



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE

ESTIMATES

(Budget Estimates)

WEDNESDAY, 2 JUNE 2004

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

Wednesday, 2 June 2004

Members: Senator Sandy Macdonald (*Chair*), Senator Hutchins (*Deputy Chair*), Senators Chris Evans, Ferguson, Payne and Ridgeway

Senators in attendance: Senator Sandy Macdonald (*Chair*), Senators Bartlett, Brown, Chris Evans, Collins, Cook, Faulkner, Ferguson, George Campbell, Payne and Ray

Committee met at 9.00 a.m.

FOREIGN AFFAIRS AND TRADE PORTFOLIO

In Attendance

Senator Hill, Minister for Defence

Department of Foreign Affairs and Trade

Portfolio overview

Mr Doug Chester, Deputy Secretary

Mr Allan McKinnon, First Assistant Secretary, Corporate Management Division

Ms Anne Hazell, Chief Finance Officer, Assistant Secretary, Finance Management Branch

Output 1.1: Protection and advocacy of Australia's international interests through the provision of policy advice to ministers and overseas diplomatic activity.

1.1.1: North Asia (including Australia–China Council, Australia–Korea Foundation)

Ms Lydia Morton, First Assistant Secretary, North Asia Division

1.1.2: South and South–East Asia (including Australia–India Council, Australia–Indonesia Institute)

Mr Bill Paterson PSM, First Assistant Secretary, South and South East Asia Division

1.1.3: Americas and Europe

Mr David A. Ritchie, First Assistant Secretary, Americas and Europe Division

1.1.4: South Pacific, Africa and the Middle East

Mr Ric Wells, First Assistant Secretary, South Pacific, Africa and Middle East Division

Mr John Quinn, Assistant Secretary, Iraq Task Force

Ms Victoria Owen, Assistant Secretary, Middle East and Africa Branch

Mr Alistair Maclean, Assistant Secretary, New Zealand and Papua New Guinea Branch

Mr George Atkin, Assistant Secretary, Pacific Islands Branch

1.1.5: Bilateral, regional and multi-lateral trade negotiations

Mr Bruce Gosper, First Assistant Secretary, Office of Trade Negotiations

Mr Stephen Deady, Special Negotiator—Free Trade Agreements

1.1.6: Trade development/policy coordination and APEC

Mr Paul Tighe, First Assistant Secretary, Trade Development Division

Mr Nic Brown, Assistant Secretary, Trade and Economic Analysis Branch

Mr Justin Brown, former Head, Asia Trade Taskforce

1.1.7: International organisations, legal and environment

Ms Caroline Millar, First Assistant Secretary, International Organisations and Legal Division, and Ambassador for People Smuggling Issues

Dr Greg French, Legal Adviser

Mr Justin Brown, Ambassador for the Environment

1.1.8: Security, nuclear disarmament and non-proliferation.

Mr David Stuart, First Assistant Secretary, International Security Division

Mr Les Luck, Ambassador for Counter-Terrorism

Output 1.2: Secure government communications and security of overseas missions.

Ms Penny Williams, First Assistant Secretary, Diplomatic Security, Information Management, and Services Division

Output 1.3: International services to other agencies in Australia and overseas (including Parliament, state representatives, business and other organisations).**1.3.1: Parliament in Australia****1.3.2: Services to attached agencies****1.3.3: Services to business****1.3.4: Services to state governments and other agencies overseas and in Australia.**

Mr Ian Kemish AM, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Mr Paul Tighe, First Assistant Secretary, Trade Development Division

Ms Zorica McCarthy, Assistant Secretary, Executive, Planning and Evaluation Branch

Ms Glenda Gauci, Executive Director, Aichi Expo Unit

Output 1.4: Services to diplomatic and consular representatives in Australia.**1.4.1: Services to the diplomatic and consular corps****1.4.2: Provision of protection advice through liaison with the Protective Security Coordination Centre.**

Ms Louise Hand, Chief of Protocol, Assistant Secretary, Protocol Branch

Output 2.1: Consular and passport services.**2.1.1: Consular services****2.1.2: Passport services.**

Mr Ian Kemish AM, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Mr Bob Nash, Assistant Secretary, Passports Branch

Output 3.1: Public information services and public diplomacy.

3.1.1: Public information and media services on Australia's foreign and trade policy**3.1.2: Projecting a positive image of Australia internationally****3.1.3: Freedom of information and archival research and clearance.**

Mr Ian Kemish AM, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Output 4.1: Property management.**Output 4.2: Contract management.**

Mr Peter Davin, Executive Director, Overseas Property Office Enabling services.

Mr Allan McKinnon, First Assistant Secretary, Corporate Management Division

Ms Zorica McCarthy, Assistant Secretary, Executive, Planning and Evaluation Branch

Ms Anne Hazell, Chief Finance Officer, Assistant Secretary, Finance Management Branch

Australian Trade Commission (Austrade)**Portfolio overview****Outcome 1: Australians succeeding in international business with widespread community support.****1.1: Awareness raising****1.2: Government advice and coordination****1.3: Services and opportunities****1.4: Austrade administered: EMDGs for small to medium sized businesses and ITES loans and advances.****Outcome 2: Australians informed about and provided access to consular, passport and immigration services in specific locations overseas.****2.1: Consular, passport and immigration services.**

Ms Margaret Lyons, Corporate Services Director, Canberra

Ms Margaret Ward, General Manager, Export Finance Assistance Program, Sydney

Mr Tim Harcourt, Chief Economist, Sydney

Mr Greg Field, Chief Finance and Information Officer, Canberra

Mr Michael Crawford, General Manager, Strategic Marketing and Communications

Mr Anthony Fernando, Manager, International Liaison Americas

Australian Agency for International Development (AusAID)**Outcome 1: Australia's national interest advanced by assistance to developing countries to reduce poverty and achieve sustainable development.****1.1: Policy****1.2: Program management****Administered items—Australia's development cooperation program.**

Mr Bruce Davis, Director General

Mr Scott Dawson, Deputy Director General, Asia and Corporate Resources Division

Mr Charles Tapp, Deputy Director General, Papua New Guinea, Pacific and Partnerships Division

Ms Annmaree O'Keeffe, Deputy Director General, Policy and Global Programs Division

Ms Jacqui Delacey, Assistant Director General, Papua New Guinea Branch

Mr Dereck Rooker-Smith, Assistant Director General, Australian Partners Branch

Mr Murray Proctor, Assistant Director General, East Branch

Mr Alan March, Assistant Director General, East Timor, Humanitarian and Regional Programs Branch

Mr Robin Davies, Assistant Director General, Indonesia Branch

Mr Peter Versegi, Assistant Director General, Policy and Multilateral Branch

Mr Mark Fleeton, Assistant Director General, Office of Review and Evaluation

Mr Peter Jensen, Acting Assistant Director General, Resources Branch

Ms Catherine Bennett, Acting Assistant Director General, Pacific Branch

Mr Jeremy Guthrie, Director, Budget Unit

Mr James Sweeting, Director, Budget Unit

Ms Rachael Moore, Policy Officer, Strategies and Program Planning Section, Papua New Guinea Branch

Ms Bernadette Mihaljevic, Policy Officer, Budget Unit

Mr Dominic Morice, Public Affairs Officer

CHAIR—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I will shortly welcome Senator Hill, the Minister for Defence, representing the Minister for Foreign Affairs and the Minister for Trade. The committee has

before it particulars of the proposed budget expenditure for the year ending 30 June 2005, documents A and B, and the portfolio budget statements for the Foreign Affairs and Trade portfolio. The committee proceedings will begin this morning with consideration of the estimates for AusAID. The committee will then examine estimates for the Department of Foreign Affairs and Trade.

When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions and the questions will be forwarded to the department for an answer. The committee has resolved that Thursday, 22 July 2004 is the return date for answers to questions taken on notice at these hearings. I have a final note on questions on notice. On 28 May Senator Andrew Murray submitted to all departments and agencies questions on notice relating to advertising, with a request that the answers be returned to the committee by 15 June 2004. Departments and agencies are encouraged to answer these questions as soon as possible but I reiterate that the committee's return date is 22 July 2004 and the committee would appreciate receiving all answers by that date.

Witnesses are reminded that evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. An officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy. However, they may be asked to explain government policy, describe how it differs from alternative policies and provide information on the process by which a particular policy was selected. An officer shall be given reasonable opportunity to refer questions asked of the officer to a superior officer or to the minister.

[9.03 a.m.]

Australian Agency for International Development (AusAID)

CHAIR—We will begin with AusAID. I welcome the Director General, Bruce Davis; Scott Dawson; Charles Tapp; and AusAID officers. Do you wish to make an opening statement?

Mr Davis—No, thank you.

Senator FAULKNER—To assist the committee, I would like to indicate that, as far as questions to AusAID from the opposition are concerned—as we have indicated to you, the committee secretariat and AusAID—we will place those on notice to try to facilitate today's business.

CHAIR—Thank you, Senator Faulkner.

Senator BARTLETT—I just want to get some general information about some finer detail of the aid budget for next financial year. Could you give an indication of how much of the 2004-05 program budget is going to be spent on aid administration—that is, any funds not expended on program delivery?

Mr Dawson—The figure that you are looking for is \$73.1 million, which is to be found both in our aid budget statement and in the portfolio estimates statement.

Senator BARTLETT—What percentage is that of the total?

Mr Dawson—I will have to take that on notice and work it out.

Senator BARTLETT—As part of collating that answer, could you say how that compared proportionally to the figures for the past five years?

Mr Dawson—You can see the figures for previous years. This is also table 6 of our aid budget statement. Departmental expenses for 2000-01 were \$67.6 million; for 2001-02, \$68.7 million; for 2002-03, \$70.6 million; and for 2003-04, \$72.2 million estimated outcome.

Senator BARTLETT—Can you indicate how much of that total budget will be spent within Australia as payments to Australian consultant companies and suppliers?

Mr Dawson—At this stage, we would not have that breakdown.

Senator BARTLETT—It just depends on how it—

Mr Dawson—It depends on programming decisions during the course of the year.

Senator BARTLETT—Do you have any indication of that for the financial year nearly gone?

Mr Dawson—We would have to take that on notice.

Senator BARTLETT—Similarly, for the current financial year, how much of the program budget was expended through consultancy contracts with other government departments—agreements with other Commonwealth government departments associated with delivering aid services, for example?

Mr Dawson—We would need to take that on notice as well.

Senator BARTLETT—Are you able to determine as yet how much of next year's aid budget is likely to be spent on salaries for Australian bureaucrats or consultants providing advice and other services in developing countries—things like police and advisers deployed to PNG and the Solomons? Does that come into the AusAID budget at all?

Mr Dawson—What you might be interested in—I am not sure it is an exact answer to the question, though—is the amount of total official development assistance which is being expended by other government departments. Certainly a significant proportion of that will be in transfer payments—for example, to other international organisations. But the costs, for example, of police capacity building assistance under the regional assistance mission to the Solomon Islands and police capacity building under the PNG Enhanced Cooperation Program are reported in the documentation as other government department expenditure.

Senator BARTLETT—With public sector employees that are part of delivering aid services, are they on fee-for-service type contracts, are they just paid existing salaries plus expenses or is it done on a case-by-case basis?

Mr Tapp—The basis for the finance for public servants from other government departments who may be working in development cooperation activities in other countries such as the Solomon Islands or Papua New Guinea is the conditions which are applied for foreign affairs and AusAID officers when working overseas. Each department, though, is

responsible for its own employment arrangements under AWAs for those individuals. And, in some circumstances, the tax office has made a determination that they are tax exempt.

Senator BARTLETT—Would you have an idea of what the average daily or weekly payment is for a public sector employee delivering aid services through AusAID?

Mr Tapp—Given that the arrangements are under AWAs through a different department, I would not have that information available.

Senator BARTLETT—Is it not able to be easily got?

Mr Tapp—No.

Senator BARTLETT—According to AusAID, as I understand it, the total official development assistance reported by Australia since 2002 has included over \$220 million spent by DIMIA on the so-called Pacific solution. How does that fit in with the stated single objective of the aid program, to advance Australia's interests by assisting developing countries to 'reduce poverty and achieve sustainable development'?

Mr Dawson—The figures that you are referring to are classified as official development assistance eligible expenditure. They occur through the department of immigration and they are reported as part of other government department expenditure. Basically, they fall under the category of humanitarian and refugee assistance. They are fully reportable as official development assistance under the guidelines of the Development Assistance Committee of the OECD.

Senator BARTLETT—I am not specifically wanting to get into a debate about whether or not this is a good policy in a refugee sense. How is that money classified as development assistance under the criteria?

Mr Dawson—As I said, it relates to the assistance provided to those outside their country of origin from a developing country seeking assistance. Therefore, it is classified under humanitarian and refugee assistance.

Senator BARTLETT—Is there a mechanism in terms of reporting internationally through the UN or whatever for total amounts of overseas official development assistance?

Mr Dawson—There is an annual survey carried out by the Development Assistance Committee of the OECD. That survey seeks information on all forms of assistance which are categorised as official development assistance.

Senator BARTLETT—So that expenditure would be counted in those figures?

Mr Dawson—That is right.

Senator BARTLETT—With the process of programs which contribute to other government objectives being reported as aid expenditure, is that under an international set of criteria?

Mr Davis—Yes, it is under the guidelines established by the Development Assistance Committee of the OECD. All donor countries within the OECD group follow the same guidelines and procedures. If there are areas where we think there is a judgment to be made on whether it does classify under those guidelines, we seek their advice and only put in,

within our ODA eligible expenditure, those matters that the Development Assistance Committee agree should be there.

Senator BARTLETT—So is there some form of auditing or checking, through that international committee, what various countries are putting in their tally?

Mr Davis—There are annual meetings. There is a statistics group within the Development Assistance Committee that does its own reconciliation of information provided by the individual countries. There are meetings of the senior statistical people from each of the countries as well, which periodically review guidelines that apply under the Development Assistance Committee.

Senator BARTLETT—Has a question ever been raised about whether or not this particular area of expenditure is appropriate to include in our total ODA?

Mr Davis—There has never been any concern at all about what we have included within our ODA, because we take exactly the same approach as other OECD member countries in that regard.

Senator BARTLETT—So it is fairly common practice for that sort of expenditure to be deemed development assistance?

Mr Davis—Yes.

Senator BARTLETT—Can you tell me a bit about the government's Papua New Guinea Enhanced Cooperation Program—I think this is in your area—and what the overarching goals and objectives of that are?

Mr Tapp—The aim of the PNG Enhanced Cooperation Program is to work with the government of Papua New Guinea in improving the law and order situation, economic governance, public sector management and the operations and performance of the law and justice institutions within the country. From the aid program perspective we will not be in a position to comment on the law and order aspects; you would need to talk to the AFP in relation to that. However, other areas of the enhanced cooperation program do fall under our responsibility.

Senator BARTLETT—So the law and justice components do not come through AusAID; they are delivered through—

Mr Tapp—The AusAID appropriation is used for covering the activities of the non-policing law and justice institutions. So, for example, working with the PNG Attorney-General's Department—through the judiciary systems, magistrate systems and what have you—is through the aid program. The Australian Federal Police, though, have separate funding for their provision of support to the ECP, and you would need to talk to them about their side.

Senator BARTLETT—But that AFP expenditure would still be part of our total ODA?

Mr Davis—A proportion of it is. It depends on the overall purpose of that expenditure.

Senator BARTLETT—There is some talk about an additional package for PNG and the Solomons focusing particularly on governance, including law and justice. Is much additional

aid—characterised as ODA, I guess—being provided next year for assistance in PNG and the Solomons?

Mr Tapp—For Papua New Guinea the estimated total ODA is \$435.6 million next financial year. For the Solomon Islands the figure is \$201.6 million estimated total ODA.

Senator BARTLETT—Do you know how much of that is specifically for the governance, law and justice area as opposed to the poverty reduction, water sanitation, education and health areas?

Mr Tapp—I can dig out some information for you on the Solomon Islands first. I do not have immediately on hand the specific figures for the Australian Federal Police or other elements in the Solomon Islands; I can merely speak from the perspective of the AusAID appropriation. In the coming financial year, in the law and justice sector we are looking at an expenditure of \$24 million. That is \$12 million for corrections and \$12 million for the justice system. We may need to be looking at some costs for assistance to the High Court and the judiciary, but we will be working out the exact breakdown and allocation of that in the coming couple of months.

The overall allocation that we have for the Solomon Islands is \$92.8 million, so you are looking at \$24 million out of \$92.8 million. It is inserting funding into the machinery of government, into the public sector reform area, into economic governance, into service delivery and into community and civil society programs. That makes up the full \$92.8 million. From the PNG side, I do not have all the detailed figures immediately on hand, but I am happy to take it on notice to provide information to you on the current thinking for what the law and justice element would be under the AusAID aid program in the coming financial year. Then again, I cannot comment on the exact numbers for the AFP.

Senator BARTLETT—Are you able to give any sort of breakdown, or at least some indication of a likely breakdown to date, as a guide to what might be spent in the capital cities of those two countries as opposed to the rural areas?

Mr Tapp—I am quite happy to take that one on notice to give you a bit of a breakdown, but I should point out that—

Senator BARTLETT—It is probably a bit hard to divide in some aspects.

Mr Tapp—The absolutely clear objective in Papua New Guinea and in the Solomon Islands is to ensure that the assistance that we are providing is being distributed throughout the country and to ensure that the full population of country Papua New Guinea or the Solomon Islands is actually benefiting from the assistance we are providing. Quite clearly, ensuring that the organs of government are actually operating effectively is extremely important—for example, to ensure that service delivery in health and education is being distributed adequately to the population, that the government is allocating appropriate resources through the budget and that those resources are actually being spent and distributed right down to the most local level. As I say, I would be very happy to provide you with some more detail on notice.

Senator BARTLETT—Were the overall goals for the Papua New Guinea Enhanced Cooperation Program developed in consideration of that single objective of the aid program

and our commitment to the Millennium Development Goals? They are a key part of the development of the goals for that program.

Mr Tapp—The basis of the enhanced cooperation program was a whole-of-government exercise. In the context of our bilateral relationship with Papua New Guinea, the needs as identified by Papua New Guinea and us are certainly consistent with the goals of the aid program and consistent with the Millennium Development Goals. For the overall process and issues relating to the development of the enhanced cooperation program, since it is a whole-of-government exercise I am sure there are some questions there that may be better directed to colleagues from the Department of Foreign Affairs and Trade.

Senator BARTLETT—To me, this reads that the overall amount of aid to East Timor next year has decreased by over eight per cent or \$2.6 million. Is that correct? If it is, why is that the case?

Mr Dawson—You are looking at an estimate for total official development assistance next year. For the last four financial years, the government had made a commitment of a total of \$150 million. I think that was split 40-40 for the first two of those four years and 35-35 for the other two years. In fact, that commitment was well and truly exceeded. Assistance which counts as ODA through a range of other sources—Australian non-government organisations, for example—and through other government organisations pushed the total level well in excess of the \$35 million which had been committed. The government has indicated that it intends to maintain total ODA to East Timor of about \$40 million for the next three financial years, and that is exactly what has been provided for in this budget.

Senator BARTLETT—Does AusAID have a view about the medium- to long-term sustainability of the East Timorese economy?

Mr Dawson—That is a complicated question.

Senator HILL—It is a challenge to build an economy; then you worry about sustainability.

Senator BARTLETT—So you make it sustainable once you get one. So you would say it is still very much at a stage where it is not in a position to stimulate sufficient growth to provide significant relief from poverty for the populace?

Mr Dawson—It is a very poor country. It remains to have a number of challenges. Those challenges include in particular its own skills base. There are very few trained, qualified professionals and administrators in areas such as economic and financial administration. There is obviously a very large task of capacity building there which Australia, along with others, is engaged in. It needs to do more to build its domestic sources of revenue. It needs to do more in a range of areas. But that work has started well over the last couple of years and certainly the government, together with the international donor community, is engaged very positively. There is an international dialogue on different reform measures which the government of East Timor has committed itself to. As long as it stays committed to those areas, there is every prospect that its own prospects will improve.

Senator BARTLETT—I cannot think of the right technical term for this but obviously there was a fair bit of focus—to some degree, a global focus—on East Timor when it was established as a new nation. Do you believe there is a similar degree of attention being paid to

the needs of East Timor or is there a bit of a struggle to keep it on the radar screen internationally?

Mr Dawson—I think that is the profile with almost every major international humanitarian situation or emergency. There is always a significant level of international support very early on and that almost inevitably tapers away as other priorities come on the scene. I think there certainly is a committed core of international supporters of East Timor and its current policies. They meet regularly and there is no sign amongst that group of any significant fall-off in support at this stage.

Senator BARTLETT—The budget for next year, as I read it, provides around \$104 million, or a bit under five per cent of aid spending, to non-government organisations in Australia and overseas. To me that appears to be a continuation of a decrease over a period of time in real terms and as a proportion of the total aid program. Is there any reason why that proportion being channelled through NGOs is continually declining?

Mr Davis—If you look at the table on page 67 of the blue book, the estimate comes out at \$110 million, which is the same as for the previous two years.

Senator BARTLETT—How does that compare prior to that?

Mr Davis—It was about the same in 2001-02 and down from a figure of \$123.7 million in 2000-01.

Mr Dawson—Part of the answer is also found by looking at the different areas of support through Australian non-government organisations. The direct support through the AusAID-NGO Cooperation Program in the year to come, 2004-05, is estimated at \$25.6 million. That compares with the budgeted estimate of \$25.4 million last year. Volunteer programs have been maintained, again, at an estimated \$21.6 million. I see no sign of the funding through Australian non-government organisations through other programs—either country programs or emergency and humanitarian programs—falling off, so I am not sure I could agree that there is a trend of decrease.

Mr Tapp—Certainly some of the funding to NGOs is going to be cyclical, given that some of the funding through the emergency program depends on the emergency. In some emergencies where there is a significant NGO program and presence it makes a great deal of sense for us to be funding through them. In other emergency situations it is not the case. If you go back, Senator, I think you will find that it peaks and troughs a bit because of the humanitarian funding through NGOs. But certainly all the other areas are very much being maintained.

Senator BARTLETT—I want to ask about the situation with the human rights initiative in Burma. Is that through you or through the department?

Mr Dawson—It is funded through the AusAID program.

Senator BARTLETT—I understood the department had suspended that initiative pending the need for some positive developments in Burma. Is that still the situation?

Mr Dawson—It is still on hold.

Senator BARTLETT—Are we planning a new aid initiative in Burma?

Mr Dawson—We are just waiting for developments first. The budget estimates show an increase in total expected official development assistance directed to Burma. That is expected to consist of new programs particularly related to the humanitarian situation in the country.

Senator BARTLETT—Is that dependent on improvements in the country?

Mr Dawson—The humanitarian program is not dependent upon any circumstances in the country.

Senator BARTLETT—And there are no signs at this stage that the human rights initiative is likely to restart any time soon?

Mr Dawson—It remains on hold.

Senator BARTLETT—I understand the government's pledge—I am not sure the figure I have in front of me of \$100,000 million is right; it sounds like a lot but it might be right—of some millions of dollars over 10 years for landmine funding expires this year.

Mr Proctor—The pledge actually runs through to the end of the next calendar year.

Senator BARTLETT—To the end of 2004 or 2005?

Mr Proctor—2005.

Senator BARTLETT—What was the total funding over that 10 years?

Mr Proctor—It was \$100 million.

Senator BARTLETT—I thought \$100,000 million sounded a little generous! Are there any plans at this stage either to continue with that pledge or to continue with some other assistance or program in the landmine area?

Mr Proctor—The existing pledge actually runs for another 18 months and it is probably somewhat premature to consider the future funding level. Considerable money is being spent this year and next, of course, and there is a major review of the Ottawa convention by state parties scheduled for the end of this calendar year, which undoubtedly will consider the broader issue of landmines.

Senator BARTLETT—So look out for that one over the course of the year. Is the new aid to Burma going to be directed through NGOs, through the Burmese government or by some other mechanism?

Mr Proctor—The aid is not directed through the government of Burma; it is directed through a variety of Australian NGOs. The ICRC, UNHCR and the World Food Program are using Australian funds in various ways to provide humanitarian assistance in Burma.

Senator BARTLETT—There was a decision to withdraw from the agreement that deals with the International Fund for Agricultural Development. Is that still going ahead or is the government still in the stage of considering that—do you know?

Mr Tapp—The proposed decision to withdraw from IFAD is sitting with the Joint Standing Committee on Treaties. I think they are due to table their report in a few weeks time. But the minister has made clear the government's view of wishing to withdraw from IFAD, so the process continues.

Senator BARTLETT—So it is still the government's intention to proceed with that—

Mr Tapp—Yes.

Senator BARTLETT—unless there is a spectacularly compelling argument put forward by the treaties committee?

Mr Tapp—That is right.

Senator BARTLETT—I do not want to revisit the treaty committee's inquiry, because that is all on the record. I think AusAID appeared before that committee.

Mr Tapp—Yes, we have, a couple of times.

Senator BARTLETT—Have there been any further representations made through AusAID or that you are aware of from the International Fund for Agricultural Development about this issue since that time?

Mr Tapp—There have been no direct representations by IFAD to AusAID since we were last in front of the JSCOT committee on this issue.

Senator BARTLETT—No further representations from international bodies asking for reconsideration of that decision?

Mr Tapp—No, as far as I am aware, we have had no further representations on that. Peter Versegi may wish to come to the table.

Mr Versegi—We did, since the hearing, receive a letter from the head of USAID, to which we have responded.

Senator BARTLETT—What was the general thrust of that letter?

Mr Versegi—The general thrust of the letter was that they asked us to look at reconsidering our position on IFAD. We outlined our reasons for the decision and made an offer for someone to meet with them to talk further about the reasons for it. We have since had another representation from USAID expressing recognition of the reasons for our decision.

Mr Davis—In fact, they went further than that, suggesting that they shared a number of the concerns that we had raised.

Senator BARTLETT—But they are not considering taking the same action?

Mr Davis—At this stage, no.

Senator BARTLETT—USAID is the US equivalent of AusAID?

Mr Davis—Yes.

Senator BARTLETT—Are there any specific details you can give me of the nature of any development assistance being provided through AusAID itself to Nauru in the next financial year?

Mr Tapp—Yes, if you wish I can provide you with information on that. I will take that on notice and give you a brief breakdown on that.

Senator BARTLETT—How does the anticipated amount for the coming financial year compare with the previous five financial years of AusAID expenditure?

Mr Tapp—The funding for next financial year will come under the third memorandum of understanding between Australia and the government of Nauru. Under the first administrative

arrangement, which was signed in September 2001, expenditure was \$16.5 million. Under the first memorandum of understanding, which was signed in December 2001, expenditure was \$10 million. Under the second memorandum of understanding, signed in December 2002, the expenditure was \$14.5 million. We are now on to expenditure under the third memorandum of understanding, and I can provide you with a broad breakdown for the coming financial year of the expected expenditure under that memorandum of understanding. I should point out that any costs associated with the processing centre are under the DIMIA portfolio and I cannot comment on those at all.

Senator BARTLETT—Are the figures you mentioned distinct to each MOU, or are they financial year figures?

Mr Tapp—The MOUs determine the amounts to be spent. There is some movement between financial years between those, particularly under the third MOU, which is covering two financial years. But we can provide a breakdown of that for you if you wish.

Mr Dawson—The year by year financial breakdown is in table 4 of the ministerial blue book statement.

Senator BARTLETT—What is the current status of the third MOU? That has now been signed off, has it?

Mr Tapp—Yes.

Senator BARTLETT—When was that done?

Mr Tapp—It was done earlier this year. For the details of that MOU you had probably best refer those questions to Foreign Affairs.

Senator PAYNE—I will start with some questions in relation to activities on HIV-AIDS, firstly in relation to the global fund contribution which was announced perhaps a couple of months ago now. Has that contribution been made?

Ms O’Keeffe—That contribution will be made over three separate financial years, beginning with the current financial year. We are about to make, if we have not already made it, a contribution this year. We will be making another one very shortly in the new financial year, followed by one in the financial year after that.

Senator PAYNE—What is the amount of each of those contributions?

Ms O’Keeffe—I will take that on notice; I do not have the exact break-up before me.

Senator PAYNE—Thank you.

Mr Davis—We are certainly front-loading that contribution to pay most of it up-front, partly because that provides the opportunity for the global fund to draw down resources from other donors—particularly the US—who want to see contributions from the rest of the donor community coming through at an early stage before they make further contributions.

Senator PAYNE—As I understand it, the decision to contribute to the global fund, which was some time in coming, was made because the funds activities in the region particularly met the government’s expectations in relation to work on HIV-AIDS. Is that right?

Ms O’Keeffe—That is right.

Mr Davis—It was a combination of the growing profile in the region and a growing understanding of the value of the fund, what it was contributing, its methods of operation et cetera.

Senator PAYNE—In relation to Australian support for the Asia Pacific Leadership Forum on HIV-AIDS and Development, which I understand is managed by UNAIDS, what involvement or engagement does Australia have in the management process?

Ms O’Keeffe—With the APLF, which is managed through UNAIDS, the secretariat is attached to UNAIDS. Australia, as one of the principal donors to APLF, has a very strong role in helping APLF determine its strategy. In fact, we were represented at the APLF Steering Committee, which was held in Shanghai just last week.

Senator PAYNE—Perhaps Mr Versegi can tell us more about that.

Mr Versegi—The steering group has been set up to provide strategic direction to the work of the APLF and there are pretty impressive regional leaders on that steering group, including Khun Anand, a former prime minister of Thailand; Ros Morauta, a former first lady of PNG; and Rob Moodie, head of VicHealth in Australia and a well-known HIV expert here. Nafis Sadik, the UN Secretary-General’s special envoy for HIV-AIDS, chairs that group. There is a cast of about a dozen altogether. We were invited to meet with the steering group after their meeting on 25 and 26 May in Shanghai—that is, the stakeholders—and I and the representative from USAID attended that meeting. I think it was clear from that meeting that the APLF has had a fairly slow start. In terms of the funding that has come into it, ours has been the first there. Other donor support has been a bit long in coming but it is now there—US funding, EU money, New Zealand money et cetera. It is now trying to move it from establishing its role into a much more strategic leadership promotion role. The work of the steering group is trying to help the APLF fulfil that quite ambitious goal. It is a hard ask; it is a difficult task.

The steering group was pretty impressive. They were very engaged and they have come up with a strategy which will seek over the next few months to do some political mapping—who the main opinion makers are and what the best way to reach them is within the region—and have a bit more of a focus on some of the key countries in the Asia-Pacific region, because it is very large, and on whether there is a need to focus on a few countries. In our region they are talking about Indonesia, Vietnam, PNG, Fiji and Cambodia. They are also including, I think, Bangladesh and a province in China and one in India, which are yet to be determined. It is probably still ambitious, that spread of countries, but it is a start in trying to focus the work of the APLF. That strategy will then be further developed. I think we are going to discuss it again at the Asia-Pacific ministerial meeting on 11 July, which the minister will be attending.

Senator PAYNE—So there has not been much progress made on the activities identified as having been APLF projected activities since 2001, give or take, or early 2002.

Mr Versegi—They have done activities.

Senator PAYNE—Are there any reports on those?

Mr Versegi—I can get you some. What they have done is not target the type of high-level political leadership that we would see as being desirable but worked more on a broader range

of community leaders and Public Service leaders, who in themselves are important. But I think we would like to see the APLF looking now at the more high-level strategic leadership, which we see as being quite crucial to an effective response to HIV-AIDS in our region.

Senator PAYNE—Have they produced the tool kits and strategic information that were one of their activities and that they were going to make available to decision makers and leaders for their advocacy and policy work in the area?

Mr Versegi—I am not sure they have completed them yet. In the steering group they were talking about another tool, which would be ‘five must-do’s’ for political leaders in the region. They are talking about having the UN Secretary-General sign that off as a key document. That could be quite a useful thing. I think they have done some work on the tool kits but I am not quite sure whether they have been completed or not.

Senator PAYNE—I think you mentioned that part of this will be on the agenda for the second regional Asia-Pacific ministerial meeting in Bangkok in July. What are the other key issues on the agenda for that meeting?

Mr Versegi—There are three main issues on it. I have forgotten the title of it but it is around political leadership. Policy and legislative frameworks is one session, which the minister will be chairing. There is another session on community leadership. I cannot recall what the third session is about. I think something like ‘access for all’ is the theme. It is political leadership around those sorts of issues.

Senator PAYNE—Will you come back to us with the third issue?

Mr Versegi—For sure.

Senator PAYNE—Is the community leadership session, for want of a better word, meant to engage non-government operators in the area?

Mr Versegi—Yes, religious leaders and business leaders as well as non-government organisations.

Senator PAYNE—Will there be Australian HIV-AIDS community representation in that?

Mr Versegi—At the Asia-Pacific ministerial meeting?

Senator PAYNE—Yes.

Mr Versegi—At the moment this is being—

Senator PAYNE—Or is it only about ministerial—

Mr Versegi—Yes, it is actually being hosted by the Thai government, and non-government representation was an issue that was raised in the steering group. At the moment I think they have allowed one non-government representative—

Senator PAYNE—One only or one from each country?

Mr Versegi—One only.

Senator PAYNE—It is hard to talk about community leadership with only one non-government representative.

Mr Versegi—Yes, I think that was a point that was made at the meeting by Marina Mahathir, the head of the Malaysian AIDS Council. Peter Piot, the UN assistant secretary-general, who was also at the meeting, undertook to take it up with the Thai government. It is really a call for the Thais to make a decision.

Senator PAYNE—I understand that. If there is any information available on that, can you come back to the committee?

Mr Versegi—Sure.

Senator PAYNE—Thank you. What involvement is AusAID having in the development of the fifth national strategy on HIV-AIDS and related diseases?

Mr Versegi—Can I take that on notice?

Senator PAYNE—You can but I would be—

Ms O’Keeffe—Actually, Senator, I can answer this. Our involvement in the fifth national strategy has been minimal. We have not been asked to participate.

Mr Dawson—Could I add as well that it is a subject which we have discussed with the Department of Health and Ageing. There will be further consultations between us and we expect to have an opportunity for input and comment as well.

Senator PAYNE—Do you understand what time frame you are working in, Mr Dawson?

Mr Dawson—No, I am afraid I do not.

Senator PAYNE—My observation would be that the time frame may be relatively brief. The Department of Health and Ageing promote AusAID as being responsible for coordinating policy advice on development matters and providing most of Australia’s financial support for international HIV-AIDS programs and in fact themselves claim that our international assistance and cooperation activities focus on:

... participating in the formulation at the international level of a strategic, coordinated and cooperative approach to the development and review of HIV/AIDS policy and programs, including through ... UNAIDS ... promoting Australia’s capacity to participate in international HIV/AIDS policy development and programs.

One would imagine that your agency would have a primary role in the development of the fifth national strategy, not, as far as I can tell so far, a minimal role.

Mr Dawson—We expect to have a significant input and we have discussed this at senior levels with the Department of Health and Ageing. Those discussions have been very amicable and we expect to receive information shortly from them upon which we can comment and have input.

Senator PAYNE—Did AusAID make any response to the review of the fourth national strategy? Was AusAID invited to comment on the observations made in that strategy, including those by Dr Moodie on Australia’s international engagement on these issues?

Ms O’Keeffe—I am unaware of that. We will take that on notice.

Senator PAYNE—Thank you.

CHAIR—Thank you to all the officers of AusAID. We look forward to seeing you later in the year.

Proceedings suspended from 9.53 a.m. to 10.12 a.m.

Department of Foreign Affairs and Trade

CHAIR—I call the committee to order. I welcome Mr Doug Chester, Deputy Secretary, and officers of the Department of Foreign Affairs and Trade. I also welcome back the minister. The committee has before it particulars for proposed budget expenditure for the year ending 30 June 2005, documents A and B, and the portfolio budget statements for the Foreign Affairs and Trade portfolio. Today the committee will examine the Department of Foreign Affairs and Trade beginning with the portfolio overview followed by the outputs and enabling services. Please note that the Foreign Affairs and Trade output 1.1.5, Bilateral, regional and multi-lateral trade negotiations and output 1.1.6, Trade development/policy coordination and APEC will be examined tomorrow from approximately 11 a.m.

The committee has resolved that Thursday, 22 July 2004 is the return date of answers to questions taken on notice at these hearings. A final note on questions on notice is that on 28 May Senator Andrew Murray submitted to departments and agencies questions on notice relating to advertising with a request that the answers be returned to the committee by 15 June 2004. Departments and agencies are encouraged to answer those questions as soon as possible. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to a committee may constitute a contempt of the Senate. Minister, do you or any officer wish to make an opening statement?

Senator Hill—No.

CHAIR—Do you, Mr Chester?

Mr Chester—No.

CHAIR—We move now to questions for the portfolio overview.

Senator FAULKNER—I wondered, Mr Chester, whether you or one of your officials could give the committee a status report, please, on the interactions the department has had with the International Committee of the Red Cross on the issue of prisoner abuse in Iraq.

Mr Chester—Yes, I will ask some of the officials to come to the table. But let me start by saying that I am aware of at least one meeting our office in Baghdad had with representatives of the Red Cross in June last year. I will make a couple of points in a general sense in relation to this issue of prisoner abuse in Iraq. From what I can ascertain, the department became aware of the abuse when the photos were made public in late April. Let me also say that, from what I can ascertain, none of the material the department had in its possession prior to April forewarned the department of what we did see when those photos were published.

In relation to the Red Cross, we were aware, and we knew, that the occupying powers—the UK and the US—had granted permission for the Red Cross to be in Iraq to monitor the prisons and the detention of prisoners. We were also aware that the Red Cross had raised some issues with the occupying powers, such as overcrowding in prisons, the categorisation

of prisoners and access to prisoners by relatives and lawyers. But, as I said, we were not aware of these issues of abuse until April this year.

Finally, we view the material that we did have on this issue in a particular context, and that context was that Australians were not detaining prisoners, nor were we accepting prisoners. We saw no suggestions that Australians had been involved in these issues that we are aware of: the categorisation of prisoners, access by relatives and lawyers and overcrowding. We were also aware prior to April that these issues that had been raised by the Red Cross were being addressed by the US and the UK. We drew that conclusion—for example, from the press reports in January—that the US was taking action against some of its personnel. That is all.

Senator FAULKNER—Let us begin, if we can, in June 2003. Was that a meeting?

Mr Chester—I will ask Mr Quinn to go into that detail.

Senator FAULKNER—Mr Quinn, what can you tell us about the interaction in June 2003?

Mr Quinn—As Mr Chester has mentioned, the head of mission at the Australian Representative Office, ARO, in Baghdad invited the ICRC to come into the mission there for a discussion about issues pertinent to the ICRC's activities in Iraq, so it was an initiative on the part of the ARO. Obviously, he was keen to make connections with key players in Baghdad from the UN and other agencies. The ICRC—this is from talking to our head of mission—was a bit reluctant to come in because they saw no particular issues with us, but they were prepared to come for a discussion. That discussion was very cordial. We understand that no issues were raised in relation to the detention of detainees beyond a passing reference to the need for access to prisoners, which is an ongoing issue that, I think, has been in the media for some time. Families have basically been complaining that they cannot get access to their relatives. It was a very cordial discussion. ICRC did not initiate any follow-up meetings; it did not follow up at all.

Senator FAULKNER—So this preceded that period when the abuses in prisons such as Abu Ghraib took place?

Mr Chester—I do not think we can answer that. I am not sure when those abuses took place.

Senator BROWN—Was it before or after Bucca? In May last year near Bucca news of US guards being removed to—

Mr Chester—The meeting was in June of last year, so if the issue you are talking about was in May, then yes, it was after.

Senator BROWN—Was that issue raised—

CHAIR—I think Senator Faulkner was asking questions of Mr Chester, Senator Brown.

Senator FAULKNER—I am just going through the processes.

CHAIR—I think one at a time. You will get your chance to ask questions, Senator Brown.

Senator ROBERT RAY—Chair, I think that is generally right, but I think any Senator can intercede and say, 'Do you mind if I intercede here?'

CHAIR—Perhaps if he had asked.

Senator ROBERT RAY—Is that all right with you, Senator Brown?

Senator BROWN—Yes, sure. Thank you.

Mr Quinn—I will answer the Senator's question. As Mr Chester was about to say, the meeting was 23 June. I cannot recall the date of the incident you mentioned, but one assumes it was after that incident.

Senator BROWN—It was May.

Mr Quinn—That is right, so that after, presumably.

Senator BROWN—Yes.

Mr Quinn—As far as I am aware, the incident was not raised in that discussion but we will check that for you.

Senator FAULKNER—I am just clearing up in relation to the June 2003 initiative. It was one taken by our senior representative in the ARO?

Mr Quinn—That is correct. I think in the context of the usual process of introductory calls on key players, obviously we support the work of the ICRC. As Mr Chester has mentioned, they have been involved all the way through doing their valuable work. So it was in that context. There were no particular issues or dramas that we were aware of at the time.

Senator FAULKNER—And that involved a visit by ICRC officials to the Australian Representative Office in Baghdad, did it?

Mr Quinn—That is right, as far as I understand.

Senator FAULKNER—Was there any follow-through as a result of those discussions that you are able to inform the committee about?

Mr Quinn—I am advised that there was no follow-up action taken by the ICRC. They did not initiate further contact with the post.

Senator FAULKNER—They did not?

Mr Quinn—That is right.

Senator FAULKNER—No, but in this case we are talking about contact that was initiated by us.

Mr Quinn—That is right. There was no further initiative taken by the post to talk to the ICRC—

Senator FAULKNER—Or the ICRC?

Mr Quinn—That is right. I guess part of the cue might have been that the ICRC was a bit puzzled about why we wanted to talk to them. We had no formal responsibilities for issues they were dealing with, so I guess that was the cue that our post took from that discussion. The meeting was cordial but, as I said, the ICRC did not really see any formal requirement to talk to our post at all for the reasons I think you are familiar with: the legal arguments about occupying power and detaining power. We do not fit into those categories. The ICRC, as you

know, is scrupulous about those process issues, scrupulous about confidentiality of reports. Their way of doing business is very low profile, very confidential, very discreet.

Senator FAULKNER—Was that significant in the fact that no discussions or meetings took place after June 2003? Why was there not the same level of discretion in June 2003?

Mr Chester—I think the way this meeting is best characterised is, as Mr Quinn said, a head of mission newly arrived at a post making introductory calls on key players in the city, in the country. You would imagine that it is certainly not out of the ordinary for a head of mission to have those introductory contacts with a large number of people.

Senator FAULKNER—I am not suggesting that; I just want to be assured it was not indiscreet.

Mr Chester—Certainly that is how we would interpret that meeting, as being nothing more than an introductory call.

Senator FAULKNER—Anyway, Mr Quinn, there is no other formal or informal contact from that time to the current day?

Mr Quinn—That is right. We did check to see whether the ICRC had actually been in touch with the department at all since that time. There were three meetings of ICRC representatives in Canberra: a human rights consultation in early March, one of my colleagues met the ICRC in April to talk about ASEAN Regional Forum issues, and also a discussion on 27 May—again, human rights consultations. In none of those discussions was Iraq raised. So there has been some contact with the Red Cross at the Canberra end but, as far as we are aware, there has been no particular contact. I should say, for the issue of completeness, that I think there was a recent request made in the last day or so if we could access the October report, which we were not aware of—this document that was subject to discussion yesterday. I understand the ICRC is reluctant to release reports because they are confidential to the parties.

