENTION, WE UNDERTOOK A REVIEW OF OUR EXISTING CRIMINAL LAW AND WERE SATISFIED THAT THE EXISTING CRIMINAL OFFENCES OF ASSAULT AND THE LIKE CAUSING PREVIOUS BODILY HARM AND SO ON WOULD BE SUFFICIENT TO COVER ANY ACTS OF TORTURE THAT MIGHT BE COMMITTED BY INDIVIDUALS WHO WERE STATE ACTORS. THE ONLY AREA WHERE A PARTICULAR PIECE OF CRIMINAL LAW WAS NOT ALREADY APPROPRIATE TO THE IMPLEMENTATION OF THE CONVENTION CONCERNED TORTURE THAT MIGHT HAVE BEEN COMMITTED EXTRATERRITORIALY, THAT IS, OUTSIDE AUSTRALIA, BY SOMEONE WHO LATER CAME TO AUSTRALIA AND WHOM AUSTRALIA WOULD NOT HAVE JURISDICTION OVER AS WAS REQUIRED BY THE CONVENTION. IN RESPECT OF THAT GAP ONLY WE ENACTED THE CRIMES (TORTURE) ACT BEFORE WE BECAME A PARTY TO THE CONVENTION. BUT WE DO NOT OTHERWISE HAVE SPECIFIC LEGISLATION IMPLEMENTING THE REMAINING PROVISIONS OF THE TORTURE CONVENTION BECAUSE THE VIEW WAS TAKEN THAT THE PROVISIONS OF OUR EXISTING LAW WERE ADEQUATE.

SIMILARLY, THERE CAN BE OBLIGATIONS THAT CAN BE FULFILLED BY PROGRAM ALLOCATION OR FUNDING OF CERTAIN PROJECTS. FOR EXAMPLE, WE PROVIDE SUPPORT AND ASSISTANCE FOR COUNSELLING SERVICES TO PROVIDE SUPPORT TO VICTIMS OF TORTURE AND TRAUMA. WE DO NOT NEED LEGISLATION TO MAKE THAT HAPPEN; THE GOVERNMENT SIMPLY HAS A POLICY AND DIRECTS ITS DEPARTMENTS TO UNDERTAKE OR FUND SUCH ACTIVITIES.

Senator BOURNE—So we are not in any way signing our lives away by signing a treaty? We are already complying before we ratify it?

Ms Leon—It is the policy of this government, and it has been the policy of previous governments, that, before we ratify, we always ensure that our laws and practices are in compliance.

Senator BOURNE—Federally, we check with all the states, don't we?

Ms Leon—Where the treaty involves matters that would involve state implementation, we do take the matter either to the Standing Committee of Attorneys-General or through another portfolio consultative body where that is appropriate for the subject matter.

Senator BOURNE—I noticed that in your submission you mentioned a few reports or submissions that have been put in, including Professor Alston's 1997 report. Would it be possible to get a copy of that report?

Ms Frost—We do, in fact, have copies with us, if you would like us to table one.

Senator BOURNE—That would be terrific. You mentioned a paper which was submitted by Canada, New Zealand and Australia about a number of reforms to the Human Rights Committee procedures. Would that one be able to be made available?

Ms Frost—We would obviously have to consult with both Canada and New Zealand before we are able to do that. However, I can give you an outline of what was contained in that paper.

Senator BOURNE—That would be good.

Ms Frost—We talked about a number of different areas in that paper, one of which—I have already mentioned it—was a suggestion to the committee to work in chambers so as to streamline the consideration of communications. Another was to give greater power to the secretariat to the treaty bodies so that they could act more like a registrar in a court. It would be quite clear when a communication that had been submitted did not contain sufficient evidence or was clearly frivolous or vexatious or misconceived—I am using domestic legal terms here, but that is to give you the idea—and then they could actually decline to register it. The third area we have experienced some difficulty in practice with is when people—this usually happens when they are unrepresented—put in a submission, get the Australian government submissions in response to comment on and seek to expand their claims continuously. We suggested to the committee that it should be able to have much more power to stop this happening, otherwise they will continually be going through these ‘ping pong submissions’, going backwards and forwards between the government and the party concerned.

Senator BOURNE—You have obviously had agreement from Canada and New Zealand.

Ms Frost—We had agreement from Canada and New Zealand to put that paper in.

Senator BOURNE—Have you had any response to it yet?

Ms Frost—We have not had any response from the committee as yet. That is partly why we have sought to take it up further in the paper I refer to that we took to the Geneva meeting and why we sought wider support for it from a wider group of states.

Senator BOURNE—If there are any outcomes from the Geneva meeting that you could let us have, we would be grateful.

Ms Frost—I would have to consult with the Department of Foreign Affairs and Trade to see whether we could do that.

Senator BOURNE—There is one other report that you mentioned, and it has not even been finished yet: the one by Professors Bayefsky and Heyns. That should become available later this year. Would we be able to get a copy of that?

Ms Frost—We are not sure what the status of that will be because it has been commissioned by the Office of the High Commissioner for Human Rights. We have let the office of the high commissioner know our interest in obtaining a copy of that paper when it becomes available, but we do not know if it will be publicly released or not.

Senator BOURNE—If it is—we do not intend to finish this for a while—we would love a copy.

CHAIR—On a completely different area, amongst the submissions we have had the current sanctions on Iraq are defined as genocide. Could they possibly be described as genocide as defined by international law?

Ms Leon—While I would not wish to give legal advice, especially on the run, to the committee on the meaning, I would just note what the elements of the crime of genocide are. A particular element that you would need to advert to in deciding whether or not particular actions were genocide is that they have to be committed with the intent of destroying the group in question. I do not know if the submissions that have been put to you have established the requisite intent.

CHAIR—I cannot remember the details of them, but there were some that suggested that the sanctions in the form they are being applied to Iraq were in fact a form of genocide.

Senator PAYNE—As someone who is sitting on the anti-genocide hearing in the Senate, Senator Ferguson, I say that whether the intent is specific or general is an ongoing academic argument as well that adds to the complexity.

Ms Leon—I was really just adverting to the fact that there does have to be a particular intent, and so even acts that might cause widespread death or suffering or other impacts to a particular group would not necessarily be genocide unless the requisite intent was also established.

CHAIR—There is another issue, and that is one of national sovereignty. We have been talking with other witnesses about the issue of sovereignty as it applies to intrastate rather than interstate conflicts and the difficulty that the United Nations has in being able to intervene before human tragedies occur. The same thing also applies to other things like environmental damage, refugee flows and terrorism. What is the position on national sovereignty, and what effect do those sorts of issues which have transnational implications have on sovereignty?

Ms Leon—I will make a few remarks on that and then I am happy for my colleagues from the Office of International Law to add something. I thought we might all have something to say.