Senator FAULKNER—We might come to that at a later stage. Of course the ARO in Baghdad was kept apprised of certain interfaces between the military and the ICRC because of certain reporting requirements which were coming through to the ARO. I think that is right, isn't it?

Mr Chester—That is correct. The ARO did receive copies of some of the reporting, and some of that reporting also came back to DFAT in Canberra.

Senator FAULKNER—Did that reporting all go through the TLO in the Australian representative office in Baghdad or did it sometimes go elsewhere?

Mr Chester—My understanding—and it is only an understanding—is that some of that went direct to the staff in the ARO.

Senator FAULKNER—I see, some went direct to staff—

Mr Chester—That is my understanding.

Senator FAULKNER—and some went to the TLO. TLOs are effectively members of staff, aren't they? It is just that they are from another department.

Mr Quinn—That is right. If I could elaborate slightly, as for the sit reps from the ADF legal advisers attached to the CPA, they copied their reports to three officers in the ARO,

including the TLO, and directly to Canberra—to basically Defence colleagues, DFAT and Attorney-General's. So those reports came through direct. On occasions they were attached to reports from the TLO doubling up, but the reports came directly through to Canberra with that line of reporting. The other line of reporting, which I understand is a more direct line through the military channels, was not received by the post or by us in Canberra. That is the second track of reporting.

Senator FAULKNER—So are you saying to us that the only reporting—in this case the sit reps, as you have defined it, which may be the only reporting—directly or indirectly to the Australian representative office in Baghdad came from those legal officers who were attached to the CPA?

Mr Quinn—That is right, as far as I am aware. I am not familiar with the arrangements in relation to the TLO in the Defence chain so I could not answer that question. But the ARO staff receive the legal sit reps from the ADF colleagues working with the CPA.

Senator FAULKNER—It seems to me you are drawing a distinction between the TLO defined in the last two days in Defence estimates either as the temporary liaison officer or the temporary legal officer. Can you help me with the official title? We have heard two.

Mr Quinn—I think the official title is transitional liaison officer.

Senator FAULKNER—That is a third one!

Mr Quinn—It is basically a defence attache equivalent. Because there is no official Iraqi government, that term was in appropriate. So that was the term crafted to meet that contingency.

Senator FAULKNER—But, effectively, we can understand the role as being akin to the role of a defence attache?

Mr Quinn—Absolutely. Obviously the defence attache is an integral part of the team in the post, so that is absolutely correct—he would be involved in discussions with the post.

Senator ROBERT RAY—Who was the TLO?

Mr Quinn—We have had three TLOs. I will have to check their names. We have had rotations and we are on our third TLO at the moment. At what particular time, Senator?

Senator ROBERT RAY—You might tell us who the TLO was prior to New Year's Day this year and who followed—around about that—and when the third one took it up. He or she may be irrelevant.

Mr Quinn—The current TLO is Phil Warwick, a Navy officer; the previous officer was Dave Green, an Air Force officer; and the earlier officer was Frank Colley, an Army officer.

Senator ROBERT RAY—What rank were they?

Mr Quinn—Colonel Colley. I think Dave Green was a colonel equivalent—I am not sure exactly—and Captain Warwick is the current TLO.

Senator FAULKNER—So you are drawing a distinction between reporting that comes in to the TLO and other reporting—in this case reporting from the CPA—which goes to the TLO as well as to three officers in the Australian Representative Office?

Mr Quinn—That is right.

Senator FAULKNER—But the distinction you are drawing here is the legal officers of the CPA who are directly reporting in to ARO officials?

Mr Quinn—That is right. I am aware of a separate track of reporting, which is more operational reporting, which I saw in my current function earlier on in the proceedings. But I have not seen that reporting for some months. I do not think that reporting goes to the post. I did check with them and as far as I am aware they do not get that reporting either.

Senator FAULKNER—It might be useful for us, so we understand, how the TLO in the Australian Representative Office in Baghdad deals with reporting that is coming in directly to him and how that is dealt with in terms of the broader responsibilities of the ARO. One assumes it does not sit with just the TLO. I assume that, but you can tell me whether that is true or not.

Mr Quinn—I am a bit reluctant to go into too much detail about how the TLO operates in Baghdad, because it is more a Defence issue, but as I said—

Senator FAULKNER—I do not want to ask you about the Defence responsibilities of the TLO. I am interested in what the TLO is passing through to the Australian Representative Office, which is a Foreign Affairs responsibility—in other words, whether all of this reporting that goes directly to the TLO but not to DFAT officials in the ARO is actually more indirectly coming through to your own department.

Mr Quinn—As far as I am aware, the TLO performs an invaluable function in passing on material to us. We get reporting from our Defence civilian colleagues who are working, for example, on developing new defence and national security architecture in Iraq as an attachment to the report the TLO sends down. As I said, we receive some of the documents as attachments from the ADF lawyers. Basically, it is conveying a lot of useful material to us on a range of activities taking place within Iraq. With regard to work being done on training the new Iraqi army and navy, again, it is invaluable for us to know how that process is running in a whole of government sense. So the TLO's job is very helpful. He passes material on. I think he is very busy and I am not sure how much time he has to digest. He is not a filter for that reporting. It comes through, and that is much appreciated from our end.

Senator FAULKNER—It would be invaluable for you also to know what was happening if there were any allegations of serious mistreatment or abuse of Iraqi POWs. You would need to know that, too. You would want to know that, wouldn't you?

Mr Quinn—Absolutely.

Senator FAULKNER—I assume then that the department has been very thorough in checking through precisely what was reported to the department. My questions here are going to the ARO. I am qualifying this. I am not talking about more broadly back in Canberra or elsewhere; I am just talking about the Australian Representative Office in Baghdad at the moment. I think you appreciate that, Mr Quinn. Have you been able to undertake a thorough check with the ARO about what information came through, was reported to and was reported from the ARO in relation to this broad issue of abuse and mistreatment of Iraqi POWs? Have you done that checking? Can you confirm to the committee that that has been done?

Mr Quinn—Yes.

Senator FAULKNER—Can you tell me when it was done?

Mr Quinn—We have had ongoing dialogue with the post, of course, since this particular controversy erupted with the publication of the photographs. I think as Mr Chester said, until those photographs were revealed we had no idea about the shocking allegations.

Senator FAULKNER—I think that is the fourth time that has been said today, Mr Quinn—I think we have got that one on board.

Mr Quinn—We basically have been checking for a few days confirming our understanding. Our understanding has been that the post has only received the sit reps from the ADF lawyers attached to the CPA. They have not received any other reporting from any other source on this subject at all. We double-checked again in the last couple of days and the post has confirmed that they did receive those sit reps basically from May last year. They can only find two references to this issue at all and in very soft terms basically: a reference to a decision to reopen Abu Ghraib, which I think was made in June, and a reference in September to detention visits at Bucca, which I think was the camp referred to by Senator Brown. After that, from late November onwards, we received them—the sit reps came through to the post. We were not getting those sit reps until late November. That channel was really only opened up for us late in the year. So they have checked. The post operates under very tight constraints. They do not keep a lot of filing, but they have checked. As I say, from the earlier sit reps, they are the only two references they could find. They have no recollection of other references to the ICRC or this subject. As far as we are aware, the only channel that they have had is those sit reps. But, as I say, that channel only really came to us late in the year.

Senator FAULKNER—I will try and work through that in some detail, but my question to you was: when did the thorough checking process of these records commence at the ARO?

Mr Quinn—A thorough check was I think late last week. We had had some informal discussion before and we asked for a double-check. Overnight we have had another check as well, just to double-check.

Senator FAULKNER—Can you be more specific than ‘late last week’?

Mr Quinn—I would have to check. I will take that on notice. I am not sure exactly when I asked.

Senator FAULKNER—Who initiated the checking process?

Mr Quinn—I did.

Senator FAULKNER—So you tasked the ARO?

Mr Quinn—Yes.

Senator FAULKNER—Did anyone task you?

Mr Quinn—No.

Senator FAULKNER—You just took the initiative to do it? If you did, I think it was a worthwhile initiative and I hope it proves helpful to us as we work through these issues. Have you had contacts with Defence in relation to these matters in the last few days?

Mr Quinn—Some specific questions have been asked, but that is all. There has been no structured dialogue. Of course most of the colleagues have been at estimates, so we have not had meetings, but I have had a couple of requests for—

Senator FAULKNER—Who asked you those specific questions?

Mr Quinn—I think I was asked by the acting assistant secretary for the Strategic and International Policy Division. They were just very routine factual questions.

Senator FAULKNER—Are you able to share those questions with us so that we can get a feel for it?

Mr Quinn—When the question came up yesterday, for example, about the distribution of sit reps I contacted Mr Birrer—the colleague in question—and indicated that I could clarify the answer to that question a bit, and we had a conversation. I think there was discussion in this committee about that subject yesterday. So I initiated some of the discussions to make sure that the issues on the table were dealt with in a way that was as factually accurate as possible.

Senator FAULKNER—So what you are saying—which is fair enough—is that you were monitoring the evidence that was taken at this committee and checking to see that it was accurate?

Mr Quinn—Not blow by blow. We had a lot of other issues to deal with. Obviously Iraq is bubbling away and we have a lot of other preoccupations. But, to the extent I could, I was trying to make sure that the information was as accurate as possible.

Senator FAULKNER—Were you satisfied that the information that you were aware of was accurate?

Mr Quinn—Yes.

Senator FAULKNER—Just so that I understand the background to this reporting into and out of the ARO in Baghdad, how complete are the records kept in Baghdad of sit reps and so forth? I thought there might be some security issues which meant that these records were not complete there.

Mr Quinn—You ask a good question. The post has indicated that, given the obvious constraints of its operation, including on the communications side—it uses laptops which require lengthy, expensive and sometimes unstable replication—the post minimises printing, but basically anything of moment they have passed back to Canberra. So I think you are right—the filing would be somewhat limited, given the communications challenges there. But, as I say, the post has checked and gone through the earlier sit reps and identified two passing references to this issue before the regular reporting started in late November. You may want to come to that later, but that is a new era to some extent.

Senator FAULKNER—Thank you for that. Does this mean that we at this committee can be assured that, as far as a thorough and complete record of the reporting in and out of the ARO in Baghdad goes, they are certainly records that are held in the Department of Foreign Affairs and Trade?

Mr Quinn—We do not have copies of all of those sit reps. I assume that they might be available in Defence. We only received the sit reps from late in the year. The documents would be available within the Australian government system. We have checked on cable reporting as well and found that nothing has come through from the post on this subject either, so there is nothing in the open cable system either on this subject. I would have to check those documents. I do not have copies of all of those documents myself in the department in Canberra.

Senator FAULKNER—What I am trying to understand is this: if material has come into the ARO, is there a complete record of it either at the ARO or in the department here?

Mr Quinn—We did ask this question, and the post has indicated that it has printed and filed a number of these sit reps—Nos 1, 2, 3, 7, 15, 16 and 17. So they have not filed the full set. One assumes that is because the issues were not germane. There are many questions that are addressed in these sit reps, including major issues about legal architecture and questions about the tribunal set up to try those responsible for war crimes. There are a lot of issues in these sit reps. That is the record the post has.

Senator FAULKNER—A lot of issues, but important issues.

Mr Quinn—Absolutely but, as I say, the post has only filed those particular sit reps. They have done a check and that is the list.

Senator FAULKNER—Where are the rest of these important issues filed?

Mr Quinn—The post would not have kept those documents. They would have printed them off, looked at them and presumably shredded them. I do not have copies of all those sit reps in Canberra but I assume that they would be somewhere in the Defence system.

Senator FAULKNER—That is what I am trying to establish: whether these would be kept elsewhere—in other words, back here in the department, which is a logical or obvious possibility—or whether they would have been otherwise dealt with. I think you are saying now that some of them have been shredded.

Mr Quinn—Because they are on the record in Canberra, one assumes that these sit reps went back to Defence. I do not have the distribution—

Senator FAULKNER—I understand that Defence may or may not have copies of them. Defence itself has not been able to put its hands on a range of documents, but that is another issue. That is not a matter your department and I think we understand and accept that. The question here is what is happening with processes inside your department. That is what I am exploring at the moment. Are you saying that if a matter is not kept on file in Baghdad then, original materials not coming to Canberra, it is likely to have been shredded at the post? Is that the picture?

Mr Quinn—That is right, because I guess the post's assumption is that the material is available elsewhere. They have security and other constraints there, and we back their judgment about how they operate on the ground in a very difficult environment.

Senator FAULKNER—You said that anything of moment is sent to Canberra. Who makes those judgments?

Mr Quinn—The officers in question would make a judgment on a daily basis about a plethora of information and would alert us to particular issues as they saw fit.

Senator FAULKNER—But allegations of abuse or mistreatment of Iraqi POWs would be issues of moment, wouldn't they?

Mr Quinn—Of course.

Senator FAULKNER—So that would all be sent to Canberra?

Mr Quinn—That is right.

Senator FAULKNER—So we can be confident that if there are not records in the Australian Representative Office on these matters then certainly there would be records in Canberra?

Mr Quinn—I would imagine so—that is right.

Senator FAULKNER—Again, this is not a matter for imagination. I am trying to explore here what the facts are. Would you be able to give me an unqualified assurance in that regard?

Mr Quinn—There is a huge volume of material. I would have to take that question on notice. There is obviously more checking that could be done. Iraq is a huge, complex subject and we would have to do more work to provide ironclad assurances. But my understanding is, having checked with the post, that they can recall only two references to this subject, which were basically procedural references, up till late last year. As I say, we can talk further about the reporting stream that began to us in late November, but, as far as we can ascertain, the post has not raised this issue or reported on this issue and there is no other documentation the post holds on this subject.

Senator FAULKNER—Let us talk about that reporting stream into the ARO first of all. If you are comfortable with that, I think it is a sensible way of dealing with it. Perhaps we should deal with the reporting stream into the ARO and then we might deal with the reporting stream out of the ARO. Can you give us a full indication—and I want to be clear about this; I want to qualify my question relating to those matters of concern in relation to possible abuse or mistreatment of Iraqi prisoners and I want to go to the issue of interrogation procedures and techniques, and any other broad subheading.

Senator Hill—This is post November, is it?

Senator FAULKNER—No.

Senator Hill—I thought he had been doing it up until November and then he was asking you if you wanted to go to November.

Senator FAULKNER—I have been talking to Mr Quinn about the full period. I want to go through the whole period.

Senator Hill—I am not sure of your question. Could I ask you to clarify your question please?

Senator FAULKNER—I did not realise that, Senator Hill. You are suggested that Mr Quinn is speaking pre-November in relation to his answers. We are going to go through seriatim from the establishment of the Australian Representative Office through to the present

time about that reporting. That should be all-encompassing and I do not think we will be at cross purposes if we do that. I have given two very broad areas and to save the committee's time if there were a committee member who would like to—

Senator CHRIS EVANS—The only other references might be to Amnesty International reports or human rights reports.

Senator FAULKNER—I would hope that would be picked up. Here NGO reporting, Mr Quinn, would be included in that.

Mr Quinn—Sure.

Senator FAULKNER—Obviously that includes the International Committee of the Red Cross and Amnesty International.

I am looking at other committee members here because I think it will save a lot of time if we get these broad categorisations clear and not go through one category then trawl through it again in some other area. So there are three identified broad areas: abuse and mistreatment of prisoners, interrogation procedures and processes in the broad, and the interface between officials and NGOs. I am looking at other committee members to see if there are any other broad areas, but that seems to suffice. If you could now give us that picture.

Senator Hill—The interface with NGOs is NGOs in the human rights area?

Senator FAULKNER—Yes, I think so. I identify the International Committee of the Red Cross; I would identify Amnesty International—I do not know if there are any others.

Senator BROWN—Human Rights Watch.

Senator FAULKNER—I think it is useful to narrow this down as much as we can, Senator Hill, because this might save a great deal of time later in the hearing.

Senator BROWN—If I may, Senator Faulkner, the other matter that probably will come through questioning in those categories is what the response was as abuse of prisoners emerged into the public domain—how the department took on board the news and what response there was to that news as it unfolded over the last 18 months.

Senator FAULKNER—That ought to be picked up in those categories.

Mr Chester—I sense that is a somewhat different question. I think we answered that in the sense that the department was not aware of this abuse.

Senator ROBERT RAY—It is asking, once you became aware, how you reacted, I think.

Mr Chester—Let me finish the answer. I was going to go on and say that once that abuse became public in April then ministers and the Prime Minister made very clear what the government's view was of that abuse.

Senator BROWN—I will come back to this later, but I am talking about information that was on the global public record, which must have been picked up by the department, and what response there was to that going way back beyond April.

Mr Chester—Before Mr Quinn answers that detailed question, if I could just re-emphasise the point that the head of our mission in Baghdad has told us that he, the head of post, was not aware of this abuse either until it became public in April.

Senator FAULKNER—What we are going to do, Mr Chester, is explore that. I think it would be useful—I hope you would agree—to explore that with the benefit of the material that Mr Quinn is going to provide to us.

Mr Chester—To the extent we can assist you in exploring that, we will.

Senator ROBERT RAY—That is your job. Why would you have to say that? That is what you are here for.

Senator Hill—I think there is a fear that they are being asked questions that they cannot answer because of a lack of knowledge.

Senator ROBERT RAY—Then you will intervene, Senator Hill.

Senator Hill—They should respond by saying that they do not have knowledge of that particular issue.

Mr Chester—And that is what we will do. There will be some elements of this where we just do not know the answer.

Senator ROBERT RAY—You will be guided by your minister, as you should be—as you are paid to be.

Senator Hill—If they are not sure, they will say they are not sure.

Senator FAULKNER—Why don't we bat on, Mr Quinn? Let us see how we go.

Senator Hill—What is the specific question?

Senator FAULKNER—I think we have defined it on about three or four occasions, but let me define it again.

Senator Hill—I do not think Mr Quinn is sure of his answer.

Senator FAULKNER—Mr Quinn, at this stage, firstly, is going to provide for us the detail of all reporting into the Australian Representative Office in Baghdad on the three issues—surely you do not want me to repeat them?

Senator Hill—No, I'm right.

Senator FAULKNER—On the three issues that we have identified between the time the ARO was established and the current day. Then Mr Quinn, having completed that and possibly after committee members have sought any further explanation if that is required, is going to tell us about the reporting out of the ARO, of the instances when these issues have been reported out of the ARO—he will inform us of that. That is the first task.

Senator Hill—The reporting into, though, is reporting into the office from within Iraq—from sources within Iraq, I assume.

Senator FAULKNER—Yes. Can we just go through it in chronological order?

Mr Quinn—By way of preamble, could I just say that the post is a very small post operating under very tight constraints. We do not expect the post to provide reporting on issues in the public domain where clearly the issues are well known. We do not get the sort of reporting you might find from a larger post where they will pick up issues that are in the

public domain. A lot of material comes through on the open system—the CPA web site. We do not expect the post to report blow by blow. The second point I would make, just picking up—

Senator FAULKNER—That excuse is noted.

Mr Quinn—It is a fact.

Senator FAULKNER—It is an excuse, and it is noted. We have noted that.

Mr Quinn—The second point, just picking up Mr Chester's—

Senator Hill—It is not just an excuse.

Senator FAULKNER—It is a qualification.

Senator Hill—It is the reality.

Senator FAULKNER—It is a qualification and an excuse. All I am asking Mr Quinn to do is to give us a complete record. If there are matters that are not included in the record, we can explore that if committee members see fit.

Senator Hill—Senator Faulkner wants to know, in the first instance, of reporting into the ARO from within Iraq on the subject of abuse or mistreatment of prisoners. Apart from the couple of references that you have made this morning—

Senator FAULKNER—Now you have redefined the question.

Senator Hill—I am trying to put it in a sense that the official might appreciate—might understand.

Senator FAULKNER—I think Mr Quinn is well aware of what we are asking. We are not limiting it to the abuse or mistreatment of prisoners.

Senator Hill—I thought you wanted to—

Senator FAULKNER—We are also talking about interrogation techniques and procedures in the broad and we are also talking about contact with the identified NGOs. What we ought to do now is just get the answer from Mr Quinn.

Senator Hill—All right, we will do it as a group.

Mr Quinn—My second point, which I think is also relevant, is that the post has not reported on the question of detention and abuse at all because the channel for reporting has been the CPA legal adviser's reporting. The material we have on this subject has basically come through that channel. The post does not second-guess that. There are colleagues working on the issues in house, as has been explained. The post has not provided much reporting at all—if any—on that subject. In terms of broader human rights issues, we would have to do another check in terms of contact with NGOs. I am not aware of any particular contact with NGOs in Baghdad; we would have to check on that. And in terms of the ICRC, as I have mentioned, there was an initial initiative taken by our head of mission, there was no subsequent contact directly and then there was the contact with the Red Cross in Canberra this year. It is a fairly short answer to your question, but I think the answer is appropriately short. The main channel was this reporting coming through from the CPA legal adviser. The post assumed that was the channel through which material would come to us. They did not second-guess that or elaborate on that.

Senator FAULKNER—I think the best thing to do is to provide the answer. We have heard the qualifications. Can you now provide any information to us about times of any contact?

Mr Quinn—I should take that question on notice in terms of the whole NGO community, but in terms of the ICRC, as I have said, I am only aware of one contact, which was the meeting in June. In terms of Amnesty International or Human Rights Watch, I am not aware of any contact in Baghdad. I will double-check that, but I cannot recall anything and the post have indicated to us that they have no recollection of any discussion with NGOs on this question of prisoner abuse. We will double-check that. Beyond that, in terms of broader human rights issues, we would have to do a check in terms of what had come through from the post. There may have been issues raised by members of the governing council or other issues in terms of the broad human rights situation in Iraq. I would have to check that for you.

Senator FAULKNER—What reporting do you have on record? What sit rep reporting do you have on record going into the post on allegations of abuse or mistreatment of POWs between the time the ARO was established and today? What have your checks turned up?

Mr Quinn—Going back to the issue of pre November, as I mentioned, the post has checked and there are only two references to this issue: one a sit rep in June, where there is a reference to discussion about the decision to reopen Abu Ghraib prison, basically because of the overcrowding in Camp Cropper. That is all.

Senator FAULKNER—What was the date of that June sit rep, please?

Mr Quinn—11 June.

Mr Chester—But they were not going to the issue of prisoner abuse—

Mr Quinn—No. Overcrowding was the issue.

Mr Chester—which was how the question was put.

Senator FAULKNER—I think Mr Quinn has been perfectly clear in that.

Mr Quinn—The second reference was in September—sit rep 16—to meetings with the ICRC. Because they had evacuated their personnel from Baghdad, they were getting back on track after the egregious bombing of the ICRC and the UN mission. They were basically questions about classification of prisoners detained, saying that they were working on legal interpretations of classes of prisoner and that they were recommencing detention camp visits on 13 September at Bucca, with the ICRC team basing itself at coalition headquarters at Um Qasr. That is all we know about pre late November.

Senator FAULKNER—Let us go to late November, please.

Mr Quinn—Again, in late November the broader distribution kicked in of the sit reps, as I mentioned. The documents went to a range of colleagues in Defence, colleagues in DFAT, including our lawyers, and Attorney-General's. In a sense that is a new era. The references turned up are basically the ones that came to our attention here. There was some discussion with the Iraqi minister for human rights, who had some concerns about detention practices.

Senator FAULKNER—What date are we now talking about?

Mr Quinn—28 November.

Senator FAULKNER—Who held the discussions?

Mr Quinn—I assume that is the ADF liaison officer working with the CPA.

Senator FAULKNER—Could we have the detail of that and our discussions with the Iraqi minister.

Mr Quinn—It was described as an impromptu meeting. There were general concerns about the methods used at the time of detention—lack of respect et cetera—and the accuracy of information about the detainment—

Senator Hill—Is this the same meeting?

Mr Quinn—It is the same meeting. There were a lot of process issues such as access to relatives. The comment made by the officer was that allegations lacked specificity but represented an unhealthy perception of practices. So there was criticism of the practices in a broad way.

Senator FAULKNER—So we now know that on 28 November it was reported to Australian authorities that the Iraqi minister had concerns—

Mr Quinn—General concerns.

Senator FAULKNER—All right—general concerns about the way prisoners were being treated.

Mr Quinn—Sure.

Senator FAULKNER—What happens to that reporting?

Mr Quinn—As I say, the reporting went to a range of colleagues in Defence, Attorney-General's and DFAT in Canberra.

Senator FAULKNER—How seriously do you treat a matter when it is reported through to those three departments? How seriously do you treat a matter when someone of ministerial status—this is what we are talking about; I assume this is a minister in the CPA; is that right?

Mr Quinn—In the governing council.

Senator FAULKNER—A minister in the Iraqi governing council has discussions with at least one Australian official about these general concerns about the treatment of prisoners. What happens when this gets back to DFAT here in Canberra?

Mr Quinn—I think it has been explained. Our view was that these processes were working. We had the ICRC in the system. There was transparency. It is a good thing if the human rights minister is engaged on the issues. They were primarily general questions relating to practices on detention. Lacked specificity was the judgment being made. Our view was that these issues were being followed up, as appropriate, so I think it is a healthy sign of transparency and openness that these issues are raised. The officer in question is working for the CPA, which is not the line area responsible for prisons. They are following up and raising issues, so our sense was that this was a positive thing in terms of due process being followed.

Senator FAULKNER—Did the TLO that the Iraqi minister spoke to have any direct contact with the jails concerned—Abu Ghraib or Camp Cropper?

Mr Quinn—In the context of that particular discussion, there is no reference to any other contact with jails or other follow-ups specifically.

Senator ROBERT RAY—That has broadened the question. The question is: did that particular individual before or after ever visit any of those prisons?

Mr Quinn—I am not sure. I will have to take that on notice. My understanding is that that particular officer did not visit but I would have to check on that. I do not know.

Senator ROBERT RAY—Which particular officer? You were not able to specify the time—quite properly; I understand—the three TLOs spent there. They went one after the other, we presume. You do not know which one we are talking about?

Mr Quinn—This would be the ADF colleague working in the office of general counsel in the CPA. It would not be the TLO; it would be the officer working in an in-line job. That is another point to make. We deploy colleagues to the CPA. Their prime responsibility is a line responsibility to the CPA. Our view was that they were being helpful in terms of process. As the minister said yesterday, our feeling was that the involvement was helping due process run appropriately.

Senator ROBERT RAY—You certainly cannot answer for him. I understand that.

Senator CHRIS EVANS—Is this Colonel Muggleton?

Senator Hill—It is not clear to me which officer you are talking about.

Mr Quinn—My understanding is that it might have been Colonel Muggleton but I am not sure. We would have to check on that.

Senator FAULKNER—Isn't the Iraqi governing council as close as it gets to some sort of sovereign government in Iraq at the time? It is as close as it gets. I am not suggesting it is a sovereign government.

Senator Hill—The CPA really is more of a de facto government.

Senator FAULKNER—You would not ignore—

Senator Hill—No, I would not ignore that, but let us try to get it accurate. I am also not absolutely sure that he was on the governing council. Are you sure of that?

Mr Quinn—That is right.

Senator Hill—There are ministers who have been appointed who have not been on the governing council. Anyway, he is obviously a person, according to the note, who has the status of minister.

Mr Quinn—That is right.

Senator Hill—They were acting ministers.

Senator ROBERT RAY—Who was the minister?

Mr Quinn—Mr Abdul-Basit Turki. As the minister explains, these are interim ministers appointed by the governing council.

Senator Hill—Mr Quinn might or might not know but I cannot tell which officer we are talking about now. Do you know who was—

Mr Quinn—I am not sure.

Senator FAULKNER—What we do know is that an interim or acting minister in Iraq informs an Australian official about concerns they have with what is happening in terms of general methods and practices within unspecified jails in Iraq. Are we able to specify it, Mr Quinn? Do you know whether it is Abu Ghraib or Camp Cropper? Do we think it is Abu Ghraib?

Senator Hill—I don't know that it would be what we think; it is: do we know?

Senator FAULKNER—What do we know?

Mr Quinn—All I know is what is on the record, which are general concerns. There is no reference to a specific location.

Senator FAULKNER—This is an acting Iraqi minister—we have now redefined him, from Iraqi minister to an acting Iraqi minister—on 28 November 2003.

Mr Quinn—I will just clarify: the officer in question was representing the CPA. These were not representations to the Australian government. The officer was in his line position in an impromptu discussion. He was appropriately in contact with the relevant players. An issue came up.

Senator FAULKNER—That is not good enough, Mr Quinn. You have just told us that this was reported back to the Department of Defence, the Department of Foreign Affairs and Trade and the Attorney-General's Department. That is right, isn't it?

Mr Quinn—That is right.

Senator FAULKNER—It is reported back to three departments of state here in Australia about what this Iraqi minister said about conditions in jails on 28 November 2003. What did the Department of Foreign Affairs and Trade do about it?

Mr Chester—Nowhere in this can I see the minister making allegations of abuse of prisoners, particularly the abuse that we have seen since the end of April. He is talking about issues such as access to relatives and lawyers, methods being used at the time of detention but not during detention, and accuracy of information used to detain people—those kinds of issues.

Senator CHRIS EVANS—That talks about the inappropriate treatment of Arab males? I thought there was a reference by Mr Quinn.

Mr Quinn—No, just lack of respect for detainees.

Senator FAULKNER—What does 'lack of respect for detainees' mean? We know now what it means now. I would be concerned if I received reporting from a minister about lack of respect for detainees. You would hope that somewhere in the Australian government somebody might twig and think: perhaps this needs a little bit more investigation.

Mr Chester—It is very easy in hindsight to make those statements. As I said earlier, you have to look at how we saw this reporting. We saw it through the eyes of allegations not being made against Australians. There are no suggestions that Australians were involved in this. We were not running the prisons. We were not detaining and holding prisoners. As Mr Quinn said—

Senator FAULKNER—Why did this Iraqi minister raise it with the Australian mission?

Mr Quinn—He raised it with the CPA. You can keep saying he raised it with the Australian mission—he did not. He raised it with the CPA. The legal people in the CPA reported back in one of their regular reports on legal issues.

Senator FAULKNER—And the person he had contact with was an Australian officer—is that correct?

Mr Chester—That is correct.

Senator FAULKNER—A defence officer? A military officer?

Mr Chester—Yes, and he reported to him not as an Australian defence officer but as a member of the legal team in the CPA.

Senator FAULKNER—This is reported through to three government departments in Australia. Are you seriously suggesting that that absolves Australia, Australians, Australian officials, the Australian government and Australian departments of responsibility?

Senator Hill—Mr Chester can only answer on facts. What he has said is that there is evidence of this communication between the Iraqi human rights minister and an Australian working for the CPA, the de facto government, on standards of detention. A message went through the system to that effect back to Australia. I do not think you can put to Mr Chester in the way you did: ‘Does this absolve everybody of responsibility?’

Senator FAULKNER—My question to you is simple: what action resulted as a result of that Iraqi minister raising those concerns? Minister, what action resulted?

Senator Hill—At the moment we are talking about foreign affairs, and the officials can tell whether any action flowed from that message within Australia, if they know the answer to that question.

Mr Chester—From the department of foreign affairs point of view, we took no action as a result of that message—that is my understanding. But I do not think we are in a position to answer the question of what action took place as a result of that message being passed on to the CPA. We do not have that advice.

Senator ROBERT RAY—You are getting these sit reps. What is your capacity to go back up the line to be able to check with the person assisting the CPA? They do not work for you directly, but do you have a capacity or not?

Mr Chester—Of course we do. If there were issues that were raised in these sit reps that we thought we needed to follow up on then we would follow up on them.

Senator ROBERT RAY—That is not quite the answer to my question.

Mr Chester—Depending on the nature of the issue. If it is something in the bailiwick of A-G’s, we go to them to seek follow-up.

Senator ROBERT RAY—I think we understand that. You get this information from a sit rep from someone who is not under your direct control in any sense but who comes to you out of, I think, a little more than courtesy. You then get the information. You may then think: I wonder what this is about. Do you then have the capacity to go back to the Australian

Representative Office and get them to go and see the person who is attached to the CPA to clarify matters? That is really what I am asking at this stage. I am trying to understand the process.

Mr Chester—Mr Quinn can answer it in more detail but, yes, we would do that. As we have indicated, these sit reps cover a broad range of legal issues, quite a number of which are important to the Department of Foreign Affairs and Trade, and there will be to and fro on those issues.

Mr Quinn—If I could elaborate, obviously we can go back and query. In this particular context you asked why we did not follow up.

Senator ROBERT RAY—I did not, but answer it because I would like to hear the answer.

Mr Quinn—The short answer is: because there was a process in train to follow up. The colleague in question reported back to the CPA. Our Defence legal colleagues were in those jobs to pursue these issues. The ICRC processes were running. In a sense the internal processes were ticking over. Given the nature of the commentary, the general allegations lack specificity; there was nothing specific. I should add, as a point of realism, that the context of this is a very large-scale challenge of processing 40,000-odd prisoners—I think they are now down to about 8,000—a huge logistical challenge. I think you would have to be naive not to expect some difficulties in a process sense with those issues—an insurgency running. I think the context is very important just to put things in their proper place. Our understanding was that there were some process problems, but basically the internal due process arrangements were robust. The ICRC was there, we had our defence lawyers following up, and it was totally appropriate for them to see the minister for human rights—and part of his agenda is lobbying. His job is to be an advocate and chase issues, just as Amnesty or the ICRC do. So our feeling was that there was an appropriate process in place, this was being followed up and there was no need for us to make any specific representations or become involved.

Senator ROBERT RAY—Did we have anyone in this period, from June last year to June this year, in the Australian Representative Office that had expertise in international law, the Geneva convention and these sorts of legal issues that may apply? Was there anyone there, or did every case have to be sent back to Australia for advice if there was ever a need? Did we have anyone, be they a TLO or otherwise, who had that sort of training and that sort of capability?

Mr Quinn—I would have to take that question on notice. I know that one of our colleagues has a legal background and has done some work liaising with the CPA on legal issues, but I am not sure if there is any specific expertise in humanitarian law. I think the assumption is that the issues will be dealt with in Canberra—in terms of any issues of interpretation or operation of international humanitarian law—or by the officer on the ground, because the colleagues who were despatched into the CPA, my understanding is, have an international legal background with a strong focus on humanitarian law.

Senator BROWN—The other question in the background of course is the response to what was emerging in the national and international media. When did the department first become aware of the dismissal of officers from Camp Bucca in May because of mistreatment and abuse of prisoners?

Mr Quinn—I would have to take that on notice. I cannot recall the details of that incident. We can check for you. I would suspect in the public domain—when the issue became public—but I would have to check on that.

Senator BROWN—On 23 July last year Amnesty International held a press conference in Baghdad and issued its memorandum of concerns relating to law and order. Part of that press conference was about allegations of torture or ill-treatment. I quote from that:

Reported methods include prolonged sleep deprivation; prolonged restraint in painful positions, sometimes combined with exposure to loud music; prolonged hooding; and exposure to bright lights. Such treatment would amount to “torture or inhuman treatment” prohibited by the Fourth Geneva Convention and by international human rights law.

... ..

Amnesty International’s concerns with regard to allegations of inhuman treatment immediately after arrest and in detention camps run by the US military have been raised in its letter to Ambassador Paul Bremer of 26 June 2003.

What was the Australian representatives’ response to or record of this Amnesty International report being published?

Mr Quinn—We have no record of receiving that particular document and—I will double-check—as far as I know, we have no record of the post reporting on that press conference. Again I make the point I made earlier—that the post would not normally go to an event like this which is on the public record. There is risk and danger in travel; they are very prudent about what they do. I would not have expected them to go to a press conference from Amnesty, because the documentation is available. I have only recently seen that document—obviously, when this issue blew up, when the egregious photos appeared. Again, looking at that document, the Abu Ghraib references are basically about tracing prisoners, overcrowding and those sorts of issues. There is nothing in that report about egregious conduct at Abu Ghraib.

But I take your point: there are a range of issues that Amnesty has raised. It just goes back to my earlier comment: everyone knew there were challenges involved—insurgency, large numbers of prisoners, managing security detainees. There were lots of issues. There is no surprise that there were process challenges. Our judgment was that the ICRC was there doing its job. In good faith we deployed lawyers to assist in those processes to make sure that the responses were as robust as possible. As I say, I take your point: there are a range of issues raised in this document—systemic issues that were in the public domain and have been known for some considerable time—

Senator BROWN—Including torture.

Mr Quinn—That is an issue in terms of definition, I guess. My legal colleagues may have a better view on that. I am not an expert on international humanitarian law. Treatment of detainees—yes, that is an issue in that document.

Senator BROWN—Amnesty International says ‘allegations of torture’.

Mr Quinn—That is right, I think, in this document. I think that is right.

Senator BROWN—I can understand not crossing through Baghdad in July last year, but this was internationally reported. What happens at this end of the line when a document like this does get reported? How does the department pick up on it and assess it to make sure it has been registered back in Baghdad or that there is some action taken on it?

Mr Quinn—I cannot speak in a general way for the activities of the department when human rights reports come in. In this particular case, I would imagine the post was aware of the report in general terms. We could check on that. They have the Internet; they have a lot of time to read quietly in their rooms. It is a fairly spartan life in Baghdad. I should say in terms of Amnesty that, as far as I understand it, we have had no representations at all on Iraq. The recent report of the 19th was emailed to the minister for information. It is an omnibus, global document on human rights in Iraq. There was no request for action. Obviously there has been subsequent correspondence with the Prime Minister, but, as I say, as far as I understand it, we have had no request from Amnesty to take any particular action. And I understand that the most recent correspondence only seeks action in relation to Afghanistan and Guantanamo Bay. Even the latest Amnesty documentation does not make any specific request of the Australian government as far as I understand it.

Senator BROWN—The earliest documentation here makes specific reference to Iraq. How does the department vet—

Senator Hill—Which document are you referring to?

Senator BROWN—The one I have referred to—23 July last year. I asked whether the department monitors the international wires on matters occurring in Iraq. If so, how could it avoid picking up on this report?

Mr Quinn—I can assure you that we do monitor closely international discussion of human rights issues. As I say, because these issues were on the table, our response was twofold. The ICRC is there; they are doing their work; they are pursuing their agendas. We had provided in good faith ADF lawyers who had expertise to try to facilitate those processes. Our response to these efforts—our modest, targeted response—was to assist in trying to make sure that due process was followed. We take these reports seriously. There are issues we may disagree with Amnesty about, but obviously the broad thrust of this report has been well known for a long time. The issues are systemic. One would have to expect these difficulties given the scale of detentions, the difficult circumstances in Iraq, the dilapidated state of jails under Saddam—there are a whole series of reasons why detention is going to be a challenge in the current environment. That is no surprise to anyone.

Senator BROWN—We are talking here about specific interrogation techniques. It is not to do with the conditions of the prison. We are talking about the interrogation techniques, which Amnesty International described as torture in July last year. Can you categorically tell me that the department did not pick up on that report—that nobody in the department picked up on it?

Mr Quinn—I would have to check which staff were on deck at the time and who read the document. I was aware of it in a broad way, but I had not read it in detail until it was highlighted recently, I have to confess.

Senator BROWN—You were aware of it in a broad way at the time?

Mr Quinn—That is right, but I cannot recall whether I had read it at that stage. We get a huge volume of material on Iraq.

Senator BROWN—How would you have become aware of it, Mr Quinn, at that time?

Mr Quinn—I guess media coverage or if we had got a report, but we have no record of having received it in the department—that is the position in a formal way.

Senator BROWN—But you and the department were aware of it at the time?

Mr Quinn—My recollection is that, but I would have to check who might have been aware of the document. It would have been a media reference. We have no record of receiving the document in a formal way at all.

Senator BROWN—This is new. We are now establishing that this Amnesty document did register in the department at the time in July last year. We have not heard that before.

Mr Quinn—I would have to check. I am just not au fait with the details. All I know is that formally the document was not received by DFAT as far as our checks reveal.

Senator BROWN—Yes, but the media reports were, which gives you information that by July last year at least allegations of torture coming from a well-respected international organisation like Amnesty International were registered in your department.

Senator Hill—I think you may be putting some words into the witness's mouth, Senator Brown. He says that the department monitors the media as it relates to foreign affairs issues and it is reasonable to assume that if this report was in turn reported in the media it would have been picked up, but he does not know any details of that.

Senator BROWN—No, he says he was broadly aware of it, Minister.

Mr Quinn—The issues in the report, I should say, Minister—perhaps to clarify.

Senator Hill—He said he is broadly aware of the issues that are in the report.

Senator BROWN—Were you?

Senator Hill—No. When you try to look back, it is very difficult to recall whether a particular report that may have passed you by as you monitor the media is the report to which you are referring. I knew, as I said yesterday, that ICRC was active in the country. I do have a recollection that Amnesty was and I have a recollection of Amnesty expressing points of view. I would be amazed if Amnesty was not doing it. I have heard recently that Human Rights Watch International was, but I have not seen any of that material.

Senator BROWN—Did the department pick up on the Human Rights Watch material during last year?

Mr Quinn—I cannot recall. I would have to take that on notice and check. I cannot recall that report.

Senator BROWN—Would you check. On 18 October last AFP reported that eight US soldiers had been charged with acts of brutality against prisoners of war in Iraq and one of the prisoners had died. What is your recollection of those reports?

Mr Quinn—Again, there was quite a lot of media coverage of some specific incidents, including I think involving British forces. My assessment was that action was being taken.

Due process was being followed—investigations had revealed abuses and they were being prosecuted. So in a sense the system was working. I think that was the judgment made by most colleagues involved in the broader interagency process. But I cannot recall the details of each of those instances.

Senator BROWN—Can you establish who in the department did and whether any response or questions went back to Baghdad about either the Amnesty report or this AFP report on US soldiers being charged with acts of brutality and in one case the death of a prisoner? I ask these questions because they put us in the context of the Minister for Human Rights, Mr Abdul-Basit Turki, speaking to the Australian representative in November and expressing concern about the rights of prisoners. You see, it is not an isolated request coming from the Iraqi minister. It has to be couched in terms of already evident information of allegations of torture to the point of the death at least of one prisoner that were available to the department and I think registered with the department, from what you have said.

Mr Quinn—Just a small clarification—the communication took place with the ADF officer working for the CPA; there was no representation made to the Australian government. I want to underline that.

Senator BROWN—But the reports from that representative office came back to Canberra.

Mr Quinn—They did. As I mentioned, his gloss was that they were general comments and lacked specificity, and our understanding was that they were being followed up, given the role of the ICRC and the responses of the US and UK military authorities in prosecuting those responsible. The two tracks were running, basically.

Senator BROWN—When those reports came back from Baghdad to the department, the department knew about these other reports of abuse to the point of torture.

Senator Hill—But the point the official was making is that these reports are seen against a background. You have pointed out that there were allegations of torture, but there was also disciplinary action taken in that regard. I cannot speak for the official but I can see how, when you have a mass of this material flowing into the office and you are working out what you need to take proactive action on, if you believe that the matter is being otherwise adequately addressed you may not.

Senator BROWN—Was the department satisfied with the disciplinary action that was taken?

Mr Quinn—As the minister has said, we are not in a position to judge the detailed facts of the case. Our understanding was that due process was being followed. There were prosecutions and investigations. This was absolutely appropriate. There was transparency. The ICRC was doing its professional job in a low-key way. We were providing assistance to make sure due process was being followed in terms of humanitarian legal expertise. As the minister said, we have a thousand issues a day. This issue seemed to be in hand. The issues were in the public domain. There is no mystery in the fact that there will be a few people who misbehave, and they were dealt with severely. That is my understanding. We did not see any particular need to follow through at that juncture.

Senator BROWN—General Karpinski says that the fact that they were not dealt with severely but were simply sent back to the States was a contributing factor in the breakdown of proper controls at Abu Ghraib and the gross abuses that occurred later on. Was the department tracking that failure?

Senator Hill—But she is said to have said that this year, not at the time relevant to these various reports.

Senator BROWN—No, it is very relevant. What she is saying is that the disciplinary action was manifestly inadequate and totally inappropriate to the crimes that had been committed and that that in itself contributed to the feeling at Abu Ghraib that abuses could occur because there was no appropriate discipline or penalty being applied to people who had already committed gross abuses earlier in the year.

Senator Hill—She can say that now, but how is the department last year supposed to have been able to read her mind?

Senator BROWN—I am just saying that Mr Quinn is saying that disciplinary action was being taken. What we know is that that disciplinary action was grossly inadequate and in fact, in her judgment, became a contributor to further abuses because it was not adequate.

Senator Hill—We do not know that it was grossly inadequate. We know apparently, because you have told us, that she has said this year that in her view it was inadequate.

Senator BROWN—What was the disciplinary action that was taken?

Senator Hill—I do not know the full details but I heard what you said yesterday.

Senator BROWN—What details do you have at all?

Senator Hill—I heard what you said yesterday. I think you were quoting her again, where she referred to them being sent out of theatre.

Senator BROWN—Would I be wrong in saying that you and Mr Quinn have no idea of what the disciplinary action was?

Senator Hill—I do not have the details of the disciplinary action taken by the United States in relation to a particular incident last year.

Senator BROWN—In the *Australian* on Monday, 20 October appeared the story ‘Marines “Mistreated” POWs’. It said:

Eight US Marine reservists have been charged with the brutal treatment of Iraqi prisoners of war following the death of one POW in June.

Minister, what was your response to this article in the Australian press?

Senator Hill—We can ask the department. It is not really for me to respond in terms of my own knowledge here; I am representing the Minister for Foreign Affairs.

Senator BROWN—Did you see that article?

Senator Hill—I do recall seeing—I do not know whether it was that specific article—references of that type. I have seen them from time to time.

Senator BROWN—The question that arises here is: what action did you take in view of the fact that there had been brutality occurring to Iraqi prisoners of war by the occupying

forces, to the point of one prisoner of war dying as far back as June? This has been reported in the Australian press. We have got an approach shortly afterwards from the acting minister for human rights in Iraq to put on record that there were prisoner rights—

Senator Hill—Evidence has been given this morning by officials that he was referring to general conditions. You tend to blur a range of different issues, Senator.

Senator BROWN—You explain to the committee what action you took to ensure that as far as Australia was concerned—

Senator Hill—If US forces were alleged to be behaving improperly I would expect US authorities to address the issue.

Senator FAULKNER—Are you able to say what the actual portfolio was of the Iraqi minister that we were speaking of a little earlier?

Senator Hill—We said in evidence that it was human rights.

Mr Quinn—That is correct.

Senator FAULKNER—He was the acting minister, was he?

Senator Hill—I said I understood the status of the ministers at that time was acting minister. My understanding is that some are within the governing council and some are not.

Senator FAULKNER—One would assume that the minister or acting minister for human rights would have certain responsibilities for treatment of prisoners. That seems logical. Can you confirm that for the committee?

Senator Hill—I do not know his full—

Senator FAULKNER—You do not think that is likely?

Senator Hill—Why don't you wait until you get an answer. I do not know his full charter but I would assume that he was interested in human rights within the country which would apply to all Iraqi people, including prisoners. It sounds as if that is reinforced by the fact that he is expressing concerns about general conditions in relation to prisoners.

Senator FAULKNER—You are here representing the Minister for Foreign Affairs, and I think we understand that, but you are Minister for Defence and these general concerns were also provided to the Department of Defence. When did you become aware of the general concerns of the Iraqi minister for human rights about what was happening in these jails?

Senator Hill—I do not think that I was made aware of that particular communication back to Australia, but I would like to have that checked as well. I do not recall it.

Senator FAULKNER—So are you saying you became aware of it this morning?

Senator Hill—This is a report back in November of last year.

Senator FAULKNER—That is right—28 November last year.

Senator Hill—I do not recall it before this morning but I would like to check.

Senator FAULKNER—I find that quite extraordinary.

Senator Hill—As Mr Quinn said, there is a mass of material coming through all the time. It is very difficult to recall each and every detail. As you know, Senator Faulkner, in this process you are held to the detail, so I would like to make a check.

Senator FAULKNER—Just tell me this: was there any other contact that the department is aware of, apart from these general concerns being raised with an Australian official who was working with the CPA? Are we aware of the Iraqi human rights minister making any other contact with Australian officials after 28 November?

Mr Quinn—Not that I am aware of but I can double-check that. I am not aware of any other contact specifically on the subject.

Senator FAULKNER—After 28 November what is the next report that you have a record of?

Mr Quinn—These were weekly sit reps so there is a lot of process related reporting, officers coordinating meetings with the ICRC, but that is all the comment—no substance. Further meetings discussing—

Senator FAULKNER—You say there is no substance, and I accept that. Just give us a broad outline or picture of what was happening.

Mr Quinn—The entry is two lines, saying that the officer coordinated a meeting at CPA Baghdad between the ICRC Protection Coordinator and CPA and CJTF7 staff regarding detention issues.

Senator FAULKNER—What was the date of that?

Mr Quinn—It was 29 November.

Senator FAULKNER—What is the next one after that?

Mr Quinn—Again, these are Defence documents so I will pick out the key points.

Senator FAULKNER—That would be helpful.

Mr Quinn—There was a discussion about detention issues broadly, preparation of a large-scale visit to Abu Ghraib—

Senator FAULKNER—What you mean by ‘detention issues broadly’?

Mr Quinn—That is all it says: issues related to detention.

Senator FAULKNER—So is this a discussion again with the ICRC?

Mr Quinn—It is with CJTF7. I guess it was CPA people talking about a visit to Abu Ghraib and a visit by the ICRC to Camp Cropper, the other facility. Again, that is all good due process. We saw that and thought, ‘That’s good. That’s what they are there for.’ They are there to basically look at those facilities, so that was a positive message as far as we could see.

Senator FAULKNER—What is the date of that sit rep?

Mr Quinn—30 December. There is a reference to the officer visiting Abu Ghraib as part of the CPA justice team, a familiarisation visit; discussed processing detainees and detention monitoring. So, again, very much process issues. There was no suggestion there of any egregious problems.

Senator BROWN—When was that?

Senator FAULKNER—What was the date of that one?

Mr Quinn—It was 2 January. They were very process oriented. Things were basically running smoothly. They were a useful insight into the process. There was nothing at all about difficulties. Then there was another report on 11 January saying the visit to Abu Ghraib went well and that the ICRC was going to report to General Sanchez. That was the first time we knew anything about any ICRC document. Again, standard due process. ICRC does a visit and reports to the relevant authority. That is also process.

Senator FAULKNER—Why do you mention an ICRC document there?

Mr Quinn—Because we subsequently found out there was this ICRC document in February, which is the issue that has been subject to some controversy.

Senator FAULKNER—I am aware of that. But what is the significance of 11 January and the ICRC document of February?

Mr Chester—The sit rep says that the ICRC will provide a confidential report to General Sanchez. I think the officer made a passing comment that obviously the public canvassing of allegations of mistreatment, which came through in the 16 January press release that became public knowledge in January, would make all the more important these processes. All he was doing was stating the obvious, that the issue obviously had a higher profile in January, given the media coverage of these various investigations. Again, there is no comment about any specific egregious abuses.

Senator FAULKNER—I do not understand the timing. This is 11 January not 16 January.

Mr Quinn—I am sorry, it was 18 January.

Mr Chester—We had moved on to the next sit rep.

Senator FAULKNER—So which of your comments are relevant to the sit rep of 18 January?

Mr Quinn—There was a passing comment by the officer that obviously the public controversy about allegations of ill treatment which came through from things like the press release from the Pentagon had just focused attention on the detention issue. That is all that was said. There is no comment about specific allegations or any detail.

Senator BROWN—Was there no report on the 4 January visit to Abu Ghraib by ICRC?

Mr Quinn—No. There is a reference to the confidential document being prepared by the ICRC. Again, we would not expect to receive such a document. It is a document that is exclusive to the parties principal. As you know, the ICRC has expressed some concern about the release of its documentation. It much prefers to work in a confidential way. We would not have expected to get that document.

Senator BROWN—Was there any reference to the spot visits by ICRC being terminated in December or January?

Mr Quinn—No.

Senator FAULKNER—Can you say whether Minister Downer was informed about the concerns raised by the Iraqi minister for human rights on 28 November?

Mr Quinn—As far as I can recollect, the minister was not informed.

Senator FAULKNER—That is a very qualified answer, Mr Quinn.

Mr Quinn—The minister was not informed.

Senator FAULKNER—You say as far as you can recollect. I would have thought someone would have checked that, to be honest.

Mr Quinn—The minister was not informed. I would have informed the minister. It would have come through me, so I think we can say that the minister was not informed.

Senator FAULKNER—When was the minister informed? Do you mean he was not informed at the time?

Mr Quinn—That is right.

Senator FAULKNER—Has he been informed subsequently?

Mr Quinn—Not specifically on this subject. We have briefed the minister that there were a series of reports from the ADF legal officer basically focusing on process issues, which is our understanding of the material we have received—a very strong focus on ICRC processes being followed. So the minister is aware of that.

Senator FAULKNER—Are you seriously saying to this committee, Mr Quinn, that, as of this morning, Australia's Minister for Foreign Affairs had not been briefed about the concerns expressed by the Iraqi minister for human rights on 28 November 2003 about what was happening in Iraqi jails? That is what is being said to this committee.

Mr Chester—The minister was aware of those issues that were raised by the Iraqi minister. As I said earlier, through the latter part of last year we were aware of those general concerns about access to relatives, lawyers, overcrowding et cetera. The minister was aware of those issues. Was he specifically aware of the Iraqi minister having contact with the CPA to raise issues? My understanding is no, he was not. We certainly did not brief him on that at that time.

Senator FAULKNER—But this is the Iraqi minister who, in his contact, even in the records held by Australian officials and the Department of Foreign Affairs and Trade here in Australia, talks about disrespect for detainees. My question is quite a specific one—

Senator Hill—But the Iraqi minister was raising this with the CPA—the de facto government.

Senator FAULKNER—I am aware of that. He raised them with the CPA via the mechanism of an Australian military officer. That is correct, isn't it, Senator Hill?

Senator Hill—By the mechanism of one of the officials working for the CPA, who in this instance would seem to have been an Australian military defence lawyer.

Senator FAULKNER—An Australian military officer, who reports back through Australian channels—

Senator Hill—That this approach had been made.

Senator FAULKNER—That the approach had been made.

Senator Hill—That is correct.

Mr Chester—I see nothing—

Senator FAULKNER—Excuse me, Mr Chester. And that the records of that are held in the department—

Senator Hill—Officials are constantly interrupted but, if Senator Faulkner believes he has been, it is an entirely different tenor.

Senator FAULKNER—The Department of Defence, Attorney-General's and the Department of Foreign Affairs and Trade. So we know that too, don't we, Senator Hill? Now I am asking a very specific question, and I would appreciate your response to it, Mr Chester. Has the Minister for Foreign Affairs in this country ever been informed of that approach by the Iraqi minister for human rights about, amongst other things, those concerns he expressed about disrespect for detainees, those concerns about what was happening in Iraqi jails? Has he, Mr Downer, ever been informed about those concerns raised by the Iraqi minister for human rights? That is my question. If so, when?

Mr Chester—Senator, I will try and answer that question. Let me first emphasise that these were concerns from an Iraqi minister not to Australia, not to Australian officials, but to the CPA. I think that is an important distinction.

Senator FAULKNER—It is only half-right.

Senator Hill—Can the witness be allowed to answer the questions, Mr Chairman?

Senator FAULKNER—Well, it was an Australian official, Senator Hill.

Senator Hill—Let him answer the questions.

Mr Chester—Senator, I want to make the distinction for the record that in the representations—if I can call them that, although they were not, really; it was described as an impromptu meeting—those issues were not raised with the Australian government through the government's representative in Baghdad. Obviously, if the Iraqi minister had raised it with the head of our mission, that would be reported back in the normal way and the minister's office would have seen it. Here we have an Iraqi official raising concerns with the CPA, not with Australia. That report came back to the department. We did not advise the minister of that report given the nature of it. It was representations or issues raised with a totally different authority—one could say a different government, in a sense, if you say that the CPA was the governing authority in Iraq. When did the minister become aware of it? I cannot give you the exact date of when that happened or if it did happen. But let me hazard a guess here: if it did happen, it was probably in the last week or so as we were going through these issues. But the minister will have to answer that question.

Senator FAULKNER—No, I do not think the minister does. I accept that you do not know but I think that when the department informed the minister can be established. That is something the department can establish for us. It is not a matter for the minister to answer. Certainly my colleagues in the House of Representatives, if they see fit, can always ask the minister a question in question time. But departmental officials are at the table here and it is a

reasonable question for me not only to ask but to expect an answer to, as to if and when the minister was informed. That is something for you to do; you can check that over the lunch break.

Mr Chester—I may have misunderstood your question, Senator—the difference between when we informed the minister and when the minister became aware of this issue.

Senator Hill—No, you answer in respect of you informing the minister.

Mr Chester—We have not informed the minister, Senator.

Senator FAULKNER—You have not informed the minister?

Mr Chester—No, and for those reasons I said earlier—it is not an issue of great relevance.

Senator FAULKNER—I see. The Iraqi official you mentioned in your answer, Mr Chester, is the Iraqi minister for human rights?

Senator Hill—That is correct.

Senator FAULKNER—You said he raised concerns with the CPA, not with Australia. Is that true, Mr Chester?

Mr Chester—That is correct.

Senator FAULKNER—He raised concerns with an Australian officer working with the CPA—is that correct?

Mr Chester—That is correct.

Senator FAULKNER—This Australian military officer thought it important enough and significant enough to report it back to Australia through the mission—is that correct?

Mr Quinn—Directly, Senator, through the usual distribution of the sit reps from late November. So officials in Canberra received the document directly, copied to the ARO colleagues.

Senator FAULKNER—This Australian official thought it important enough to report back directly?

Mr Quinn—He thought it was an issue perhaps of some note to include in his weekly report.

Senator FAULKNER—And this direct report was lodged with three government departments here in Australia, amongst a whole range of other places, obviously, where this reporting goes. But it went to Defence—that is correct, is it?

Mr Chester—That is correct.

Senator FAULKNER—It went to the Attorney-General's Department?

Mr Chester—That is correct.

Senator FAULKNER—And it went to the Department of Foreign Affairs and Trade?

Mr Chester—Yes.

Senator FAULKNER—You cannot answer for Defence and Attorney-General's, though I appreciate you providing the information that it was sent there. When was it received in the Department of Foreign Affairs and Trade?

Mr Chester—I think we have indicated earlier that we received it on 28 November. Was that the date we received it?

Mr Quinn—On or about that time, yes.

Senator FAULKNER—If Mr Downer was not directly informed, can I ask you this, just for the purposes of ensuring the record is complete. Either Mr Chester or Mr Quinn: can you inform this committee, please, whether this information was passed to Mr Downer's office?

Mr Quinn—It was not. Basically, as I think Mr Chester has explained, the judgment was taken that the follow-up was being made appropriately through the CPA process. The gloss the officer put on it, the ADF lawyer, was that they were general allegations lacking specificity, so there was nothing specifically we needed to do; there was no representation to the Australian government. And, as I said before, our feeling was the processes were robust, the ICRC was there, it was absolutely appropriate for the Iraqi interim minister to raise these issues and they were being followed through appropriately. So we saw no reason to advise the minister or take things forward. I assume colleagues who received the document had a similar judgment in other parts of the system. Again, I am not an expert on humanitarian law, but the documents went out to a number of colleagues and one assumes they made the same judgment. I should also add that this is one paragraph of a three- or four-page document with a whole range of other issues that were really of a very high priority to us, so I should put the thing in context.

Senator FAULKNER—I think I have got the context.

Mr Quinn—On the specific issue, I think the feeling was that the process was in train and his concerns were being followed up appropriately within the CPA.

Senator FAULKNER—On Mr Howard's visit to Baghdad he met with governing council members or ministers, didn't he?

Mr Quinn—That is right.

Senator FAULKNER—You have already given the name of the minister for human rights but could you repeat it for me please.

Mr Quinn—His name is Abdul-Basit Turki. The Prime Minister did not meet this minister in Baghdad during his visit.

Senator FAULKNER—I see. Was the Prime Minister informed before he met members of the Iraqi Governing Council that this communication had been made? Are you aware of that? You may not be. You are not from the Department of the Prime Minister and Cabinet, but these sorts of responsibilities do fall largely to your department.

Mr Quinn—I do not know, but I very much doubt it.

Senator FAULKNER—What about you, Senator Hill—did you meet Abdul-Basit Turki?

Senator Hill—I do not think I have met him.

Senator FAULKNER—You do not think you have met him?

Senator Hill—I had a roundtable session with the governing council on one occasion, but I do not recall meeting him.

Senator FAULKNER—You do not know whether you met him at the roundtable. Fair enough. That can be checked.

Senator Hill—I do not know if it can be checked. There were about 30 present at the meeting.

Senator FAULKNER—Do we know if any Australian minister has met the Iraqi minister for—is it human rights or humanitarian affairs?

Mr Quinn—Human rights, I think. I am not aware of any ministerial contact with the interim minister. We would have to check in terms of any other ARO contact with the interim minister. There may have been some other contact on broader issues, but as far as we know no contact at all on the question of allegations of abuses against prisoners.

Senator FAULKNER—How common was contact at the ministerial level with our representatives in the Australian Representative Office in Baghdad?

Mr Quinn—I guess it depends a little bit on the issue. The post is there to pursue our interests. From time to time the head of our mission would call on senior Iraqi ministers, so from time to time.

Senator FAULKNER—This issue was raised not as a result of a proactive approach from the post; this was obviously made as a result of an initiative from Mr Abdul-Basit Turki. That is correct, isn't it?

Mr Quinn—As Mr Chester has mentioned, it was an impromptu meeting. I am not quite sure what that means, but it sounds like it was ad hoc, on the run.

Senator FAULKNER—It was an impromptu meeting; it was not one that the post organised.

Mr Quinn—That is right.

Senator FAULKNER—That is the point I am making.

Mr Quinn—Clearly, the colleague involved was not with the mission; he was working for the CPA in a line position.

Senator FAULKNER—How often do Iraqi ministers raise issues at impromptu meetings?

Mr Quinn—Again, our involvement is in a few key areas—agriculture, planning—and there is quite extensive contact with the ministers involved. We have the senior adviser in the planning ministry and the senior adviser in the agriculture ministry, so they would have very regular contact. In other ministries we had a Treasury colleague working with finance, so he would have seen the minister from time to time. It depends a little bit on the issue, but it is reasonably extensive. This is not an unusual event at all in terms of contact with the interim ministers.

Senator FAULKNER—When this came back to the Department of Foreign Affairs and Trade it basically sat in a file, did it? If you know any different, Senator Hill, please inform us.

Senator Hill—I presume it was read and noted.

Senator FAULKNER—That is your presumption. Is Senator Hill's presumption correct, Mr Chester?

Mr Chester—That is correct.

Senator FAULKNER—Who read it, please?

Mr Chester—It would have been read by staff in the Iraq Task Force.

Senator FAULKNER—I want to be more specific about that.

Mr Chester—If I can just finish my answer: as I said earlier, given the nature of it then it would not be surprising not to do anything further.

Senator FAULKNER—I have heard that. I do not accept it, but I have heard it—and no doubt I will be hearing that whenever this issue is mentioned. It is up to people to make their own judgments about how significant they believe an approach from the Iraqi minister for human rights is on matters relating to the treatment of detainees in Iraqi prisons. That is a matter of judgment, but my judgment is obviously very different to yours, Mr Chester, which seems to often be the case at this committee.

Mr Chester—My professional judgment is that the action we took was the appropriate action in relation to this.

Senator FAULKNER—And my political judgment is that such a matter is of the most grave concern. Anyway, who did note it?

Mr Quinn—I cannot vouch for all my colleagues reading the documents they receive daily, but there were a range of colleagues in different bits of Defence—the legal area of Defence, SIP, international policy and strategic areas, lawyers in DFAT, and the Attorney-General's Department. So a range of colleagues saw the documentation. I head the task force. I rely on professional judgments of colleagues. I saw no particular need to act on this. Others did not either, so I guess their assumption was my assumption that due process was being followed. This was nothing particularly surprising, given the context that we discussed before. As you say, these are matters of judgment. A number of colleagues would have seen that sit rep. Whether or not they read it, I do not know.

Senator BROWN—What was the due process or the appropriate follow-up that you keep talking about, Mr Quinn?

Mr Quinn—I think the fact that the governing council had the meeting. Our assumption is that our colleagues in the field do their jobs and follow up, and this issue would have been drawn to the attention of the relevant authorities within the CPA.

Senator BROWN—It was or it would have been?

Mr Quinn—As I say, I do not know what the follow-up action was, but our assumption was that this report would have also been submitted—

Senator BROWN—You said that you did not think it warranted further action because appropriate follow-up was being taken. You are now telling me that you assume that it was being taken.

Mr Quinn—I guess the point I made earlier was that my understanding is that our ADF legal advisers are in their jobs to facilitate these processes. I was talking about action at our end in terms of follow-up in Canberra. My assumption is that this information was conveyed to the CPA and they dealt with it and followed up on it. I do not have a clear indication of that from the report from the officer who filed the report, but the assumption was that he would have done his job and followed up on that conversation.

Senator BROWN—Then did he, and what was the follow-up?

Mr Quinn—I do not know. We would have to check with Defence on that.

Senator BROWN—I think that assumption is simply a hindsight assumption. I put it to you that this representation from the minister for human rights, once it was noted in Canberra, was dismissed.

Mr Quinn—I do not think ‘dismiss’ is the right word. These comments were made in a context. As I have said before, we were conscious of broader systemic challenges—that there was a very large volume of detainees, a very decrepit prison system and difficulties with insurgency. Anybody who followed events in Iraq would understand the context of this. The job of the minister for human rights is to be an advocate—to pursue these questions. Absolutely appropriately, he did that. That view was conveyed to the CPA. That was appropriate. And I am sure the CPA was aware of those concerns and there was follow-up.

Senator BROWN—I put to you that there was absolutely nothing done about it. What evidence can you give me that something was done?

Mr Quinn—I cannot speak for the legal colleague involved. We would have to ask him as to what action was taken.

Senator BROWN—As far as you know, no action was taken that you can describe to this committee.

Mr Quinn—There was a whole range of action taken in terms of ICRC visits and other activities. We read that document in the context—and I read it again today in the context—of follow-up action. There were a whole range of things that were done, including prosecution of individuals who were involved in particular abuses. I see this as part of the mosaic—that there was a series of follow-up actions taken and that those due processes were being followed. The ICRC was doing its job. The British and US military authorities prosecuted people. So I see it in that context.

Senator BROWN—These are well known, but I put it to you that there was no response to the minister for human rights in Iraq that you can put before this committee.

Senator Hill—No response from the minister?

Senator BROWN—I am asking what response there was to the minister’s expressed concern to this officer.

Senator CHRIS EVANS—To the minister.

Senator Hill—The Iraqi minister.

Mr Quinn—I do not know the answer to that question. We would have to ask the colleague who was involved in this particular transaction and process.

Senator BROWN—Would you do that and report back to the committee?

Senator CHRIS EVANS—Are we talking about—

Senator Hill—Mr Chairman, could I interrupt for a moment. I am concerned about the number of officials that are sitting around. No doubt they are having great fun, but they might be put to more productive use back in the department. If this is going to go some time, could we let them go?

CHAIR—That is a fair comment. We will break at 12.30. Perhaps before we break we will get some guidance.

Senator FAULKNER—What time are you planning your normal afternoon tea break, Mr Chairman?

CHAIR—At 3.30.

Senator FAULKNER—I think we can at least safely say that this will last until then, and we can ensure that officials are informed about progress. That is a good idea, Senator Hill. We do not want to ruin people's days too much.

Senator Hill—So they can all go. Can we get some indication about three o'clock?

Senator FAULKNER—Why don't we say that at the afternoon tea break, or before if necessary, we will inform people as to progress that is being made if that would assist. But, if we could have officials who are associated with the Middle East and the Iraq Task Force remain behind, that would be useful.

Senator BROWN—Mr Chester, you told the committee that the Minister for Foreign Affairs was aware of concerns about overcrowding and such matters in the prison during last year. Did I hear that correctly?

Mr Chester—I think I said that there was a general awareness that there were issues of overcrowding and access by relatives and lawyers. My understanding was that the minister was aware of those general issues, yes.

Senator BROWN—What about the claims of torture and mistreatment of prisoners that were in the Amnesty report in July and then surfaced in the news in October, as I have indicated earlier, about gross abuses leading in one case to the death of a prisoner—was the minister aware of that?

Mr Chester—You will have to ask the minister. I do not know.

Senator BROWN—But you are telling me that the minister was generally aware of the overcrowding and the conditions in the prisons. Can you tell me that he was not aware of the torture and the death of at least one prisoner by this time?

Mr Chester—I cannot answer for the minister. I do not know what he was aware of and what he was not in respect of that issue.

Senator BROWN—Minister, can we find out?

Senator Hill—I can take that on notice.

Senator BROWN—And would you ask when Mr Downer first became aware generally or specifically about the Amnesty report, about the Red Cross reports in October, November and January, and about the abuse of prisoners and the death of one prisoner which surfaced in the national news in October but which had been mentioned before, in May last year. And could you seek from the minister to let the committee know when he first became aware of abuse of prisoners in Iraq, either generally or specifically, at that level of torture and of the deaths of prisoners both in Iraq and in Afghanistan.

Senator Hill—I will take that on notice.

Senator CHRIS EVANS—We have been referring to the Australian officer who was embedded in the CPA who received this representation from the Iraqi minister. Can you confirm that was Lieutenant Colonel Muggleton? I do not think we have actually identified which officer it was. I know Colonel Muggleton was there at the relevant period. I am just not sure. Is that who the sit rep is from?

Mr Quinn—That is my understanding but I would have to double-check in terms of time lines. It does not say on the document I have got.

Senator CHRIS EVANS—I know another officer was there in November—Colonel Kelly—as well, but I think the handover had occurred by towards the end of November.

Mr Chester—We will have to check.

Senator CHRIS EVANS—I think if you could confirm whether or not it was Colonel Muggleton or, if not, who it was, it would be helpful. The date of that meeting was 28 November, was it?

Mr Quinn—I think so. That was the date of the sit rep. We will have to double-check that but that is my understanding.

Senator CHRIS EVANS—Are they weekly sit reps? I know the Army officers tended to send back week ending type sit reps. Is that the nature of that?

Mr Quinn—Weekly; that is right.

Senator CHRIS EVANS—Was the sit rep headed 28 November or was it headed 21 to 28 November?

Mr Chester—It was probably the sit rep from 21 to 28 November. This event, I expect, would have happened some time in that period. We do not have the precise date of when the interim minister raised these issues.

Senator CHRIS EVANS—So some time in that week we think Lieutenant Colonel Muggleton—but we will double-check that—had representation made to him by the Iraqi minister and reported it in his end of week sit rep on 28 November. Is that right?

Mr Chester—I think that is correct.

Mr Quinn—The sit rep was for the period 24 to 30 November. I understand it was Colonel Muggleton, from the note on the file here.

Senator CHRIS EVANS—Is this Colonel Muggleton's sit rep or is this the TLO's sit rep?

Mr Quinn—It is Colonel Muggleton's sit rep. It says CPA officer, general counsel, ADF legal officer, so it is that particular job. There was another reference to an issue about al-Jazeera detainees, too, I just noticed in that sit rep. So there were some other issues bouncing around about particular detainees and cases. But, again, it was a very process oriented reference.

Senator CHRIS EVANS—I do not know where Senator Faulkner got up to in the chronology.

Senator FAULKNER—We were up to 18 January.

Senator CHRIS EVANS—We have heard evidence from Defence that Major O'Kane shared with Colonel Muggleton—we are not clear exactly how he shared it—or showed him a copy of the ICRC report and discussed with him his work in responding to that ICRC report. While there is some doubt about the exact dates—I think 30 October and 6 November were the working party dates—we assume it is some time in November. I think Colonel Muggleton did not get into the country until some time in November, so it is around this time; we have not yet been able to identify more clearly the time. But we have evidence from Defence that Colonel Muggleton was made aware of the ICRC report and the allegations contained in it about ICRC concerns about the treatment of prisoners. Is there anything in Colonel Muggleton's sit reps or reporting that draws reference to that ICRC report or his conversations with Major O'Kane?

Mr Quinn—Nothing at all. We had never heard of the October report until the recent revelations that the document existed, nor even that Major O'Kane was doing that job. So there is no reference at all to that particular report or the activities of Major O'Kane. As I say, we were not aware of that until very recently.

Senator CHRIS EVANS—We know, for instance, that Colonel Muggleton had a bit of a role in facilitating issues with the ICRC. Is there no reference in his sit reps to—

Senator Hill—That was subsequently, wasn't it?

Senator CHRIS EVANS—That is what I was going to check. I know he did, but I do not know the time line with which he did. It is a fair point, but that is what I was trying to identify. If we were already up to January, I just wanted to backtrack and make sure I understood. Are you saying to me that in the November-December period, up to 18 January, where Senator Faulkner has got to and no doubt will want to resume, there is no mention of meetings with the ICRC or liaison with the ICRC?

Mr Quinn—As I mentioned, there are some references to arrangements being made for meetings, including, as I mentioned, the visit to Abu Ghraib, which the ADF officer advises went well. He foreshadows a confidential report going to General Sanchez from the ICRC. But there is no reference in any of the documents that we have, as far as I am aware, to the October report, and this was news to us.

Senator CHRIS EVANS—So what was the date of his reporting on his visit to the Abu Ghraib prison and the arrangements for that?

Mr Quinn—It was 11 January. There is a reference to the visit going well and the fact that a report would be prepared, and then there is a reference in the 18 January report to the fact

that, given the public controversy about the specific prosecutions of individual American and British—as appropriate—military, there would be a particular focus on this subject. But there is no reporting on the nature of the visit, and I guess, appropriately, it is within the ICRC internal process. I guess we would not expect that particular report to come through.

There is an issue, of course, in terms of what the CPA role was in relation to detention and, again, I think that has been canvassed previously. But the core function for detention was very much a military command function; the CPA role was ancillary. So I guess the role of the ADF colleagues working in the CPA was an ancillary role in facilitating those contacts, but the core carriage of the issues lay with the military chain of command.

Senator CHRIS EVANS—That is right, but clearly now we know that Colonel Muggleton was making arrangements for the visit to Abu Ghraib prison.

Mr Quinn—That is all I know.

Senator CHRIS EVANS—I was not sure whether you were quoting in entirety or giving us a summation of the sit rep. Does it tell us what arrangements he was making in relation to the visit to Abu Ghraib prison?

Mr Quinn—No, it is minimal. There is just a brief reference to the fact that the visit was taking place.

Senator CHRIS EVANS—Do you take it from that that he was part of the visit to the Abu Ghraib prison on that occasion?

Mr Quinn—I do not know. He says the visit went well. Whether or not he was there, I do not know.

Senator CHRIS EVANS—So you take it that it was the visit of the ICRC to the Abu Ghraib prison?

Mr Quinn—That is right, but who else was there I do not know.

Senator CHRIS EVANS—So it is not clear from his sit rep whether he was an attendee at that visit to the Abu Ghraib prison?

Mr Quinn—I think that is right. I will have to reread them, but I think that is right.

Senator CHRIS EVANS—I think we know from evidence from Defence yesterday that he visited the prison at least twice and his predecessor numerous times. I do not think I have actually got the dates that Colonel Muggleton visited the prison. Do you have the exact date of the visit to Abu Ghraib?

Mr Quinn—I do not think so. It is probably a matter for Defence. There was a visit on 2 January, my colleague Mr Chester has just pointed out. Yes, on 2 January there was a visit by the officer—one presumes Colonel Muggleton—as part of the CPA team and then there was a subsequent visit by the ICRC, so I apologise—there were two visits being discussed.

Senator FAULKNER—You have already given that in evidence.

Senator CHRIS EVANS—We know, for instance, that Major O’Kane visited Abu Ghraib prison on 2 January. Are you saying now that Colonel Muggleton was in company with him and visited the prison on 2 January?

Mr Quinn—I do not know. All I know is that the officer providing the report, who I think was Colonel Muggleton, indicates he visited. But as to who he was with there is no other detail in the summary.

Senator CHRIS EVANS—That is what I am saying to you. I knew Major O’Kane was at the prison on 2 January. I did not know that Colonel Muggleton was there. I just want to be clear—do we know Colonel Muggleton went to Abu Ghraib prison on 2 January 2004?

Mr Chester—From the sit reps it seems that that is the case, but I do not think I would like to say definitively that that is the case. That is how we have interpreted these sit reps. It says ‘the officer visited’ and from that we believe it is the officer who wrote the sit rep.

Senator CHRIS EVANS—Yes, because he would not normally be reporting on a colleague who was stationed in the joint military headquarters, would he? He would be reporting on his own work. He would not be responsible for reporting on behalf of Major O’Kane in CJTF7?

Mr Quinn—That is right, yes.

Senator CHRIS EVANS—It seems he may have visited the jail on 2 January as well, which is the preparatory visit for the ICRC visit which occurred during 4 January to 8 January. I think their visit was to the Abu Ghraib prison and also to Camp Cropper at the international airport. Does it indicate whether or not Lieutenant Colonel Muggleton accompanied them on that visit?

Mr Quinn—That is not clear from the report, so I am afraid that question is probably better addressed to Defence in terms of the detail.

Senator CHRIS EVANS—They tend to make it clear that he was working for the provisional authority and not for them and that the reporting lines were not all that robust or regular. There seems to be a black spot here in terms of reporting lines for officers of the CPA. As I understood it, their major reporting line was back through the TLO—is that correct?

Mr Quinn—As I indicated, as far as we understand, the reports from the CPA legal adviser were copied to three colleagues in the ARO, including the TLO. But he, in a sense, performed a very valuable on-forwarding function. Occasionally these reports were annexed to his regular sit reps but most of that came through directly to Canberra, so we had a direct line from the ADF legal adviser in the CPA from late November. Before that we had no visibility of the sit reps but, as I mentioned, the post saw some of them but only picked up the references as far as they could check.

Senator CHRIS EVANS—But from November onwards you were getting a weekly sit rep from Colonel Muggleton and any other legal officers who were located inside the CPA?

Mr Quinn—I think there was only one legal officer who was in the CPA. I would have to check on that in terms of who was there at which times, but the reporting—

Senator CHRIS EVANS—My understanding is now we have two—we might have a group captain and a colonel there since February.

Mr Quinn—That is right. The current situation is that they report jointly; we get one document. I am not sure which officer writes the report or whether it is a joint activity, but we

do get that one document through. The second point I would make is that we did not receive any reporting through the CJTF7 channel. We did not get that military reporting, so whatever was in those documents we have not seen.

Senator CHRIS EVANS—But you were getting direct reporting from the CPA legal officers?

Mr Quinn—That is right.

Senator CHRIS EVANS—That is where we learned that Colonel Muggleton reported on 11 January about the inspection visit in the week preceding by the ICRC to Abu Ghraib prison. What we know from Defence is that the duration of that inspection was four days, from 4 to 8 January, to Abu Ghraib and Camp Cropper, but there is no detail on that in this sit rep.

Mr Quinn—That is right. There is a reference to the visit to Camp Cropper proceeding—I am sorry; the Camp Cropper facility is mentioned on the 18th but we have no further detail.

Senator CHRIS EVANS—In terms of the sit rep of the 11th, it refers to being involved in arrangements for the ICRC visit?

Mr Quinn—No, Senator. There is a reference to a discussion, from an administrative and coordination viewpoint, of the recent visit to Abu Ghraib—that it went very well and that there would be a confidential report going from the ICRC to General Sanchez. That is all it says, basically.

Senator CHRIS EVANS—It does not seek to characterise the ICRC confidential report to Sanchez?

Mr Quinn—No.

Senator CHRIS EVANS—In the sense that it does not attempt to pre-empt it or say what the ICRC's view of the world was?

Mr Quinn—No.

Senator CHRIS EVANS—I would not expect it to but I was trying to be clear about it. As you say, the ICRC are very careful about confidentiality of reports in any event. Effectively, he is describing the process that will be followed after the visit; is that fair?

Mr Quinn—That is right.

Senator CHRIS EVANS—You were telling me about the 18 January sit rep. What is the nature of that report?

Mr Quinn—There is a reference to the public controversy in the media about ill treatment of detainees. This would obviously make these processes more important, which is fair enough. There is a second reference to the ICRC beginning a visit to Camp Cropper during the reporting period.

Senator CHRIS EVANS—Beginning a visit to Camp Cropper?

Mr Quinn—Yes.

Senator CHRIS EVANS—My impression of the evidence from Defence was that that was in the previous week, the 4th to the 8th. It would appear that Major O'Kane accompanied

them; it sounded like there was a continuous visit over four days to the two prisons but this is slightly different. I am not saying it is wrong; I am just trying to piece it together. It appears from your sit rep that the visit to Camp Cropper was in the week ending on the 18th?

Mr Quinn—And the subsequent sit rep suggested the visit continued, so it sounded like it was fairly long—perhaps it was a coming and going type visit. Again, we have the barest detail in these reports.

Mr Chester—Senator, it is difficult to interpret these reports, I have to say, but my reading of it is that it looks like the visit was from 18 to 25 January. That is how I would read it but others may read it differently.

Senator CHRIS EVANS—It may well be that they went back into Camp Cropper after the initial visit. With respect to the public controversy reference, is it clear from the sit rep what public controversy the sit rep of 18 January is referring to?

CHAIR—We will take a break now and reconvene at approximately 1.30 p.m.

Proceedings suspended from 12.29 p.m. to 1.38 p.m.

CHAIR—Welcome back. Mr Quinn, I understand that you have a couple of further comments to make.

Mr Quinn—Thank you. There were a number of issues raised this morning which we took on notice. There is one process question I should just clarify. In terms of the distribution of the sit reps coming from the legal adviser to the CPA, my understanding was that, as I mentioned this morning, we started to receive these in late November. During Colonel Muggleton's period in that job the sit reps came to Defence in Canberra and then were relayed onwards to other addressees, so there was a go-between arrangement. It was pretty much an automatic one, but there was some delay sometimes in those documents coming through. When the new team took over—the group captain et al—the documents came straight to us directly. So the timing of the receipt of the Muggleton sit reps may be a little bit fluid, given that the documents came via Defence.

The other thing I should flag is that there is something in my mind about Minister Turki. I had forgotten that, in fact, he had two other contacts with us officially. One was with our representative in Geneva to the United Nations on 5 December. He went to Geneva to talk to the UN human rights system. He did not raise at all any questions or allegations relating to detention at that point. That was 5 December, so it was shortly after the conversation we referred to earlier. Secondly, I should have remembered also that Minister Turki had met parliamentary secretary Mrs Gallus in Geneva on 15 March and similarly did not raise any complaints about detention in Iraq. He was very much focused on the challenge of dealing with Saddam's legacy and the need to rebuild human rights infrastructure. So there were two other contacts I should have mentioned this morning which I had overlooked. Thank you.

CHAIR—Thank you, Mr Quinn. Mr Chester, do you have some further comments to make?

Mr Chester—No.

Senator FAULKNER—We were working through the reporting in to the ARO in Baghdad. My recollection is that we got as far as 18 January. Mr Quinn, could you let us know what the situation was on and after 18 January?

Mr Quinn—I think I mentioned briefly that in the 25 January sit rep there was a reference to the ICRC visit to Camp Cropper having ended. Again, there is no comment at all on that visit. It is just a factual statement that the visit took place. On 8 February there was a reference to CPA and CJTF7 dealing with the ICRC on a number of occasions during the previous week and various meetings being arranged but, again, it was process oriented and a discussion about another proposed ICRC set of visits to detention facilities, so, again, more processes.

Mr FARMER—And that is the lot?

Mr Quinn—The issue of the ICRC report emerges on 15 February. The legal officer reports that the report was given to Ambassador Bremer. It was detailed comprehensive and highly critical. CPA and CJTF7 were formulating their responses, basically. That really was the farewell report from the officer in question. He makes some observations about US and Australian approaches in a broad-brush way on detention issues. That is really where the formal notice of the ICRC report emerges.

Senator FAULKNER—So on 15 February the legal officer reports that the ICRC report has been handed to Mr Bremer—is that right?

Mr Quinn—That is right.

Senator FAULKNER—What does it say about content?

Mr Quinn—As I mentioned, one sentence detailed comprehensive and highly critical. The second reference was that the CPA and CJTF were formulating their response and that the UK were doing their own separate response to the issues raised.

Senator FAULKNER—Who was making the response?

Mr Quinn—Again, I am not precisely clear. My understanding is that the line responsibility for detention lies with CJTF7. My understanding is that the CPA has some role in relation to detention but it is a rather secondary one. The advice that I have seen from the legal officers on the ground is that the role is basically confined to facilitating contact with detaining authorities, being involved in budget and personnel support issues, pursuing physical improvement of civil prison facilities and raising issues about detention as appropriate. My understanding is that their role in the CPA is very much as broad advisors on legal issues, so I would imagine they would have a fair amount of discretion as to how much involvement they had in the detention process.

They also have a forward-looking role in terms of promulgating new legislation to do with reform of the prison system. As I was saying this morning, our judgment was that the officers were actually making a useful contribution to due process being observed. As I say, I am not sure how they interpreted that mandate or how actively they were involved but it seems that they had a range of activity under way in this area.

Senator FAULKNER—But in the sit rep it does indicate who is making the response?

Mr Quinn—CPA and CJTF7.

Senator FAULKNER—Yes, so it is both the joint task force and the CPA. Who are the addressees of the sit rep, also of 15 February, which is a precise indication of the ICRC February report?

Mr Quinn—The same list as I discussed previously—basically, colleagues in Defence, in the legal and international policy area, Attorney-General's and DFAT, both the task force and our legal colleagues.

Senator FAULKNER—Is this when the Department of Foreign Affairs and Trade first becomes aware of the February ICRC report?

Mr Quinn—That is right, although, as I mentioned before, that report was foreshadowed. We knew something was coming, but this was the formal advice. That is right, Senator.

Senator FAULKNER—So this was the first formal advice of its existence. Did that formal advice trigger any activity in the department?