CHAIR—I know it is a broad question, but it is something that has been put to us.

Ms Leon—While in broad terms it is true that states are sovereign in respect of matters that are within their own jurisdiction, such as matters concerning their relations with their own citizens, conduct that takes place entirely within their own territory and so on, I think it is true to say that, especially in recent decades since the United Nations Charter was agreed, there has been a growing recognition that some matters that would otherwise be seen as entirely matters of national sovereignty do have an international dimension. The area of human rights is one such domain, where it is specifically mentioned in the UN Charter as one of the UN's fundamental purposes. Accordingly, there is already a tension, by the mere creation of those Charter guarantees, that human rights frequently will involve the relationship between the state and its own citizens, which might ordinarily be thought of as a matter entirely within the domestic sovereignty of that state. So we have seen over the period of time since the charter was agreed and then the International Bill of Rights was developed, an increasing acceptance of the fact that, while matters might be entirely internal, the international community does have an interest in and a role in the protection of human rights within a state.

I DO NOT THINK THERE IS AS YET ANY PRECISION, AND THERE MAY NEVER BE ANY PARTICULAR PRECISION, ABOUT WHERE THE LINE IS WHERE ACTS INTERNAL TO A STATE BECOME MATTERS OF INTERNATIONAL CONCERN. CERTAINLY WHERE A STATE IS A PARTY TO ONE OF THE RELEVANT INTERNATIONAL HUMAN RIGHTS TREATIES THEY HAVE, BY BECOMING A PARTY TO THAT, ALREADY CEDED TO OTHER STATES THE RIGHT TO HAVE A VIEW ABOUT THEIR OWN PROTECTION OF HUMAN RIGHTS BECAUSE THAT IS RELEVANT TO THEIR FULFILMENT OF THE TREATY OBLIGATION IN RESPECT OF WHICH THEY HAVE OBLIGATIONS TO OTHER STATES. EVEN WHERE THERE IS NOT A TREATY OBLIGATION, THERE ARE CLEARLY SOME SITUATIONS WHERE THE UNITED NATIONS HAS TAKEN THE VIEW THAT ACTS THAT MIGHT BE OTHERWISE SEEN AS INTERNAL HAVE AN INTERNATIONAL COMPONENT BECAUSE, FOR EXAMPLE, THEY COULD IMPACT ON INTERNATIONAL PEACE AND SECURITY, WHICH IS ONE OF THE OTHER RELEVANT FUNCTIONS OF THE UNITED NATIONS TO PROTECT. THAT VIEW FORMS THE BASIS OF THE ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL TRIBUNALS IN RELATION TO THE FORMER YUGOSLAVIA AND IN RELATION TO RWANDA.

IT MAY ALSO BE THAT IN RELATION TO ENVIRONMENTAL MATTERS A SIMILAR DEVELOPMENT IS OCCURRING. INCREASINGLY THERE ARE A RANGE OF TREATIES ON ENVIRONMENTAL MATTERS, WHICH MEANS THAT STATES ARE AGREEING TO UNDERTAKE CERTAIN ACTIVITIES THAT WOULD OTHERWISE BE ENTIRELY WITHIN THEIR OWN DOMESTIC SOVEREIGNTY, THAT THEY ARE AGREEING TO UNDERTAKE THOSE OPERATIONS IN COMPLIANCE WITH A RANGE OF MEASURES OR AGREEMENTS THEY HAVE AGREED WITH OTHER STATES AND HAVE THUS BECOME THE SUBJECT OF INTERNATIONAL LAW, NOT ONLY OF DOMESTIC LAW.

CHAIR—Would there have been any international law in relation to the chemical spill in Romania. for instance? Would there have been international law that would cover that?

Mr Jennings—There may well be regional agreements in the European context relating to the international river courses and so on that are applicable. I must admit we know a lot of international law, but we are perhaps not expert in the regional European agreements on international watercourses. But essentially in the European context there are a lot of regional agreements, with so many countries bordering on each other and rivers flowing through these countries. Chemical spills or the pollution of these rivers are of vital interest to the countries. Indeed, these conventions may provide for dealing with disputes that arise—may provide for liabilities, as I have said. We are not experts on those conventions. Essentially, in that context it was an issue of an activity being conducted in Romania, a problem occurring and the effects of that problem being felt in other countries, so you had transboundary effects.

CHAIR—The reason I asked you was that initially Hungary was going to seek compensation or sue Romania and then dropped the application or dropped the charges, as I understand it.

Mr Jennings—Again the nature of the negotiations between Hungary and Romania that may have led to that result is something that is outside my direct knowledge. But, in relation to dispute settlement in the international system, there are a whole range of dispute settlement mechanisms that might apply, as provided for in the UN Charter—negotiation, conciliation, mediation—before you get to taking a dispute to some sort of judicial settlement. There may have been negotiations there were relevant in that regard, but that is probably as far as we can take it.

I THINK I AM HERE MORE TO SPEAK ON THE INTERNATIONAL CRIMINAL COURT. I THINK IT IS IMPORTANT TO LOOK AT THE CRIMES THAT THIS COURT WILL DEAL WITH. THEY ARE MUCH THE SAME CRIMES THAT THE AD HOC TRIBUNALS DEAL WITH—GENOCIDE CRIMES AGAINST HUMANITY AND WAR CRIMES, BOTH IN INTERNATIONAL ARMED CONFLICT AND INTERNAL ARMED CONFLICT. WHAT THE UN SECURITY COUNCIL HAS SAID THROUGH THE EXERCISE OF ITS VERY SIGNIFICANT POWERS UNDER CHAPTER VII OF THE UN CHARTER IS THAT IN CERTAIN CIRCUMSTANCES THREATS TO INTERNATIONAL PEACE AND SECURITY OCCUR. IN THOSE CIRCUMSTANCES IT IS APPROPRIATE FOR THE SECURITY COUNCIL TO ESTABLISH JUDICIAL BODIES TO DEAL WITH PERSONS WHO ARE ALLEGED TO HAVE COMMITTED THESE CRIMES—THESE MOST SERIOUS CRIMES KNOWN TO THE INTERNATIONAL COMMUNITY. AT THAT POINT THE INTERNATIONAL COMMUNITY SAYS, ‘WE HAVE AN INTEREST IN SEEING JUSTICE BEING DONE HERE.’ THAT IS NOT TO SAY THESE PERPETRATORS CANNOT BE DEALT WITH BY THEIR OWN NATIONAL COURTS. BUT IN THE CONTEXT OF THE SECURITY COUNCIL VIEWING IT AS A THREAT TO PEACE AND SECURITY, IT HAS RAISED IT TO THE POINT WHERE IT IS OF CONCERN TO THE WHOLE INTERNATIONAL COMMUNITY.