Mr Quinn—It did. In my sweeping role as chair of the task force I basically try to keep an eye on a whole range of issues. I was concerned to read about this report. I am not sure exactly when I received the sit rep, given there may have been some delay in the distribution. I put this issue before the legal watch group, which is a subcommittee of the task force, and basically asked whether there were any particular issues we needed to be aware of. I was concerned that there may be follow-up required. I was conscious that the ICRC has a confidential process. Things were in order in that regard, but I just wanted to double-check that there were no issues of concern. At that legal watch group meeting there was no response on that. Again, I had one concern. I knew that we were not detaining prisoners and had no role in detention. I had some concerns in relation to the Iraq survey group, so I said, 'Are there any issues here in terms of process we need to be aware of?' A message went through the military chain and through the ARO to check in terms of the Iraq Survey Group whether there were any particular issues that needed to be raised with us. The reply came back: 'No, our Australian colleagues in the ISG are not involved in interrogation or detention processes. There is no issue that we need to be concerned about.' So I guess in my role as sweeper I just raised the issue. I raised a query, it was responded to and my assumption was that the ICRC process was moving forward in the usual way.

Senator FAULKNER—When did the legal watch group meet?

Mr Quinn—The meeting was 26 February.

Senator FAULKNER—So it was not that long after; it was nine days after the actual date on the sit rep. Who comprises the legal watch group? As you have described it, this is some sort of subcommittee of the Iraq Task Force, isn't it?

Mr Quinn—That is right. Basically, lawyers from Defence, Attorney-General's and DFAT plus the task force and sometimes other colleagues from Defence on the operations side or the international policy side, depending on the issues at stake. I should put this in context again. There was a lot of discussion around this time on the whole question of legal architecture in relation to the transition, so there were many other issues we were discussing—such as the proposed tribunal to try Saddam Hussein and his acolytes. So this was part of a broader

debate. It was not a specific agenda item; I raised it under other business that I had read this report and had some concerns, and I sought further clarification and information.

Senator FAULKNER—That sounds like a responsible course of action to take. Are you able to say to us who was present at the meeting of 26 February?

Mr Quinn—I would have to check on the detail of individuals but, as I say, those three departments—Attorney General's, DFAT and Defence—would have been there.

Senator FAULKNER—Legal officers from those departments. Was the Department of the Prime Minister and Cabinet represented? It is on the Iraq Task Force, isn't it?

Mr Quinn—That is right. Not at that stage. I think PM&C has come to some recent meetings of the legal group but not at that point.

Senator CHRIS EVANS—Would representatives from the Defence Legal Service have turned up?

Mr Quinn—That is right. As I say, they are the core contributors because the issues are quite technical and it is not my field. I basically chair and listen to the experts. But occasionally officers from international policy or operations areas come along, too, because there are issues that they can add value on.

Senator CHRIS EVANS—But the core Defence representative is someone from the legal team?

Mr Quinn—That is right. I cannot recall which individual it was as there was some changeover. I would have to check that.

Senator FAULKNER—Can you take on notice for us which agencies—if there were any others—were represented there and who the actual personnel were who were present at the meeting of the legal watch group of 26 February.

Mr Quinn—I have indicated the agencies that were present. I am clear on that. I would have to check the names of the persons present.

Senator FAULKNER—I know you are clear that they were there. You are saying that that is the complete list of agencies present?

Mr Quinn—That is right.

Senator FAULKNER—If that is the case could you then please take on notice who represented the agencies at the legal watch group meeting on that date?

Mr Quinn—Sure.

Senator FAULKNER—You indicated that you expressed some concerns to that watch group. Can you briefly sum those up for the benefit of the committee.

Mr Quinn—Again, I am recollecting a little bit vaguely. I raised the issue broadly that from the recent sit reps the issue of detention had gained some momentum. Obviously we were conscious of the public debate about the prosecutions of individuals from the US military and also British press reporting on their issues. So my concern was to make sure that we knew what was happening and basically were in good order. My question was rather broad—whether there was any information we needed to know that we did not know. This

was rather a cursory comment—that we respected the ICRC processes but were there things we needed to know in terms of possible difficulties. As I say, there was no response at that stage.

Senator FAULKNER—Effectively, arising out of that discussion and flagging of the issue, there was no further activity on the matter—would that be right?

Mr Quinn—There was one follow-up action, which was to check on the Iraq Survey Group. I wanted to make sure in my own mind that there were no issues in terms of detention or interrogation. We got advice back, both through the military net—the defence net—and through the ARO that there was no involvement in interrogation or detention issues for the Iraq Survey Group, which is looking at WMD issues, as you know, Senator.

Senator FAULKNER—The check went to the involvement of the Iraq Survey Group, did it, in these issues as opposed to whether any individuals were directly involved in the prison system?

Mr Quinn—Exactly, Senator. I was clear that we had no role in terms of detention more broadly but I just wanted to check, on that very specific area, that there was no particular issue, and the advice came back that there was not an issue there.

Senator FAULKNER—Was that advice formalised in writing?

Mr Quinn—I recall that it was. I would have to check but I think it was, yes.

Senator FAULKNER—From both the defence source and the ARO?

Mr Quinn—That is right.

Senator FAULKNER—For the legal watch group, did the ICRC report remain ongoing business?

Mr Quinn—I do not think it was discussed again. I guess our understanding and our assumption was that the ICRC was doing its job. From the tenor of the reporting to that point, there had been close cooperation from the detaining authorities. We had no reason to suspect there was any major difficulty there. Our officers were there to facilitate and overcome problems. From my seat I did not see any particular issues and I can only assume my other colleagues who saw the sit reps took the same judgment. That is my understanding.

Senator FAULKNER—Are records of meetings taken for the legal watch group?

Mr Quinn—Not detailed minutes, no. I keep a record of the discussion but we do not keep minutes.

Senator FAULKNER—Your record of discussion would be the main record keeping for the legal watch group, would it?

Mr Quinn—Other colleagues keep their own records.

Senator FAULKNER—But as far as the Department of Foreign Affairs and Trade is concerned it is the main record?

Mr Quinn—Probably, yes. Other colleagues from my task force would also be taking notes at the time.

Senator FAULKNER—You chair the legal watch group?

Mr Quinn—Generally, yes.

Senator FAULKNER—You certainly chaired this one on 26 February.

Mr Quinn—That is right.

Senator FAULKNER—Are any of your colleagues in the Department of Foreign Affairs and Trade tasked to take notes?

Mr Quinn—I guess it is a resource issue. A lot of issues are bouncing around. Formal minutes and records are a major burden. We have a lot of other issues. We are extremely busy. I guess I have taken the judgment that we do not need those formal minutes. We have pretty extensive notes of the meetings, and I did actually check on this issue with some colleagues to make it clear that my recollection was accurate—that I had actually raised this issue. I think that is right.

Senator FAULKNER—Did you check your own notes?

Mr Quinn—I did, yes.

Senator FAULKNER—Of the group.

Mr Quinn—That is right. There is a brief reference to detention but I did not take a detailed note of what I said.

Senator FAULKNER—Did any colleagues in Foreign Affairs take any more fulsome notes at that time?

Mr Quinn—I would have to check. I am not sure.

Senator FAULKNER—We can certainly say, at least, that the sit rep of 15 February is when the ICRC report formally came to the attention of the Australian government. Is it also fair to say that the 26 February legal watch group meeting is the first action arising from that report that the Department of Foreign Affairs and Trade is aware of?

Mr Quinn—That is right. I do not know what else was done with respect to other agencies.

Senator FAULKNER—I do understand that you cannot answer on behalf of others. What happens after 26 February?

Mr Quinn—There is another sit rep referring to further discussions between CPA, CJTF7 and the ICRC. Obviously, there was further discussion about the allegations in the ICRC report. Again, we are not a party principal. We had no expectation of receiving that document. We did not receive the document. Our assumption here was that those processes were running smoothly—that ICRC was doing its job, that the CPA and CJTF7 were responding to those issues.

Senator FAULKNER—What date is that sit rep?

Mr Quinn—It was 29 February.

Senator CHRIS EVANS—This is the group captain's one?

Mr Quinn—I think there may have been a changeover in the duties at that point.

Senator CHRIS EVANS—That is why I want to check who the author of it is.

Mr Quinn—It may have been the group captain document. I do not know. I would have to check. I think there was a changeover around that time.

Senator CHRIS EVANS—The previous one was a Muggleton one, we thought. You were going to double-check that—

Mr Quinn—Yes.

Senator FAULKNER—We are happy for this to be identified by rank, which is consistent with the way we were doing this through the Defence estimates.

Senator CHRIS EVANS—The only reason I used the name ‘Muggleton’ is that he is on the public record. He is discussed. But ‘the group captain who I think replaced him’ or ‘the group captain we have not named’ is okay. We are happy for him not to be named.

Senator FAULKNER—We are happy to be consistent with that practice if it assists.

Mr Quinn—I think the group captain was involved in this report and the other colonel, but I am not sure.

Senator FAULKNER—When you say allegations of abuse are included in that sit rep, can you tell me what that means? ‘This deals with actual allegations,’ you said.

Mr Quinn—That is right. There is reference to very serious allegations in the report.

Senator FAULKNER—Is that the correct terminology—‘very serious allegations’?

Mr Quinn—That is all it says—that is right. There is no detail.

Senator FAULKNER—Very serious allegations—what, of abuse?

Mr Quinn—No, contained in the ICRC report. We were not privy to that report. They could relate to overcrowding; they could relate to advising relatives; they could relate to a range of issues. We were not in the loop on that subject.

Senator FAULKNER—Did anyone take any action to try and establish what these very serious allegations in the ICRC report might be? Let us see if we can nail it down a bit.

Mr Quinn—I am not aware of any action taken. I was overseas during that initial period in March.

Senator FAULKNER—What happened to this sit rep in Defence? Did it go to the legal watch group?

Mr Quinn—No, it was not referred back to the legal watch group, as far as I am aware.

Senator FAULKNER—So, effectively, it sits on file somewhere in the department, does it?

Mr Quinn—Presumably, Senator. As I say, the assumption was that the processes were running smoothly—the ICRC was doing its job, the report had been conveyed to the parties principal and our officers were facilitating those process issues and making sure that there was appropriate follow-up. Of course, I should just add, to put that in context, there was the whole parallel public line of the investigation of those military personnel who were being accused of serious violations in the public record from 16 January onwards. So I guess my assumption was that those processes were proceeding. The ICRC processes were proceeding

in parallel on the broader issues, on the systemic issues. But there was no particular new revelation in this particular sit rep.

Senator FAULKNER—One of the issues, as you would probably be aware, Mr Quinn, for some time has been the issue of degree. I think you would be aware of the debate that has gone on around that issue of allegations versus very serious allegations and the like. But what is clear in this particular sit rep is that, while not outlining what the allegations are, it identifies very serious allegations contained in the ICRC report. I would have thought the use of the language ‘very serious allegations’ might mean that someone might take it particularly seriously and further action might be undertaken to try and establish what that means.

Mr Quinn—Just to make the point about context again, action was being taken. Prosecutions were being launched against individual officers who were allegedly involved in activity that was regarded as illegal. The ICRC was doing its job. We had no concept at that stage of the egregious photographs that emerged. We were assuming these issues were in relation to more standard issues. The issues were in the public domain. There were individuals who were being charged with offences. So I guess this was not any particularly dramatic new news to anybody in the system at the Canberra end.

Senator FAULKNER—While I understand the point you make about the photographs, that is a pictorial representation of certain events. Of course, the certain events are not only depicted in pictorial form, are they? The certain events just do not happen as a result of some picture being taken of them. Do we now know that the very serious allegations contained in the ICRC report in fact are the very serious allegations of abuse? Do we now know that that is the case?

Senator Hill—I think it is on the public record. You can see what is on the Internet from the February ICRC report and you can also see what is on the public record from the May prosecutions. My recollection is that there are allegations and prosecutions taking place for events that are not covered in the February report.

Senator BROWN—I have one or two questions about another report, and that is the report of General Taguba, who was appointed by the US command to inquire into the serious allegations on 31 January. He reported back with his incendiary report naming people, recommending charges and effectively leading to the dismissal of General Karpinski, the head of the prison at Abu Ghraib. That report was handed down on 17 February, which is a week before the legal watch group met. Were you aware of General Taguba’s report then? If not, when did the department first become aware that General Taguba had been commissioned to make that report and had reported?

Mr Quinn—Again, I am trying to recollect the detail. This report I only became aware of when it became public. We were not consulted or involved in that process earlier on. I understand, from recollection, the report was somehow leaked in the American system but we were not aware of that exercise in any shape or form until it became a media issue.

Senator BROWN—What is the process here? It is effectively a post-war situation with the occupying forces there, this is a seminal report about the abuse of prisoners and we have heard from your evidence that Australians were at least involved in responding to the Red Cross and to others and that it had been general knowledge in the department as to abuse of

prisoners in the preceding year. How come the department—and presumably the government—did not know about this highest of levels report into the abuse of prisoners and the findings?

Mr Quinn—If I could just clarify, the department were not aware of abuse of prisoners as a big issue. They were aware of systemic problems in relation to the detention processes in Iraq. The egregious images that have appeared recently were totally news to us. To explain today, we have got some general commentary about ICRC processes in reports from the ADF legal officer attached to the CPA but we do not have detailed information; we do not have access to the ICRC report, so we are not a party principal to this issue. The ICRC do not regard us as such; we have not had access to their reports. Similarly, one would imagine that the Taguba report was part of a military chain of command. I do not know how that issue was handled but we certainly had no visibility of it.

Senator BROWN—I have great difficulty here. As you know from this morning, reports of torture were in the Australian and international press by October of last year at the latest and Amnesty had issued its report in Baghdad in July and there were earlier reports than that, by the way, including in the international and Australian press. I find it difficult to understand how Australia can be in this coalition of the willing but cut out from such an extraordinarily important and politically contentious issue as the wide-scale ‘criminal breaches’ of the Geneva convention—as General Taguba describes them—of prisoners in detention under the coalition of the willing, of which we are part. Was at any stage an effort made to ensure that this sort of process, in which we as part of the occupying forces must be seen to be involved, was notified to Australia?

Mr Quinn—I think probably the broad thrust of your question is more for the minister to respond to, but we had no visibility of this particular report. Perhaps to sum up, I guess the government’s response was to place experts in the CPA legal office who could facilitate due process, who could facilitate the usual work the ICRC does. Our understanding from the Canberra end was that process was working well, those colleagues were doing their job, the ICRC was presenting reports and the relevant authorities—the British and US military—were responding appropriately; they were investigating those actions.

Senator BROWN—But you did not know this.

Mr Quinn—We did, from the reports of the CPA legal adviser. The visits went well. There was constructive cooperation and there was follow-up. I was coming to the next sit rep, where there is a reference to the US military taking the ICRC report very seriously and taking positive action. All the messages we were getting from that channel of communication were that the processes were in order; we were tracking forward. So there was no reason why we wanted to try to raise any particular issues, because they were being dealt with in the usual way.

Senator BROWN—But on 26 February the legal watch group was discussing these public reports about abuse of prisoners in Iraq. In the meantime, the US high command has had a general go in there and come back with an extraordinary report of broadscale abuse—criminal activity—and you do not know about it.

Mr Quinn—We did not know that until it was on the public record—that is right.

Senator BROWN—I am at a loss to understand this process. Either we are part of a coalition or we are not. I ask the minister: is there any explanation as to how a legal watch group, specifically set up by Australia to keep a watch on the legal processes regarding engagement in Iraq, could not know when the wide-scale abuse of prisoners has become a public matter? A US general has been appointed and has put a report back in to the US high command which specifies criminal activity against prisoners and this legal watch group does not know about it. Were we part of the coalition of the willing or were we subordinate to the United States in this matter?

Senator Hill—We are part of a coalition of some 30 countries seeking to support the process of stabilisation, reconstruction and transition to Iraqi government. We have forces and we have officials in Iraq and around Iraq making that contribution, often at significant risk to their own lives, and I am of the view that they are doing a great job. They are doing a great job for the people of Iraq and they are doing a great job for Australia in terms of our country being able to make a worthwhile contribution to these processes.

Senator BROWN—I have nothing but the greatest admiration, certainly not less than yours. It is an extraordinarily important job. What appals me in this situation—and I ask you to comment on this, Minister—is that important matters like the broadscale criminal abuse of prisoners, which directly threatens our Defence Force personnel in Iraq and elsewhere, was not known to this government and that this government allowed itself to be in the dark, to be cut out of the information, to be outside the loop, when all the way claiming to be part of a coalition.

Senator Hill—Mr Chairman, is this a question or another speech?

CHAIR—I think we have had these before. Senator Brown, ask your question.

Senator Hill—The criminal abuse of prisoners is as appalling to me and the government as it is to anybody else.

Senator BROWN—Can you tell me, Minister, how it is that a report by General Taguba on these criminal abuses which directly increased the threat to Australians and others in Iraq, because it was about matters which were already public, and which recorded criminal abuses going on in the prison—and we have heard evidence that legal officers from this country were involved in assessing and reporting back to the Red Cross how the government did not know that General Taguba was undertaking this study or had reported back and did not know the contents of that report—

Senator Hill—My understanding is that his undertaking was not related to the ICRC report as such. It was an investigation that the US authorities decided to institute after evidence of criminal abuse had been brought to their attention in January of this year, and they undertook to investigate those allegations. They made public the fact that they were investigating them. The general carried out an investigation, and prosecutions have ensued from that process. So, as I said yesterday and, I think, the day before in relation to what was revealed in January, it would seem to have been appropriately responded to.

Senator BROWN—The evidence that we have heard, though, Minister, is that an Australian major drafted the response, the Karpinski letter, that went back to the Red Cross,

which effectively, as far as we know—and we are still waiting to see if that will be made available—said that the Geneva convention was not being breached.

Senator Hill—We have not said that at all. The draft that was prepared by an Australian major who was working for the joint coalition headquarters did not relate to the investigation that was carried out by the American general. You are again melding two distinct matters to achieve the political conclusion that you want to draw.

Senator BROWN—You are separating a matter which has a very clear continuum. The Australian major wrote the draft of the Karpinski letter that went to the Red Cross about matters which so appalled General Taguba when he arrived on the scene that, on his advice, General Karpinski was removed in disgrace from her command. What I am asking here—

Senator Hill—But that is confirming what I said. That related to the allegations that were made at the beginning of January which the US undertook to investigate. It stated publicly that it was carrying out that investigation.

Senator BROWN—The point I am making is that those allegations were essentially the same as those the Red Cross had made earlier.

Senator Hill—I do not think you can say that. The ICRC report is on the Net, and a lot has been revealed publicly about the post-January US investigation and the prosecutions. I believe that if you compare the two you will find allegations in the latter that are not in the former.

Senator CHRIS EVANS—That is true, but I also think we need to be clear about this. The February report makes it very clear in section 3.2, ‘Abu Ghraib Correctional Facility’, paragraph 27:

In mid October 2003, the ICRC visited persons deprived of their liberty undergoing interrogation by military intelligence officers in Unit 1A, the “Isolation section” of “Abu Ghraib” Correctional Facility.

Senator Hill—I know that. You have read that before.

Senator CHRIS EVANS—It goes on then to detail what it found in that October visit. I thought you conceded yesterday that the allegations that the Australian officers were dealing with in the October working party were of a very serious nature, and I do not want any suggestion being made to the contrary. They may not have been the same allegations as the specific allegations that were dealt with later by the American military but they were very serious. I can read out the sections—I am sure you know them—which go to nudity, abuse et cetera.

Senator Hill—But the allegations of torture, rape and so forth that came out in January were as a result of information provided to the US authorities and not, as I understand it, of the ICRC’s investigations. I am not trying to downplay the level of mistreatment that appears in that February report. I will tell you what does concern me. What concerns me is that I saw a press report overnight that was referring to the ICRC’s work but yet it had a photo from the American January investigations which did not relate to that work at all. I think that that is unfortunate. With great respect to Senator Brown, he is seeking this afternoon to do the same sort of thing, because he is trying to—

Senator BROWN—Very clearly, the report coming from the man in the American forces who made a complaint about this corroborated what the ICRC had been saying. It may have triggered General Taguba's investigation but it was corroborating what the ICRC—

Senator Hill—No, it did not trigger the general's investigation.

Senator CHRIS EVANS—No, but it added specific allegations to the general mistreatment allegations. I think it stands to reason that the ICRC when inspecting the prison did not see examples of rape and assault because, quite frankly, they were the inspectorate walking through the prison.

Senator Hill—I understand that.

Senator CHRIS EVANS—What they did see was of serious concern to them and allowed them to detail systemic problems with the prison, and what they saw was systemic abuse. That was as a result of their October visit and you know, and I don't, what was in the October-November reports. I suspect there is enough in there—I think you said yesterday—to confirm that those officers were dealing with allegations of serious abuse.

Senator Hill—I think I used the words 'serious mistreatment'. I think I also said yesterday that when you read each of these reports there does seem to be a grading. By the time you get to the third, the specific US allegations, you are into the business of criminal abuse which led to criminal prosecutions.

Senator CHRIS EVANS—Because you had specific witnesses.

Senator Hill—That might be so. I don't think we are in a position to say that. The January material is the same except that with the January allegations came evidence. That may or may not be so but—

Senator CHRIS EVANS—I am not necessarily going that far. All I am saying is that we know enough to know that there were serious mistreatment and abuse issues from their earlier visits which they discovered on an inspection. It was not discovered via a whistleblower or photographs but merely by inspecting the prison. That, it seems to me, tells you there was a major problem.

Senator Hill—It was serious.

Senator CHRIS EVANS—If someone walking through the door, not on a surprise visit but on a planned visit, with Australian lawyers accompanying them, can discover that level of mistreatment and abuse, it is not surprising that what was found when there was no inspection being held, when the officers running the prison were left to their own devices, was of a more shocking nature. That is the only point I am making. I think we do know that what we were dealing with in October was serious abuse.

Senator Hill—I said 'serious mistreatment' because what I see later, particularly in January, is worse. But I am not trying to downplay evidence that seemed to grow during the course of last year, now that we are better informed.

Senator BROWN—Minister, you have a legal watch group set up. Was its first meeting on 26 February?

Mr Quinn—The watch group was set up some time ago to deal with legal issues relating to the Iraq crisis.

Senator BROWN—When was that?

Mr Quinn—I would have to check the file. It was probably some time late in 2002 when legal issues were being considered. It met fairly intensively, obviously, when there were issues in relation to the conflict, and it fell into desuetude for a few months. I would have to check in terms of the meetings last year. There were not many meetings in the second half of last year but from the beginning of this year it has met fairly regularly because of the range of legal questions we are looking at—as I mentioned before, the legal architecture post transition, the tribunal to try Saddam Hussein and his colleagues. That structure is there; it meets in an ad hoc way. It is not a formal standing group but it meets to advise the task force and allow the lawyers to get together and talk through issues.

Senator FAULKNER—What about issues relating to the application of the Geneva convention? These are matters obviously for the legal watch group?

Mr Quinn—That is right, Senator; they could be discussed there, absolutely.

Senator FAULKNER—Could be or have been?

Mr Quinn—In terms of the discussion in February, I guess that was implicit in my question about whether there were any issues for us to be looking at. There probably would have been some discussions last year. Again, I think the practice is not to provide legal advice that we give the government. The issue would have been raised on and off over time.

Senator FAULKNER—As events have moved on through the early part of this year and up to the current day, I would assume that issues relating to the application of the Geneva convention, the protocols for interrogation of prisoners, the reports of the ICRC and any other NGOs, the issue of the serious allegations in relation to prisoner abuse, would fall right within the bailiwick of the legal watch group. Would that be right?

Mr Quinn—That is right. As I mentioned to you, I did raise this issue in that context. There was earlier discussion when the relevant arrangements were being made. I was not involved in those discussions last year in terms of the MOU and all those issues that I think you have canvassed previously. Obviously when we had a better handle on these issues we had a discussion, in May, in the legal watch group on what we should do by way of follow-up. So that issue is on the agenda. The assumption had been, through this reporting period that we have been discussing, that the processes were in order, the ICRC was doing its job, the prosecutions were being launched and there were no particular issues for us to deal with. We were not detaining people and we were not involved in interrogation, so we had no operational role there. Our role was via the ADF colleague who was providing advice through the CPA.

Senator FAULKNER—Did the legal watch group have a regular meeting or did it have ad hoc meetings?

Mr Quinn—I have checked the records for this year. We met on 28 January, 12 February, 26 February, 7 April, 28 April and 17 May. So any of those meetings is an opportunity for anybody to raise any issue they want to raise. As I was saying before, the focus has been very

much on legal architecture: how we defend our national interests in terms of the transition, issues to do with prosecution of war crimes and other things under Saddam Hussein, and those sorts of issues. The issue of detention was raised on a couple of occasions, I mentioned, in late February.

Senator BROWN—By whom?

Mr Quinn—I mentioned I had raised this question on 26 February, that I had seen the mid-February sit rep from the ADF colleague. I had concerns. I wanted to check that there were no issues that we had not dealt with.

Senator Hill—It is better to finish one answer and then take Senator Brown's question, otherwise you will get lost.

Mr Quinn—As I say, that is the relevant forum to discuss these issues. We did raise the question of that list on two occasions.

Senator FAULKNER—While I am clear on who constitutes the watch group, I am still not entirely clear on who it reports to. I assume it is the Iraq Task Force—is that right? Or is it a stand-alone sort of mechanism?

Mr Quinn—That is right, but obviously line agencies have their line responsibilities.

Senator Hill—Which is right? There were two alternatives there. Does it report to the Iraq Task Force or is it a stand-alone organisation?

Mr Quinn—It is a subgroup of the Iraq Task Force, but I just make the point that the colleagues would report directly to their own ministers on the issues. We would not be channelling all the advice through the task force. So Attorney-General's or Defence or—

Senator FAULKNER—So there are two lines of reporting out of the legal watch group: to home departments of officers attending, on the one hand, and to the Iraq Task Force, on the other hand.

Mr Quinn—That is right.

Senator FAULKNER—When reports go to the Iraq Task Force, are they formal?

Mr Quinn—No. I provided a brief summary of the discussion that we had had the week before to the following weekly meeting of the task force. Again, with the task force having as a concept two lines of reporting, we would not purport to control every issue. Individual agencies have their agendas. We cannot run all the Iraq agenda through one prism, but we do try to coordinate and make sure that there is a clearing house that operates effectively.

Senator FAULKNER—Is the general plan to try and have the legal watch group meeting prior to the task force? Is that how it works normally?

Mr Quinn—As required. The task force meetings are weekly. Every Tuesday there is a task force meeting. Normally, if there is a meeting preceding that of the legal watch group, there would be some follow-up at the task force meeting.

Senator FAULKNER—Are you able to indicate to the committee what is the next report after the report of 29 February?

Mr Quinn—I think there was another report referring to another visit to Abu Ghraib prison and basically references, as I mentioned before, to the US military taking the ICRC report very seriously, taking positive action to address the matters at issue, having a very constructive meeting with the ICRC and demonstrating commitment to the laws of armed conflict. So the assessment from the officer on the ground was positive that this process was on track.

Senator FAULKNER—You had better tell us when that was.

Mr Quinn—That sit rep is of 7 March. I am not sure when the meetings took place; there is no detail on that.

Senator CHRIS EVANS—Who is the author? If you do not want to name them then can you give us their rank?

Mr Quinn—I think it was the group captain and the new colonel.

Senator CHRIS EVANS—That was the sit rep of 7 March.

Mr Quinn—That is right.

Senator CHRIS EVANS—This is not one that Defence was able to identify yesterday.

Senator Hill—I am not sure—

Senator FAULKNER—Mind you, there were a lot of things Defence did not seem to be able to identify.

Senator Hill—I am not sure, but it does seem to be good news.

Senator CHRIS EVANS—Any news is good news.

Senator BROWN—There is an indirect reference to that Taguba report.

Senator FAULKNER—Before Senator Brown jumps in, I think we need to get this issue cleared up.

Senator CHRIS EVANS—The group captain and the colonel—

Senator FAULKNER—I just want to get an answer to what is happening.

Senator CHRIS EVANS—and this is a 7 March sit rep report?

Mr Quinn—That is right.

Senator CHRIS EVANS—Are one of the addressees Defence?

Mr Quinn—That is right. Defence, Attorney-General's and DFAT—both the task force and our legal colleagues.

Senator CHRIS EVANS—Can you run through again what the sit rep included?

Mr Quinn—A reference to the officer—one assumes one of the officers who wrote the report—visiting Abu Ghraib prison. There was no comment on that. There is a prelude to a pending ICRC visit conducted with CJTF7 staff and then a working level meeting with CJTF7 and the ICRC. I am a bit reluctant to go into too much detail because ICRC issues are really confidential, but the general message was: 'The US military was taking the ICRC report very seriously, taking positive action to address matters in the report, a most constructive meeting,

demonstrated US commitment to the laws of armed conflict in this area. Future reports will refer to follow-up US action.' Then he makes a passing reference to press reports of 17 US military personnel being suspended from duty following investigations of maltreatment, so that is getting into the public domain material.

Senator CHRIS EVANS—What do you take it was the Australian officer's role being described in the sit rep report?

Mr Quinn—As I said before, my understanding is that the CPA was playing an ancillary role. The line command was the military. I think our colleague was facilitating those contacts and providing international humanitarian legal expertise. He was adding his expertise but he was not—

Senator CHRIS EVANS—So facilitating contact between the ICRC and—

Mr Quinn—CJTF7, the military command.

Senator CHRIS EVANS—Not between them and the CPA?

Senator Hill—He would be doing that on behalf of the CPA, so he would be drawing together the military command and the de facto government on the issue of the response to the ICRC report, as I read it.

Senator CHRIS EVANS—Let me be clear, Minister. You are saying that that is your interpretation of what the sit rep reflects, is it? I am not being querulous, I am just trying—

Senator Hill—I am drawing some assumptions from that. As I understand it, the report has come from a legal officer who was working for the CPA, the de facto government, and it is referring to participating in a working group meeting with the joint command in relation to the responses to the ICRC report.

Senator CHRIS EVANS—But our legal officer in the CPA seems to have been facilitating ICRC contact with the military headquarters—is that a fair summary of why you think he is reporting this?

Senator Hill—I do not know whether it goes quite as far as that.

Mr Quinn—I think we are trying to add context. We are not sure of the detail of this particular transaction but my understanding from subsequent legal advice is that the CPA role is rather narrowly defined in terms of detention. My assumption is that he is in a facilitating role and he may, in an ad hoc way, be required to provide some expertise because he is an international lawyer—that is his background, so that is my assumption. But it is an assumption.

Senator Hill—And we know that the February ICRC report was delivered to Bremer as the head of the CPA. We know that they responded by saying they would get in and make a range of different changes. This would suggest that in March they were in the process of doing that.

Senator CHRIS EVANS—We certainly know Colonel Muggleton facilitated the meeting between Bremer and the ICRC in February. I just want to be clear whether it is the group captain or the colonel. We are not sure. Does it reflect that they had been to Abu Ghraib again or that the ICRC had visited Abu Ghraib again?

Mr Quinn—It says ‘the officer conducted a visit’, so, yes, I think one of the officers did go there. I am not sure which officer.

Senator CHRIS EVANS—So in the sit rep of 7 March it seems that one of our officers had been out to Abu Ghraib again. They had accompanied the ICRC or were dealing with the ICRC response?

Mr Quinn—They talk about a ‘prelude’ to the visit. I should also mention—I had not picked up this detail—that it may be that the officer was there in two capacities. There is a split in responsibility for detainees between the Iraqi interior ministry/CPA and the military chain of command, and the report refers to the fact that there are some prisoners under Iraqi corrective service jurisdiction in Abu Ghraib prison, so he may have been there wearing his CPA hat as a legal adviser on legal issues because there is—

Senator CHRIS EVANS—For the civilian detainees, as different from the POWs?

Mr Quinn—Maybe criminal detainees who are under the jurisdiction of the Iraqis. That may be why he was there as well. He may have had a couple of hats on. This is speculation on my part.

Senator CHRIS EVANS—It sounds like there was another ICRC visit to occur to Abu Ghraib as part of that. There was a prelude, I think you said, to another ICRC visit.

Mr Quinn—That is right. I cannot see a date for the next visit but one assumes there was another visit.

Senator CHRIS EVANS—There was a reference to the laws of armed conflict. What is that a reference to? Is that the section that deals with treatment of prisoners of war?

Mr Quinn—It is a bit out of my league. I might defer to my legal colleagues. I think they are issues about humanitarian law and the applicability of different classes of prisoner, but I am afraid I am not expert on that subject.

Senator CHRIS EVANS—I was more just trying to interpret what it referred to. We do not have the document and you are quoting us bits. It referred to the Americans accepting the laws of armed conflict.

Senator Hill—I presume the laws of armed conflict include that prisoners should be treated humanely. That is a guess as to what it refers to.

Senator CHRIS EVANS—I was trying to understand whether this is a separate issue or this is the issue of the Abu Ghraib prisoners.

Senator Hill—Yesterday I thought it might be a separate issue, but perhaps it is where the laws of armed conflict relate to the holding of prisoners.

Senator CHRIS EVANS—That is the extent of the reference in the 7 March sit rep?

Mr Quinn—That is right. Plus a passing reference to the fact that 17 US military personnel have been suspended from duty. In a sense that is the public side we are all very familiar with.

Senator CHRIS EVANS—There is no particular reference to the Americans’ internal investigations, more to the ICRC.

Mr Quinn—Not referred to at all.

Senator FAULKNER—Let us move on beyond 7 March to the next report.

Mr Quinn—My understanding is that the next reference to this issue —again, these are three-or four-page documents—is a very short reference to the ICRC making negative comments about Camp Cropper. No detail provided there, but again just affirmation that no Australians were involved in any aspect of breaches of international humanitarian law. I guess that is a resonance of the early inquiry that I initiated from this end about whether we had any role in relation to the detainees at Camp Cropper.

Senator FAULKNER—What is the date of that?

Mr Quinn—21 March.

Senator FAULKNER—The author? Is it the group captain again?

Mr Quinn—I guess so, yes.

Senator CHRIS EVANS—I do not want to be pedantic, Mr Quinn, but guessing in the last couple of days has not been very helpful. Do we know or don't we?

Mr Quinn—Let me just check.

Senator CHRIS EVANS—I think the minister shares my concern about such statements.

Mr Quinn—Yes, that is right I think—the group captain and the new colonel.

Senator CHRIS EVANS—They are coming in under joint names, are they? Are the sit reps coming in as joint sit reps on behalf of the two legal officers at CPA?

Mr Quinn—That document is just entitled 'CPA office of general counsel—ADF legal report'.

Senator FAULKNER—And beyond 21 March?

Mr Quinn—On 2 May there is another brief reference—this is obviously when the images issue hit the media—to the fact that the UK and US investigations are proceeding. There is an indirect reference that there may be some correlation between the general issues raised earlier and these incidents, but it is a very general reference.

Senator FAULKNER—A general reference saying what?

Mr Quinn—Basically they are referring to the publication of photographs and talking about US and UK investigations following up and referring to previous discussions that the officers have been involved in between the CJTF and the ICRC. There is nothing very specific about it.

Senator FAULKNER—It might not be very specific but it interests me. What does it mean? Could you quote the actual words from the sit reps so we get some sort of context? Chair, I am planning to finish this and then cede the call to Senator Brown in some time to do some questioning so we do not keep chopping and changing, which is not assisting anyone and is I think delaying us. Would that be okay?

CHAIR—I would agree with you.

Senator FAULKNER—We did try to do it a little earlier, Senator Brown, but you were not with us, so we could not. Now we have gone back into this issue, let us sort it and then we will go back.

Senator CHRIS EVANS—Some of us have difficulties following long trains of thought—that is, me.

Senator Hill—I'm sorry. We are just discussing this.

Senator CHRIS EVANS—Only the arts committee has a dramatic pause. I think you are probably overplaying it a bit.

Senator Hill—We are checking the language.

Senator FAULKNER—Is this one causing a bit of a problem?

Senator Hill—No, I am just wanting to get accurate and factual information for the committee.

Senator CHRIS EVANS—That is why Senator Faulkner suggested you quote the report rather than interpret it for us.

Senator FAULKNER—I would have thought quoting the report ought to have been an easy task for you, but it may not suit.

Senator Hill—Understanding them is not always as—

Senator FAULKNER—I think we understand the significance of it. It is pretty clear from what Mr Quinn said.

Mr Quinn—Sorry for the delay. We were just trying to clarify exactly what this meant. I can read it out, with the minister's permission. It says:

A number of IHL issues arose during the week—

I guess, international humanitarian law issues—

the major one was the publication of images of both US and UK troops allegedly mistreating Iraqi detainees. With regard to the US matter, the possibilities of these sorts of incidents were foreshadowed by earlier sitreps including Sitreps 3/2 and most directly in LTCOL Muggleton's Sitrep 13. Action is pending following the results of the US investigation and a UK investigation has been launched to determine the details of the alleged incidents. GPCAPT ... has been involved in discussions between CJTF-7 and the ICRC on improvements to IHL training for US army members.

That is basically it.

Senator Hill—My hesitation on reading it is because it does seem to be drawing a rather long bow to say:

... the possibilities of these sorts of incidents were foreshadowed by earlier sit reps ...

Earlier sit reps, as we have heard today, certainly expressed concerns in very general terms, but it is hard to see how they could be interpreted as related to what we saw in the photographs.

Senator FAULKNER—You have always found that hard, but here now read into the record is a statement in black and white that makes the direct link.

Senator Hill—The statement made in May—

Senator FAULKNER—It is 2 May.

Senator Hill—It is a statement made in May by a different officer with the benefit of new knowledge—that is, the photographs—seeking to interpret sit reps that were written in February.

Senator FAULKNER—No, Minister. What this officer does in May—

Senator Hill—That is exactly what it is.

Senator FAULKNER—No, let us be clear. As I heard Mr Quinn read out that very important detail, the officer who wrote that sit rep mentioned two previous sit reps by number. I think it was two. Let me confirm that with you, Mr Quinn. Is that right—were there two?

Mr Quinn—That is right.

Senator CHRIS EVANS—Sit reps 32 and 13—is that right?

Mr Quinn—3/2 and 13.

Senator FAULKNER—3/2 is one, isn't it, Mr Quinn?

Mr Quinn—That is right.

Senator FAULKNER—And the other one was?

Mr Quinn—13.

Senator FAULKNER—Could you now provide for the committee, so we are clear, the date of those two sit reps—that is, 3/2 and 13?

Mr Quinn—Sit rep 13 I do not think we have seen. I guess that may be in the Defence system somewhere. I am sorry. My apologies. This is the second series. Again, just to recap, sit rep 13—I am sorry, I was thinking of the earlier sequence of sit reps—of 15 February talks about the ICRC delivering a report to Ambassador Bremer which contained detailed, comprehensive and highly critical comments. That is all that is in that document.

Senator FAULKNER—That is the sit rep of 15 February?

Mr Quinn—That is right.

Senator CHRIS EVANS—That is Colonel Muggleton's sit rep of 15 February?

Mr Quinn—That is right.

Senator Hill—Yes.

Senator FAULKNER—Is 3/2 a sit rep of 3 February or 2 March?

Senator Hill—That is the one of 29 February.

Mr Quinn—Again, there is just a reference to very serious allegations contained in the ICRC report. That is all it says.

Senator Hill—So they were the two sit reps that referred to the February report.

Senator CHRIS EVANS—They were the only two that Defence could find yesterday.

Senator Hill—They were the only two that we could find that referred to the February report.

Senator CHRIS EVANS—It is noticeable that Foreign Affairs has a better record of Defence sit reps than Defence has.

Senator FAULKNER—Even though Foreign Affairs said they did not have a complete record.

Senator Hill—I don't know about that.

Senator FAULKNER—Well, I do.

Senator Hill—But they have not found others, as I understand it, that relate to the February report.

Senator CHRIS EVANS—Nothing hangs on it at the moment; I just noticed that when Defence were questioned they were not able to provide these sit reps of 7 and 21 March and 2 May which contain information about these matters. Obviously this is not an issue for Foreign Affairs.

Senator FAULKNER—So it is fair to say, Mr Quinn, that on 2 May an ADF officer writes a sit rep which ties the same abuses that are depicted in photographic material to those that are previously reported in sit reps, one on 15 February 2003 and one on 29 February 2003. Is that a fair summation?

Mr Chester—It is tying it back to the ICRC report, or making a reference back to the ICRC report. That is certainly how I read it but others may read it differently.

Mr Quinn—Referring to the minister's comments again, and the possibilities of these sorts of incidents, it is very loose language, it is *ex post facto*, things had moved on and we had seen the photographs. I do not think there is any suggestion there that colleagues here knew about the photographs. It seems to be drawing a long bow to suggest that.

Senator FAULKNER—I am asking about the abuses depicted by the photographs and the events referred to in the 2 February sit reps.

Senator Hill—What he is reminding the reader of is the fact that there have been previous occasions when his predecessors have drawn to the attention of officials that there are problems—problems as identified in the February report of the International Committee of the Red Cross.

Senator FAULKNER—Is it drawn to the attention of officials and what did officials do as a result of receiving those sit reps?

Senator Hill—You have heard what happened in relation to the receipt of the ICRC report. It was acted upon in the terms that we were told about yesterday, and today we have heard further evidence of the way in which the recommendations in it were positively progressed. It would seem that it served its purpose and was contributing to improved standards.

Senator FAULKNER—You know as well as I do, Minister, that all these sit reps have as addressees three departments of the Commonwealth of Australia. That is right, isn't it?

Senator Hill—Whether all of them have, I don't know.

Senator FAULKNER—Either directly or indirectly.

Senator Hill—Certainly with the ones where you have asked that specific question, we have identified—

Senator FAULKNER—All of them, either directly or indirectly, on the evidence provided by Mr Quinn.

Mr Quinn—That is right, Senator.

Senator FAULKNER—Mr Quinn, to be fair, has said that he cannot be precise, and if he does not know, I don't expect him to be. He can't be precise as to whether it is direct or indirect. That was your evidence, wasn't it, Mr Quinn?

Mr Quinn—There are named addressees on the list, so there are different agencies that received the documents. Whether colleagues have read the reports, I don't know, but those three agencies are regularly in the distribution lists for these documents.

Senator FAULKNER—But those three agencies are named addressees in relation to these three sit reps.

Senator Hill—But the key—

Senator FAULKNER—I just want to get that sorted. I want an answer to that question.

Mr Quinn—With the two earlier ones, that is right. In late March PM&C was added to the list because of the importance of wider issues, including transition. We understand that from late March PM&C was added to the list. So that is right, Senator: the two earlier documents—

Senator FAULKNER—You are making the point that the three agencies were still there but in relation to the 2 May sit rep there was at least one additional agency, the Department of the Prime Minister and Cabinet?

Mr Quinn—That is my understanding.

Senator FAULKNER—My point stands. All three agencies are addressees or received copies of these three sit reps.

Senator Hill—The point I wanted to make in response to the question—or maybe you would say the exchange—is that the issue then becomes what action was taken by Australia. The point is that the action was not to be directly taken by Australia and the report was not directed to Australia. The report was directed to the occupying powers and the CPA, and those three parties had positively responded to that report, as has been put in evidence today.

Senator FAULKNER—But it is high farce if you are suggesting that it is reasonable for the Australian government to wash its hands of these matters because the destination of these particular reports happens to be three departments of government in Australia but the primary report is addressed elsewhere. I just do not think any reasonable person will accept that incredibly lame excuse.

Senator Hill—I am afraid that Senator Faulkner's argument is unravelling. We are not saying that anyone should be washing their hands; what we are saying is that the ICRC report was being positively responded to by the parties to whom it was addressed and that fact had been brought to the attention of Australian officials through the sit rep. That is the evidence that has been put to this committee today.

Senator Hill—If Senator Faulkner is now saying that the Australian government should have taken some supplementary action—and he can say that; he can make that point—

Senator FAULKNER—What the evidence on Monday, yesterday and today shows is that on a regular basis reporting was received in relation to issues that went to the serious abuse of POWs in Iraqi jails, mainly but not exclusively the Abu Ghraib jail, and effectively nothing was done at any level of the Australian government about any of those reports. I think that is an extraordinarily serious situation.

Senator Hill—The officials are saying that none of the sit reps said that, which is quite true. But the point that Senator Faulkner does not want to acknowledge—

Senator CHRIS EVANS—That is not right.

Senator Hill—because it undermines his political argument, is the fact that the sit reps—

Senator CHRIS EVANS—‘Various serious allegations’—you quoted it to us.

Senator Hill—recognised that the reports were being positively responded to by the parties to whom they were directed and Australian officials were being told that that was the case.

Senator FAULKNER—Haven’t you listened to the evidence?

Senator Hill—If the Labor Party—

Senator FAULKNER—The sit rep from 29 February quite directly said, ‘Very serious allegations contained in the ICRC report.’

Senator Hill—Let me finish.

Senator CHRIS EVANS—Paul Bremer was described as being ‘shocked’. For the officials to suggest that it was not serious and we did not know is just not right.

CHAIR—Order!

Senator Hill—You give lots of speeches. You are asking: why wasn’t there extra action taken by the Australian government? The Australian government relies on the parties who have the responsibility of occupying powers and the de facto government—the parties to whom the ICRC directed its report—to address the issues covered in that report. That, it would seem, occurred. Furthermore, Australian officials were informed of the fact that it had occurred.

Senator CHRIS EVANS—You have been practising this defence for three days and no-one is buying it.

Senator Hill—Furthermore, we now know that there were some Australian government defence officials who were actually in there on the ground helping them to achieve those better outcomes.

Senator CHRIS EVANS—We do not know that.

Senator Hill—That is what Labor does not want to acknowledge because it undermines the argument.

Senator CHRIS EVANS—We do not know whether they were helping them or not. You haven’t released the draft letter. I do not know what the draft letter said. I do not know

whether they were helping defend them against the charges or whether they were actually helping to fix the problem—I do not know.

Senator Hill—Labor wants to imply—and Senator Evans on the radio this morning went as close as I have heard him get to saying—that Australia is in some way complicit in these abuses, that the ADF is in some way complicit in these abuses.

Senator CHRIS EVANS—No; I said we are involved. You always resort to that defence when you are under pressure.

Senator Hill—That is what the last two days have been all about. That is why the ADF has been dragged into this in this way.

Senator FAULKNER—How dare you say those sorts of things! This committee is trying to get to the truth of these matters. If it were not for this committee, you would have covered the whole thing up.

Senator Hill—This committee is not interested in the truth; this committee is interested in trying to win a political argument.

Senator FAULKNER—If it were not for Monday's and Tuesday's Defence hearings, none of this would be out in the public arena, and you know it. If it were not for today's investigations of the department of foreign affairs, this material would not be public.

Senator Hill—Today has been a bad day for you because there was evidence that the response was given and implemented.

Senator FAULKNER—There is a culture of cover-up under your stewardship as minister.

Senator Hill—Nonsense!

Senator FAULKNER—And your government's stewardship of all these portfolios.

CHAIR—Order! We will have some questions please.

Senator CHRIS EVANS—I would like to ask how one can maintain that serious allegations were not contained in the sit reps, because what you have provided to us today and what Defence provided in the last few days is the evidence that the sit reps of the 15th and the 29th both detail that there were serious allegations and that Paul Bremer, the head of the CPA, was shocked. For you now to suggest that somehow it was not serious just seems to be unsupportable.

Senator Hill—No, the sit reps of February did say that.

Senator CHRIS EVANS—So we knew they were dealing with serious allegations. When the officer on 2 May says what everyone else knows, that there is a correlation between the ICRC's concerns and the photos of the abuse, you want to pretend that somehow that was the first anyone would have thought about it, that somehow they had been separate processes. They both went to abuse at Abu Ghraib and they both went to concerns raised, to the Australian government's knowledge, as early as October.

Senator Hill—I think it is very difficult for somebody to read those sit reps of 21 February and envisage the photographs that led to the prosecutions in January—or the investigations and subsequent prosecutions from January of this year.

Senator CHRIS EVANS—Why?

Senator Hill—I gave you an example earlier of a press report that I saw overnight of abuses that I did not see referred to in those ICRC reports.

Senator CHRIS EVANS—The report in February refers to the October—

Senator Hill—Did the February report talk about torture?

Senator CHRIS EVANS—The report in February refers to the report of October 2003 and the ICRC visit. It talks about prisoners who were:

... handcuffed and naked, or with women's underwear on the head, or being handcuffed either dressed or naked to the bed bars or the cell door.

That sounds pretty familiar to the sort of behaviour that was reflected in the photos, to me.

Senator Hill—And other behaviour.

Senator CHRIS EVANS—I admit some of the other behaviour was worse, but this was when there were inspectors in the jail.

Senator Hill—You might say it is worse, and I think I can understand why you would describe some of the other behaviour as worse. But the point is that I have said that I regard that sort of treatment as inhumane. The important thing was that, when it was drawn to the attention of authorities, action was taken.

Senator CHRIS EVANS—What is the evidence for that?

Senator Hill—The evidence that has been put before this committee today.

Senator CHRIS EVANS—No, you have not. What evidence?

Senator BROWN—It is not true.

Senator CHRIS EVANS—That is not true. What we know is that the Americans responded when they had an internal whistleblower. What we do not know is how they responded to the ICRC. That has not been detailed at this committee.

Senator Hill—I am talking about the response to the ICRC reports. What you were told for two days this week—

Senator CHRIS EVANS—Is that we did not know anything about it.

Senator Hill—No, you were not told that. You invent these things. We were told that there was to be a change in the commandant, if that is the right expression. We were told—

Senator CHRIS EVANS—That was as a result of the American investigation, not as a result of the ICRC investigation.

Senator Hill—No. Go back and read the evidence about the result of the ICRC report of February and what happened upon receipt of that report by Mr Bremer and the British and American authorities. A number of changes were to be implemented. What we have heard today is that an Australian officer reported back to Australian officials that the progress in implementation of better practices was going well. That is the evidence that has been put before this committee today. That might undermine your argument, but so be it.

Senator CHRIS EVANS—It does not undermine my argument at all. My argument is that we knew a lot more than you and the Prime Minister told the Australian public. The only reason we know is that we followed the paper trail at the estimates hearings.

Senator FAULKNER—Which you again cover up.

Senator CHRIS EVANS—And again today you confirm you should have known.

Senator Hill—You are now changing the debate.

Senator CHRIS EVANS—That has always been the debate.

Senator Hill—What you have been trying to argue, up until a minute ago, is that Australia should have done more. What you have learnt today is that the authorities to whom the report was directed acted properly upon it. I would have thought you would think that that was good news.

Senator CHRIS EVANS—What I thought we had been examining, Minister, is what the Australian government knew.

Senator Hill—That is another issue.

Senator CHRIS EVANS—What has become clear in the last few days is that what you and the Prime Minister had been telling the Australian public was not right; it was highly misleading. What we have used the estimates for is to uncover what really happened. What we have here today is further proof of the paper trail of information coming back to the various departments. Now we know that it came back to Defence, Foreign Affairs, Attorney-General's and the Prime Minister's own department, detailing the seriousness of the abuses, detailing the ICRC reports and detailing Australian legal officers' involvement with the processes—and you have been telling the Australian public for the last month you did not know anything about it.

Senator Hill—I did not say that at all.

Senator CHRIS EVANS—Clearly, that is not right.

Senator Hill—I did not say that at all—you know that. There has been no secret made of the sit reps of February that referred to the February report and there has been no secret made of the fact that they went to a number of different addressees within government—no secret about that.

Senator CHRIS EVANS—Why did you go on television in early April and say you knew nothing about it?

Senator Hill—I did not do that. What we have learned today—

Senator CHRIS EVANS—You said the first you knew of this was when you saw the photos.

Senator Hill—Today we have had further corroboration of the fact that the ICRC report was positively responded to by the parties to which it was directed. We can go over this again if you like—we have done it for three days.

Senator CHRIS EVANS—What we have been examining is what the Australian government knew and what they did about it. We read in the international papers what the

ICRC did, we did not learn it from you; and we learned how the Americans responded from the international newspapers, we did not learn it from you.

Senator Hill—It is true: the first that I learned of these major abuses was at the beginning of May—and I think it was the first that most people learned. That has also come through in the evidence. Even the officials have said that today.

Senator CHRIS EVANS—But what the sit rep proves is that on 2 May the officers who had been providing this information back to you commented that this new photographic evidence confirmed their earlier reports to you about the concern about abuse inside Iraqi jails. That is what the 2 May sit rep does—it links the two. You are uncomfortable with that, and I understand why.

Senator Hill—It is an interpretation that is placed by that particular officer.

Senator CHRIS EVANS—The same officer who sent back the 29 February report, which talked about the ICRC and the American response.

Senator FAULKNER—And frankly, given a choice of believing the officer or believing you, I am going to believe the officer.

Senator Hill—I can quite understand that.

Senator FAULKNER—I think most people could, frankly.

Senator CHRIS EVANS—Can I just go back to Mr Quinn: you quoted us a part of the sit rep. Can you tell us what other issues the sit rep covered that were of interest to these matters?

Mr Quinn—This is 2 May, Senator?

Senator CHRIS EVANS—Yes.

Mr Quinn—The document is about 3½ pages long, with the introductory paragraph basically talking about big picture issues in Iraq—what is happening in terms of de-Ba'athification; the political transition particularly; and Mr Brahimi's important work, which came to fruition last night with the new government, of course. There is a particular focus on transitional arrangements. One issue of interest to us is the question of privileges and immunities post transition, so there is a lot of reference to that. There are issues that go to real estate. We have an interest in how those issues will be managed in the transition. A workshop on anti oil smuggling is mentioned. The lawyers provided advice on that issue. There is a reference to new Iraqi laws. Our lawyers have been very actively involved in drafting CPA orders, some of which relate to our economic interests, so we have been very keen to stay in touch with things like foreign investment liberalisation. So a lot of their work is tied up with the drafting that has gone on in the CPA on those issues. Then we come to the paragraph I quoted, Senator, and then there is a brief reference to the new colonel's activities providing advice on international humanitarian law relating to photographing by the media of prisoners. I guess this may relate to the media coverage of this issue. Then there are other matters—a reference to what is happening with the handling of Mr Moktada al-Sadr, the oil for food issue, security questions, vetting.

Senator CHRIS EVANS—So in terms of the prisoner issues—the ones with the broad scope that Senator Faulkner outlined this morning—there are two references: one is the

paragraph you quoted and the second was the involvement of the new Australian colonel in international humanitarian law considerations of the photographing of prisoners—

Mr Quinn—By the media, that is right.

Senator CHRIS EVANS—By the media, not by MPs.

Mr Quinn—This is the public curiosity point again. It is not my field but there is obviously prohibition against invasive publicity for prisoners. The advice related to the issue of treatment of detainees who might be subject to prosecution by the Iraqi special tribunal. So, again, he was providing proactive policy advice on how the issue of media coverage of the special tribunal might be managed.

Senator CHRIS EVANS—That was the 2 May sit rep. Were there subsequent sit reps of interest?

Mr Quinn—There was a brief reference on 11 May basically talking about the role of the ADF advisers in relation to prison issues and that they were sending some more advice. I assume that must have been some sort of request, maybe for some more information from Defence, but the focus is basically what the role of the staff was in relation to detainees. They assert the point we made earlier that basically, for facilitators, the prime responsibility for detention lies with the military chain of command.

Senator CHRIS EVANS—I think I missed that at the start. Is that the 11 May sit rep from the group captain and the colonel, still?

Mr Quinn—That is right.

Senator CHRIS EVANS—Discussing the role of the ADF in prison issues inside Iraq?

Mr Quinn—I think talking about their own role. Legal officers have acted as points of contact and in facilitation with the ICRC, but they make the point that the interaction is really between the ICRC, the CPA and CJTF7, the military chain of command. They say that at all times detainee issues were within the purview of CJTF7 and that their role was facilitating good communications and relations.

Senator CHRIS EVANS—Why would they be making that point?

Mr Quinn—I am not sure. Maybe they were asked to clarify their role. I am not sure what the background was to that. That is all that is—

Senator CHRIS EVANS—It sounds like it is a fairly defensive comment in the light of what we know now. This is what I am trying to understand—has someone raised concern about their role?

Mr Quinn—I do not know.

Senator CHRIS EVANS—I do not understand why their own home department and others would seek to define their role.

Mr Quinn—I am not sure. I think there was some discussion within the CPA about the legal position in relation to the CPA in terms of the ICRC report. I recall seeing some advice somewhere that, as I mentioned earlier, because the chain of command is under the military, Ambassador Bremer received a copy of the report, as the minister has indicated, as the interim

government. But they did not actually have formal authority for the prisons. They were under the military chain of command. I guess it is a legal argument. That may be some sort of ancillary flow-on from that legal debate about what role the CPA had in relation to the report—whether they were actually a party principal or not. It is not my field; I am just recollecting vaguely the discussion on it.

Senator CHRIS EVANS—The date of 11 May has become quite a seminal one in the history of these matters. Everything seemed to happen on 11 May. It seems to be a date when a lot of the inquiries started, when the minister's brief changed and when the minister was first asked about it in parliament, and, obviously, now we have the lawyers attached to CPA clarifying their role in a sit rep back to Australian departments.

Mr Quinn—I have no more information. We did not initiate a request for information. Perhaps there was something through the Defence chain, but I am not aware of any request. But there may have been a request to provide further information.

Senator CHRIS EVANS—We know on or around that date—there is some confusion about whether it was the 10th or 11th—Defence started making some inquiries and they did seek to contact some of the legal officers. So I suppose putting two and two together, they might have had contact about what their role was in relation to prisoner matters. Then there was a survey, for instance, which Defence gave evidence about, on knowledge of prisoner abuse, but they also indicated they started contacting some of the legal officers who were serving or had served. Maybe that is what triggered that.

Mr Quinn—It could be.

Senator CHRIS EVANS—What you are saying to me is that Foreign Affairs did not have any communications with them which would have triggered their provision of that sort of advice.

Mr Quinn—That is right. We were aware that Defence was doing due diligence in terms of what was out there and what information there was but we were not involved in any request to the legal adviser to provide further information.

Senator CHRIS EVANS—Did you commence doing the same sort of due diligence at the same time?

Mr Quinn—To some extent, yes. Again I make the point that our role was really a facilitating role through the task force. The issues were in the public domain, there were two channels running—the ICRC channel and the public prosecutions of military personnel. So, in a sense, all that we knew was what came through the sit rep channel in terms of the information. I started to look in terms of previous activity and I mentioned the February discussion that I initiated in the legal watch group. So we did some basic housekeeping but we did not see ourselves as a party principal and we felt, given the constraints of the ICRC, we had acted appropriately in not pursuing the ICRC confidential report. We were not a party to that process—this is the February report—and we had no knowledge of the October report or working paper, at all. We did some modest due diligence but I guess we were not engaged in intensive activity at that point.

Senator CHRIS EVANS—You said earlier that the inquiries you made were on your own initiative. So you did not get a ministerial or a request from the secretary or anything?

Mr Quinn—No, that is right.

Senator CHRIS EVANS—Did you become aware that Defence was doing due diligence or survey type work?

Mr Quinn—That is right. Obviously the issue was mentioned briefly during the task force discussions. We were obviously appalled to see the photographs, and everyone is conscious of the damaging effect of all of that, particularly in terms of the delicate stage of the negotiations with the Iraqis and other aspects. One thing I should mention I did was to also bring the issue back to the legal watch group later in May. On 17 May we had a legal watch group meeting where I put the prisoner detention issue as the first item. We obviously needed to explore the issue further. Defence, Attorney-General's and PM&C were there. Defence indicated they were checking on information available. They made the comment that I have made this morning that clearly the focus in the reporting had been on general procedures. The ADF advised its role in facilitating those procedures, the positive role played, the confidentiality of ICRC reports.

We had a discussion about what more could be done in terms of what was appropriate follow-up action. As you know, the government had made clear its concerns in relation to this issue. I think Mr Downer has referred to his conversations with his counterparts so, in a sense, representations had been made at the formal level. Defence was doing its due diligence. We thought it might be appropriate for one of our colleagues to go to the pre-departure briefing for the AFP colleagues deploying to Iraq to make sure that human rights issues were covered-off in that particular context. We reissued the code of conduct we had given to our civilian advisers when they deployed, which is based on the Public Service code of conduct and it includes the obligation to report any activity that seems to be illegal. We had no knowledge of any reason why the civilian advisers would see anything but we wanted to remind them they had obligations. That was done. So we did a number of housekeeping things to follow up but that was at my initiative. There was no directive for us to do that.

Senator FAULKNER—But what material did you have before you at the legal watch group? I hear what you have said about what you did and that seems sensible in the circumstances, but what material was available to you?

Mr Quinn—As I have said, the only material we had available was the series of reports from the CPA legal adviser. That is all we really have on file plus, of course, the public record.

Senator FAULKNER—These are the sit reps that we are speaking of—that we have been talking about now for some period of time.

Mr Quinn—That is right. They were not formally tabled.

Senator FAULKNER—That is what I wanted to know. Were these provided to other members there?

Mr Quinn—No.

Senator FAULKNER—They all had them anyway in their home departments.

Mr Quinn—That is right; exactly.

Senator FAULKNER—Did you find amongst the legal watch group there was a reasonably broad knowledge of what was contained within them?

Mr Quinn—I think that is true, yes.

Senator CHRIS EVANS—Was that the last sit rep that contained issues of that nature?

Mr Quinn—I recall that there was one other sit rep with a very brief reference on 17 May.

Senator FAULKNER—That is the same date that the legal watch group met, is it?

Mr Quinn—That is right. I am not exactly sure when that document was received but it is a very brief reference. They refer to the fact that they have been doing some analysis of past detention operations and communications with the ICRC. I guess this is a follow-up to the discussion we had earlier about checking on who did what when. It was basically indicating that work was being done.

Senator CHRIS EVANS—They were doing analysis of what?

Mr Quinn—Analysis of what had occurred in relation to past detention operations and communications with the ICRC. This housekeeping was just following up.

Senator FAULKNER—Who was conducting that analysis?

Mr Quinn—It is in the passive tense but it says that the group captain had taken part in the process.

Senator FAULKNER—This is obviously not anything from an NGO or General Taguba's inquiries. This is some sort of separate inquiry, is it?

Mr Quinn—I could be wrong. Again, we would have to talk to our colleagues in Defence and to the author but I read this as some internal discussion about the role of our colleagues in this process. That is my understanding.

Senator FAULKNER—Who is 'our' in this instance? Is 'our' Australian or is 'our' CPA? Whenever things do not suit, 'our' quickly becomes CPA.

Mr Quinn—This is a report from the CPA legal adviser—the Defence colleague in the CPA. It is an exercise that he has undertaken himself, presumably.

Senator FAULKNER—I am asking you about your use of the term 'our'. Does that 'our' mean Australian or does it mean CPA?

Mr Quinn—The Australian Defence Force colleague in the CPA.

Senator FAULKNER—Is the analysis of 'our role' the Australian role or the CPA role?

Mr Quinn—It is not clear. It is a very brief reference. My interpretation is that there is some sort of stock take that he is doing in terms of—

Senator FAULKNER—Do we know that there has been a recent stock take in relation to the Australian role in these issues and events? Maybe you could help us with that, Senator Hill. Do you know that?

Senator Hill—A stock take? I have not heard that.

Senator FAULKNER—Assessment; analysis.

Senator CHRIS EVANS—Survey.

Senator FAULKNER—The general thrust of what we have had read to us.

Senator Hill—There is no doubt that there has been effort to draw together all the previous information for the benefit of parliamentary committees and the like.

Senator FAULKNER—Yes, of course. But we are talking about something here that is happening in Baghdad. That is certain the sense of it, Mr Quinn, isn't it? We are not talking about an analysis occurring in Australia or elsewhere.

Mr Quinn—That is right. My understanding is that it is basically information collection and setting everything out in detail. As I say, I am not au fait—

Senator FAULKNER—But it is occurring in Baghdad? Is it occurring in the Australian Representative Office in Baghdad?

Senator Hill—I presume it relates to efforts to draw together all of the information to which we have been referring in the last few days.

Senator CHRIS EVANS—So you think it is their response to the Australian Department of Defence inquiries about what they knew about detention practices and interaction with the ICRC—that is, responding to an Australian Department of Defence request to gather information together?

Senator Hill—I think it could well be so, but I do not really know. That is a logical explanation.

Senator CHRIS EVANS—Yes, given that in the previous sit rep they sought to define again their role, they were clearly conscious of a debate about what role they were playing in relation to prison issues and the ICRC. Now it seems that the 17 May sit rep suggests that they are actually analysing their involvement or summarising their involvement.

Mr Quinn—That is an assumption. I do not know.

Senator CHRIS EVANS—Would it be easier if you actually read us the sentence verbatim?

Senator FAULKNER—That would help.

Senator Hill—I think, with the benefit of hindsight, we realise that there can be a blurring of responsibility for Australian officers working for these other agencies—whether they are working for the coalition headquarters or whether they are working for the Coalition Provisional Authority. What are their obligations to, in that instance, the authority and what are their obligations to their Australian ultimate employers? There may be a debate taking place about that, but I am not sure. I can ask if that is what the committee wants me to do.

Senator FAULKNER—If we can establish it precisely, that would assist.

Senator Hill—Okay.

Senator FAULKNER—You might be able to report that back to us, if possible. If Mr Chester and his colleagues could check over the tea break which we are about to have, that would be helpful.

Senator CHRIS EVANS—Is that the last reference we have to these issues? I gather we are getting fairly contemporaneous now.

Mr Quinn—That is right.

Senator CHRIS EVANS—Minister, do you have any idea why Defence did not seem to have knowledge of these sit reps beyond February when they gave evidence to us yesterday? I know this is with your other hat on, but is it striking you as it is striking me that this is a level of knowledge of reports—

Senator Hill—I would need to review the *Hansard*. I know that, at an earlier stage, we were particularly concerned with sit reps that related to the February report and there was a focus on those sit reps.

Senator CHRIS EVANS—My understanding is that they were the two that they were able to identify as having referred to the issues.

Senator Hill—Identify as what?

Senator CHRIS EVANS—I do not want to verbal anyone—I would like to check the *Hansard* as well. My recollection—and I confess that after a couple of days of estimates I do not want to live or die on the basis of it—is that they had identified two sit reps of interest to the matters we were discussing: the ones of 15 and 29 February. But it seems to me that what Foreign Affairs have given us today is a whole range of subsequent sit reps which go directly to those issues.

Senator Hill—I suspect it was their understanding of what ‘of interest’ meant. It seems that Defence officials have been attending the legal watch group and we have been told that officials that attend it seem to be familiar with the sit reps. I do not want to also mean that that necessarily means that a particular legal officer was aware of a particular sit rep. But I suspect it is a definitional issue.

Proceedings suspended from 3.30 p.m. to 4.03 p.m.

Senator BROWN—Mr Quinn, you made a reference some time before the tea break about Mr Downer, the minister, speaking to colleagues about human rights abuses. Can you tell me when those conversations took place or how early that reference of concern by the minister was expressed?

Mr Quinn—In parliament on 13 May Mr Downer mentioned that he had spoken to the Americans and the British government on this subject, making the point that we wanted this matter dealt with as quickly and thoroughly and effectively as possible. He made the comment:

All known incidents of abuse need to be dealt with with the full force of the law in the United States and also, where appropriate, in the United Kingdom.

Senator BROWN—Thank you. I remember that and it is on the public record.

Mr Quinn—My understanding is that Mr Downer spoke about this subject to Secretary of State Powell, the US ambassador and the UK foreign minister, but I would have to check the dates of those particular conversations.

Senator BROWN—Could you check whether he spoke with any of those people or anybody else in the UK or the US about human rights concerns this year or last year?

Mr Quinn—Human rights concerns broadly?

Senator BROWN—In Iraq and Afghanistan.

Mr Quinn—I would have to take that question on notice.

Senator BROWN—Thank you. The information I have is that Ambassador Bremer, the American effectively in charge of Iraq, was expressing concern about human rights to military and political leaders in August last year. Do you have any record of that?

Mr Quinn—Not that I can recall. I would have to check on that too.

Senator BROWN—Would you check on that, and would you check to see if Mr Bremer spoke with any Australians about concerns about human rights abuses.

Mr Quinn—In terms of the detention issue, or more broadly in Iraq?

Senator BROWN—In terms of the arrest and detention of people in Iraq and the potential for fallout if the abuses that were occurring were not corrected.

Mr Quinn—I have no recollection of any such conversation but I can check.

Senator BROWN—Minister, did you meet with Mr Bremer when you were in Iraq?

Senator Hill—Yes, I met with him in April and the previous November.

Senator BROWN—Did the issue of the rights of Iraqis arise at that time?

Senator Hill—No. It certainly did not at the April meeting and I do not recall it being an issue at the November meeting.

Senator BROWN—Would you check to see if it was?

Senator Hill—I do not know what I can check.

Senator BROWN—Notes kept of those meetings?

Senator Hill—I do not know. The representative office might have taken notes.

Senator BROWN—I would be surprised if there were no notes.

Senator Hill—I am confident that it was not an issue, but if you want us to check we will.

Senator BROWN—I do want you to check whether the issue was raised on either of those occasions.

Mr Quinn—Senator Brown, just after the lunch break—I think you were out of the room at the time—I clarified that the human rights minister had had two subsequent contacts with the Australian government. It is in the record, but I should recap in the interests of completeness. The minister met our representative in Geneva on 5 December, basically to discuss the future of human rights in Iraq, but did not raise any allegations or complaints about detention. Subsequently—I think you asked about ministerial contact—Mrs Gallus, the parliamentary secretary, met Interim Minister Turki on 15 March in the margins of the Commission on Human Rights. Again there were no references to, or complaints about, abuse of detainees in that context. I just wanted to complete the record on that.

Senator BROWN—Was the department aware of General Geoffrey Miller's mission to Iraq in September last year to look at the matter of detention and interrogation? He came from Guantanamo Bay.

Mr Quinn—Not that I can recall. I do not recall any public reference to it and we had no other reference to it, so I do not recall that at all.

Senator BROWN—One of the things that arose from that period of time—and we know from hearings yesterday that Major O'Kane was involved at the end of August—was the *Interrogation Rules of Engagement* which were, I now find, posted on the wall at the Abu Ghraib interrogation facility. What knowledge did you, Minister, or the department have about the drawing up of rules for the detention and interrogation of prisoners either at Abu Ghraib or generally in Iraq?

Senator Hill—These are the *Interrogation Rules of Engagement* that we have been discussing over the last two days?

Senator BROWN—That is right.

Senator Hill—The advice from the officials was that that was not for foreign eyes; it was an American document. They therefore assumed that we did not play any part in that document.

Senator BROWN—Minister, you might be up to tell me about the operations during the invasion of Iraq in which Australian pilots on a number of occasions refused to take part in bombing targets in Iraq because the Australian rules did not permit that, whereas the American rules would have.

Senator Hill—I am not sure whether that is really a question to the foreign minister. What you want to know?

Senator BROWN—Are you aware of the publicity about the different application of rules by Australians when they were involved in combat, as opposed to those of the US?

Senator Hill—There were differences in the rules of engagement and there were differences in the targeting directives, and Australian pilots obviously had to comply with the Australian rules.

Senator BROWN—Was the US command made aware of the different Australian rules?

Senator Hill—Oh yes. Again, there was a team of lawyers at the headquarters monitoring and advising on these issues on a daily basis.

Senator BROWN—Did that extend beyond combat to the rules in the post invasion period and the occupation period?

Senator Hill—In relation to targeting directives, it is not really relevant for Australia any longer because we are principally talking about the role of our FA18s. After the major combat phase they were withdrawn. But the Australian forces currently in Iraq are operating under rules of engagement, and I—

Senator BROWN—Under whose rules of engagement?

Senator Hill—Under the Australian rules of engagement. I would not be at all surprised if they varied from US rules of engagement.

Senator BROWN—Has it been made clear to the US and the UK that, where there is a conflict in the rules of engagement, the Australian rules, as far as Australian personnel are concerned, prevail?

Senator Hill—We had this debate in the last two days and, again, I do not really think these are questions for foreign affairs. But if the chairman thinks they are, I will go on. I assume the chairman is focusing on these things.

CHAIR—As to whether the question should be answered, that is your decision, Minister.

Senator Hill—As to whether the question is within the terms of reference of this inquiry into the estimates of Foreign Affairs is your decision, Chairman. I do not personally object, but these are questions that should have been asked in the previous two days.

Senator BROWN—No, I am looking at the relationship between—

Senator Hill—And some of them were asked so I am repeating what we have said in the last two days.

Senator BROWN—this country and another country in Iraq. It is very much a matter of our relationship with other countries. It is very much pertinent to this inquiry. So I ask you, again, Minister—

Senator Hill—When the forces are operating together in a coalition, the Australian forces have got to comply with Australian rules of engagement.

Senator BROWN—That is a very important point.

Senator Hill—Where it becomes more tricky is in the instance of third country deployments. An Australian military officer who is operating in a US battalion, for example, would be operating as part of that battalion. If he has been assigned to that unit and his unit is deployed to Iraq, he operates under the rules of engagement of that battalion, but he has an overriding requirement to comply with the laws of Australia. So, if those rules of engagement are in conflict with the legal obligations that Australia has accepted, that is the overriding requirement. I can understand how that must be really quite difficult on occasions to interpret but, in a practical sense, I am advised that it does work.

Senator BROWN—What I am trying to establish here is: in what way was it conveyed to the US command or between government and government that the application of Australian rules at all times for Australian personnel would prevail? You can read the document out.

Senator Hill—I will. It has been put to me that you said something that is incorrect.

Senator BROWN—Please correct it.

Senator Hill—You had said that the pilots were being told to bomb things that they should not.

Senator BROWN—No, if I did—

Senator Hill—If you did say that, I would like to make the point that in these—

Senator BROWN—I am sure you would have pulled me up.

Senator Hill—I might have missed it. We are into the latter half of the second session of the third day of this process.

Senator BROWN—Can I make it absolutely clear here that my intention, whether I made it clear or not, was to say that we all know that Australians did not bomb targets that US operatives would have bombed. They refrained from it. That has been on the public record.

Senator Hill—Australian pilots will always take a precautionary approach, but there are also differences in the rules of engagement and the targeting directives.

Senator BROWN—Is this established from government to government, minister to minister or Prime Minister to President that, in an engagement such as this, each country's own rules will prevail when it comes to their own personnel?

Senator Hill—That was a decision of the government that was conveyed to our coalition colleagues, but I think that the other governments expected that and were expecting to operate under the same situation.

Senator BROWN—How was that conveyed and by whom?

Senator Hill—I do not remember the full detail of that. You are going back pre the combat phase.

Senator BROWN—Did the Prime Minister make it clear with the President?

Senator Hill—I would not think the Prime Minister would have needed to make it clear to the President. The Americans know—

Senator BROWN—I would have thought he would have needed to make it clear to the President.

Senator Hill—No, because the Americans know the way in which we operate. If they invite us to join a coalition, they know it will be on that basis. All that gets set out and the teams of lawyers are put in place. The teams of lawyers work together and they each have their different sets of rules of engagement.

Senator BROWN—Is the basis of the arrangement that is put in place one in which information will flow between the engaged governments and/or operatives?

Senator Hill—I am sorry, I do not understand that.

Senator BROWN—I am confused, after some days of going into the matters in Iraq, as to why it was that Australia was not kept abreast of what the Americans at the highest level were doing when it came to the concern about abuses of detainees and people held by the US command, because this impacts on the whole direction of the war, the occupation and the outcome. I might ask you, Minister: do you not think that the global information that has come out of Abu Ghraib about the criminal abuse of people held in Abu Ghraib has not added to the danger for Australian and other personnel in Iraq?

Senator Hill—I think the risks for Australian service personnel and officials in Iraq is high. It has been high throughout. I do not think it is materially affected by the post-January revelations.

Senator BROWN—You shrug your shoulders on that but I am surprised. You honestly do not think, Minister, that the pictures of abuse of Iraqis that have been on Iraqi television screens and that have led to a great deal of feeling and animosity being expressed in Iraq have added to the danger for Australian personnel in Iraq both in the short and long term?

Senator Hill—I am reminded that the assessment of the experts—the ASIO threat assessment—is unchanged. That is my reaction as well. If the threat had been low then the revelation of these abuses in May might have affected that threat, but the threat has been high throughout.

Senator BROWN—My reading of it is that opinion polls in Iraq have changed dramatically in terms of support of the occupation in Iraq, as a result of the pictures of abuse of prisoners. But you are saying to me, with a shrug of your shoulders, that you do not think it has made a difference.

Senator Hill—I do not think I shrugged my shoulders, and I have answered the question twice. The other question that you started to ask, before you moved to a different question, was related to, in your terms, why we are not informed of prison abuses. The explanation for that is that, although there are over 30 countries in the coalition in Iraq at the moment, the ICRC directs its reports to the occupying powers and to the de facto government. That is what occurred. It would seem on the basis of the evidence before this committee that those reports were positively responded to.

Senator BROWN—I will come back to that. I find it incredible that you can tell the committee twice that you do not believe that there has been an added element of danger for Australian and other personnel in Iraq because of the repeated and universal display of those pictures of criminal abuse of Iraqis in the prisons.

Senator Hill—The advice of the experts is that the threat level was high beforehand and remains high.

Senator BROWN—That is a different matter and you know it. I am asking you about the government's opinion as to whether that has potentially increased the danger to Australian personnel in Iraq—service personnel and ambassadorial staff, people who are working on behalf of the government in Iraq now and into the future.

Senator Hill—It has made many functions more difficult.

Senator BROWN—In what way?

Senator Hill—Particularly the private sector engagement, which is critically important to building the new Iraqi economy, re-establishing and building new infrastructure. I think it is going to make the challenge of elections even more difficult. But in the case of Australia—and you have asked about Australia—we have military forces there who are very professional. They know the risks under which they are operating and they take those into account. We have officials that we seek to protect by the presence of those professional troops. So in terms of the risk to the Australians that I have mentioned I do not think the risk has increased, but the risk is high throughout.

Senator BROWN—I find it incredible that you could say that.

Senator Hill—I know. You have said it several times.

Senator BROWN—I was giving you ample opportunity to—

Senator Hill—Change my mind?

Senator BROWN—have a more realistic appreciation and one in line with commonsense. The question for me and I am sure for the committee is: how does Australia ensure the maximum security of its forces and personnel in Iraq if it is working in a vacuum of information as to what the superior force—the US force—is or is not doing, particularly in relation to detainees and, I might add, the impact on civilians of the ongoing violence in Iraq? If this government is not acquainted with every important aspect of the relationship between the occupying forces and the Iraqi people, how can the government achieve the best outcome for Australia and maintain the maximum security for its forces in Iraq?

Senator Hill—From a security perspective, our forces are well informed in relation to American operations.

Senator BROWN—You knew nothing about what was going on there. You said so yourself.

Senator Hill—We have people in the American headquarters, or in the joint headquarters, as has been said in the last couple of days. We have quite a large Australian national headquarters—I think there are some 60-odd military personnel. We know the tasks that the Australians are undertaking. We know their roles. We know where the areas of greatest risk are. As I said, they are very professional and very capable.

Senator BROWN—I put it to you that the failure of the government to keep informed, the government's insistence that it did not know about such things as the unfolding mistreatment of prisoners, which has been on the public record for over a year now, and the government's laissez faire attitude towards the operation of the US and UK forces in terms of information about the downside have materially affected the future of this country's interests in Iraq. I am trying to establish whether the government had a deliberate policy of 'don't ask, don't be told' or, alternatively, whether the government made it its business to be told by the US, the UK and indeed other countries about important matters unfolding in Iraq when they were unfolding so that it had not just a say in relation to our own personnel in Iraq but an influence for the good on what is happening in Iraq to, for example, head off—

Senator Hill—It is another speech, Chair. I could try to extract six questions from that. I am not quite sure why you do not insist on questions being asked. Am I supposed to give a speech in response?

CHAIR—My apologies, Minister. I ask you, Senator Brown, to direct questions to the minister.

Senator BROWN—I have been doing that. He is seeking your protection.

Senator Hill—Which question should I extract from your last speech?

Senator BROWN—The question I am asking you is: do you not understand the argument that by not knowing what was going on in Iraq about the mistreatment of prisoners and not following it, not directly demanding information about that when information started to surface, this passed up the opportunity for Australia to intervene in a way which would have limited the damage that is now leading to—

CHAIR—The question, please, Senator Brown.

Senator Hill—I do not accept that at all. Australia did not manage the prisons. Australia did not carry out interrogations. The occupying powers had an overall responsibility. The prisons were administered through the joint military command. But what I think is most important is that when problems were drawn to the attention of the relevant parties by the ICRC they were positively responded to.

Senator BROWN—I will ask you particularly and explicitly about the Taguba report again, because it is one of the most important documents that one could ever see and it has taken centre stage in the US Senate hearings into this matter.

Senator Hill—What day was it published, as a matter of interest?

Senator BROWN—You have a copy.

Senator Hill—You said January yesterday.

Senator BROWN—No, the report was—

Senator FAULKNER—It was said that it was February and you said you did not think it was. I believe it was not. The information was leaked at least to that effect. I am expecting you to correct the record on that, Senator Hill, but I am not holding my breath.

Senator Hill—Welcome back!

Senator FAULKNER—Lovely to be here.

Senator BROWN—You are correct there, Senator Faulkner.

Senator FAULKNER—It is often the case, Senator Brown.

Senator BROWN—It was legally vetted and became officially tabled—

Senator Hill—I am sorry I interrupted you and I should not have interrupted you.

Senator BROWN—You asked me and I am going to finish this, Senator Hill, because you do not know—in early March.

Senator Hill—Early March, was it?

Senator BROWN—Yes.

Senator Hill—Sorry, Senator Faulkner—early March.

Senator BROWN—The question is: when did you get to know about it?

Senator Hill—I think I got to know about it through the press. I saw it referred to. I do not think I knew about it until early May, actually.

Senator BROWN—I find your insouciance is inappropriate to the seriousness of the matter.

Senator FERGUSON—It does not matter what you find, Senator Brown; you are here to ask questions.

Senator Hill—There is nobody here who regards these issues more seriously than I do.

Senator FAULKNER—I find that hard to believe!

Senator Hill—I would worry about your own state of mind, not others.

Senator BROWN—You are not going to distract me, Senator. Do you not think it is a serious omission that Australia did not know that Major General Taguba was investigating what happened at Abu Ghraib and handed this report to his superiors at the end of February?

Senator Hill—My understanding is—and I said this earlier today—that he was doing an investigation at the request of the American authorities of abuses alleged to have been carried out by Americans which came to light at the beginning of January. I see that as primarily American business. If I was concerned that the Americans were not taking the issue seriously or were not responding to these issues, it would be different.

Senator BROWN—The problem is they did not respond at the earliest moment. The most serious events, which were transferred photographically to a world audience, occurred in November and December, Minister. Have you or the government moved to make clear to the US and the UK authorities that you are to be kept abreast of future concerns coming from the Red Cross, Amnesty International and Human Rights Watch?

Senator Hill—It is their practice not to deliver their reports to third parties. We have heard this morning from Mr Quinn how they believe it is more productive to work on a bilateral basis and a low-key basis. If you look at these reports, they are written in such language. They receive appropriate responses and follow up those responses.

Senator BROWN—The Prime Minister has now had a letter from Amnesty International, but can you tell the committee whether the government intends to approach the Red Cross, Human Rights Watch and Amnesty International to ensure it is acquainted with future reports when they are handed to the US or the UK authorities?

Senator Hill—We tried to get the so-called October report, even retrospectively, from the ICRC and they said no.

Senator BROWN—I ask you again: will you approach the ICRC and the other organisations and ask them to consider providing future reports about any matters in Iraq and Afghanistan to the Australian government at the same time as they go to whichever other government is involved?

Senator Hill—My understanding is that that is not the way that the ICRC operates.

Senator BROWN—Will you make that approach?

Senator FERGUSON—And the other 30 governments as well!

Senator BROWN—Chair, I am not representing the other governments; I am representing the Australian interest here. That is what this committee is doing.

Senator Hill—I will draw that issue to the foreign minister's attention, but I suspect he will say that he knows that the ICRC will not work that way.

Senator BROWN—I do not think he can know that until the approach has been made. I think we have to in some way or another put an end to the 'if you don't ask, you're not told and therefore you can't be responsible' attitude of this government.

Senator Hill—I have just said to you that they would not even give us a report retrospectively.

Senator BROWN—You do not know that about future reports. There will be more reports coming out of Iraq and Afghanistan. I am asking you: will you establish—

Senator Hill—I hope the ICRC continues to do its work. I think it does good work. I have said that I will pass that—

Senator BROWN—Request.

Senator Hill—guidance from you to the foreign minister, but I suspect that he will say that he knows that the ICRC does not work that way.

Senator BROWN—I come back again to the Taguba report. I note in earlier evidence that there were indications—they might be cryptic but it translates pretty clearly—coming back in those reports from Iraq, Mr Quinn, that Australians on the ground there were aware that this investigation was being undertaken.

Mr Quinn—If I could clarify: as I mentioned earlier, the first we knew of this report was when it became public. What I indicated was that, following advice from our ADF legal colleague in the CPA, we were aware that the United States was taking these allegations seriously and following through. We were not au fait with the modalities of that report. There were prosecutions of course being launched. There was the press release from the Pentagon in January. But we had no knowledge specifically of that internal document and nor would we expect to receive such a document. As I say, it came into the public domain when elements were leaked, but we had no knowledge of that detailed procedure. The only advice we had from our legal colleague in the CPA was that the United States was following through on that. It would seem to me, as I think the minister has said, totally appropriate for the US to have a very thorough investigation, and that is what that Taguba report reflects.

Senator BROWN—You mentioned that the legal group was looking at the future trial of Saddam Hussein. Could you elaborate?

Mr Quinn—Yes. This is quite a complicated subject. Our sense is that there is still some way to go in the preparations for these trials. The cases are very complex and again I would yield to my expert legal colleagues on the detail. We have tried to be helpful in the preparatory processes. As you may know, we have assigned an expert to assist with investigative aspects of the very early stages of the process. At this stage we have information on the public record as to what the charter of this tribunal will be, and the process is now in train to train up the Iraqi lawyers and judges who will basically take the lead on that exercise. So we are at a rather preliminary stage on that exercise. We wanted to make a modest, targeted contribution in the early days, but there is a long way to go on this subject and we have no clear sense yet of modalities. There are various US agencies involved in this process—the Department of Justice and the FBI as well. They have been doing various planning and preparations, but we are still some way off from any trials.