THE NEGOTIATION OF THE INTERNATIONAL CRIMINAL COURT STATUTE WAS AN ATTEMPT BY THOSE INVOLVED TO CREATE A PERMANENT INTERNATIONAL COURT AND, IN A SENSE, OBTAIN THE NEED FOR THE SECURITY COUNCIL TO ESTABLISH AD HOC TRIBUNALS ON EACH AND EVERY OCCASION THAT IT THOUGHT NECESSARY. I UNDERSTAND IT HAS BEEN ADVERTED TO IN THE SUBMISSION THAT THE SECURITY COUNCIL CAN REFER MATTERS TO THE COURT UNDER CHAPTER VII OF THE TRIBUNAL. IT IS THE NATURE OF THESE CRIMES.

THESE CRIMES ARE GENERALLY BEING COMMITTED BY GOVERNMENTS AGAINST THEIR OWN PEOPLE—CRIMES AGAINST HUMANITY, CRIMES COMMITTED IN THE COURSE OF INTERNAL ARMED CONFLICTS. INTERNATIONAL ARMED CONFLICTS THANKFULLY ARE FEWER AND FEWER IN THESE DAYS AND TIMES. THE FOCUS NOW IS MUCH MORE ON INTERNAL CIVIL WARS THAT OCCUR AND ACTS THAT ARE TAKEN AGAINST CIVILIAN POPULATIONS. THIS IS OF CONCERN TO THE ENTIRE INTERNATIONAL COMMUNITY AND IS SIGNIFIED BY THE ADOPTION OF THE ICC STATUTE.

CHAIR—As there are no further questions, I thank you on behalf of the committee for your attendance here today and for your contribution to the inquiry. There may be some questions that arise out of other evidence that we receive and we may seek to put questions on notice to you that you may give a considered response to. They will not be urgent because the inquiry will be over a considerable period of time. But it may happen that we need your advice on some other matters.

[2.37 p.m.]

PURNELL, Mr David Lyle, National Administrator, United Nations Association of Australia

REYNOLDS, Professor Margaret, President, United Nations Association of Australia

CHAIR—On behalf of the subcommittee, I welcome representatives from the United Nations Association of Australia. I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion. The deliberate misleading of the subcommittee may be regarded as a contempt of parliament, although I am quite sure I do not need to remind the witnesses of that particular requirement. We would prefer all evidence to be given in public but, as you would be aware, if at any stage you wish to give any evidence in private you may ask to do so and the subcommittee will consider any request.

WE HAVE RECEIVED YOUR ASSOCIATION'S SUBMISSION AND IT HAS BEEN AUTHORISED FOR PUBLICATION. ARE THERE ANY ADDITIONS OR CORRECTIONS THAT YOU WISH TO MAKE TO THAT SUBMISSION?

Prof. Reynolds—There are no additions we wish to make. There will be some general comments but not specifically on the submission. I will ask our national administrator, David Purnell, to make some opening remarks.

Mr Purnell—We welcome this inquiry as a means of focusing public attention on the United Nations as a vehicle for international action in many fields where shared responsibility is needed. In his recent report to the millennium assembly and the summit Kofi Annan, the Secretary-General, stated very aptly that the UN's influence derives not from power but from the values it represents, its role in helping to set and sustain global norms, its ability to stimulate global concern and action and the trust inspired by its practical work to improve people's lives.

AUSTRALIA HAS BEEN DESCRIBED BY KOFI ANNAN AS A MODEL MEMBER OF THE UN BECAUSE OF ITS SIGNIFICANT CONTRIBUTION OVER THE YEARS, AND WE APPLAUD THIS RECORD. AT THE SAME TIME, WE SEE THE DESCRIPTION AS A CHALLENGE TO MAINTAIN OUR HIGH STANDARD OF SUPPORT FOR THE UN RATHER THAN A REASON TO REST ON OUR LAURELS. THIS IS PARTICULARLY SO NOW THAT THE GOVERNMENT HAS MADE A DECISION TO REVIEW ITS PARTICIPATION IN UN TREATY BODIES, A DECISION WHICH HAPPENED AFTER OUR SUBMISSION WAS LODGED. WE HAVE MADE REPRESENTATIONS TO THE MINISTER FOR FOREIGN AFFAIRS AND TRADE ABOUT THE IMPORTANCE OF AUSTRALIA MAINTAINING ITS COMMITMENT TO THE TREATIES IT HAS RATIFIED. THE RESOURCES OF THE UN NEED TO MATCH THE DEMANDS MADE UPON IT. THE UNAA IS CONCERNED THAT THE STREAMLINING OF THE ORGANISATION MUST BE DONE IN THE CONTEXT THAT MORE AND MORE WILL BE REQUIRED OF THE UN IN THE COMING YEARS.

WE SUPPORT THE STRENGTHENING OF THE UN IN ITS MEDIATION, CONCILIATION AND PEACEKEEPING FUNCTIONS. WE WELCOME THE SECRETARY-GENERAL'S ANNOUNCEMENT OF A SPECIAL STUDY PANEL TO REVIEW UN PEACE OPERATIONS AND WE LOOK FORWARD TO ITS REPORT. WE

SUPPORT THE IDEA OF MANDATED CONTRIBUTIONS TO THE PEACEKEEPING BUDGET AND TO THE CORE SPECIALISED AGENCIES. WE SEE THAT NON-GOVERNMENT ORGANISATIONS HAVE A MAJOR CONTRIBUTION TO MAKE COOPERATING WITH THE UN IN CONFLICT SITUATIONS AND IN THE BUILDING OF CIVIL SOCIETY. WE COMMEND THE IDEA OF AN INTERNATIONAL PEACE FORCE AS A RESOURCE FOR PREVENTING CONFLICT FROM ESCALATING.