Senator BROWN—Who has been tasked for that job?

Mr Quinn—I could provide that name privately. We have tried to avoid publicly naming our CPA civilian advisers for security reasons, but I am very happy to give you the name privately.

Senator BROWN—What is the time line for the Saddam Hussein trial?

Mr Quinn—Again, that is a difficult question to answer. If you ask me today, I would think it unlikely for any action to be taken before the end of the year. These are hugely complex cases. There are big issues of evidence investigation. There are questions as to whether you start with Saddam Hussein or a more modest case where you can actually manage the issues. But I should say that one remarkable thing about the current situation in Iraq is the courage and energy of Iraqi lawyers and judges. A lot of work has been done, and the system is moving forward quite encouragingly on that front despite 35 years of tyranny, so that is an encouraging story.

Senator BROWN—That is good to hear. Can you tell us anything about the condition and the cooperation of Saddam Hussein and/or his cohorts?

Mr Quinn—I know very little about that subject. I know that there has been a fairly intensive process of debriefing but, beyond that, I do not have details. It is a long, laborious process and, I think, as we have seen from media reports, Saddam Hussein is not being particularly cooperative in terms of providing a lot of detail.

Senator BROWN—You have said that you did not think the trial would be before the end of the year, and I know that is the best you can tell us. Does that include pre-trial hearings?

Mr Quinn—I would have to check on that. The Iraqi system, I understand, is a sort of codified European style legal system, so it is not a British adversarial type justice system, not a common law system. I am not exactly sure how the investigative processes operate, but I think we are very keen in a policy sense to see the Iraqis running this exercise. It is their history that needs to be accounted for, and we are supportive of a thorough account of the previous regime's atrocities and egregious crimes.

Senator BROWN—I have one other question, which is about the civilian casualties. We asked the Department of Defence about that yesterday. Does your department do an assessment of the impact of civilian casualties and the publicity about that? Does it do an analysis of what the state of casualties or the accumulating casualties is and what impact this is having on the progress of the occupation in Iraq and on world opinion?

Mr Quinn—We do know independent analysis of casualty figures—I think you have had a response from the defence department on that question. Obviously, the most serious casualties are a result of terrorism, and the Iraqis have copped most of the damage in terms of activities by the rejectionists to derail the rehabilitation of Iraq. So that is the first point to make. Even though our colleagues are at risk and the coalition is at risk, quite clearly the most serious damage is done to Iraqi civilians by these incidents of bomb blasts and other activity. My sense is that a lot of Iraqis obviously are worried about criminal activity, and terrorism and political violence are of concern. Quite clearly, Iraqis want to see stability restored. The coalition is, I think, explicit in its comments that the Iraqi security forces have to take the running on these issues as far as possible. There is an intensive program to train up the Iraqi police and other security services, because I think our judgment is that they will do that job best. You could fill the country with peacekeepers but you would not really solve the problem. You need an Iraqi indigenous security structure there. The coalition is there as a backup pending the elaboration and establishment of effective security services.

So, in terms of the overall scene in Iraq, political violence is a worry. The press is very open. If there are any issues of casualties, there are 200 newspapers in Iraq so there is a free press and the issues are aired. Quite clearly the Iraqis are a proud, nationalistic people. They do not much like occupation long term—that is understandable—so obviously casualties are an issue there. But our sense is that the issues are in the open. There is a lot of public debate about the questions and the coalition is trying very hard to transfer authority to the Iraqi security forces, so there is a very clear strategy to try to move forward. There are different security challenges in different contexts but, as I say, we do not keep separate records. The analysis we make of casualties is in the broader context of political developments more broadly, including on the terrorism side.

Senator BROWN—When it comes to the transfer of the government, what input is Australia having there to ensure that there is in fact a complete transfer of authority to the forthcoming government as against the public record where such things as external affairs, the economy and even the making of laws may not be within the capability of the incoming appointed government at least until the period of an elected government next year?

Mr Quinn—That is quite a big question. To be brief, I think our policies are guided by two principles. One is Iraqisation. Iraq belongs to the Iraqis so from the beginning our civilian advisers in the CPA have sought to strengthen the capacity of Iraqis to take back their responsibilities. Our team in agriculture worked very hard on the agriculture side. We have a senior adviser in planning. We had no blueprints to impose and we were very keen to establish Iraqi capabilities in those areas. From the beginning we have been very keen to shift responsibility back as quickly as possible, and the government has made a number of statements underlining that point.

In terms of the prerogatives of the interim government, as you know the government was announced last night, which is a very important step forward. The challenge is that the government is representative but not elected. A number of forces within Iraq have made plain—including Ayatollah Sistani, the influential Shiah cleric—that this should be a caretaker government; it should not take dramatic decisions that bind the future of Iraq. So we have to respect Iraqi views on that score. The Security Council resolutions make the point that the sovereignty is already vested in the governing council. As Ambassador Greenstock said, it is a shift in authority on 30 June. We are very pleased that the interim government is moving forward now that the governing council is dissolved, but clearly in our view there is a need to give the interim government sufficient authority to do its work—pass budgets and negotiate on issues like debt. It is important that it has enough horsepower to do its job. We have to be respectful of Iraqi concerns that it is not an elected government and it therefore needs to tread carefully. Elections are scheduled in January 2005 and that is the most important next milestone. One important job of the caretaker government is to prepare for elections.

Senator FERGUSON—Mr Quinn, was I right when I heard you say in response to a question from Senator Brown that you could not quantify the number of casualties there had been?

Mr Quinn—We make no independent assessment. There is a lot of information available from the CPA. The military commanders brief regularly on casualties figures, and I think they

are an accurate assessment of the current state of play. So we make no independent assessment of casualties.

Senator FERGUSON—Could you say with some certainty that in fact the number of casualties in Iraq is somewhat less than the 500,000 that Senator Brown suggested there might be prior to the commencement of the military conflict?

Mr Quinn—500,000 is a very big figure. It would be much less than that, I would think.

Senator FERGUSON—You can say with certainty that it is much less than that?

Mr Quinn—Yes. I do not have a figure; I would have to check.

Senator FERGUSON—In relation to the Red Cross and Senator Brown's urging of the foreign minister to ask for a copy of the report of the Red Cross on the state of these prisoners: is it a fact that over the past probably 50 years the Red Cross has been able to gain access to prisons in a number of countries purely on the basis of the fact that their reports will not be made public?

Mr Quinn—That is right, Senator.

Senator FERGUSON—If there was pressure on the Red Cross to make public their reports, wouldn't it endanger the opportunity for them to go into some countries that are prepared to let them in on the basis that their reports are confidential if the reports were made public—that is, they may not be allowed to go in?

Mr Quinn—That is my understanding.

Senator FERGUSON—So the request of Senator Brown to seek public—

Senator BROWN—I did not make any such request.

Senator FERGUSON—You asked the foreign minister to see whether or not reports could be made available to him when in fact the Red Cross is investigating prisons that are under the control of the United States.

Senator BROWN—That is correct.

Senator FERGUSON—You asked whether the Australian foreign minister could receive information when in fact the Red Cross goes into these places on the understanding that the report will be given to the people who are responsible for those prisons and the control of them.

Mr Quinn—That is right. Perhaps I could quote the President of the ICRC, who actually told our ambassador a couple of days ago, on 26 May, that the ICRC reports are passed to the detaining powers—in this case the US and the United Kingdom—in confidence and are not provided to any other person or government. This is standard practice. So we have had that message confirmed from the President of the ICRC quite recently.

Senator FERGUSON—So what Senator Brown is really asking, when asking for us or the foreign minister to be supplied with those reports, is in fact undermining some of that confidence that is placed in the Red Cross and the undertakings that they give that their reports will not be made public?

Mr Quinn—That is your interpretation. I have presented the ICRC position.

Senator FERGUSON—I have listened to a lot of Senator Brown's interpretations today. I thought I might just throw in one of my own.

Senator Hill—I think that clearly could be argued.

Senator FERGUSON—Thank you, Minister.

Senator BROWN—Well done, Senator Ferguson.

Senator FAULKNER—On a matter that was raised previously, could you make clear, please, Mr Quinn, when the Department of the Prime Minister and Cabinet joined the legal watch group.

Mr Quinn—My understanding is that they came to the most recent meeting, which was on 17 May. I would have to check if they were involved in previous discussions. I am not sure that they were.

Senator FAULKNER—Why was the initiative of Prime Minister and Cabinet joining the legal watch group taken?

Mr Quinn—Again, I cannot speak for the Department of the Prime Minister and Cabinet. I think because of the nature of the discussion we were having, about transitional legal architecture, there was a sense that this was an issue of great moment which required their involvement. There was a sense that the early discussions had been more preparatory, but as the 30 June transition deadline approached the urgency of trying to resolve some of these legal questions became more intense. But I cannot speak for PM&C. As I said before, they joined the list of sit rep recipients in late March, I think for the same reason—that the legal reasons were becoming more pressing and more germane as 30 June approached. But I cannot speak for—

Senator FAULKNER—I appreciate you cannot speak for the Department of the Prime Minister and Cabinet, but perhaps you could tell us on whose initiative Prime Minister and Cabinet joined the legal watch group. Who took the initiative? Did the PM&C take it or did you take it?

Mr Quinn—I cannot recall. It may have been that we made the point in a meeting that this meeting of the Iraq Task Force was taking place. It may have been that we contacted PM&C to make sure they were in the loop, given the importance of the events. I would have to check that. I will have to take that on notice.

Senator FAULKNER—I would appreciate it. Who represents PM&C at the legal watch group?

Mr Quinn—I would have to check the individual officer concerned. There are a few different officers who work on Iraq in PM&C. I would have to check that.

Senator FAULKNER—Have any other departments or agencies joined the legal watch group? You told us of the main membership, being Defence, A-G's and your own department. Now added to that, of course, is PM&C. Are there any other agencies or departments?

Mr Quinn—On reflection, I recollect that we may have had an AFP officer at that meeting on the 17th, because there were issues relating to deployments of the AFP, to police training. I would have to check but I think that is right. I cannot recall exactly who attended the legal

watch group meetings during the major combat phase of operations. I cannot imagine which other departments might have been there. We would need to check on that. It was in the earlier days. I was not involved in those processes at that stage.

Senator FAULKNER—You might take that on notice for the earlier days, but my questions are really going to any recent additions.

Mr Quinn—I think only the AFP and PM&C, more recently. They are the two that I can recall.

Senator FAULKNER—But you do not know whose initiative it was to bring PM&C along?

Mr Quinn—I suspect we may have contacted them to say, ‘You may want to be involved given the issues are germane,’ but I would have to check.

Senator FAULKNER—We have dealt with some reporting into the Australian Representative Office in Baghdad. What about reporting out of the ARO to DFAT? How is that undertaken on a regular basis? I assume part of it is cable traffic and the like. You might just outline that for the committee’s benefit, please.

Mr Quinn—The post operates in that conventional way. To one degree there are cable reports that come through. There are of course emails on less important subjects but, having checked the record, as I have said before, the main channel of reporting on this particular issue was the sit reps from the ADF legal colleague in the CPA.

Senator FAULKNER—I believe we have gone through all of those, haven’t we? You can confirm that, can you?

Mr Quinn—That is right.

Senator FAULKNER—At least everyone you are aware of.

Mr Quinn—That is right. And I should just add that, because of the constraints on communications, the reporting is less generous than in other posts. It is quite a chore to report classified material. The post reports on priority topics but it does not try to cover the field. The assumption is that if matters are on the public record—I mentioned the Amnesty report, for example—we would not be expecting the post to conjure up a report on that subject because they really are constrained.

Senator FAULKNER—You have mentioned sit reps, and we have gone through all of those. You mentioned the normal cable traffic and you mentioned emails. Is there any other type of reporting out of the Australian Representative Office in Baghdad that you might draw to our attention for a complete picture?

Mr Quinn—The only other point I would make is that we try to stay in pretty regular contact by telephone. It is a tough job and we would have some contact with the post almost daily. The telephone contact is quite intensive.

Senator FAULKNER—In relation to cable traffic and emails, have you in the processes of trying to establish what occurred in relation to these issues we have been canvassing: the ICRC and other human rights NGO reports, the issue of prisoner interrogation techniques and processes, and the broader issue of mistreatment of Iraqi POWs, including the issue of serious

abuse? Have you checked the cable reports, the cable traffic and emails in relation to those matters? Not you personally but has the department done a thorough check of those?

Mr Quinn—Yes, we have checked on the cable traffic side and we have also asked the post to confirm their knowledge. As I said before, they have confirmed that the channel of reporting was the sit reps. I think I explained earlier they had no approaches from the ICRC on the subject and there is no separate channel of reporting on the subject that we are aware of.

Senator ROBERT RAY—That answer goes to the treatment of prisoners and all related matters. What about information that was derived from prisoners—was that sent back by email or cable? You can exclude from my question anything obtained by people that we cannot name for legislative reasons. I think you understand the subtlety of that part of the question but, outside that, were we getting a product out of these prisons—intelligence information et cetera and was that reported back?

Mr Quinn—I have seen no raw reporting back. Obviously, as you mentioned, intelligence agencies have many sources and one would be unwise to assume that there would be input, but that is the only angle I can think of. We have received no raw intelligence or raw information.

Senator ROBERT RAY—Nothing out of the Representative Office?

Mr Quinn—Absolutely not.

Senator ROBERT RAY—It might have sparked some interest and I would have wondered how they were obtaining that information but if we did not receive any then we can rule out that line of inquiry. Thank you.

Senator FAULKNER—Has there been any mention of these issues that I outlined in cable traffic?

Mr Quinn—Not that we have ascertained. We have done a check from cable traffic and we cannot find any reference. We will obviously double-check and triple-check but the first check indicates nothing.

Senator FAULKNER—Have there been any of these matters raised in email traffic?

Mr Quinn—Not that we are aware of.

Senator FAULKNER—But you have done a check?

Mr Quinn—We have done an initial check. We would have to do a thorough check. There are a lot of emails coming and going on all sorts of issues. The post has indicated to us there is nothing else they are aware of at that end. We would need to do a thorough check at this end but, as far as I know, there is nothing through that channel.

Senator FAULKNER—Have we been able to nail down precisely—Senator Brown was canvassing this issue in part—if and when the February report of the ICRC came into the possession of the department?

Mr Quinn—As I said before, we did not get a copy of the report. We did not pursue it for the reasons we have elaborated. When this issue broke, when we became aware of the photographs and the other issues, we were obviously very keen to see what was in that report.

We secured a copy indirectly, if I can say that, not from the ICRC, and almost immediately it was on the web site. The ICRC was adamant that they would not give us a copy of the report.

Senator ROBERT RAY—But you are entitled to get a copy of the report by other means.

Mr Quinn—We felt we needed to know what was in the report because we had not seen it; we had no knowledge of it. So we thought that, in terms of doing our job, it was important to—

Senator ROBERT RAY—Don't get sensitive; this is a matter of praise that you obtained a copy.

Mr Quinn—I feel a bit guilty, Senator, because we should not really have a copy.

Senator FAULKNER—I wouldn't feel too guilty, if I were you, Mr Quinn. Everyone in the world seems to have a copy. If I can get a copy, it really is very widely available. Are you able to give me a precise date as to when the department pulled that copy off the web site?

Mr Quinn—I might have to take that on notice. It was after the scandal of the photographs erupted. I would guess it was some time in April but I would have to check.

Senator FAULKNER—How was it drawn to your attention that it was on the web site?

Mr Quinn—I cannot recall, Senator. I did not chase it myself so I would have to check that. When there was press coverage of the document, presumably there was access to the document and therefore we realised it was on a web site.

Senator FAULKNER—This report having been obtained, however it was obtained by the department, was it then the subject of briefing to the minister? In other words did you brief on the contents of the report?

Mr Quinn—Not in a formal way, Senator. We gave the minister's office a synopsis but of course they had the document already from the web site, so it was in the public domain at that stage. Our copy was received pretty much as the document was put on the web site. We did not do an analysis of the document.

Senator CHRIS EVANS—Do you mean that you assumed the minister had a copy?

Mr Quinn—The minister's office follows issues closely, too. I do not know whether they had a copy or not.

Senator FAULKNER—What happened in the department once this report was obtained? There is no criticism of you for obtaining the report; everyone got hold of it. Don't interpret my question as being critical because it is not. What happened internally in the department? Was there an analysis of it and follow-up action?

Mr Quinn—There was no specific action. We had a brief telephone conversation with the minister's office saying, 'Here are some of the key points in the document that occurred to us,' but there was no formal analysis done. The issue was in the public domain. This was another element in the overall public discussion about detainees and those issues. When we had this discussion in the legal watch group, it was obviously an element in the equation that the ICRC report was public but there was no specific action taken on the report as such.

Senator FAULKNER—Sorry, what were you saying was the role of the minister's office on the contents of the report?

Mr Quinn—I recall we had a brief telephone conversation saying, 'Here are a few elements in the report that struck us as being of interest.' But I cannot recall the detail of that.

Senator FAULKNER—Are you able to identify what those elements are?

Mr Quinn—Again, I am a bit reluctant to go into detail about the report. I suppose what struck me when I read it was the focus on process. The section on Abu Ghraib, for example, dealt in quite some detail with issues in relation to overcrowding and processing of prisoners. That is my recollection. There were a lot of process questions in the report covering the usual issues one would expect the ICRC to cover, the whole spectrum from food to security of the personnel, accommodation—the whole range of housekeeping and process issues that the ICRC gets involved with. As you know, Senator, there was also some reference to detention and those more serious issues.

Senator FAULKNER—Did you see the report in last week's *Bulletin* which said that a 'diplomatic source' reportedly said the ICRC report was the subject of a cable to Canberra?

Mr Quinn—I did not see that report.

Senator FAULKNER—Could anyone help us with that? I thought the department would keep a very close eye on what was reported in the *Bulletin*.

Mr Chester—It sounds familiar, but I will try to check.

Senator FAULKNER—I do not have a page number, I am afraid, just a recollection.

Senator Hill—We do not know whether that report was in the DFAT clips or not.

Senator FAULKNER—You do not know if it was there?

Mr Chester—That is right; I am not sure whether that *Bulletin* article was in our clips and was therefore read by us.

Senator CHRIS EVANS—Defence have been hogging the *Bulletin* a bit lately; it has been hard for DFAT get a run.

Mr Chester—It is not a magazine I read regularly.

Senator ROBERT RAY—That is to your credit.

Senator FAULKNER—Whether you saw the article or not is, in one sense, neither here nor there. Can you shed any light on the substance of the suggestion?

Mr Quinn—I cannot. Whether there was some discussion about getting access to the report I would have to double-check. I do not recall any request to get the report formally, but I will have to check that. In a sense it was academic, because the report was public.

Senator FAULKNER—Have you done a check of cable traffic more broadly than just cable traffic to and from the Australian Representative Office in Baghdad about these issues of prisoner interrogation abuses, NGO reports et cetera?

Mr Quinn—The focus has been on Baghdad and reporting from there. That is right.

Senator ROBERT RAY—How do you do that sort of search? Do you have an electronic way of being able to foreshorten that by putting in a couple of key words?

Mr Quinn—That is right.

Senator FAULKNER—Does that mean there has not been a search of other cable traffic and so this may not necessarily have been picked up?

Mr Quinn—That is right. I will have to check on the process—what happened exactly after the report appeared. I am not sure what discussions took place. I mentioned that our mission in Geneva had spoken to the head of the ICRC on 26 May. I am not sure of the context of that particular request—whether there was a request in relation to the February report, which we knew about, or the October report, which we had not heard about until it was revealed a couple of days ago. That was news to us—the working paper from October. I will have to check that.

Senator FAULKNER—What is the general responsibility of the Australian Representative Office in Baghdad? What is the broad role and function of the ARO there?

Mr Quinn—Clearly, the function of the ARO is to be our diplomatic office in Baghdad. As you know, we cannot have a formal embassy, given that there is no formal government in Iraq. We are hoping that we can transform the ARO into an embassy as soon as practicable with the transition on 30 June. The functions of the embassy basically are to represent our interests in Iraq, which include engaging with Iraqi officials, interim ministers and governing council members. Obviously, the interim government will be a priority for us in terms of connecting with those people. We would like to do more with the Iraqi business community but there are constraints on travel and of course the private sector in Iraq has been pretty knocked about by 30 years of central planning. So part of the ARO's job is to interact with Iraqis to know who is who, who the key players are, and to promote our interests, particularly on the economic side of the shop.

The second role the ARO play is to interact with the CPA. Clearly, we need to understand what is happening within those processes, so there is regular contact with a range of areas of the CPA, and the post reports on those connections. I guess a subset of that is that the post keeps in discussion with our advisers in the CPA, in agriculture or in the planning ministry about developments and reports back on those questions, including on the legal issues. As I have said before, there has been some dialogue on the architecture of the legal framework in Iraq into the future. So the post has a range of functions. Security, of course, is a major preoccupation. A lot of time is spent trying to minimise risk. The post cannot operate in the free and easy way that most posts can, so their operations are, as I say, very constrained.

Senator FAULKNER—Is the TLO seen as integrated into the team there at the ARO?

Mr Quinn—Very much, as I said this morning, an integral member of the team, as a defence attache would be in an ordinary embassy.

Senator FAULKNER—But that role does have some separate responsibilities, doesn't it, to the broader responsibilities of the office.

Mr Quinn—Again I would defer to Defence on that. There are particular housekeeping issues, say, in relation to talking to our military headquarters or aspects, I suppose, of the

security detachment, more technical aspects, that the TLO would be involved with, but I think it is a fairly classical defence attache arrangement, with the caveat that the circumstances are very unusual in Baghdad.

Senator FAULKNER—Is the ICRC still based in Geneva? They were anyway.

Mr Quinn—That is right.

Senator FAULKNER—It would be clever to be doing a check of cable traffic to and from Geneva as well, wouldn't it?

Mr Quinn—We can check that quite easily.

Senator FAULKNER—Have you done that?

Mr Quinn—I have not. We can follow up on your question.

Senator FAULKNER—So we have not checked cable traffic on these ICRC reports to and from Geneva?

Mr Quinn—We have not, but I cannot recollect any substantive discussion. The only question in my mind is whether there was some formal request for the report, but we would have to check on that.

Senator FAULKNER—What about the relationship between the Australian Representative Office and CJTF7—how does that work?

Mr Quinn—Again, I guess the main conduit would be the TLO if there were particular issues. I know that the head of mission does visit the headquarters at Camp Victory from time to time and has a very good working relationship with the commander of the Middle East area of operations, so it is very important that those two colleagues know each other and talk to each other, but that is from time to time. The practicalities of getting to the airport are an issue. It is not a leisurely drive; it is a serious undertaking. We do not do this lightly; it is essential travel. There is a very good working relationship between the two.

Senator FAULKNER—But that is handled effectively through the TLO?

Mr Quinn—In terms of day-to-day issues, but of course the head of mission can talk directly to the commander as he sees fit. I am sorry, Senator, I should have clarified: this is the commander of the Australian headquarters. I do apologise. The CJTF7 is the US military headquarters. I am talking about the Australian military commander.

Senator FAULKNER—Is it JTF633?

Mr Quinn—That is right.

Senator FAULKNER—If we have another few days on this we will not be speaking any English at all. We will spend the whole day talking in acronyms. Let us take your answer as read for JTF633. That is the easy way of doing it and I think the record can show that. What about CJTF7, coalition headquarters?

Mr Quinn—Again I would have to take advice from the head of mission, but my recollection is that most of the contact with CJTF7 would be through the military chain. I know that the head of mission has attended meetings with senior Australian military visitors and senior officers, so he would have that role, but he would not generally be in a position to

talk to people like General Sanchez off his own bat. If there is a senior visitor—a minister or a senior military officer—he may go along, but there would not be regular contact with the coalition military headquarters in that context.

Senator FAULKNER—Have you got any DFAT officers working in the CPA?

Mr Quinn—Not at the moment. We had a colleague who finished up in March. He spent a year working with ORHA and then CPA. He was replaced by an AusAID colleague.

Senator FAULKNER—So at this stage all the DFAT personnel are in the ARO in Baghdad?

Mr Quinn—That is right.

Senator CHRIS EVANS—What was the function of the former DFAT officer in the CPA?

Mr Quinn—He was a flexible and versatile individual. He started off basically assisting General Garner set up a secretariat within ORHA, the predecessor of the CPA. When General Garner was replaced he found a new niche, which was basically coordination of international donor assistance to Iraq, working in the planning ministry. That branched out into an enterprise called the Council for International Coordination, which became the donor coordination committee. He became very heavily involved in preparations for the Madrid donors conference and follow-through, so his track was very much on the civilian side.

Senator CHRIS EVANS—So he is unlikely to have anything to do with the liaison with the ICRC, for instance?

Mr Quinn—That is right.

Senator FAULKNER—Are there any officers in the ARO in Baghdad who are now pretty well dedicated to dealing with these issues that have arisen out of the ICRC report and the allegations of serious abuse and mistreatment of prisoners? I assume this has taken a bit of time over there now. I just wondered if you have actually tasked an officer, or more than one officer, to be coordinating on this issue.

Mr Quinn—The short answer is no. It is a very small post. They are very busy with all sorts of other issues. As I mentioned before, the chain of reporting was through the CPA legal adviser's sit reps. I think the assumption is that action on this topic is being pursued through other channels. The ARO are not really making a major contribution on this question. They have many other preoccupations. It is a micropost. It is only a few individuals. They obviously are keeping an eye on the issue but there is no formal tasking.

Senator FAULKNER—What you mean by a micropost? That just comes down to numbers of individuals, I assume.

Mr Quinn—That is right. It is a very small post.

Senator FAULKNER—Are you able to say the number of individuals now?

Mr Quinn—I can. The numbers are larger because of a range of unusual local conditions. For example, we have three administrative officers because we have no local staff there, so they are not doing policy work. We have a property officer who is, I think, there now or about to arrive, working on our new chancery project. So there are six policy officers including the

head of mission—I think that is right, from recollection—including the TLO. So there are five officers including the head of mission.

Senator FAULKNER—Does that include the admin officers and the property officers, or are they additional to the five?

Mr Quinn—They are additional to the five.

Senator FAULKNER—So it is nine plus one—would that be right? Nine plus the TLO?

Mr Quinn—That is right. I am sorry; I take one away. There is also an Austrade colleague who has recently joined. So there are two other agencies, one Austrade colleague and the TLO. That is eight. Of those eight, there are three administrative officers. That gets down to five, one of whom is the head of mission. So that is four other officers.

Senator FAULKNER—Okay. But that fits your definition of a micropost, which is fine. I just was not clear what you meant.

Mr Quinn—That is right, with the additional point that, given the security constraints, a day in the life of the ARO is not a standard posting day. There are a lot of practical problems of getting around. They just cannot do the usual workload, given the circumstances there.

Senator FAULKNER—Did the status of the Australian Representative Office change as a result of the passage of UN Security Council resolution 1483 in May 2003?

Mr Quinn—I do not think so formally. Again, I would take advice from my legal colleagues. But, if I could just elaborate, my understanding is that the Vienna conventions in a way are suspended when there is no sovereign government in Iraq. This is why we use the terminology 'ARO'. Our view is that when the new interim government takes over, the Vienna convention will be reactivated in a way. But, as I say, my legal colleagues may have a more sophisticated—

Senator FAULKNER—Just before we move to Mr French, did you mention someone with a trade responsibility there?

Mr Quinn—That is right.

Senator FAULKNER—You may not be able to but could you very briefly outline the functions of that official?

Mr Quinn—Again, the circumstances in Baghdad are very unusual.

Senator FAULKNER—That is why I asked.

Mr Quinn—This is not your usual Australian trade commissioner. Quite clearly, as I mentioned earlier, we have important commercial interests in Iraq. The post has spent quite a lot of time on those issues. We have agreed with Austrade that it is appropriate to have an officer on deck. A lot of his work will now be related to what is called the program management office, which is the office involved in supervising the expenditure of this \$18 billion in US supplemental funding. We are obviously interested in opportunities for subcontracts from that particular area. That is one area where our Austrade colleague will be focusing. Clearly this officer will also be trying to understand better the private sector in Iraq which, as I say, is quite knocked around after 30 years of central planning but which is booming at a micro level. SMEs are really moving ahead very quickly. Iraqis are buying a lot

of goods. The economy has probably recovered 30 per cent over the last year. So there is opportunity there but there is also risk and challenge.

Senator FAULKNER—I appreciate that information, which is helpful, and I am sure the committee does too. Mr French was going to respond to my question about the significance or otherwise in relation to the status of the Australian Representative Office on the passage of UN Security Council resolution 1483.

Dr French—The status of the Australian Representative Office is not that of an embassy, as has been stated before. The Vienna Convention on Diplomatic Relations is currently not applicable to the Australian Representative Office or other representative offices of countries represented in Iraq at the moment because of the absence of a formally constituted government exercising all the trappings of government. It is anticipated that, pursuant to Security Council resolution 1511 providing for the establishment of the interim Iraqi government, that government will be seen as a government that has the capacity to, inter alia, exercise the rights and obligations foreseen under the Vienna Convention on Diplomatic Relations. Therefore, after 30 June, the status of representative offices in Iraq, including the Australian Representative Office, may be transformed into that of an embassy.

Senator FAULKNER—Thank you, that is helpful and that is quite clear about what might happen in the future. I am still not entirely certain about what, if anything, happened to its status on the passage of 1483. Did it change at all? I think you are saying no. That was my interpretation of your answer, but correct me if I am wrong.

Mr Quinn—I do not think so, Senator; I think the status quo applied.

Senator FAULKNER—By the government's own admission, Australia was an occupying power in the period from March to May 2003. What was the ARO's status then? It wasn't any different?

Mr Quinn—I think not. We took the judgment that we needed our own separate diplomatic presence and we thought that the appropriate title was the Australian Representative Office. As you know, the United States did not have an embassy. The British have a sort of British interests section, so they took a different approach. But I do not think that issue really changed the status of the post at all. Resolution 1483, as you know, Senator, clarified the two occupying powers, so the situation was clear at that point.

Senator FAULKNER—Are you able to assist the committee on what the broad processes are in relation to the transmission of information from Australian based CPA personnel to the Australian government?

Mr Quinn—Yes. It is a bit of a complicated story. The officers are in line positions so their first responsibility is to do their job. They report fairly extensively by email when they can. Some report more than others. As you know, AusAID is funding the civilian advisers, apart from the two Defence civilians working in the CPA. The Defence civilians in the CPA provide reporting as attachments to the TLO's regular sit reps, so that information comes through the Defence network. The other emails come either directly from the advisers concerned or through AusAID's subcontractor. AusAID has subcontracted out management of the civilian advisers to a firm called SAGRIC. So it varies depending on the issue. If there is something

very important or pressing, we may ask the ARO staff to go and talk to a particular CPA adviser and provide a cabled report. So there are different ways the information comes back.

Senator FAULKNER—Are such personnel required to report on matters of interest to the Australian government?

Mr Quinn—It is a question of judgment. As I mentioned before, the key point is that our contribution is meaningful, and it was quite clear to us from early on that the CPA did not want liaison officers, they wanted officers who could deliver and contribute, and I think it is fair to say that we have had excellent contributions from a range of officers. Their prime responsibility is to do their line job, but as and when required we do expect them to draw issues to our attention.

Senator FAULKNER—Does the ARO represent the Australian government to the coalition authority?

Mr Quinn—Absolutely, and that is an important distinction. There may be an issue where the line adviser feels some awkwardness. They are doing a line job, they do not want to be lobbying for an Australian position and that is fair enough. The ARO is the Australian lobbyist, if you can put it in those crude terms, and they would go in and make representations.

Senator FAULKNER—What sort of daily dealings would the ARO have with the CPA?

Mr Quinn—Regular.

Senator FAULKNER—That is helpful. Can you be any more fulsome than ‘regular’?

Mr Quinn—I could add, from my own visits to Baghdad, I would think normally once a day someone from the ARO would be talking to the CPA on different issues, depending on availability. A lot of the CPA staff travel. A lot of the contact is informal, but there is regular contact.

Senator FAULKNER—So you would have ARO consultation with Australian members of the Coalition Provisional Authority on both a formal and an informal basis?

Mr Quinn—That is right, but pretty informal. It is regular contact just to keep an eye on developments and to talk to colleagues.

Senator FAULKNER—What sorts of matters are we talking about here?

Mr Quinn—We talk for example about the planning adviser. He was heavily involved in the recent Doha donors meeting, so we were very interested to know that preparations for that meeting were progressing. There are issues about the food security issue and food supplies. We have an adviser working with the trade ministry on how those processes are running, so there is a range of issues. We have also talked on occasions to non-Australian CPA advisers. Areas like the oil sector we are interested in from a commercial point of view, so there has been a regular dialogue with the CPA oil team. There are no Australians there at the moment. We had an adviser last year. So a whole range of issues would be canvassed.

Senator FAULKNER—Are these sorts of interactions reported back to Canberra?

Mr Quinn—Depending on the transaction and the issues. Sometimes, if there is nothing particularly new—the post is constrained and we do not expect blow-by-blow reporting—but if significant issues arise, we are alerted.

Senator FAULKNER—Is DFAT involved in debriefing those who are working at the CPA when they return to Australia?

Mr Quinn—Yes, we try as hard as we can to talk to colleagues who return. Iraqis a mosaic and colleagues who have been in the field are very helpful to us in terms of information gathering. Our strike rate is not 100 per cent. We do miss some colleagues who return but we do try to talk to colleagues on return if we can.

Senator FAULKNER—So you have checked all those debrief reports for the issues that we have been talking about earlier today of abuse allegations and interrogation techniques, the ICRC report and so forth?

Mr Quinn—I can say on the civilian side we have not done a check on that, but I cannot imagine any way in which those issues would have crossed their desks. We can take your question on notice and check through all of those reports, but they are very much technical, agricultural, financial or donor coordination reports. One would not expect issues relating to prisons to come out of those discussions.

Senator FAULKNER—So they have not been checked? That is just a bit of a grand assumption?

Mr Quinn—I tried as hard as I could to go to those debriefs or see records of the debriefs and I cannot recollect any reference to that issue, but we can double-check.

Senator ROBERT RAY—Can we return to that cable that was reported in the *Bulletin*. Have we been able to get any further information on that?

Mr Chester—I have seen the article and I do now recall seeing the article last week in our press cuttings.

Senator ROBERT RAY—But we do not know what cable it refers to?

Mr Chester—No.

Senator ROBERT RAY—We do not know who the diplomatic source is?

Mr Chester—No.

Senator ROBERT RAY—You have not called in the AFP to track down the leaker again, have you?

Mr Chester—No.

Senator ROBERT RAY—We know who it is not because several people are suspended, so cannot be them.

Senator FAULKNER—But has any checking being done at all as a result of that *Bulletin* article?

Mr Quinn—I had not heard of it until you mentioned it. I think we are checking now to see what correspondence was entered into with Geneva in terms of ICRC reports.

Senator ROBERT RAY—You suspect that is maybe what it is referring to but do not quite know yet?

Mr Quinn—I am not sure. As I said before, we had no knowledge of this October working paper. Maybe there was a request in relation to that document. We had not seen that. Whether it is the February report, I am not sure. In a sense, it would be rather odd to ask for the February report that is, in a sense, on the table. But we are checking on that.

Senator ROBERT RAY—Have you had reporting in from other Middle East countries, Islamic countries and, in particular, maybe Indonesia on what the effect—in the view of those countries and the populace of those countries—of the coalition of the willing now is, subsequent to the publication of those photos and the disclosure of details of mistreatment of prisoners? Are you getting cables in and doing an assessment as to what impact it has had in the Islamic world?

Mr Quinn—I would have to defer to my colleagues who deal with the Middle East more broadly. My brief is Iraq and that is a full-time job. I do not recollect any recent cables. It is all in the media in terms of regional reactions. There certainly has been a response in different parts of the region on this subject, but I would have to take that question on notice in terms of which particular countries had indicated particular responses.

Senator ROBERT RAY—I will ask it more broadly of the department; I was not particularising it to you. Have we got any knowledge of—

Mr Chester—I am not aware of any specific cables coming in, but I would not rule it out without checking through the system.

Senator ROBERT RAY—If you are not aware of it, my next question is probably redundant. You have not developed advice or strategies around this if you are not quite yet aware of whether you have received information on it.

Mr Quinn—I guess I would say that the government's response is robust: that the investigation should proceed and prosecution should proceed. Due process has been followed and the ICRC is in Iraq exposing these particular issues and challenges. I think the government has made very clear its concern about these incidents. There is not much we can do in terms of public opinion in the wider Arab world on this subject beyond just straightening out this issue. That is really a matter for the two responsible governments to move quickly on. As I said before, we have done our modest bit in providing legal advisers who can try to make sure these processes run properly.

Senator ROBERT RAY—I am just a bit concerned about the reaction in Indonesia, where it is very easy at the moment to connect Australia with any problem around the globe—mostly unfairly, I might add; in fact, inevitably unfairly. It seems to get easy currency there. Even though it is not a related matter, the fact that Australia is cooperating in missile theatre defence has been totally distorted there. People just do not understand. It races through the subculture, if you like, and we do not seem to be able to influence it in any way. I would have thought that this was very similar.

Mr Quinn—I can defer to my colleague who handles Indonesia. As the minister has indicated, Indonesia has been very focused on internal political processes—elections. My

understanding is that the issue has not resonated in a huge way in Indonesia, but I would have to take advice from the relevant division head in that area. My understanding is that it has not been a huge issue in Indonesia, but I would have to check that.

Mr Chester—I am fairly confident that there have been no representations and or no issue raised with us by Indonesia.

Senator ROBERT RAY—That was not really the question, Mr Chester. I was worried not so much with what the official government reaction would be. On a whole range of issues that has been good in recent months. It is the way it has been able to be distorted amongst the populace, without us getting any sort of countervailing view over—even to the point where I think it has annoyed a lot of Indonesian authorities. People are expressing these views based on virtually nothing, but it can take off from these sorts of issues.

Mr Quinn—Sorry to interrupt you, Senator Ray. If I could clarify two small procedural things that were discussed before. I think I miscounted the numbers at the ARO. I think there are 10 officers—OPO, Austrade and the TLO and seven other officers from DFAT. Of those, three are admin and four are policy. So the numbers are four policy officers, including the head of mission. That is quite a small group.

Senator ROBERT RAY—Do you have any locally engaged staff there at the moment?

Mr Quinn—There is a sort of driver-messenger, but because of security concerns we really cannot employ local staff. That is why the admin group is large. I think Senator Faulkner asked about when the minister's office received a copy of the report. We provided a copy of the report on 10 May—obviously when we got hold of the document, which was around the time it appeared on the web site. We did provide the minister's office with a copy of the document. My apologies.

Senator FAULKNER—Can I ask you now about what has been described as the October and November 2003 working party reports of the ICRC. I think, Mr Quinn, you would know of the reports I am referring to?

Mr Quinn—Yes.

Senator FAULKNER—Can you perhaps give me a bit of a status report as to the background to the Department of Foreign Affairs and Trade's knowledge of these working papers please?

Mr Quinn—I can be very brief. We had no knowledge whatsoever of these documents until a few days ago, when their existence became public.

Senator FAULKNER—When did you first get knowledge of those working papers?

Mr Quinn—I think when there was a media report of the activities of Major O'Kane, again of which we had no knowledge beforehand. That was late last week, I think. Of course, in estimates in the last couple of days there has been discussion about this subject—the existence of working papers—but we had no knowledge of this documentation before then.

Senator FAULKNER—Have any attempts since then been made to try and establish the veracity of those reports by the department?

Mr Quinn—Excuse me—the veracity of which reports?

Senator FAULKNER—The working papers.

Mr Quinn—That they existed or that they—

Senator FAULKNER—The veracity of the media reports or other reports about the working papers. In other words, having just a few days ago found out about this, has the department gone into overdrive to try and work out what the basis of these claims was, whether the working papers existed and so forth?

Mr Quinn—No. My understanding is—and I would have to check this—that there was a request over the weekend, I think from PM&C quite possibly, for this working paper to be made available to our posts in both Washington and London. That is my understanding, but I am not sure what the outcome of that exercise was. You have asked before about the question of Geneva. I am not sure what request has been made to Geneva. I think there has been a request to Geneva as well to see if this document could be made available. But I have not seen the document.

Senator FAULKNER—Do the requests for Washington and London follow the public statements of the Prime Minister?

Mr Quinn—This was over the weekend. I am not sure of the detail of when those requests were made last weekend.

Senator FAULKNER—Nevertheless, it has been followed through by Foreign Affairs? The requests have been made?

Mr Chester—Senator, I think you are asking whether we, through the DFAT system, have asked the US to—

Senator FAULKNER—Yes.

Mr Quinn—Not that I am aware of in terms of further follow-up. The posts are doing what they have been asked to do, but I do not know what the outcome of those discussions is.

Senator FAULKNER—Who would ask the posts what to do? If the posts had been asked to do something, you would necessarily know, wouldn't you?

Mr Quinn—Whether the action has been taken? Not necessarily. They may be still—

Senator FAULKNER—You would know whether the request has gone in to the posts.

Senator Hill—Yes. He said that they had been.

Mr Quinn—That is my understanding.

Senator FAULKNER—And over the weekend—

Mr Quinn—Over the weekend—that is right.

Senator FAULKNER—I am just trying to see if we can get it clear; that is all. You have not had that confirmed or you cannot confirm it?

Mr Quinn—I cannot confirm the outcome of those inquiries. That is right.

Senator FAULKNER—You can confirm that the inquiries have been made.

Mr Quinn—That is the advice I received. That is right.

Senator Hill—Is that right? You can confirm that the posts have been asked.

Mr Quinn—That is right.

Senator Hill—But you cannot confirm what has happened thereafter?

Mr Quinn—That is right. I cannot confirm the outcome. We checked and we had advice from PM&C that requests were made over the weekend, but I do not have further detail.

Senator FAULKNER—But were these requests made by Foreign Affairs or were they made by PM&C? Who has done it?

Mr Quinn—Not by Foreign Affairs—I think from PM&C.

Senator FAULKNER—Have they been made direct to the posts by PM&C; is that how it works?

Mr Quinn—That is my understanding.

Senator FAULKNER—That is what I was just trying to clarify. So for its part are you saying to me that effectively the Department of Foreign Affairs and Trade has not made any attempts to obtain these working papers?

Mr Quinn—In a sense, the requests had been made already, so those requests were in with the US and the UK. The question I am not clear on is whether there has been any request to Geneva. I think there has been a request to Geneva as well but I would have to take advice on it. I am not sure what the latest is on that subject.

Senator FAULKNER—You were asked some questions a bit earlier in this estimates committee about the Amnesty International report. As I understand it, that report is entitled *Iraq: memorandum on concerns relating to law and order*. Did DFAT monitor the Amnesty press conference of 23 July 2003?

Mr Quinn—We have no record, as I mentioned this morning, of receiving the report and no record of attendance at that press conference. As I said this morning, I do not recollect the detail of the document; I only saw it quite recently. I have had a look at it. We have not received any request from Amnesty to take any specific action on this subject in relation to that report or any other. That is the story on the earlier report of 23 July. The issues raised in the report, as I mentioned this morning, are well and truly canvassed in a whole range of contexts over the last six months or so, so what is in that document is no surprise. But we have taken no specific action in response to that report.