UNAA SUPPORTS THE EFFORTS OF THE SECRETARY-GENERAL TO OBTAIN CLEARER PROTOCOLS ABOUT INTERVENTION IN CRISES AND TO SEEK WAYS TO INTERVENE EARLIER AND MORE FLEXIBLY. WE AGREE WITH KOFI ANNAN THAT NATIONAL SOVEREIGNTY SHOULD NOT BE USED TO SHIELD THOSE VIOLATING HUMAN RIGHTS. WE SEE THE EAST TIMOR EXPERIENCE AS A VALUABLE EXAMPLE OF A FLEXIBLE RESPONSE TO A CRISIS AND WE SUPPORT THE IDEA OF VANGUARD ARRANGEMENTS, AS MENTIONED IN THE COMMITTEE'S OWN PAPER, TO ENABLE A RAPID RESPONSE TO CRISES. UNAA SUPPORTS STRONG HUMAN RIGHTS INSTRUMENTS AND STRUCTURES AND ENDORSES THE SECRETARY-GENERAL'S COMMITMENT TO STRONGER INTERNATIONAL AND HUMAN RIGHTS LAW. I NOTICE THAT EVEN IN THE LAST FEW DAYS KOFI ANNAN HAS MADE A SPECIAL APPEAL ABOUT COUNTRIES ADHERING TO INTERNATIONAL LAW, SO IT IS CLEARLY A HIGH PRIORITY. WE BELIEVE AUSTRALIA SHOULD RATIFY THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT AS SOON AS POSSIBLE. WE HAVE MENTIONED IN OUR SUBMISSION ABOUT HUMAN RIGHTS EDUCATION, WHICH WE CONSIDER TO BE VERY IMPORTANT. IT SHOULD BE GIVEN A GREATER PRIORITY BY EDUCATION MINISTERS AND ATTORNEYS-GENERAL. WE MADE SOME SPECIFIC RECOMMENDATIONS ON THAT.

WE WOULD LIKE TO SEE GREATER REFORM OF THE UN AND WE HAVE OUTLINED A NUMBER OF PROPOSALS THERE, SOME OF WHICH YOU HAVE ALREADY CANVASSED TODAY. WE THINK THE SECURITY COUNCIL NEEDS TO BECOME MORE REPRESENTATIVE AND TRANSPARENT, IN THE WORDS OF ALEXANDER DOWNER, AND THAT AUSTRALIA SHOULD SEEK TO BECOME A MEMBER OF THE WORKING GROUP ON SECURITY COUNCIL REFORM AND SHOULD ENCOURAGE EXPLORATION OF THE IDEA OF A PEOPLE'S ASSEMBLY. WE ARE PLEASED TO NOTE THAT THE ARREARS PAID RECENTLY BY THE UNITED STATES HAVE, IN THE WORDS OF THE UNDERSECRETARY-GENERAL FOR MANAGEMENT, 'SAVED THE UN FROM THE FINANCIAL BRINK'. AT THE SAME TIME, WE ARE AWARE THAT THE UNITED STATES STILL OWES ARREARS, INCLUDING FOR THE PEACEKEEPING BUDGET. I NOTICED IN AN ARTICLE YESTERDAY IN THE *AUSTRALIAN* THAT IT IS ESTIMATED THE US OWES \$1.3 BILLION IN ARREARS FOR THE PEACEKEEPING BUDGET.

WE BELIEVE THAT UN FUNDING ARRANGEMENTS WILL NEED STRENGTHENING TO SAVE THE ORGANISATION FROM PARALYSIS. WE HAVE A SUGGESTION THAT MEMBER STATES OVERDUE IN THEIR PAYMENT OF DUES SHOULD BE DENIED ACCESS TO UN PROCUREMENT CONTRACTS. WE ALSO THINK THAT MORE CREATIVE FUNDING APPROACHES THROUGH GLOBAL TAXATION AND SUCH LIKE OUGHT TO BE LOOKED AT.

IN RELATION TO THE TERMS OF REFERENCE ABOUT AUSTRALIA, WE THINK THAT THE BIGGEST CHALLENGE FACING AUSTRALIA IS FOR THE GOVERNMENT TO SHOW LEADERSHIP IN ADHERING TO PROVISIONS OF INTERNATIONAL AGREEMENTS THAT WE HAVE RATIFIED, IN ENSURING THAT ITS DIPLOMATIC RESOURCES, NOTABLY IN DFAT, ARE UPGRADED TO ENSURE EFFECTIVE REPRESENTATION AT THE UN, THE BUILDING UP OF THE PEACEKEEPING CENTRE—WHICH YOU HEARD MORE ABOUT THIS MORNING—

AND RESEARCH INTO PEACEKEEPING AND RESPONDING CONSTRUCTIVELY TO UN BODIES ABOUT OUR POLICIES AND PRACTICES. WE SEE THE TREATIES COMMITTEE AS AN EFFECTIVE FORUM FOR THIS PROCESS. AS WAS MENTIONED THIS MORNING, WE ENDORSE THE COMMENTS THAT WERE MADE ABOUT ITS VALUE.

WE BELIEVE THAT A UN PARLIAMENTARY GROUP IS NEEDED TO HELP BUILD AWARENESS AND COMMITMENT AMONG MEMBERS OF PARLIAMENT. WE ARE VERY PLEASED A YOUTH DELEGATE WAS INCLUDED ON THE UN GENERAL ASSEMBLY DELEGATION FROM AUSTRALIA LAST YEAR. WE WOULD LIKE TO SEE THAT CONTINUED, ALTHOUGH WE DO NOTE THAT THERE IS NO FUNDING PROVIDED FOR THAT PARTICULAR APPOINTMENT. WE FEEL THAT IT WOULD BE AN APPROPRIATE BACKUP TO THE DECISION TO HAVE SOMEBODY OF THAT KIND ON THE DELEGATION.

IN CONCLUSION, WE AGREE WITH THE SECRETARY-GENERAL'S RECENT STATEMENT WHICH EMPHASISED SIX SHARED VALUES OF THE UN WHICH REFLECT THE SPIRIT OF THE CHARTER: FREEDOM, EQUITY AND SOLIDARITY, TOLERANCE, NON-VIOLENCE, RESPECT FOR NATURE AND SHARED RESPONSIBILITY.

Prof. Reynolds—On point 2 in regard to the government's review of its relationship with UN human rights treaty bodies, we have not included any reference to that in our submission to this committee because it was announced after we had prepared our submission. We have prepared a submission to the foreign minister notwithstanding that the process is a closed process as I understand, although I understand that submissions are welcome.

I WOULD LIKE TO POINT OUT THAT AUSTRALIA HAS RATIFIED 14 OF THE 18 HUMAN RIGHTS TREATIES OR CONVENTIONS—THERE IS DIFFERENT TERMINOLOGY DEPENDING ON THE CONVENTION OR THE TREATY. OVERALL, AUSTRALIA IS INVOLVED WITH OVER 900 TREATIES AND CONVENTIONS OF VARIOUS KINDS, RELATING TO INTERNATIONAL LAW OF THE SEA, THE INTERNATIONAL MONETARY FUND, ET CETERA. IN CONSIDERING AUSTRALIA'S RELATIONSHIP WITH THE UNITED NATIONS, OBVIOUSLY HUMAN RIGHTS ARE VERY IMPORTANT TO THE UNAA AND INDEED I AM SURE TO EVERY MEMBER OF THIS COMMITTEE, BUT IT IS IMPORTANT TO KEEP IN PERSPECTIVE THAT AUSTRALIA'S RELATIONSHIP WITH THE UNITED NATIONS COVERS SO MANY FACETS OF GOVERNMENT ACTIVITY. SOMETIMES THE ONLY CONTROVERSY SEEMS TO BE IN RELATION TO OUR HUMAN RIGHTS TREATY OBLIGATIONS. SOME PEOPLE DO QUERY OUR RELATIONSHIP WITH THE WORLD TRADE ORGANISATION; A FEW MAY QUESTION OUR RELATIONSHIP WITH THE IMF. I JUST WANTED TO PUT THAT IN PERSPECTIVE BY VIRTUE OF THE NUMBERS: THERE ARE 18 HUMAN RIGHTS TREATIES; WE HAVE RATIFIED 14 OF THEM, BUT THAT IS IN A TOTAL OF OVER 900 UN TREATIES.

THE SECOND POINT IS THE NEED FOR A PARLIAMENTARY GROUP ADVOCATING FOR THE UNITED NATIONS SIMILAR TO THE WAY THE PARLIAMENTARY AMNESTY GROUP FUNCTIONS. I KNOW THAT PARLIAMENTARIANS ARE VERY COMMITTED TO MANY PARLIAMENTARY GROUPS. IT COULD BE ARGUED THAT SOME OF THE WORK THAT IS ALREADY GOING ON IN PARLIAMENTARIANS GROUPS COULD IN SOME WAY BE REPLICATED. AUSTRALIA'S RELATIONSHIP WITH THE UNITED NATIONS IS HISTORICALLY VERY IMPORTANT AND IS GOING TO BE MORE AND MORE IMPORTANT IN THE FUTURE.

I AM NOT CONVINCED THAT ALL PARLIAMENTARIANS—AND I COUNT MYSELF AS ONE—ARE AS FAMILIAR WITH THE WORK OF THE UNITED NATIONS AS PERHAPS THEY MIGHT BE IN THEIR LEADERSHIP ROLE IN DEMYSTIFYING THE WORK OF THE UNITED NATIONS IN THE COMMUNITY. WE HAVE ALL HEARD THE SWEEPING GENERALISATIONS THAT THE UNITED NATIONS IS GOING TO TELL AUSTRALIA WHAT TO DO. EVERYONE IN THIS ROOM KNOWS THAT THAT IS NONSENSE, BUT IT IS A MYTH THAT IS CONSTANTLY PERPETUATED. I THINK THAT A PARLIAMENTARY GROUP, EVEN IF IT ONLY MET A COUPLE OF TIMES A YEAR WHEN APPROPRIATE SPEAKERS WERE IN CANBERRA, WOULD ASSIST IN THIS PROCESS. I SPEAK FROM PERSONAL EXPERIENCE. I HAVE MYSELF BEEN INVOLVED IN A NUMBER OF UNITED NATIONS CONFERENCES. I KIDDED MYSELF I KNEW A LITTLE BIT ABOUT THE UNITED NATIONS, AND I WENT OFF AS ONE OF THE TWO PARLIAMENTARY REPRESENTATIVES IN 1997. I FELT I WAS AN ABSOLUTE NOVICE. I FELT I DID NOT KNOW A THING FOR THOSE FIRST FEW WEEKS, AND THIS WAS SOMEONE WHO LIKED TO THINK SHE KNEW A THING OR TWO ABOUT THE UNITED NATIONS AND HAD ADVOCATED FOR IT IN THE PAST.

SO, WITH THOSE FEW WORDS, I TAKE THE OPPORTUNITY TO THANK THE COMMITTEE FOR INVITING US HERE, TO CONGRATULATE YOURSELF AND MR HOLLIS, WHO, I UNDERSTAND, WILL BE REPRESENTING THE PARLIAMENT AT THE UNITED NATIONS GENERAL ASSEMBLY THIS YEAR, AND TO SAY THAT I AM SURE YOU WILL FIND THAT MANY OF THE QUESTIONS THAT ARE BEING DEBATED HERE IN THIS FORUM WILL, IF NOT ANSWERED, CERTAINLY BE TOPICS FOR ONGOING DISCUSSION, AS WAS INDICATED EARLIER. THANK YOU VERY MUCH.

CHAIR—Thank you Professor Reynolds. I promise you that I will probably arrive there in September just as naive as you did, although we are going through the process of a hearing, which is enlightening to some extent..

Prof. Reynolds—You will be much better off.

CHAIR—I take on board your suggestion about a group of parliamentarians, only I think it probably would be fair to say that there is not a parliamentarian that does not support the concept of the United Nations; they just may not agree with every decision that is made, and that is where the difference is, I think. I cannot think of a member of parliament who does not support the United Nations and the work that it is doing.

Prof. Reynolds—But I think, with respect, they are guilty of not always promoting the goals of the United Nations in an accurate way. That is perhaps me being very generous in some instances. But it is a complex bureaucracy, like all bureaucracies, and I think there is a great deal more we can all learn about how it functions, why it functions in the way it does and why, when we criticise it, we really have to look to ourselves, the Security Council and the funding processes rather than always saying, ‘It’s them out there that have got it wrong.’

CHAIR—Without entering into a debate, let me say that of course you have been through the process and you know that members of parliament often have a lot of different priorities that they might place ahead of membership of such a body. But it is something that we will take note of.

WE HAVE TALKED A LOT TODAY ABOUT NATIONAL SOVEREIGNTY AND HOW THE UNITED NATIONS ITSELF CAN BECOME INVOLVED IN CERTAIN ISSUES THAT ARISE WITHIN NATIONAL BORDERS. WHAT WOULD THE VIEW BE OF THE UNITED NATIONS ASSOCIATION OF AUSTRALIA IN RELATION TO RESOLVING THE CONFLICT THAT ARISES BETWEEN THE INVIOLABILITY OF NATIONAL SOVEREIGNTY AND THE INCREASING DEMAND FOR INTERVENTION BY THE UNITED NATIONS TO SOLVE WHAT SOMETIMES BECOME HUMAN TRAGEDIES IN INTERNAL DISPUTES?

Mr Purnell—In our submission we have talked quite a bit about some of the things that the Secretary-General is trying to focus on: the use of contact groups and things like that which emphasise more the sort of preventive element of getting in early and getting acceptance to UN involvement at an early stage. There is a point that we would like to make about focusing a little bit more on the non-military options that are available to the world. It is very easy to accept the inevitable logic about the fact that most situations will get out of hand before we can do much about them, whereas in fact we want to say that there are resources of conciliation, mediation and good offices, the sort of thing that the Secretary-General has been talking about, which could be used more strategically—the concept we mentioned of an international peace force, which has only arisen in the last 12 months, the idea of training more people in the skills of non-violent intervention in conflict situations and making that as another resource that can be available to the UN in trying to work in situations which are looking as though they are going to get out of hand.