Senator FAULKNER—I think I heard some of that evidence anyway a little earlier in this estimates committee hearing. I do not know how reliable the source is but the *Bulletin* magazine claimed that Amnesty International did pass copies of the report to the CPA for distribution to all member states. Do you recall reading that at least?

Mr Quinn—This is the report of 23 July 2003?

Senator FAULKNER—Yes.

Mr Quinn—I do not recall receiving a copy through the CPA, the ARO or any other source.

Senator FAULKNER—I want to be clear on this, rather than it being ‘recall’. You can be more definitive than that for us, can’t you? Either it was received or it was not. It is not a matter of whether it is recalled or not. There is always a difficulty with that use of language.

Mr Quinn—We have no record of receiving the report. We have checked our files. As I mentioned this morning, I can vaguely recollect a report but there were many issues happening at this time and the issues in the report are not surprising. I cannot recall any specific action or the specific report.

Senator FAULKNER—The only thing I wanted to check about this was the government response to it. My recollection was that Defence had indicated that DFAT was considering, if you like, a whole-of-government response to that report. Do you recall that evidence given at this committee when Defence was before the committee?

Mr Quinn—As I say, we had a few other dramas in the last couple of days, but one of my colleagues mentioned that this issue had been raised. Clearly, in terms of the 23 July report we did not receive that document that we are aware of. My understanding was that the Defence reference was presumably to the more recent correspondence that had come to the Prime Minister on 14 May, which contained a package of material from Amnesty. Again, my understanding is that the letter actually requests the government to respond on the issue of Afghanistan but does not actually request any action on Iraq. I can only surmise that Defence was suggesting that may be a whole-of-government response—

Senator FAULKNER—To that second report?

Mr Quinn—Yes, to the recent correspondence dated 14 May to the Prime Minister, that might be appropriate, but I would be puzzled if we were going to be responding to a report of July 2003.

Senator FAULKNER—My question goes to the more recent report. Do you know if you are coordinating a whole-of-government response to that second communication?

Mr Quinn—We are not actively doing that, but it would be a logical thing to do. The PM&C would draft a letter.

Senator FAULKNER—I understand that. My question is: are you actually doing it, effectively, at this stage?

Mr Quinn—Not yet. We would be guided by PM&C. Direction for a letter to the Prime Minister would come from PM&C, but we would be very happy to contribute and very keen to see a whole-of-government response.

Senator FAULKNER—No doubt that can be chased up at subsequent DFAT estimates, hopefully not by me. One thing I was keen to ask you about was the diplomatic impact of the prisoner mistreatment allegations in Iraq and your assessment of the impact on support for the coalition. I assume some effort internally has gone into this issue, because I imagine it would be something that would be central business for DFAT. Could you confirm that for me?

Mr Quinn—I make the obvious point that the United States and the United Kingdom in particular have underlined their distress and concern about these reports. As you saw, President Bush has announced the demolition of Abu Ghraib prison, so I think the coalition is absolutely alert to the complication this particular issue has created in terms of Iraqi views on

the coalition presence. I guess it is fair to say, though, that one could argue that Iraq is a tough place. The previous regime was a tough regime. I think there has been an impact, but we need to look at it in the context of Iraq. As I said before in response to Senator Brown, Iraqis chafe at occupation. They obviously want their country back again. I have been very struck on my visits at that sense of the wave of Iraqisation coming. I think this is an element in the equation of frustration but I would not necessarily overstate it in terms of the domestic repercussions within Iraq. Obviously it has repercussions in many countries in the Middle East more broadly and in Western countries. It is not helpful, obviously. Our view is that it is all the more important to press ahead with Iraqisation. The announcements last night are all the more significant. Certainly from where I sit the decision for the interim government to assume authority pretty much straightaway from the governing council is a good thing. We hope it will lend momentum to Iraqisation. In that regard one hopes that the impact can be mitigated by prompt action. But clearly some damage has been done—that is undeniable.

Senator FAULKNER—That is a coined word, is it—‘Iraqisation’?

Mr Quinn—It is a short version of saying ‘handing authority back to the Iraqis’. It is their country. We need to understand their processes, work with them, not impose solutions from outside—

Senator FAULKNER—I think I understand what it means, but it is new DFAT-speak, is it, or is it in common usage?

Mr Quinn—It is rather inelegant, I appreciate, but I think it sums up the issue.

Senator FAULKNER—I am not suggesting it is inelegant. I just wondered if it was a new coined DFAT word.

Senator Hill—He has conceded it is inelegant.

Senator FAULKNER—I was not making that point. I am not sure that it is inelegant. Anyway you have coined a new word, Mr Quinn. No doubt we will find it in future dictionaries. My question was more, I suppose, about process—what, if any, resources have you put in to try to make this assessment of what these horrific pictures, and all the mistreatment allegations, have meant in terms of support for the coalition in Iraq? Are resources going in from DFAT here to try and make these sorts of diplomatic assessments?

Mr Quinn—All I can say is that it is part of the overall matrix. It is a complication that nobody needed at this critical juncture. We have been very keen to make sure that due process is followed. The government has made very robust comments about the need for prosecution. As I say, I think the bigger-picture challenge is getting Iraq back into Iraqi hands. That imperative is all the more underlined by any negativity that has been generated by these egregious acts.

Senator ROBERT RAY—You did concede that some damage was done. With respect to lessons learnt—I understand that it is as much for Defence as it is for you—what about the use of contractors? A lot of this, it would be alleged, did not involve the regular US armed forces; it involved either deployed reservists through the National Guard or the use of contractors by the CIA for interrogation et cetera. We do not go down the same path here anywhere near as much, but have we learnt a lesson there? Has any material come through to

suggest that a lesson may be learnt as to how you, as a department, or as a whole-of-government approach, keep control of these operations without subletting them out to contractors who may not have the same standards?

Mr Quinn—All I could say from the DFAT perspective is that there has been a lot of international discussion about the use of contractors in the context of the Balkans, Afghanistan and Iraq. It is a big issue. The minister is better qualified to comment obviously from the Defence perspective. It is a reality that we need to be alert to. Part of the job of our CPA legal advisers has been to try to develop a sufficiently robust legal framework within Iraq to deal with private security firms in particular but with contractors generally. I guess there is an issue there but in terms of our arrangements, contractors can provide flexibility but of course accountability has to be there as well. So I take your point. But we have not really embarked on a major lessons learnt exercise to date.

Senator FAULKNER—As part of this assessment that we have been talking about in terms of impact on the coalition, has the department also looked at the impact of these prisoner mistreatment allegations, the expose with the photographs and the like on views of Australia in the broader Arab and Muslim world? It seems to me to be very important and I wondered whether that was part of it.

Senator ROBERT RAY—I have just informed Senator Faulkner that we have had a dialogue on that, so unless you have something fresh to add, we can move on.

Senator FAULKNER—I am very pleased to hear that.

Senator Hill—We had a dialogue on contractors yesterday, too.

Senator ROBERT RAY—Yes, but I am asking in the Foreign Affairs context. I did not want it to drift back into the Defence context.

Senator Hill—But the reservations that you were expressing in your questions were shared by Defence officials.

Senator FAULKNER—I apologise. I thought Senator Ray was asking about contractors.

Senator ROBERT RAY—No, we covered it earlier. I think we have explored it to its full depth.

Senator FAULKNER—Excellent. I look forward to reading the *Hansard* record. Let me ask, as I am sure the issue of impact in the Arab and Muslim world has been dealt with by Senator Ray half an hour ago, about this issue of occupying power status, which we did touch on. Are you able to give us some background on whether Australia, formally or informally, indicated to the US or the UK or to other members of the Security Council that it would not self-nominate as an occupying power? Can you bring me up to speed with that, please.

Mr Quinn—Briefly, I think I mentioned, maybe at the estimates session before last—this was a while ago, so bear with me—that the note that came from the British and the United States, the UN circular basically unilaterally saying they were the two occupying powers, was an issue we really had not been consulted on, so we did not lobby either way. There was a debate in Australia, as you know, and the resolution clarified it, but we did not proactively seek to influence that outcome. That is my recollection, but I would have to double-check. It was some time ago.

Senator FAULKNER—Can a country denominate itself as an occupying power?

Mr Quinn—I do not know, but we did not do anything of that sort. The note was circulated and the resolution was clearly naming those two countries. As you know, there was a debate—again, this is not my field—about occupying territory, and all those legal issues were canvassed. But 1483 then put the issue beyond doubt and clarified it. We had no active involvement. We were not on the Security Council in that decision.

Senator FAULKNER—Did Australia cease to be an occupying power in the view of the department with the passage of UN Security Council resolution 1483? Is that the key element?

Mr Quinn—I think that is right. It put the issue beyond any doubt, because there was a clear international legal enunciation through the Security Council. My colleague Dr French may elaborate.

Dr French—I could perhaps say that, as I think has already been mentioned briefly, until the passage of UN Security Council resolution 1483 on 22 May 2003 there was some uncertainty as to the status of Australia—whether it was or was not an occupying power. It goes to issues, for example, of the interpretation in particular of The Hague regulations of 1907, which go to issues of occupation, effective control of territory and matters of that nature. As of 22 May 2003, that question was answered by UN Security Council resolution 1483. In particular two preambular paragraphs expressly state the legal position.

Senator FAULKNER—Can you read that to me please?

Dr French—Yes. This is from UN Security Council resolution 1483 of 22 May 2003:

Noting the letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council (S/2003/538) and recognizing the specific authorities, responsibilities, and obligations under applicable international law of these states—

that is, the USA and the UK—

as occupying powers under unified command (the “Authority”) ...

The other germane preambular paragraph directly following that says:

Noting ... that other States that are not occupying powers are working now or in the future may work under the Authority ...

Senator FAULKNER—Did Australia indicate to the US, the UK or other members of the Security Council that it would not self-nominate as an occupying power at the time?

Mr Quinn—I do not think so. There was no action taken. We were not party to that resolution and the internal Security Council discussions. As I say, the note came out nominating those two countries as self-nominating and that was a unilateral action, as far as my recollection serves me correctly.

Senator FAULKNER—Again, I wonder—and Mr French can no doubt help me with this—whether a country can denominate itself or whether you actually need the United Nations Security Council to agree. Is this an issue of great complexity in international law? If it is, I do not want to ask the question because I suspect I will not understand the answer.

Dr French—Essentially it is a question of facts and interpreting the relevant conventions as to whether or not a country is an occupying power. It is not foreseen, as far as I am aware, under any of the relevant international humanitarian laws or laws of war—those relevant norms being the Hague convention and the Hague regulations of 1907 as well as the four 1949 Geneva conventions. It is not foreseen that states will determine their status as occupying forces; it is rather a question of fact, primarily. I refer again to the 1907 Hague regulations as to whether a territory is being effectively controlled—that is shorthand—by a particular power.

Senator FAULKNER—Sounds like longhand.

Dr French—There was some uncertainty about the status of Australia. It was not absolutely clear prior to the passage of UN Security Council resolution 1483, but the Security Council resolution did clarify the matter.

Senator FAULKNER—In whose view? You said there was some uncertainty before the passage of UN Security Council resolution 1483—I accept that—and that there has been no uncertainty since its passage. That is effectively what you are saying, isn't it, in layman's language? I appreciate that I have no qualifications in international law, so you will just have to bear with me. Who says so?

Dr French—The Security Council itself is interpreting the relevant international law. To the extent that the Security Council resolution is seized of this matter, we have accepted this—particularly as the Security Council resolution is clearly involved in the process of interpreting and applying international law in this context with a view to the transition from the state of hostilities which has existed to the restoration of full Iraqi sovereignty and self-determination.

Senator FAULKNER—The argument that has been raised with me is that there is a prospect—more than a prospect—that Australia has continuing obligations as an occupying power and that that is not altered by Security Council resolution 1483 in the absence of express termination of its status in relation to future acts. I am not a lawyer—I do not even want to be a lawyer. My question is really a process question as to whether any efforts have gone on internally in the department to advise on this particular matter, which seems to be an important one.

Dr French—I can say that there has been advice on a range of issues relating to Iraq. Consistent with the general practice, it would not be appropriate for me to say whether advice has been given on this particular matter or what that advice may have been.

Senator FAULKNER—I am not going to the substance of—

Senator ROBERT RAY—You can tell us whether advice has been obtained and received; you cannot tell us what is in it. So you are half right there and half wrong. Good try, though.

Senator FAULKNER—He can tell us if he wants to, but I would not actually ask that question. I do not want to go to the substance of the advice. I have indicated that I am asking a process question about whether advice on that issue has been sought.

Dr French—In general terms, yes, advice relating to Australia's status has been sought.

Senator ROBERT RAY—Do you go to outside firms for that advice, or do you go to the Australian Government Solicitor?

Dr French—In relation to international law, advice is provided by the Office of International Law in the Attorney-General's Department and the legal branch within DFAT. Clearly, a range of international legal obligations flowing from international humanitarian law do apply to Australia in relation to its activities in Iraq. The Australian government has stated clearly on a number of occasions that it is taking those obligations very seriously.

Senator FAULKNER—Has any consideration been given to the prospect that, even with the carriage of Security Council resolution 1483 having the effect of ending Australia's status as an occupying power—for the sake of the argument let us accept that—Australia remains responsible for the treatment of prisoners of war and other detainees under the general principles of state responsibility? I am asking whether advice has been sought on that matter.

Dr French—We actually have not received a formal request for advice on that specific issue, Senator.

Senator FAULKNER—Did you self-initiate any work in this area?

Dr French—We have done work on that. In general terms it is clear that the obligations in relation to the treatment of prisoners of war, which are contained within the third Geneva convention, and in relation to persons detained during a period of occupation, which are contained in the fourth Geneva convention, apply specifically to the so-called detaining power, and Australia has at no time been a detaining power. That is to say, in shorthand, the obligations have accrued to the United States of America and the United Kingdom as detaining powers in the sense contained within Geneva convention 3 and Geneva convention 4 of 1949.

Senator FAULKNER—One of the points here, it strikes me, is whether the UN Security Council needs to explicitly discharge the responsibility of being an occupying power rather than, if you like, the implicit position that is being outlined here or adopted—that is, that it is clear in the absence of Australia being named in UN Security Council resolution 1483.

Dr French—I am sorry, Senator; what is your question?

Senator FAULKNER—The issue is: does the UN Security Council need to explicitly discharge the responsibility of Australia being an occupying power—I am asking whether that needs to be done; it has not been done—rather than having the implicit discharge of that responsibility? You are saying that it is implicit in the passage of UN Security Council resolution 1483.

Dr French—I am not aware of any requirement for explicit discharge.

Senator FAULKNER—My question is: has any advice been sought on that matter?

Dr French—As I mentioned, we have provided advice on the issue of Australia's status.

Senator FAULKNER—Did Australia approach any member of the United Nations Security Council to ensure that it was not named in that resolution?

Mr Quinn—As I have mentioned, we did not seek this outcome. This was a decision taken by the Security Council. The British and the Americans issued a note indicating that they were

occupying powers. As Dr French has said, the principles applying still apply even if there is a formal occupying power—capital O, capital P or lower case. But quite clearly the Security Council makes clear that there are two classes of countries: occupying powers and those working with the occupying powers. We are in that second category but, for practical purposes, as Dr French has said, international humanitarian law applies and everybody has obligations under those principles and the Geneva and Hague regulations and frameworks.

Senator FAULKNER—You are saying to me that Australia did not approach a member of the United Nations Security Council to make sure that Australia was not named.

Mr Quinn—That is right, as far as I am aware. As I was saying before, we took no action to declassify ourselves or whatever the expression is. The practical effect is that we are not an occupying power, but a lot of those principles will still apply and humanitarian law will still apply.

Senator FAULKNER—Did Australia flag with either the United States of America or the United Kingdom that it would not provide a letter in similar form to that outlined in the preamble by Dr French—as the US and the UK did for the purpose of UN Security Council resolution 1483? Did we flag that with the US and the UK?

Mr Quinn—As far as I recall, no, we took no action in that regard. This was a unilateral letter that came from the British and Americans announcing their position, and the Security Council resolution was passed subsequently.

Senator FAULKNER—That is helpful, but are you able to give me an unqualified assurance in that regard? You said as far as you are aware, and I appreciate that it is difficult to give assurances where you are not aware, but it seems to me that, if Australia had made such an approach to the UK or the US, it would have been something that a senior DFAT official—you or Mr Chester—could give the committee an unqualified assurance on.

Mr Quinn—I recall that this issue was discussed at some length at the estimates before last. We did check our files. We had no record of any communication of that ilk. We could double-check that, including with other agencies who might have been involved in the discussion, but, as I say, from my recollection and from a review of our files after the session before last of estimates, I think there is a nil return on that.

Senator FAULKNER—I gather Senator Brown wants to ask some questions on this point.

Senator BROWN—Just one point. You have said a couple of times that a unilateral declaration that they were the occupying powers was made by the US and the UK. I take it from that that Australia was not consulted?

Mr Quinn—That is my recollection.

Senator BROWN—So here we are—the coalition of the willing—going in at the outset under the agreement of Prime Minister Howard, but when it came to the status after the invasion had consolidated control of the country, Prime Minister Blair and President Bush unilaterally declared that they were the occupying powers and did not consult Mr Howard about it.

Mr Quinn—I would have to take that question on notice. As far as I can recall, there was no consultation. It may be a function of the fact that—I think it is right to say this, Minister—

there were no Australian troops on the ground as such. We did not occupy any territory. We had no physical occupation of the country. The view may have been taken that Australia was not occupying—that this was a clear-cut issue. Maybe the US and British lawyers took that view. I do not know what the basis of their decision was.

Senator Hill—Also, it was not the decision of the coalition; it was the decision of the Security Council.

Senator BROWN—Based on the identification by themselves of those two countries as the occupying powers without reference to Australia.

Senator Hill—Yes, I suspect it was their assessment of the reality on the ground.

Senator BROWN—The obvious point there is, however, that Prime Minister Howard took Australia into this conflict as part of the triumvirate—the coalition of the willing—but when it came to the establishment—

Senator Hill—I think there were actually four countries, usually referred to as the ‘coalition of the willing’.

Senator BROWN—You may or may not include Spain.

Senator Hill—No, Poland. Spain was not involved in the combat phase.

Senator BROWN—But when it came to the establishment of the credentials as to who was occupying after the occupying had been done, Australia was not consulted and, unilaterally, Britain and the United States announced that they were.

Senator Hill—We are not on the Security Council and the Security Council made this decision.

Senator BROWN—Yes, it made the decision on the information of the UK and US.

Senator Hill—That is an abbreviation. It no doubt took into account the views of France and—

Senator BROWN—Tell us the process, Minister.

Senator Hill—The process of the development of the Security Council resolution? I do not know.

Senator BROWN—The process of the identification by the UN that the occupying powers were UK and US.

Senator Hill—It is the same thing, isn't it? The process by which the Security Council reached the conclusion that the US and Britain were the occupying powers, I do not know.

Mr Chester—As we have said, I think it probably came down to the reality of the situation: that the United States was occupying territory, the United Kingdom was occupying territory and no other country was occupying territory. I think we have said that a number of times. That is our sense of how the decision was made that it was those two countries that were the occupying powers.

Senator BROWN—Let us make this clear: you do not identify Australia as part of the occupying force in Iraq?

Mr Chester—I do not identify Australia as an occupying power in the legal sense, no.

Senator BROWN—No, the question I asked you was about Australia being part of the occupying force. Clearly it is, isn't it?

Mr Chester—I do not know the legal answer to that.

Senator Hill—What was the question?

Mr Chester—Are we an occupying force?

Dr French—It is dealt with in that following preambular paragraph in Security Council resolution 1483, which states that other states are not occupying powers and they are working now or in the future under the CPA. They are not occupying powers.

Senator BROWN—The very revealing point that Senator Faulkner has drawn out here is that, when it came to this establishment of status after the invasion of Iraq, suddenly the Howard government was not even consulted by Britain and the United States. I wanted to ask about the International Institute for Strategic Studies. The Prime Minister quoted from their reports before the war. In a recent report—in fact, the 25 May *Strategic survey 2003/4*—the institute, which is based in London, made the assessment that there had been an increase in the potential and reach of al-Qaeda since the invasion of Iraq, stimulated by the occupation of Iraq as well as the ongoing Israeli-Palestinian conflict. The report says:

al-Qaeda has more than 18,000 potential terrorists scattered around the world and the war in Iraq is swelling its ranks.

Is that so?

Senator Hill—The size of al-Qaeda? Even defining al-Qaeda is not easy. If you are talking in terms of operatives that might identify themselves with al-Qaeda, the number is not known.

Senator BROWN—Have you got any other figures besides those that have come out of this report by the International Institute for Strategic Studies?

Senator Hill—Various parties make estimates, but I suspect they are all better described as guesstimates.

Senator BROWN—What other parties have made what other estimates?

Senator Hill—If you read the literature, you see estimates being made by all sorts of people.

Senator BROWN—Can you provide the committee with those estimates seeing as you have read them and seen them?

Senator Hill—No, I cannot. I sort of note these things in passing.

Senator BROWN—I suggest that you do not have them.

Senator Hill—I do not think there is an official estimate of the size of the al-Qaeda organisation.

Senator BROWN—Amnesty reported the day after that release, that the war on terror: ... made the world more dangerous, rather than safer, and has prompted the most sustained erosion of human rights and international law in 50 years ...

Do any of you gentlemen remember, before the invasion of Iraq, predictions coming from the CIA, amongst other organisations, that the invasion of Iraq could lead to an increased danger to the world from the threat of terrorism?

Mr Chester—I do not recall that. It may be that these questions that you are asking are ones that are better directed to the head of our International Security Division rather than the Iraq Task Force.

Senator BROWN—In the *Courier Mail* today, an article from Phillip Coorey, reporting from New York stated:

The US is facing another public relations nightmare in Iraq, this time over allegations its troops assaulted Iraqi civilians and stole from them.

The Pentagon confirmed yesterday complaints by Iraqis that US soldiers stole money, jewellery and other property during patrols and house raids aimed at cracking down on the insurgency, were being investigated.

The New York Times revealed the story yesterday, saying misconduct by US troops had spread beyond the walls of detention facilities at the Abu Ghraib prison.

The Times cited at least two dozen cases under investigation.

Have there been any reports from Australian representatives in Iraq or elsewhere about this matter? If not, will you seek to find out the facts about this matter, which involves theft and assault of Iraqi civilians by occupying forces in Iraq? I am asking you, Minister.

Senator Hill—There are always lots of allegations made. The important thing is that, if an allegation is made, it is properly investigated. It appears from those reports that investigations are being pursued and I have confidence that the United States would do that task properly.

Senator BROWN—What I am asking is: will you inform yourself this time rather than not asking so that the Australian government is acquainted with these claims and can itself respond to them?

Senator Hill—I do not think I need to approach the US on that. As you have read out, there has been an allegation made and the allegation is being investigated by the appropriate US authorities.

Senator BROWN—Aren't we hearing the same process that happened with Abu Ghraib. You and the government were quite prepared to allow the US to take the investigation path without asking about it and without having input about the Australian point of view?

Senator Hill—No, it is an entirely different situation. What we said earlier is that the ICRC was pursuing issues in Abu Ghraib. It took those issues to the parties with responsibility for implementing their recommendations and those parties responded positively. What you are talking about here—

Senator BROWN—I am talking about criminal behaviour by allied troops in Iraq which threatens the wellbeing of Australians.

Senator Hill—are particular allegations of particular criminal activity by individuals and that is being pursued through the proper authorities in the same way as the allegations on

individual criminal activity that were made in January were pursued through proper investigations that have led to prosecution.

Proceedings suspended from 6.30 p.m. to 7.39 p.m.

CHAIR—I declare this estimates hearing back in session.

Senator FAULKNER—Is it the view of the government that, because Australia is not an occupying power in the view of the government, in Iraq any breaches of the Geneva conventions by the occupying powers—that is, the US and the UK—do not have any relevance to Australia.

Dr French—The issue, as far as we were putting it in broad principles, is not in terms of determining responsibility under the relevant Geneva conventions which I mentioned—the Geneva convention III and Geneva convention IV of 1949. The issue is not whether a power is an occupying power but rather whether a power is a detaining power. If it is ascertained that a nation state is a detaining power then there are relevant obligations in terms of treatment of prisoners—for example, prisoners of war under Geneva convention III or prisoners detained in the course of occupation under the fourth Geneva convention. Responsibilities and obligations accrue to that or those nation states that are defined as detaining powers by virtue of the fact that they have detained prisoners. It is possible to envisage a detaining power that is not an occupying power. It is possible to envisage an occupying power that is not a detaining power.

Senator FAULKNER—Have you had an opportunity to look at the ICRC February report?

Dr French—I have seen it.

Senator FAULKNER—Are you aware that that report is addressed to the coalition forces, not just to the occupying powers? It is in the first paragraph of the report—have you had a look at that?

Dr French—Yes there is a reference to the coalition forces.

Senator FAULKNER—Has the department given any thought to the significance of that terminology?

Dr French—As I mentioned and as has been borne out by the actual procedure and practice of the ICRC the report of February, to which you are referring, was transmitted effectively to the United States and to the United Kingdom. Those are the countries which received it. It was not transmitted to any other state. That again gets back to the principle and the practice, which I think has been adverted to earlier, that it is very longstanding practice and principle of the ICRC to maintain strict confidentiality in regard to its reports between itself—that is, the ICRC—and the detaining power. There are longstanding public policy grounds behind that to the extent that if such reports were spread more broadly and were not confidential between the ICRC and the detaining power, the access of the ICRC to detainees around the world would be endangered.

Senator FAULKNER—The issue I am trying to understand from DFAT's point of view is whether there is a legal distinction to be drawn by referring to coalition forces rather than occupying powers.

Dr French—No. In the end, as a matter of law, as we understand and interpret it, it is effectively addressed to the relevant states. It is clear when we look at the obligations under international humanitarian law as expressed in the third and fourth Geneva conventions that the obligations do directly accrue to the nation state that is engaging in the act of detention and not to any group of states or coalition of states. That is to say, there is not a concept in international law of corporate detention, rather it is national detention by the relevant detaining power.

Senator FAULKNER—You say it is clear. Has advice been sought, either internal or external, on this point? I am referring here to the specific issue in relation to the executive summary of this report using the terminology of the ICRC drawing—and I quote:

... the attention of the Coalition Forces (hereafter called “the CF”) to a number of serious violations of International Humanitarian Law.

This document is littered with this terminology of ‘the CF’ for coalition forces, isn’t it?

Dr French—Yes.

Senator FAULKNER—It makes this point in what is the first sentence of the executive summary and then this terminology is littered throughout the report. My question is: have you sought advice, externally or internally, on the significance of this terminology to Australia?

Dr French—On the specific issue of the terminology used in the February reports, I am not aware of a request for advice on that. What I can say is what I have said in the past: there has been a clear operating understanding as to how the law of armed conflict and international humanitarian law applies in this regard. That clearly defines responsibility and obligations in terms of detaining powers—that is, nation states as distinct from coalitions or groups of countries.

Senator FAULKNER—And when you use the terminology ‘responsibility’ does that mean moral responsibility or something more?

Dr French—No, I am talking about the specific legal obligations.

Senator FAULKNER—As opposed to moral responsibility?

Dr French—I am telling you what my understanding of the legal situation here is.

Senator FAULKNER—I appreciate that and I thank you for outlining it to the committee. I am clarifying that when you talk about ‘responsibility’ you are talking about legal responsibility not moral responsibility.

Dr French—Yes.

Senator FAULKNER—Are there any particular obligations given that Australia actually has in its possession now a copy of that February ICRC report?

Dr French—As a matter of law, not that I am aware of.

Senator FAULKNER—Are there any legal obligations or responsibilities as a result of Australia having had officers dealing with and responding to ICRC concerns?

Dr French—As a matter of law, not that I am aware of.

Senator FAULKNER—Is there a matter of legal obligation or responsibility given that Australia was engaged in planning on prisoner detention and interrogation issues at some level—supported by, in fact, the trilateral agreement?

Dr French—As you mentioned, there was a memorandum of understanding signed between the United States, the United Kingdom and Australia on 23 March 2003 which set out and clarified the respective obligations of those three countries in regard to the treatment of any detainees detained. That was not a legally binding document per se but a memorandum of understanding. The obligations to which it refers exist anyway by virtue of, in particular, the third and fourth Geneva conventions.

Effectively, the memorandum of understanding was setting out and clarifying the respective obligations which do exist under international law, particularly in the circumstances where Australia and the United Kingdom, as I understand it, are parties—certainly Australia is and I believe the United Kingdom is also a party—to the first additional protocol to the 1949 Geneva conventions which broadens the definition or category of prisoners of war, whereas the United States is a party only to the 1949 Geneva conventions themselves and therefore has a more narrow definition of prisoner of war in particular. So those matters were clarified by virtue of this memorandum of understanding. The actual obligations referred to in the memorandum of understanding which I mentioned actually derive from broader international law, in particular Geneva conventions and the first additional protocol. Those obligations were not activated with regard to Australia by virtue of the fact that Australia did not detain prisoners.

Senator FAULKNER—You say that the trilateral agreement is not legally binding. You have advice to that effect?

Dr French—It is by its nature a memorandum of understanding, Senator, which is a less than treaty status document and has not gone through the treaties process. It did not of itself—

Senator FAULKNER—Has it got no status in law at all?

Dr French—A memorandum of understanding is a solemn political undertaking. As I mentioned, it refers to processes which have their basis in, in particular, the third and fourth Geneva conventions.

Senator FAULKNER—Just so we can be clear on the definitional issues, when we talk about the trilateral agreement is that shorthand for the MOU that was signed between the US, the UK and Australia on 23 March 2003? I think we are talking about the same document but, for the sake of the record, could you confirm that for me.

Dr French—Yes, I am referring to the MOU of 23 March 2003.

Senator FAULKNER—Would you agree with me that that effectively establishes an arrangement for the transfer of prisoners of war, civilian internees and detainees between US, UK and Australian forces?

Dr French—In the event that prisoners were taken, or detained, yes.

Senator FAULKNER—Is it best to call it the MOU or the trilateral agreement—what is the best shorthand?

Dr French—MOU, because it is not an agreement under international law.

Senator FAULKNER—Did DFAT have a role in the drafting of that MOU?

Dr French—We did see it, certainly. We did have a certain role. The primary role was with Defence.

Senator FAULKNER—I do not expect you to explain Defence's role but can you explain to me what DFAT's role was in the drafting of that MOU?

Dr French—My recollection is that the issue of such an MOU was discussed within the legal watch group under the Iraq Task Force.

Senator FAULKNER—Did you have in your mind, given this involvement, that Australia needed to put in place measures to ensure that any prisoners that were captured or detained or handed over to Americans for incarceration were protected in accordance with the Geneva conventions?

Dr French—The basis of the MOU was to simply clarify and create procedures to ensure compliance with the relevant Geneva conventions.

Senator FAULKNER—Was any effort put in to ensure that individuals, liaison officers, for want a better description, were appointed to be working with prison officials to ensure that detainees were accorded treatment consistent with the Geneva conventions?

Dr French—With regard to the MOU, certainly I am aware from Defence that a liaison officer position was identified for the purposes of implementing the relevant legal obligations if they were to arise. In particular with regard to Foreign Affairs and Trade, I can say that, as is foreseen under the relevant Geneva convention, we had made provision for an information bureau to be established—which did not in the end occur—so that if Australia had become a detaining power and had detained prisoners then the records of the information which is required to be provided to the detaining power upon capture—effectively: name, rank and serial number—would be conveyed to an information bureau and that information would then be used as appropriate.

Senator FAULKNER—So that planning was in place?

Dr French—Yes.

Senator FAULKNER—Who took the initiative to put that planning in place? We are obviously talking some time ago now.

Dr French—Yes. My recollection is that it was a joint process between the relevant departments, particularly in the legal watch group.

Senator FAULKNER—What about monitoring arrangements with the ICRC? Are you aware of any consideration given to those matters previously? I am just talking from a DFAT perspective, obviously.

Dr French—Monitoring of the ICRC activities?

Senator FAULKNER—Any arrangements for monitoring whether prisoners were being treated consistently with the Geneva convention. Were any monitoring arrangements considered as these issues were being developed—monitoring arrangements with the ICRC?

Dr French—Not specifically in the context of what I mentioned. We were specifically looking at ensuring that in the appropriate circumstances our obligations would be fulfilled. Those particularly refer to ensuring appropriate prisoner transfer arrangements and enabling the establishment of an information bureau.

Senator FAULKNER—If not in that context, in any other context?

Dr French—Not in the legal context, as far as I am aware.

Senator FAULKNER—Did you seek any advice at all as to whether or how to ensure that the 23 March MOU between Australia, the UK and the US actually accorded with the responsibilities of the third Geneva convention? It seems to me that, given the work that was done on this MOU, you would be wanting to satisfy yourself that it did accord with those responsibilities. Did you do that sort of work?

Dr French—In looking at the MOU itself as it developed, yes, our objective was to ensure that the MOU clarified between these three countries—the US, the UK and Australia—that the respective obligations under the third and fourth Geneva conventions and, in the case of Australia and the UK, the first optional protocol to the Geneva conventions would be fulfilled.

Senator BROWN—I will ask again about the definition of ‘detaining power’. There have been newspaper reports in Australia of Australians being involved in detaining prisoners in Iraq—in the recent conflict in Fallujah, for example. What is the definition of ‘detention’ in that sense of detaining prisoners?

Dr French—The third Geneva convention speaks of particular information to be provided to the detaining power. The detaining power is responsible for recording and registering any prisoners who are taken, and there are very clear obligations upon the detaining power as to what it can and cannot ask. For example, an officer or a member of the armed forces when being detained is only required, effectively, to provide name, rank and serial number. I am sorry; I have lost the thread of your question.

Senator BROWN—It is all right. I will ask you another question. Was a decision made—and anybody might answer this—at any stage that Australia would not be a detainer of prisoners?

Dr French—I am certainly not aware of any such decision.

Senator BROWN—Is anybody else?

Dr French—As I mentioned, arrangements were developed for the possibility that Australia would detain prisoners but in the end no detention occurred. The process under the third Geneva convention is a registration process, and at no time did Australian forces involve themselves in the detention process.

Senator BROWN—Again relating to Fallujah—I was talking about this yesterday—there have been recent newspaper reports of a warrant officer of the Australian forces leading a platoon that did detain prisoners. Whether or not that is the case, in that circumstance would not Australia be seen as the detaining power?

Senator Hill—If you are talking about the one Australian who is serving within a US unit—

Senator BROWN—Who was leading a platoon.

Senator Hill—If there is one Australian within a US unit, and if the unit captures somebody, who is detaining the person? It depends on the role of the Australian, I suppose.

Dr French—As I mentioned, as the convention requires registration it would be the detaining power which registers. There is no statement within the convention that I am aware of as to whether the ranking officer or another person does this. What is important is that the detaining power does register a prisoner of war as soon as possible upon capture. That triggers then the whole process of providing information and ensuring that the prisoner is in a system where they can be monitored, including by the ICRC. My assumption would be—although I must admit that I am not aware of the facts there—that, as has been the case throughout this conflict, certainly as far as I am aware, either the US or the UK has been the detaining power and has undertaken these important registration functions.

Senator BROWN—Does a legal question arise when a platoon commander is from the Australian forces and detains prisoners?

Dr French—Not that I am aware of. Effectively it is the act of registration that triggers the detaining power responsibilities and obligations under the third Geneva convention.

Senator BROWN—I will not pursue this because it is becoming largely hypothetical, except to ask this question. If an Australian platoon detains somebody and hands them across to another country's forces, in that circumstance does the other country become the detaining power? My understanding of the MOU is that that is not the case. It is the people who actually make the arrest—effect the detention—who are the detaining force; the others are the receiving force.

Dr French—The detaining power and, in the particular circumstance, the detaining force, would be the power: the individual member or members who do the registration process to commence this. I guess the key element that is required under the third Geneva convention is to ensure that a power that is a party to the Geneva convention takes control of a process of registration to ensure that the relevant consequences, including information that may be available to the ICRC, can be guarded.

Senator BROWN—Finally, is there any time limit in which that process of registration has to take place?

Dr French—I would have to take that on notice. I do not have it off the top of my head, I am sorry.

Senator FAULKNER—I want to follow through what Senator Brown has just asked about. Is the basis of the government's argument that Australia was not a detaining power under the Geneva convention but was an arresting power under the convention? Is that the nub of the government's position?

Dr French—In international law, as far as I am aware, there is not a category of arresting power. The relevant term in the third Geneva convention is 'detaining power' and that process is defined by the power doing the detention and doing the registration process.

Senator FAULKNER—You are saying that Australia is not a detaining power. That is unarguable from your point of view?

Dr French—Yes.

Senator FAULKNER—It is not a detaining power. We have had a few examples. We had the statement early last month from the Minister for Foreign Affairs talking about Australian Defence Force personnel not doing the capturing on their own—about Americans having been with them and so forth. Evidence was adduced here in this room a little earlier in these hearings—with the Department of Defence, in relation to HMAS *Kanimbla*—about an Iraqi mine group or whatever being detained by HMAS *Kanimbla* but effectively being in the hands of the US Coast Guard. So this has been talked about for some time. You say that Australia is not a detaining power. What I do not understand is on what basis under the Geneva convention this applies. Can you explain it to the committee?

Dr French—In the end, the facts of what happened are a matter for advice from the Department of Defence, obviously. But, as I mentioned, to the extent that the third Geneva convention refers to a detaining power, it is that power which determines when it becomes a detaining power by detaining persons who become prisoners of war and by engaging in the registration process that sets off the chain of rights and obligations which accrue to prisoners of war.

Senator FAULKNER—What are the obligations of a transferring power? Is that what Australia is? You say it is not a detaining power. You say there is no such thing as an arresting power. Is it a transferring power?

Dr French—To describe it in the terms of the MOU, which you are of course aware of, it talks about detaining powers and accepting powers. As I mentioned, the MOU was not activated, because the act of detention, as a matter of law, was not undertaken by Australia. Australia was neither a detaining power nor an accepting power, which are the terms that are used in terms of potentially triggering obligations under the Geneva convention. I am not aware of a category known as a transferring power.

Senator FAULKNER—I am just trying to understand the provisions of the third Geneva convention dealing with the treatment of prisoners. Responsibility lies with the detaining power.

Dr French—Yes.

Senator FAULKNER—That is article 12 of the third Geneva convention.

Dr French—Yes.

Senator FAULKNER—Under that convention, if that power—that detaining power—breaches the third Geneva convention, the power by which the prisoners were transferred is bound to ‘take effective measures to correct the situation’—quoting article 12. Is that correct?

Dr French—The power which detains is required to ensure that no grave breaches occur, yes.

Senator FAULKNER—Surely Australia has been such a power in some cases. If that is the case, it would be required to seek such measures, wouldn't it?

Mr Chester—I think Dr French has said a couple of times that Australia was not a detaining power because Australian forces did not detain. I understood what he was saying to

be that you had to take that step of detaining prisoners in order to be categorised as a detaining power. Dr French will correct me if I am wrong, but that is my understanding.

Dr French—That is correct.

Senator FAULKNER—How can we say that in the case of the *Kanimbla*, for example?

Mr Chester—I am not aware of that case, and I am not sure if others here are. Given that, it is probably something to ask the ADF.

Senator FAULKNER—I am interested in DFAT's crucial and critical role in terms of compliance with the Geneva conventions. I would have thought that that was mainstream business for DFAT.

Senator Hill—Well—

Senator FAULKNER—I hope it is.

Senator Hill—You have to apply the facts to the law. Obviously, DFAT has had the advice that, in the circumstances of the *Kanimbla*, it was the United States that was the detaining power, not the Australians.

Mr Chester—The advice we have is that the ADF did not capture any prisoners in Iraq. That is the advice we have.

Senator BROWN—Can I just ask whether there is a difference between 'taking prisoner' and 'detain'?

Senator Hill—Sorry?

Senator BROWN—Is there a difference between the accepted concept of taking a prisoner—a person being taken as a prisoner—and a person being detained.

Dr French—As I mentioned before, the act which triggers a chain of obligations—under, in particular, the third Geneva convention—is the act of detention, and that is an act which involves the registration process of a prisoner taken. In that context, the advice to us from the ADF is that there have been no detentions—there has been no detaining of prisoners.

Senator BROWN—What both Senator Faulkner and I are trying to make clear is that, in the case of *Kanimbla* and the warrant officer I spoke about—and there may be many other cases; we do not know—firstly, it would seem strange that an Australian force of 800 to 2,000 has been present in Iraq through all these hostilities and not taken anybody prisoner. Even if that is the case, are you saying that the Geneva convention interpretation has been made that detaining a person is not taking them a prisoner but is actually documenting them?

Dr French—It is a process which is evidenced by the taking of the details of the person detained.

Senator BROWN—You do not think it is challengeable in an international court, for example, that what the convention actually means is the taking of the person?

Senator Hill—Everything is challengeable. You have asked the legal officer of DFAT for his opinion, and he has given his opinion.

Senator BROWN—I just want to be super sure here that—let me put directly—if Australians take people prisoner in Iraq or elsewhere they are not obligated to ensure that

those prisoners are treated according to the Geneva convention unless at some future time they actually do the taking of details, registration.

Dr French—As I mentioned, it is the detaining power and the act of detaining that triggers the obligations under the third Geneva convention.

Senator BROWN—The dictionary definition of the word ‘detaining’ is taking hold of, preventing from moving forward. It does not mean registration.

Dr French—In the context of the third Geneva convention, it is the detaining power that does the act of registering a prisoner taken, and that act has a twofold purpose: it is making clear that it is the detaining power that is taking responsibility for that prisoner and, as I mentioned, it is also triggering a process of collection of information to ensure that such information may be available to be used as appropriate, including, for example, for the ICRC. In that context, Australia did not become a detaining power because it did not engage in that process.

Senator BROWN—It does leave open the strange situation where Australia, for example, could have taken thousands of prisoners—and let us remember that tens of thousands of prisoners have been taken in Iraq—or hundreds of prisoners, but not accepted responsibility for any of them, simply because it handed them across to somebody else who registered them.

Dr French—The advice that we have from Defence is that at all times the detaining power was not Australia but, rather, the US.

Senator BROWN—Because the US registered them, not because the US took them prisoner?

Dr French—The US detained them as the detaining power. That is our advice from the ADF.

Senator BROWN—I do not think we can go any further here, but I would just counsel that legal advice be taken on the matter, if it has not been, that the process of taking a person prisoner does not put on a power the responsibility of seeing that that prisoner is treated at all times down the line—no matter who they go to—under the Geneva convention. Mr Quinn, you might just check and see whether or not that inquiry should be made.

Senator Hill—What do you mean by ‘clarify’? We have a lawyer at the table. He has given best legal advice. Who are we supposed to clarify with?