ALL THOSE ISSUES OF SOVEREIGNTY COME INTO IT—YOU HAVE TO NEGOTIATE YOUR WAY THROUGH. YET, IN A WAY, WHAT HAPPENED IN TIMOR WAS QUITE AN INTERESTING EXAMPLE OF THE FACT THAT DIFFERENT KINDS OF OPERATIONS CAN BE NEGOTIATED. YOU COULD SAY IT STILL WAS NOT EARLY ENOUGH AND STILL DID NOT ACHIEVE ALL OF THE THINGS THAT IT COULD HAVE ACHIEVED, BUT IT SEEMS TO ME THAT THE OPTIONS ARE THERE TO TRY SOME DIFFERENT APPROACHES. THAT IS WHAT WE WANT TO ENCOURAGE THIS COMMITTEE TO PURSUE AS FAR AS YOU CAN IN ASKING PEOPLE IN POSITIONS OF GOVERNMENT AND SO ON WHY IT IS INEVITABLE THAT SITUATIONS HAVE TO BE LEFT UNTIL A MILITARY SOLUTION IS THE ONLY APPROACH.

CHAIR—What are some of the devices that might be used?

Mr Purnell—As I say, this idea of sending fact finding teams into specific situations and, as they did in fact in Timor, sending members of the UN Security Council on specific deputations and things like this. The Defence people talked this morning about strengthening the peacekeeping operations division of the UN. Maybe we ought to emphasise a little more the resources that are needed by the other parts of the UN that deal with the peacemaking side, the actual structures that enable them to get access to more people. We know of the work, for example, of Connie Peck, an Australian who has worked in Geneva on how to train more officials in resolving conflict situations. We would like to encourage that sort of work. Australia originally did give some money to help the sort of work she is doing. Those sorts of things we think ought to have more priority in the budget of the UN and the way in which things are done.

CHAIR—When you used Timor as an example, it is probably not as stark an example as most of the other conflicts that we have heard of over the past 10 years. The Indonesians have been in Timor for only 25 years. In Kosovo, they had 800 years of conflict. In Somalia, Rwanda

and all those places, they were strongly ethnically based. Do you think the devices that you are talking about using would have worked in those situations, bearing in mind that by the time you get to the last resort people actually do not want to listen?

Prof. Reynolds—When you look at some of the absolutely entrenched conflict and violence it is very easy to say, ‘Who could possibly negotiate an outcome?’ It is probably only the optimists in the world who would say, ‘At least let’s try it because we haven’t been successful in finding any alternative.’ There is a tendency for mediation and conflict resolution to be left until things are about to blow up and then people scurry around and say, ‘Quick, we’ve got to get some mediation.’ It should happen much earlier.

THE OTHER VIEW I HAVE, WHICH AT LEAST SOME MEMBERS OF THE COMMITTEE MAY AGREE WITH, IS THAT WE ARE INCLINED—AND I SPEAK GLOBALLY ABOUT ‘WE’— USE FORMER LEADERS AND DIPLOMATS, USUALLY MALE, TO GO INTO THESE SITUATIONS AND RESOLVE CONFLICT. SOME OF THEM ARE VERY GOOD AND I PAY TRIBUTE TO THEM, SO I DO NOT WANT THIS TO BE SEEN AS BLANKET CRITICISM. BUT SOMETIMES THEY TAKE WITH THEM THE BAGGAGE OF THEIR EXPERIENCE, THEIR PHILOSOPHY AND THEIR GOVERNMENT, ET CETERA. ANYONE WHO KNOWS ANYTHING ABOUT CONFLICT RESOLUTION AND MEDIATION KNOWS THAT YOU COME FROM A COMPLETELY OBJECTIVE PERSPECTIVE. FOR INSTANCE, I COULD NEVER BE AN EFFECTIVE MEDIATOR BECAUSE I HAVE TOO MANY VIEWS AND WOULD WANT TO INFLUENCE TOO MUCH IN THE OUTCOME I WOULD WANT TO SEE.

CHAIR—We would not believe that!

Prof. Reynolds—Maybe I could be trained to discard all of my preconceived views, but I rather doubt it. An effective mediator is totally independent and does not come thinking that this side or this side should do it this way or the other way. The UN is reluctant to take a chance on some of these apparent nobodies out there who have been trained by people like Connie Peck, because they think, ‘They are not high profile enough. They have not been in diplomacy. They have not been at the UN. They do not understand.’ While Connie Peck’s program is excellent and it is gradually influencing the United Nations, many of the people that her program has trained are not being called upon, because the Secretary-General, Security Council members, the Australian government, and anybody else with a view, tend to want to rely on the people they know.

SO IF YOU HAVE A SITUATION WHERE YOU ARE LOOKING FOR AN AUSTRALIAN, YOU THINK, ‘OH WELL, WHAT ABOUT ANDREW PEACOCK, WHAT ABOUT GARETH EVANS, WHAT ABOUT BILL HAYDEN.’ WE THINK, ‘WE KNOW THESE PEOPLE. WE KNOW THAT THEY UNDERSTAND THE WAY THE WORLD WORKS. WE WILL SEND THEM.’ WITH EVERY RESPECT TO EACH OF THOSE INDIVIDUALS, THEY ARE NOT TRAINED MEDIATORS. WHILE THEY HAVE GOT WONDERFUL QUALITIES AND EXCELLENT EXPERIENCE, THEY MAY NOT NECESSARILY BE THE BEST PEOPLE TO PUT IN A CONFLICT RESOLUTION ROLE. THE EASIEST WAY I CAN DESCRIBE IS IF I—AS I DID THIS LAST WEEKEND—NEEDED A PLUMBER, I WOULD NOT ASK THE CHAP DOWN THE ROAD BECAUSE HE IS A GOOD BLOKE; I WOULD ASK A QUALIFIED PLUMBER. WITH ONE OF THE MOST IMPORTANT AND SENSITIVE TASKS FACING THE GLOBAL COMMUNITY, WHY DON’T WE ASK THE EXPERTS, PEOPLE WHO ARE TRAINED IN MEDIATION, INSTEAD OF THE GOOD BLOKES—AND THEY

USUALLY ARE GOOD BLOKES—WHO HAVE DEMONSTRATED THEIR LEADERSHIP—

Senator GIBBS—It depends where you are coming from, Margaret.

Prof. Reynolds—You could say there is an interpretation of that.

Senator GIBBS—But that is not a slur on people on the other side.

Prof. Reynolds—Because men have held leadership positions for so long—and they have probably done an excellent job in various fields of leadership—are they necessarily the people to bring into mediation?

Senator BOURNE—On a completely different subject but still on the UN, you mention a few things to do with NGOs and their role, particularly in your submission on peace building, which you have been touching on. Can you expand that a little bit and also give us your view on where else NGOs—and what sort of NGOs—could usefully be used by the UN to donate expertise and effectively be able to carry out some roles within the UN?

Mr Purnell—That was probably the next point we were going to make on that other discussion, in a way, that NGOs do have a pretty amazing network around the world. They are on the ground in many situations and often over a long period, so they often know pretty much what is going on. It seems to me the UN could certainly tap into that kind of knowledge to perhaps be given more advanced warning of how situations are going. That would be a fairly general view of how NGOs have a different access, usually, to people in particular situations and, therefore, have perhaps a different perspective than the government representatives—or even the UN—might be getting.

I GUESS WHAT HAS HAPPENED AGAIN IN TIMOR IS THAT A LOT OF NGOS HAVE BEEN WORKING IN COOPERATION WITH THE UN AND HELPING TO BRING EXPERTISE IN REBUILDING THE SOCIETY THERE. I WOULD SAY THAT A LOT OF THE NGOS—FOR EXAMPLE, MEMBERS OF THE COUNCIL OF OVERSEAS AID AND THOSE SORTS OF GROUPS—WOULD HAVE A LOT OF EXPERTISE IN PEACE BUILDING WORK. THAT IS PROBABLY AN AREA THAT THE UN IS PERHAPS LIMITED IN WHAT IT HAS BEEN ABLE TO DO BECAUSE IT HAS BEEN FOCUSING A LOT MORE ON EMERGENCY SITUATIONS. THOSE WOULD BE A COUPLE OF EXAMPLES. I DO NOT KNOW WHETHER MARGARET HAS ANY OTHERS.

Prof. Reynolds—Non-government organisations, I have to say, are much more grassroots based. They are much more in touch with local communities and, partly because of the way they operate, they can perhaps take more risks, whereas governments always have to look at the protocols and the opinion polls and what their particular foreign policy is at the time and cannot always take some of the risks—I am not talking about physical risks—of perhaps talking to certain groups in the community. It might be seen as totally unacceptable for government to talk to certain groups in a given community where conflict is involved, whereas non-government organisations are not as similarly divided so they can take that risk of the perception that they are talking to a particular organisation that may be seen as rather controversial. The United Nations is increasing its recognition of non-government organisations. They are much more involved than even five years ago, but when it comes to peacekeeping or conflict resolution, again it is assumed that it has to be at the highest level of country leadership. To my knowledge,

there have not been too many peace negotiations held where there is a delegation that includes several NGOs.

Mr Purnell—I would like to add something there. I think we have to acknowledge that there is a tension here, and what has happened to Australia recently is a classic example of that. Because NGOs are becoming more prominent in the UN system, they are inevitably going to have more influence on the thinking that takes place within UN bodies, and that clearly has been causing the Australian government some angst recently. But I think it is part of the total picture that the world has moved on and it cannot rely simply on the word of nation states as to what they are prepared to allow to be said in the international fora. So I think there is a double edge to all this in the sense of where the NGOs come into it, and it is not always going to be easy.

Senator PAYNE—I was wondering whether you had a chance to see the defence department's submission to this inquiry, particularly the idea of a standing army. You make a recommendation, I think in paragraph 6.9, that their views should be sought on the idea, so I wondered if you had had a look at their views and your response to them.

CHAIR—It was only authorised today.

Senator PAYNE—I am sorry. I did not realise that.

Mr Purnell—I just heard the discussion this morning as I was sitting in, so I heard a little of that.

Senator PAYNE—In that case, you might like to take that on notice, Mr Purnell. It is not very fair to ask you to do that on that basis. I did not realise that it had been authorised only this morning. In part 10 of your submission, you make reference to the concept of a chamber of deputies elected by the world's people, which I guess I would describe as a great phrase, hugely ambitious and an interesting concept in many ways. I am wondering though, given that it falls within the reform part of your submission, if it is not perhaps more important to make sure that the United Nations as it is currently structured is appropriately reformed so that it works well rather than going down the road of what I think would be an extraordinarily ambitious proposition; but I stand to be corrected.

Mr Purnell—We are referring to that because it has been something that has been around for quite a while. It has been discussed in various fora around the world. There are quite a few people in the NGO community who still strongly believe that there ought to be some kind of 'parliament' of the UN to get away from the emphasis simply on sovereign states being represented. I do not necessarily feel that is something I would put a lot of energy into, partly because of what we have been talking about. The NGO involvement in the UN is increasing, so people are getting other avenues to influence things. The sort of thing you are putting forward seems to me to be a very reasonable way to approach it. We put it in there because we do not want to forget that there is always this range of views about reforming the UN, some of which are more radical than others. It would be foolish to ignore those, because they do represent people's reasonable concern that the UN has got out of touch.

Senator PAYNE—I wish to take up one point you make at the conclusion of paragraph 8.9 on page 26 of your submission. You make a very specific imputation in relation to asserting:

... the Australian Government actively hindered the ICJ in gathering information from East Timorese refugees in Australia about crimes committed in East Timor.

And so on. You then impute a motive for that, without any reference at all to the fact that there was significant concern, as I understand it for example, from trauma and torture experts as to the advisability of conducting such inquiries at that time. Members of this committee, in fact four of the five who are here now, met with representatives of the commission itself in Dili in December and many of the victims, observers and so on of crimes committed in East Timor who had been interviewed by the United Nations human rights inquiry itself. I would be concerned if your comment in your submission was left standing without at least an acknowledgment of the trauma and torture aspects of that whole process.

Mr Purnell—We included that because at the time when we wrote the submission the ICJ had made these comments. We wanted to indicate that that is just an example of how difficult it can be to respond to those situations. But it is valuable that you have made that point, because we had not heard that extra evidence that you have got there.

Prof. Reynolds—On your second question, in relation to reform of the UN and the importance of the reform process, no organisation can remain without change—whether you use the word ‘change’ or ‘reform’. It is very important that any structure is constantly looking at better ways of doing things. There is a tendency to blame the United Nations itself and its day-to-day operations because of basic flaws in government—I do not mean Australian government—policies around the globe. The US comes to mind in terms of the withholding of so much of its budget for so long. When we talk about reform of the United Nations, of course it is a good organisation but it is not perfect. But we need to remember that it is a product of all governments and that, if we are talking about the reform of the United Nations, we also need to look at the reform of the ways in which countries relate to the United Nations. Australia has a pretty good record in terms of our historic role. We pay our dues; we pay on time; we take a large percentage of the United Nations activities very seriously. But when we talk about reform of the United Nations we must always remember that it is an organisation that we create. It is not ‘them over there’; it is an organisation that we have control of by virtue of how we relate to it.

Senator GIBBS—Following on from there, this funding to me seems to be a very serious problem. I notice in your summary in K you have said for years the UN has been on the financial brink and that default by penalties as provided in the charter should be imposed on recalcitrants and stronger penalties should be imposed, like suspension of access to UN procurement contracts. Do you think that probably losing their seat on the Security Council could be a stronger sanction on these countries, particularly the USA? I find it absolutely appalling that the Department of Foreign Affairs and Trade this morning told us that they owed, up until the end of March, \$244 million. That was their regular budget and I think they ended up quoting something like \$250 million that they owe. Now you tell us that they owe \$1.3 billion in the peacekeeping budget. It seems to me that if countries like Australia—and obviously a lot of other countries in the world who pay their dues and are there and are trying to cooperate with this organisation, the USA does not seem to be cooperating at all. If the UN is on the brink of financial problems every now and then, how are they going to operate?

Prof. Reynolds—That is precisely the dilemma. I am sure Kofi Annan wakes up every morning and makes that speech to himself. On one hand, the very nature of the United Nations is that it is an organisation that operates ‘on a wing and a prayer’ in that it cannot tell countries what to do.

Senator GIBBS—Why?

Prof. Reynolds—Because that is not the nature of the United Nations. It is there to encourage cooperation and peace and security and encourage countries to maintain high standards across all these various conventions. But because it is really at the behest of the Security Council—the most powerful members of the United Nations—it is almost unthinkable that you could say to the United States, ‘Well, sorry, you’ve lost your seat on the Security Council.’ It might be a good idea, but it is just totally impractical because the Security Council is effectively a law unto itself.

CHAIR—And it cannot happen because of the charter.

Prof. Reynolds—And it cannot happen because of the charter.

Senator GIBBS—Obviously this power of veto where one person can say, ‘Now, listen: do the right thing or you are out,’ is very undemocratic. This is a worldwide organisation. What can we do to change it?

Prof. Reynolds—Most years, speeches are made at the General Assembly saying precisely this, by a number of countries—the Scandinavians, the Canadians, the New Zealanders, for example. I think it was the New Zealand ambassador to the United Nations who made the comment that David Purnell just read out a short time ago. Penny Wensley, our own ambassador, has made statements; Alexander Downer, Gareth Evans and probably every foreign minister for many years has commented on all these issues. The way in which the United Nations Charter has been developed is that it is an extremely sensitive organisation trying to balance sovereignty, the feuding disputes between nations and the balance of power and relationships. We all know what we would like to do. We would like to call a meeting and say, ‘Right, you pay or else,’ but it is not that simple.

CHAIR—Especially when two countries provide over 40 per cent of the total funding.

Mr Purnell—That is right, and that would perhaps be a good reason for changing the formula, so that it is not so dependent on the US.

Senator GIBBS—Maybe so. They seem to be holding the world and the UN to ransom. They seem to owe an awful lot of money. Why don’t we just scrap it and start again?

Mr Purnell—We would have to invent it in a different way, I suspect.

Senator GIBBS—What bothers me is, if this continues and the UN is constantly on the brink of financial ruin because the USA is jackbooting their way all around the world like they usually do, what is the future? If this is going to continue, what is the future of the UN down the track? A lot of people now say, ‘What’s the use of them? They’re a toothless tiger.’ People do

say that to me. That is not my opinion—I am only saying what people say to me. But will it survive?

Prof. Reynolds—The UN can only do what governments allow it to do. That is the message we have to get back to the community. They seem to think that the United Nations is some sort of authoritarian entity that can push governments around. It is much more that governments are responsible for the UN and to the UN. It is the best mechanism we have at the moment. If you actually do a stocktake of the benefits of the UN, it gives a much more positive view than statements such as ‘What’s the good of it? It hasn’t achieved all that it could.’ It is like any political entity. It is like pointing the finger at various governments around the world.

Senator GIBBS—You are obviously misunderstanding what I am trying to say. I am probably not saying it correctly. We all know that they do good work. Everybody realises that, and that they do not tell governments what to do. The way it is operating at the moment, like any organisation it cannot function without proper funding. Let’s face it: if a government does not have money, it cannot do anything and it falls apart. If this crucial funding position, which seems to be because of one country, continues, isn’t this going to diminish what the UN can actually do? Will there be a future for it or will it constantly be struggling, with everybody criticising the US and saying, ‘If they paid up, we could just go ahead in leaps and bounds’?

Mr Purnell—That is one of the reasons we put in that comment about procurement contracts. If you adopt a strategy along those lines, you put pressure on people outside of the government of the USA who are running companies. They then start to say, ‘What’s happening?’; they start to pressure their Congress people and say, ‘Look, this is not good enough. We ought to get back on track again.’ It is a bit of a carrot-and-stick sort of thing. We have to acknowledge—and I think we have actually acknowledged in our submission—that the Security Council has reformed itself a bit. DFAT said this morning that it has made its processes more open and more accessible. On Timor, Australia obviously had a lot more access to the Security Council than it would normally have as a non-member. We made a comment in our submission: why don’t we ask the big countries to exercise more restraint on their use of the veto? In fact, I think recently the veto has been used less. There are various ways to try to tackle this matter without coming out directly and confronting the US to the point they just close up shop and walk away—which would not help very much. I understand your frustration. We feel very much that frustration too.

CHAIR—One would think that the United States was the only country that had used a veto.

Senator GIBBS—And, because of the Charter, could the UN actually put these sanctions on? Would they be able to stop the procurement contracts? I do not know how it works, to tell you the truth.

Prof. Reynolds—They could threaten. Whether they could actually achieve it is another matter.

Senator GIBBS—That does not get very far. We can all threaten.

Prof. Reynolds—Maybe threatening would be enough to start with. A lot of people are just as unhappy about the state of affairs as we are. When I was there a couple of weeks ago, I met the United Nations Business Council—I think that is their official name. They are so concerned

that they have formed themselves into a business lobby group to advocate that the US pays its dues on time. As business people, they are doing business around the world and they do not want to find that there are parts of the world where they cannot continue to do business because of conflict and violence. In a very simplistic way, they are looking after their own interests but also looking after the UN's interests.

Mr Purnell—We have just been reminded that UNHCR has put some sanctions in terms of its contracts on countries that produce landmines. So there are ways of starting the process.

CHAIR—Thank you very much for coming today and for your contributions to the inquiry, Professor Reynolds and Mr Purnell. If you have any additional material you want to provide to the committee, we would be very happy to accept it. You will be sent a copy of the transcript which you may correct for fact.

RESOLVED (ON MOTION BY SENATOR GIBBS, SECONDED BY SENATOR BOURNE):

That, pursuant to the power conferred by paragraph (o) of sessional order 28B, this subcommittee authorises publication of the evidence given before it at public hearing this day.

Subcommittee adjourned at 3.27 p.m.