Senator BROWN—I am saying that to me the law ultimately comes down to commonsense. There is a consistent thing about courts and appeal courts having at least a big thread of commonsense. To me it is not commonsense, despite what I have heard about the good advice that Dr French has been kind enough to give to the committee, that a country who takes prisoners can absolve itself from the responsibility of seeing that those prisoners are treated according to the Geneva convention by giving the prisoners to somebody else to document. If Australia is doing that, it ought to be doubly sure that that is what the Geneva convention spells out. Dr French has told us that that is the case, but ultimately—

Senator Hill—No, he has told you the law. He did not tell you the facts. You have predetermined that the Australians took these people prisoner and then passed them to the

Americans to be detained. I do not think that is in accordance with the advice that was given in the last two days of this committee's hearings.

Senator BROWN—It is passing strange that Australia has been there right from the outset and not taken a prisoner in the meaning of the Geneva convention—not detained a person under the—

Senator Hill—Australia has assisted in the taking of prisoners, but it has not detained prisoners in terms of the Geneva convention.

Senator FAULKNER—But don't we understand that it is the so-called facts that determine what our obligations are under the Geneva conventions? Is that right?

Senator Hill—That is correct.

Senator FAULKNER—Can you tell me that, Dr French.

Dr French—Yes.

Senator FAULKNER—It is the facts?

Dr French—Yes.

Senator FAULKNER—Is there any special definition of 'facts' here that I ought to be aware of?

Senator Hill—Commonsense definition.

Senator FAULKNER—Is it commonsense? That is what I am asking—the usual dictionary definition of facts. I am expecting the answer to that to be yes, but I just want to check.

Dr French—Yes.

Senator FAULKNER—Isn't it a fact that we participated militarily in the conflict? That is a fact, isn't it?

Dr French—Yes.

Senator FAULKNER—It is a fact that we have continued to maintain a military presence in Iraq, isn't it?

Dr French—Yes.

Senator FAULKNER—It is a fact that we are part of the CPA. That is a fact, isn't it?

Dr French—Working under the CPA, in the terms of resolution—

Senator Hill—Or in support of the CPA. I do not think we are technically part of the CPA.

Senator FAULKNER—Don't all these lead to ongoing responsibilities as an occupying power through straight responsibility? They are the facts.

Dr French—If you are referring again to the issue of detention then, as I mentioned, it is the specific obligations that arise out of any given fact situation as to whether a country is a detaining power. As I mentioned under the facts that we have been provided with by Defence, Australia did not engage in the acts of detention as defined under the Geneva convention.

Senator BROWN—That is your advice from Defence?

Dr French—That is the advice we have received from Defence.

Senator BROWN—To be blunt I am trying to be doubly careful here that Australia does not at some time further down the line leave us exposed to court action because prisoners have been taken and not treated according to the Geneva convention. When what happened to these prisoners is traced back, they can claim that whoever took them prisoner should not have allowed them to get into a situation where their rights were taken away.

Senator Hill—For a start there is no evidence that prisoners who were taken when Australia was associated with their capture have not been treated in accordance with the Geneva convention.

Senator BROWN—I accept that, Senator Hill, but we must not allow that situation to arise.

Senator Hill—The other point that you will not accept is that we retain confidence that our coalition colleagues will operate within the Geneva convention. Occasionally—it probably happens even in our society—there are criminal abuses, and when that occurs we have confidence that that would be dealt with appropriately.

Senator BROWN—We are dealing with a situation where criminal abuses have occurred.

Senator Hill—We would not have operated with a detaining power if we had any doubts as to the set of values under which that other party operated.

Senator FAULKNER—In a situation like the one that is well known of those Iraqis who were trying to mine in the gulf and HMAS *Kanimbla*, how did we work out, originally, that the US would always be the detaining power? What is the basis of that? That is something I do not understand.

Senator Hill—It may not have been. It was our preference that they were because they had the facilities for managing prisoners.

Senator FAULKNER—Sorry, I did not hear that.

Senator Hill—It was always our preference that either the United States or Britain would be a detaining power in the event of the taking of any prisoners with which we were associated because they had the facilities to deal with them that we did not have. We nevertheless realised that it was possible that we could be a situation where that did not occur, and that was the reason we signed the memorandum with the other two parties that dealt with our obligations in that circumstance.

Senator FAULKNER—So it is our preference. But the head of power is the MOU?

Senator Hill—No, the head of power was not the MOU. I will defer to the legal expert, but I do not know that the MOU really added much that is not already within the terms of the convention. At least it made it clear to the parties that were operating together.

Senator FAULKNER—But how do we find ourselves in a situation where—my memory tells me it was 40-odd Iraqis but that may not be the right number; I am just going on press reports—a considerable number of Iraqis are detained by HMAS *Kanimbla*? That is a fact that that occurred and I do not think anyone argues about it.

Senator Hill—No, they do argue about that. They say that, in the technical sense, they were actually detained by the Americans.

Senator FAULKNER—But I want to know how we managed to find ourselves in this situation. The HMAS *Kanimbla* example is a good example to use. How did Australia organise a situation where, when Iraqis were being detained on an Australian vessel, the detaining power would be the US? What is the head of power for that? What is the arrangement or the agreement or the process that led to this situation? That is what I am trying to understand. I still do not understand it.

Senator Hill—I do not have the briefs in front of me that set out the facts but, as I understand it, Americans were present at the relevant time to take possession of these individuals. To the extent that they were on the Australian ship, they were being held for the Americans.

Senator FAULKNER—I understand that. But let us go back a step. What leads us to the situation where, in that circumstance, if a member of the US Coastguard is onboard HMAS *Kanimbla*, those American Coastguard officers would be the detaining power? Was there some sort of agreement? Or what is the agreement that leads the US to always being the detaining power?

Senator Hill—As I understand it, there was an understanding with the coalition colleagues with whom we were operating that, in such a circumstance if they were present and able to, they would take possession of the prisoners.

Senator FAULKNER—Surely this is not done on the basis of an understanding?

Senator Hill—I am not sure whether it was.

Senator FAULKNER—That is what I am asking. That is the only point of my question.

Senator Hill—You have had 24 hours of it over the last two days. I do not remember you asking the question.

Senator FAULKNER—I am asking is here because—

Senator BROWN—I did.

Senator FAULKNER—and to be fair I think these issues were canvassed, but there was so many other extraordinary exposures in the department that you are supposed to be administering—

Senator Hill—The facts in relation to the communique were not canvassed in that depth.

Senator FAULKNER—that we probably did not spend enough time on this. We are making up for it now, Minister. So, what is the answer?

Senator Hill—I do not know.

Senator FAULKNER—I know you do not know. Let us see if we can find someone who does know.

Senator Hill—Now that you have raised this issue and you want the facts of the capture of those Iraqis—

Senator FAULKNER—No, I do not.

Senator HILL—in relation to the *Kanimbla* clarified, I will seek that information.

Senator FAULKNER—No, I do not want the facts of the capture of those Iraqis clarified. I think I understand broadly what happened and I accept it. What I want to understand is what the head of power is or the arrangement or the agreement that leads the US to always be the detaining power. What is our agreement that leaves us in this position? That is what I am asking.

Dr French—I am aware of no agreement along those lines.

Senator FAULKNER—What basis does it have then?

Senator HILL—I think it is better to say that we have no written agreement.

Senator FAULKNER—No written agreement?

Senator Hill—No, I do not know whether there was or was not. The witness has said he is not aware of any written agreement.

Dr French—To clarify, I meant agreement in the sense of international law—no agreements between the relevant countries to designate any particular country as always being a detaining power. On the contrary, the MOU of 23 March 2003 foresaw that all three countries could be detaining powers.

Senator FAULKNER—That has got no legal force, you have told us.

Dr French—No, it was a clear exposition of the obligations and rights which already accrue through the relevant Geneva conventions. The facts, as they arose as we are advised by the ADF, were such that at no time did Australia then become the detaining power.

Senator FAULKNER—I am sorry, but Senator Hill has just told us—I think he just told us a moment ago—that sailors on board HMAS *Kanimbla* held these Iraqi prisoners for a period of time before the Coastguard arrived.

Senator Hill—No, I did not say that. I have always understood that the Americans were present at all relevant times.

Senator BROWN—Were they senior people?

Senator Hill—If you want the exact detail of the circumstances of the arrest and detainment, I would prefer to get that rather than simply base it on my memory.

Senator FAULKNER—I appreciate you taking that on notice. You could even perhaps mount a case that it would have been better to have asked you while Defence was at the table—fair enough, too. That will be appreciated and I look forward to your answer in that regard. But I am still trying to grapple with this issue. For example, on HMAS *Kanimbla* there might be a couple of US Coastguard guys on board—or they might have come a bit later but let us assume they are on board. In these sorts of circumstances, what is the basis of Australia being able to say in each and every case that the US is the detaining power? That is an example and there are many other examples—the Minister for Foreign Affairs talked about this on 11 May. That is all I am trying to nail down. It may be all that Senator Brown is trying to nail down, for all I know. It is all I am trying to nail down, anyway.

Mr Chester—I think what we are saying is that we are not aware of whether or not there is or was an arrangement or an understanding, and if there was one we are not aware of the nature of that. On that basis we would prefer to take this question on notice.

Senator FAULKNER—It is not a question of not being aware of the nature of it; you are not aware of the existence of it.

Mr Chester—At this point in time, no, but we would like to take it on notice.

Senator FAULKNER—I find this quite incredible because there are quite serious obligations that flow to Australia in relation to these prisoners that are being detained under the Geneva convention.

Senator Hill—There was not an obligation for the US to always be there.

Senator FAULKNER—Stop arguing amongst yourselves.

Senator Hill—No, I am speaking to you, and you are getting hysterical again. It was advantageous for us if the Americans could detain persons because they had the proper facilities to do it.

Senator FAULKNER—What is the agreement? What is the basis for this? You do not even know, and you are Australia's defence minister.

Senator Hill—I have said the basis is that where it was possible for Americans to detain individuals where we were associated with their capture they would do so. That occurred on four separate occasions. That is the best advice that I have been given.

Senator FAULKNER—I accept it occurred on four separate occasions. On what basis? What communication, agreement, negotiation, understanding or memorandum underpinned this?

Senator Hill—I have said to you that I believe that there was an understanding to that effect, on the basis of what I have been told. The exact form of that I do not have here tonight, but if you want to know the form of it I will ask.

Senator FAULKNER—Who has told you that?

Senator Hill—I have known it throughout the process. I know that there were discussions, in the lead-up to our participation in the conflict, on the issue.

Senator FAULKNER—I am extremely concerned, when we have got before us the head of the Iraq Task Force, an eminent lawyer like Dr French, Australia's defence minister and Mr Chester—who is an expert on everything—that nobody can tell us.

Senator Hill—You have just been told.

Senator FAULKNER—I have been told you do not know.

Senator Hill—You will not listen.

Senator FAULKNER—I do listen. You do not know.

Senator Hill—You have been sitting there for too long. You are getting out of—

Senator FAULKNER—Where is the agreement?

Senator Hill—I said I do not know the exact—

Senator FAULKNER—You do not know—I know you said that.

Senator Hill—I said I do not know the exact form of the agreement. I know there was an understanding to that effect.

Senator FAULKNER—An understanding is not good enough. An understanding can be something you can come to in a phone booth out the back.

Senator Hill—An understanding can be fine because it is not the agreement or the understanding in advance that is of consequence; it is the facts as they are applied to the law in each circumstance that counts.

Senator FAULKNER—Don't tell me that. We are talking here about something as serious as the application of the Geneva conventions to these POWs who are being detained in circumstance where we know of these serious allegations of mistreatment and abuse. So it is not something to be scoffed at, Senator Hill.

Senator Hill—I am not scoffing at anything.

Senator FAULKNER—You shouldn't.

Senator Hill—You're the one who is becoming hysterical. We don't know of any suggestion that any prisoners in whose capture Australia was involved have been mistreated. That is the first point. Secondly, we know that if we did capture prisoners and we were the detaining party, there are obligations upon us under the convention which were reiterated in the form of the memorandum that has been referred to tonight. However, I am advised that on the four occasions where Australia was associated with the capture of prisoners the circumstances were such that the United States could be the detaining party.

Senator FAULKNER—How?

Senator Hill—That was of benefit to Australia because we did not have the facilities in theatre to manage prisoners, certainly in the longer term.

Senator FAULKNER—We are not talking about the longer term; we are talking about these prisoners when they are being detained. The classic example is that of an Australian naval ship and its complement—HMAS *Kanimbla*. I accept that you are right in saying that there are four occasions. But I think most people would find it incredible, Minister, that you don't know how this arrangement came into being and that the international law division and the Iraqi Task Force in the Department of Foreign Affairs and Trade don't have a clue either.

Senator Hill—No, that is—

Senator FAULKNER—You don't.

Senator Hill—You're being ungracious because you're overtired.

Senator FAULKNER—I am not being ungracious; I am being harsh but fair.

Senator Hill—You have overexerted yourself this week. I don't know whether there is any point in repeating what I have said.

Senator FAULKNER—I am never ungracious.

Senator Hill—I am sorry I accused you of that.

CHAIR—You are improving, Senator Faulkner, I have to admit.

Senator Hill—I genuinely apologise for calling you ungracious.

Senator FAULKNER—Your apology is accepted. I wish you would now apologise for your bungling in the Department of Defence.

Senator BROWN—Can I ask what the four occasions were, Senator Hill?

Senator Hill—Why didn't you ask that during the last two days when we had the facts in front of us and the officials in front of us?

Senator BROWN—I asked you about this matter in the last two days and you did not answer. I am now asking you—

Senator Hill—Is that a question to the foreign minister?

Senator BROWN—This is a question to you in your capacity—

Senator Hill—Then I will refer it to the foreign minister.

Senator BROWN—You have referred to the four occasions.

Senator Hill—No, you have had a fair go today. You haven't asked any questions related to the foreign minister.

Senator BROWN—This is all to do with our relationship with other countries in a theatre of war and in a theatre following a war. It is very serious and it is germane to this portfolio. I am asking you, as the representative at the table, and as you have spoken about the four occasions, to give the committee a description of what those four occasions were.

Senator Hill—I will take it on notice.

Senator BROWN—In doing that, let us make it clear to the committee that at this stage you do not know what those four occasions are.

Senator Hill—That is not true but I will take it on notice because—

Senator BROWN—You should tell us if you do know.

Senator Hill—I want to ensure a full and accurate response.

Senator BROWN—You also said that there is no information that anybody that has been taken prisoner in circumstances in which Australians were involved has been mistreated. Does Australia monitor what happens to prisoners—for example, the prisoners off *Kanimbla*?

Senator Hill—I don't think they have been monitored. As I said in the chamber recently, we have confidence in our coalition colleague who is the detaining power.

Senator BROWN—We know that prisoners have been abused by the coalition colleague. How do you know that—

Senator Hill—No, I would not put it in those terms.

Senator BROWN—That is what General Taguba says. I am asking how—

Senator Hill—We know there has been abuse by certain individuals.

Senator BROWN—That is right, of prisoners. Minister, you have made the statement twice to the committee tonight so I am asking you how you know that prisoners taken by

Australians or involving Australians are not amongst those who have been abused, because that is the statement that you have made.

Senator Hill—What is the statement I have made?

Senator BROWN—That there is no evidence that that has happened.

Senator Hill—That is correct; there is no evidence.

Senator BROWN—I am asking you how you know that that is the case.

Senator Hill—Is there any evidence? I know of no evidence.

Senator BROWN—The reality is that you do not know whether or not that is the case; you are making an assumption.

Senator Hill—I know of no evidence that those prisoners have been abused. That is a statement of fact.

Senator BROWN—You have no evidence that they have not, either.

Senator Hill—You did not ask me that. The question was—

Senator BROWN—This is the point: you do not monitor it.

Senator Hill—I did not answer that question.

Senator BROWN—I will put it to you. You made the statement. I am following it up with a question. You do not know, do you?

Senator Hill—And I have said to you that, as far as I know, those who were taken prisoner where Australia was associated with their capture have not been individually monitored. I will go back and double-check. I am basing that on the fact that I have seen no suggestion that they have been monitored and I have assumed that that is because we have confidence in our coalition colleague.

Senator BROWN—You have described how putting prisoners into the care of the United States as the detaining power is a convenience for Australia because we do not have the holding facilities. I will try again—Senator Faulkner has been trying to get this information out of you. Who made the decision that prisoners taken by Australians would always be put into the hands of the United States so that they could be the detaining power? Who made that decision?

Senator Hill—There was no decision in those terms.

Senator FAULKNER—How does it happen then? That is the point. How does it possibly happen?

Senator Hill—As it happened in the circumstances, it was more than that we were lucky, because it was our desire for that to occur if possible because, as I said—

Senator FAULKNER—We are now being informed that the whole basis—

Senator Hill—I am trying to answer Senator Brown's question now. It was our desire for that to occur if possible because, as I said, we did not have the facilities for the retention of prisoners. But it could have occurred, both in Iraq and in Afghanistan, that we were the detaining power. In those circumstances we would have had to find a way to manage—and

certainly in relation to Afghanistan we had looked at that possibility—and we would have been bound by the provisions of the convention and of the MOU that we negotiated with the other coalition partners.

Senator FAULKNER—But given your obligations under the Geneva conventions, surely you should be able to explain to this committee how you came to find Australia in the position that it was not a detaining power—that on each and every occasion Australian Defence Force personnel took Iraqi POWs it would be said that they were taken by US forces and the US was the detaining power, even on two occasions on board HMAS *Kanimbla*.

Senator Hill—Senator Faulkner talks about each and every occasion. As I understand it, it occurred on only four occasions and in those circumstances it was possible for the United States to take possession of the prisoners.

Senator FAULKNER—But what is the head of power? What is the agreement? What is the arrangement? What is the MOU? Is there an exchange of correspondence? Was there a ministerial handshake? Was there some sort of under-the-table discussion between the Prime Minister and someone from the US? Can't somebody, particularly in Australia's Department of Foreign Affairs and Trade, front up and tell us what the basis is? It is not good enough for you, Minister, or officials at the table not to tell us what the head of power is here, because we are talking about Australia's obligations under the Geneva conventions—and this is in the context where there have been such serious and public concerns about possible breaches of those conventions.

Senator Hill—The convention and the obligations under the convention are as applied to the facts, not to any pre-existing agreement. As I understand it—and the specialist lawyer will correct me—you cannot agree away your responsibilities under the convention.

Senator FAULKNER—No, and the facts are that HMAS *Kanimbla* is sailing out there in the Gulf and on two occasions has taken a substantial number of Iraqi POWs. That is a fact, just like all the other facts that I went through.

Senator Hill—That is not the fact as I understand it. But I have said to you that if you want the full sequence of events in relation to the *Kanimbla* incidents, I will confirm it.

Senator FAULKNER—Is it your understanding that in the case of, say, *Kanimbla*, this is dealt with by there being a member of the US Coastguard on board the ship at all times? Is that how you do it? If that is how you do it, what is the arrangement, what is the agreement?

Senator Hill—I said what the arrangement was.

Senator FAULKNER—What is the understanding?

Senator Hill—The arrangement was that if a coalition colleague could detain prisoners where we were associated with their capture, that was to the benefit of all parties concerned.

Senator BROWN—Who made that decision?

Senator FAULKNER—Where is that formalised? Where do I read that formal agreement and understanding? You are saying, Minister, that we read it nowhere. It is some telephone box discussion between persons unknown at a time unknown and the details unknown, and that is very unsatisfactory. Even you would know that.

Senator Hill—You should have asked the questions in the last two days when the relevant—

Senator FAULKNER—These go to our obligations under the Geneva conventions, and they are relevant here to the Iraqi Task Force.

Senator Hill—You do not ever listen to an answer. The Geneva conventions come into play by application of the facts, not by any pre-existing agreement or understanding.

Senator FAULKNER—I have run through the facts; we know what the facts are.

Senator BROWN—Can you come back to the committee tomorrow with this information as to how this agreement or understanding was arrived at and who made it?

Senator Hill—I will refer it to the foreign minister.

Senator FAULKNER—I will tell you what the facts are. Fact 1: we participated in the military conflict. Fact 2: we have a continued military presence in Iraq. Fact 3: we are part of the coalition forces in Iraq. They are the facts.

Senator Hill—I think you just want to fill in the night.

Senator FAULKNER—Fact 4: POWs have been taken by Australian Defence Force personnel. That is not a bad start in relation to the facts.

Senator Hill—If Senator Faulkner is going to define the facts whatever might be the reality—

Senator FAULKNER—They are some of the facts; there may be many other facts.

Senator Hill—what can one do about that?

Senator FAULKNER—What you can do is to provide the basis for this agreement.

Senator Hill—I offered to do that a long time ago.

Senator FAULKNER—No, what you offered to do previously—

Senator Hill—I offered to find you the facts in relation to the apprehension, and I will also provide you with greater detail of what I believe was at least a pre-existing understanding as to how the ADF would deal with this issue if it arose.

Senator FAULKNER—What do you mean by pre-existing understanding?

Senator Hill—You did not listen to me earlier.

Senator FAULKNER—I did, actually.

Senator Hill—No, I do not think you did. I said that in the lead-up to the combat phase, there was at least an understanding reached between the ADF and other armed forces as to how this issue of prisoners would be dealt with. You have asked me whether that understanding was reduced to writing, the timing of it and that sort of detail, and I have said that I am prepared to take that on notice and provide whatever information I can.

Senator FAULKNER—All right. My question to you, Mr Quinn, in your capacity as the leader of the Iraq Task Force is: are you aware of that understanding?

Mr Quinn—No, I am not aware of the detail. The minister has explained the context.

Senator FAULKNER—I am just asking about your awareness. Dr French, what is your official position in the department?

Dr French—Legal adviser.

Senator FAULKNER—Are you aware of that understanding?

Dr French—No, Senator.

Senator FAULKNER—Thank you. We will come back to it tomorrow.

Senator BROWN—Clearly the captain of the *Kanimbla* either must have been aware of this arrangement or must have sought advice on the taking of prisoners, which led to him transferring prisoners into the care of the United States. What we really do need to know is who made that decision and how that decision was consummated by agreement with the United States and the United Kingdom. Minister, you are good enough to be looking at what the four occasions were involving Australians taking—

Senator Hill—Except I have not said prisoners were transferred to the United States.

Senator BROWN—Are prisoners taken by Australians—

Senator Hill—I have not said the prisoners were taken by Australians.

Senator BROWN—So what happened on the *Kanimbla*?

Senator Hill—I said I would get you the facts.

Senator BROWN—Would you get the number of people involved when you ascertain those facts, please?

Senator Hill—Yes.

Senator BROWN—As for the International Criminal Court, am I right in understanding that the United States is not party to the international agreement which has established that court?

Dr French—The US is not a party to the statute of the International Criminal Court.

Senator BROWN—But Australia is?

Dr French—Yes.

Proceedings suspended from 8.54 p.m. to 9.13 p.m.

CHAIR—We move now to output 1.1.8, Security, nuclear disarmament and non-proliferation. I welcome Ambassador Luck and Mr David Stuart.

Senator FAULKNER—I have some questions, Mr Luck, that go to the issue of the terrorism white paper. They are mostly process issues. First of all, can you indicate to me the date that was set for commencement of the white paper.

Mr Luck—I think the first work on the paper started in early March. My memory is that it was 8 March when I first learned of the idea. By 10 March we had done some initial scoping work on it and in the next couple of weeks we started to put together the small team that has been working under my direction to draft the paper.

It took probably till the end of March to really get that team together, although we had started with the resources we had immediately on hand, including my own, to put together some ideas and begin discussing them around our own agency, and we even had some contact with other agencies. That was preliminary work. Perhaps that is enough to answer your question. You may have other questions about other steps.

Senator FAULKNER—Yes, that was a very fulsome answer. Thank you. What about the date for the completion of the white paper?

Mr Luck—We gave ourselves three months from then and we are getting towards the final phase now. Frankly, that was fairly ambitious. It is quite a big job and has required a very intensive effort. We feel we are getting towards the final stages of consultation on the draft.

Senator FAULKNER—Has the completion date been brought forward?

Mr Luck—Not to my knowledge.

Senator FAULKNER—I just wanted to check with you whether basically the plans have stayed consistent for completion through the process. I am not suggesting it has; I just want to know. What about the agencies that have been consulted in the preparation of the white paper? Could you provide us with a list of those?

Mr Luck—Certainly. The initial outline of the white paper, which we did on the basis of a series of chapters that we thought would describe the task, was circulated in early April to the following agencies: AusAID, the Australian Federal Police, ASIO, ASIS, Attorney-General's, AUSTRAC, Customs, the Department of Transport and Regional Services, the Department of Immigration and Multicultural and Indigenous Affairs, the Department of Defence—and within that also to the Defence Intelligence Organisation—to the Office of National Assessments and to the Department of Prime Minister and Cabinet. That is the core group of agencies consulted, although at a later stage Treasury also joined the list.

Senator FAULKNER—Thank you. Was there any process for public consultation?

Mr Luck—Not on the normal scale of a white paper. We have had some consultation with experts in the field, including some outside the government—some academics. We have started some consultation with leaders of the Muslim community.

Senator FAULKNER—Did you advertise for submissions at all?

Mr Luck—No.

Senator FAULKNER—So these have basically been organisations or individuals that you felt might be able to make a contribution?

Mr Luck—Yes, and they were consulted largely to try and help reassure ourselves that we were getting the judgments in some of the more difficult areas right. Most of the consultation has in fact been an internal government one.

Senator FAULKNER—Would you be able to take it on notice for me—I do not want to bog the committee down now—to provide a list of those people you requested to make an input from outside government?

Mr Luck—I am sure that information is available; I just wonder whether they would necessarily feel that they wanted to have their identities known.

Senator FAULKNER—That is a fair enough point if you can explain it to me. What would be the concern?

Mr Luck—That would be a matter for them.

Senator FAULKNER—Is it the embarrassment of being associated with a Howard government white paper?

Mr Luck—Not at all.

Senator FAULKNER—That is what I immediately assumed you meant.

Mr Luck—It is a question that I ask myself: would it be appropriate to do that?

Senator FAULKNER—Do you have some concerns in that regard?

Mr Luck—Not on the basis that you put them to me, Senator, no.

Senator FAULKNER—No, but you have some concerns. What are the concerns?

Mr Luck—It has occurred to me that identifying people outside government whom we have consulted is something they might have views about. It is as simple as that. We have not asked them that question; it has simply been a question in my mind. I hesitate to give you the assurance that we will provide those details simply on the basis of that question.

Senator FAULKNER—How many have you gone to outside? Can you give me a figure?

Mr Luck—In the academic field I think it is probably about three or four. There is not a vast field of expertise on terrorism. We have not yet completed the other process of consultation that I informed you about. We have in mind perhaps another three or four.

Senator FAULKNER—So it is a small number.

Mr Luck—Yes.

Senator FAULKNER—You might be able to check with them for us, in the process of your discussions—

Mr Luck—Certainly.

Senator FAULKNER—and indicate those that do not mind their names being made public. If others do mind their names being made public, you could just tell us how many there are and we can take it from there.

Mr Luck—I think the point here is that we are putting together advice for the government on the basis of the task we have been given and the scope that it entails. Basically the task involves putting together an authoritative view of the international dimensions of the terrorist threat and the way it manifests itself, the way it touches Australian interests and the way the government has responded. Obviously it will be a government paper and it is naturally not something that everybody who would have been consulted in the process would necessarily associate themselves with. It is a government paper.

Senator FAULKNER—I have to say to you that I find it a pretty unremarkable thing to be provided to a committee like this. However, if there is a valid sensitivity, of course take account of it.

Mr Luck—I would certainly be very happy to ask those consulted.

Senator FAULKNER—You might even consider, if there is some sensitivity, providing the information privately, on the basis that it is not made public.

Mr Luck—Certainly, Senator.

Senator FAULKNER—Anyway, I will let you respond to that in the way that you, in the first instance, deem appropriate. I think it is fair for me to say to you that I consider the question an unremarkable one and that it is not unreasonable that that sort of information be in the public arena. That is my first and instinctive reaction, but I am always ready to listen to a valid argument about why those issues should not be made public—and there may well be.

In the Department of the Prime Minister and Cabinet estimates last week Mr Metcalfe said he did not think the white paper would be regarded as being anywhere near a final document yet. Is that a pretty fair assessment of where it is up to?

Mr Luck—We believe we are taking it to a point where it is getting into the final stages. I believe Mr Jordana made a comment along those lines in the same set of evidence. The point at which it is final will be decided by the government.

Senator FAULKNER—Let me quote him directly from the *Hansard*. Mr Metcalfe said:

My sense, as Mr Jordana says, is that it is a work in progress that has gone a fair way down the track, but I do not think it would be regarded as being anywhere near a final document yet. We are not aware of what the ultimate launch publication arrangements might be.

That is what he said. I asked him a number of questions. I suppose I am asking you whether those comments still stand, because I think I am getting a slightly different picture from you tonight.

Mr Luck—It is a week later, Senator. I do not think there is an enormous difference between that perception and my own. I make the additional point that we will only know when it is final when the government has looked at it and taken a view.

Senator FAULKNER—Are you working to a planned launch date at this point?

Mr Luck—No.

Senator FAULKNER—No pre-planning in that regard?

Mr Luck—No.

Senator FAULKNER—You have not been tasked to complete this work by a particular time?

Mr Luck—We are working to complete it by the middle of June, which is three months after we started.

Senator FAULKNER—This is obviously an important task for you and for the department. That would be right, wouldn't it?

Mr Luck—It is, Senator, yes.

Senator FAULKNER—What sort of resources has the department devoted to the preparation of this white paper?

Mr Luck—In addition to myself being fairly full-time on it, I would say, I have one SES colleague, two broadband 4s, one broadband 3 and one broadband 1 on the team. In addition,

as you would expect, there has been a process of consultation with other areas of responsibility and expertise around the department but except for a couple of days nobody else has been on the team full time. So that represents what we regard as the core team. We have also had the benefit of full-time contributions by one staffer each from ASIO and the Department of Defence.

Senator FAULKNER—You described it as a team. You have a team operating in the department, have you, under your guiding hand?

Mr Luck—That is right.

Senator FAULKNER—Do you call it a team or a task force?

Mr Luck—We call it a team. It is an informal term that seems to fit.

Senator FAULKNER—In terms of secondment of officers, you said there was one from ASIO?

Mr Luck—There is an officer from ASIO and an officer from the Department of Defence.

Senator FAULKNER—Can you say at what level they are?

Mr Luck—I am not sure exactly what the ASIO designation is. I think it is about a broadband 3 or 4 equivalent. For Defence, it is a lieutenant colonel.

Senator FAULKNER—In terms of secondment from other areas within DFAT, there are a number of your DFAT officers as well?

Mr Luck—Yes. They are not seconded so much as just being brought onto the team. There is a fair bit of fluidity in DFAT at any one time. We have been able to identify the right sort of people.

Senator FAULKNER—What areas of the department have you drawn these from?

Mr Luck—The South-East Asia division, someone from the Middle East area and my SES colleague was head of one of the Europe branches, although she had finished there and was in transit but had done some previous work in the international security division, including covering terrorism.

Senator FAULKNER—Any involvement of any of the Iraq Task Force?

Mr Luck—A number of areas of the department have been consulted on bits of the draft. They certainly have been on part of the draft, yes.

Senator FAULKNER—No-one working on the Iraq Task Force is working on your terrorism white paper team?

Mr Luck—No, Senator.

Senator FAULKNER—Are we at the point of having a draft, either of the full document or of parts of the document?

Mr Luck—Certainly.

Senator FAULKNER—We are there, are we? There is already a draft of the white paper?

Mr Luck—A work in progress draft, yes.

Senator FAULKNER—Is that being circulated around agencies?

Mr Luck—Yes. Can I give you some details on that?

Senator FAULKNER—Yes, give us a status report on it. That would be helpful.

Mr Luck—I mentioned the synopsis that we sent around in early April. That was at about the time we had a first meeting of all those agencies. What we tried to do is have a continuous process of consultation on segments of the text where we knew there was particular expertise outside our department. But we also had a meeting in early April to bring everyone together. We circulated an overview which will take the shape of what will become a sort of executive summary on 14 May and we circulated a first full draft of the text on 18 May in the knowledge that this was something that was still in need of a lot of work. That draft has gone through a second iteration and has been distributed, and that is about where we are up to. So there are still a number of other iterations to come, possibly.

Senator FAULKNER—We heard from Mr Richardson in ASIO's estimates last week that he would use the words 'broad agreement' in responding to a question about whether or not there was a reasonable agreement in relation to the synopsis from the agency. He also said in response to a question of mine that whether or not there was—this is the issue that was raised—disagreement in relation to the synopsis and then between ASIO and DFAT 'we had some suggestions' and that 'only some of those suggestions' had been reflected in the DFAT document. Can you confirm that that is a fair assessment of where the DFAT-ASIO interface is on this document?

Mr Luck—That is fair. I think it is also true of probably most of the other interfaces that have been involved. It has been a good process of consultation and agencies have contributed very willingly, with a very quick turnaround on drafts and that sort of thing. So I think what he says about a large measure of agreement is basically a good way to characterise it.

Senator FAULKNER—Did this mean that DFAT rejected or refused to incorporate some of ASIO's submissions to DFAT regarding either the synopsis or the draft white paper?

Mr Luck—I would not put it that way. 'Refused to incorporate' does not really capture the way in which we worked—in a very collegiate way. Ideas have been put forward, we have discussed them, some have been taken on board in that process and some have been put to one side. Whether or not that will be the state of play at the end of the process is unclear. But it would be wrong to characterise it as rejection and sharp differences. Certainly on substance and analysis there is a broad measure of agreement, both as to the appropriateness of the scope of the task and as to the details we have fleshed out.

Senator FAULKNER—I have certainly been told that there is quite a vigorous bureaucratic argument going on on the issue of the degree of the threat of terrorism posed to Australia or Australian interests that should be included in the paper. My informant might be wrong, of course.

Mr Luck—It does not sound right to me. I would say rigorous, but not vigorous.

Senator FAULKNER—On that issue of the degree of threat terrorism poses to Australia and Australian interests?

Mr Luck—On the degree of threat, we are highly dependent on ASIO's judgment and capabilities. That is the agency that has the key responsibility there and we are very happy, as we have been from the start and as we made very clear from the start, to accommodate that. They are the experts on assessing threat. This paper is broader than that, though. It describes the threat both in the way that it presents itself and some of the origins of it. It tries to provide a context in which the broad Australian public can understand the issue and indeed put into context some of the more short-term threat assessments that are issued from time to time. The way you characterised it there does not quite ring true with my own experience of the process.

Senator FAULKNER—I would prefer you to characterise it, not me. I just want to understand what the situation is. So you have received formal submissions from agencies like ASIO—is that how it works?

Mr Luck—No, not really. There has been a body of material that has existed within the government, some of which was sensitive and classified, which we have been able to draw on. The process has mainly involved working out from a core outline which was agreed and then an expanded outline and then a full paper. We have wanted to make it an accurate and true process in that way all along. Right from the start we have been circulating drafts, which are essentially written within our team, to interested agencies and getting their comments and amending them according to their comments or some discussion based on those comments. Of course in the case of ASIO we have had one of their people—and one from Defence—embedded in the team, which has been a very convenient way of tapping into those other agencies in a rather intricate way, making sure we are touching base with all relevant people in those agencies who have some detailed expertise or judgment to contribute. That has been more the nature of the process rather than a standard one of calling for submissions and then trying to massage those into some sort of composite draft.

Senator FAULKNER—Let us use the ASIO example. Are there any outstanding issues between ASIO and DFAT on the white paper?

Mr Luck—There are issues being discussed. All key agencies have issues that they have yet to see fully resolved in the way the paper is developing, yes.

Senator FAULKNER—But is the final draft of this white paper dependent on those issues being resolved?

Mr Luck—Hopefully, the final draft will—but it may not—involve full resolution of all issues.

Senator FAULKNER—What does that mean?

Mr Luck—It is the normal process of preparing material for ministers.

Senator FAULKNER—Yes, you are saying that at the end of the day the minister has the final say.

Mr Luck—It will be the government's prerogative and they will make the final judgments if everything has not been wrapped up at a bureaucratic level, which is the normal process of taking something before cabinet.

Senator FAULKNER—Is it right that Mr Downer is the lead minister for this white paper?

Mr Luck—He is, yes.

Senator FAULKNER—So it will be produced effectively in Mr Downer's name?

Mr Luck—He will take it to cabinet. It will be a government paper, to my understanding, if they accept it and if they are happy to issue it in the form that it is produced for them.

Senator FAULKNER—What about the input of the AFP? I cannot recall if you mentioned that. I jotted down most of what you said.

Mr Luck—Yes, they are there.

Senator FAULKNER—So they are in the list of agencies?

Mr Luck—Yes.

Senator FAULKNER—Is it a similar sort of situation with ASIO, with a bit of tick-tacking on the draft and the like?

Mr Luck—With the AFP?

Senator FAULKNER—Yes.

Mr Luck—Yes.

Senator FAULKNER—This would be pretty common across agencies?

Mr Luck—Yes.

Senator FAULKNER—What you are really suggesting to the committee is that even at the bureaucratic level it sounds like there is going to be a range of unresolved issues—a draft that will go forward to ministers will contain a range of areas where views will be unresolved, where there will be differences of view.

Mr Luck—I think it is a bit early to predict that.

Senator FAULKNER—I thought that was what you told us.

Mr Luck—I said that may be the case, and that would be completely normal in the way these things are dealt with within government, as you would know.

Senator FAULKNER—Would it?

Mr Luck—I think so, yes. Cabinet submissions often go forward with comments.

Senator FAULKNER—I am not sure how normal it is for a draft white paper to go forward with agencies which have got a major responsibility in the fight against terrorism having views so substantially differing in nature that they cannot be resolved. I do not think that is very common.

Mr Luck—I am not suggesting that is the case.

Senator FAULKNER—No, but you are certainly dropping a substantial hint that that is the case.

Mr Luck—I am not intending to. We are working very hard to resolve these questions. We have got the paper substantially agreed, as I said earlier, through a very good process, and I would be pretty confident we can continue that process to resolve all issues. If we cannot then there is a way of settling it.

Senator FAULKNER—This synopsis seems to be causing a lot of problems, doesn't it?

Mr Luck—No.

Senator FAULKNER—Aren't agencies like ASIO, AFP and the Attorney-General's Department just fighting with you like Kilkenny cats?

Mr Luck—Absolutely not. That is a completely inaccurate impression. I do not know where you got it.

Senator FAULKNER—You are assuring me that that is not the case, are you?

Mr Luck—Yes.

Senator FAULKNER—They have just got concerns with the synopsis? Just the normal creative tension between agencies?

Mr Luck—The synopsis was settled weeks ago.

Senator FAULKNER—It was finalised?

Mr Luck—Yes, with no fuss.

Senator FAULKNER—When was that finalised?

Mr Luck—It was circulated on 7 April. I do not think there were any amendments to it. It was understood to be agreed within two weeks of that date.

Senator FAULKNER—I accept what you say about this, that there is a draft white paper and obviously it goes through, I suspect, iterations all the time—it is an evolving document. Would that be fair to say?

Mr Luck—Yes.

Senator FAULKNER—At what point of the evolutionary process do you put out drafts to agencies? When would agencies expect the next draft? How often do you do it? I do understand that it is iterative and so forth.

Mr Luck—That is right. I gave you the dates, I think. We have circulated two full drafts. The first full draft was circulated on 18 May. The only magic about that date was that that was when we had written it. We felt we had most of the material together about a week before that, but we were not really satisfied. The problem with a whole lot of people writing something like this is that you get contrasting styles and different levels of detail. So we spent a few days just to try and—

Senator FAULKNER—You brought in the style police.

Mr Luck—No.

Senator FAULKNER—They work for one of the parliamentary departments here—I can introduce you to them.

Mr Luck—Could you give us the names, please? That would be very helpful.

Senator FAULKNER—I can actually, but they worry more about things like furniture, artwork and the like.

Mr Luck—We might need to hire them for a short time. We actually asked an editor to come in and help us knock it into shape so that we could circulate it with a degree of confidence that the first thing our colleagues in other agencies would say was not, ‘This is all over the place.’ We wanted them to focus on substance. Then we distributed the second full draft. We asked for comments, both oral and written—textual suggestions, basically—on the draft in quite quick time, and we were able to get a second version out.

Senator FAULKNER—What was the date of that?

Mr Luck—It was 27 May.

Senator FAULKNER—That is literally a couple of days ago?

Mr Luck—It was last week.

Senator FAULKNER—I do not expect you to have brought a crystal ball into the committee hearing but within reason can you say what your expectation is of when the next iteration or the next draft will be circulated to agencies?

Mr Luck—I was hoping to get it out about now but I have been away. We will probably try and get something out before the end of the week.

Senator FAULKNER—Before the end of this week?

Mr Luck—Yes, but that is not a promise.

Senator FAULKNER—I understand: that is your plan at this stage. I just wanted to get a feel for the timetable.

Senator BROWN—I want to ask about the report I referred to in the committee earlier tonight—the report of the International Institute for Strategic Studies. Has that been taken into account in the development of this white paper? What assessment has been done of the presumption therein that the war in Iraq has boosted the numbers of al-Qaeda operatives and the risk of terrorism?

Mr Luck—We have read the report. I have read the summary, called *Perspectives*, which is a good read. One of my team has read the whole thing. He has given me a good report of its flavour. The report is very timely and it is quite authoritative, I think. It is one among many public sources that we have tried to plug into, including a lot of the academic literature that is around. On the question of numbers of al-Qaeda, that report talks about what they call ‘conservative intelligence estimates’ of the numbers, being something like 20,000, having been trained in al-Qaeda camps since 1996. Then I think it goes on to say something like: assuming estimates of some 2,000 al-Qaeda operatives having been taken out of action in some way, there may still be 18,000 around. I do not know where they get those figures from but they seem to put some weight on them.

Some of the press reporting seems to suggest that those figures demonstrate, in some measurable or credible way, that Iraq has increased the numbers of al-Qaeda, which I do not think is a correct reading of what the IISS paper was actually saying. My own reading of it is that they had given us a figure which they had gleaned somehow from their reading of what they say were conservative intelligence estimates.

Senator BROWN—Will the white paper give an assessment of the impact of Iraq on the security of the world as a whole, including Australia—knowing that we are talking about terrorism here—and of the speculation that the events in Iraq are actually leading to a stimulation of terrorist activity or intent?

Mr Luck—No. The focus of the white paper really is not on Iraq. It depends on what the government decides will be the content of the paper in the end, but it is quite possible that there will be references to Iraq.

Senator BROWN—Surely you cannot have a paper talking about terrorism and the threat, presumably, to Australians in the long term without taking into account the impact of events in Iraq.

Mr Luck—It is something we have been giving thought to.

Senator BROWN—You just mentioned the government. Is it up to the government to not take into account the impact of Iraq on the security of Australians and the threat of terrorism?

Mr Luck—That is not for me to say. This paper will be a government paper. Its purpose will be to set out an authoritative view for the Australian public of the nature of what we are trying to distinguish and describe as a new form of terrorism whose characteristics are notable partly because of the reach of contemporary terrorism—it is transnational and has obviously developed some strategic reach, as demonstrated through the tragic attacks of recent years.

The idea of the paper is to try to help Australians understand that; to try to explain some of the origins of the type of thought that has given rise to extremism, which has converted itself into terrorism; to describe how al-Qaeda has in some ways branded this particular type of terrorism and given it a lot of organisational and ideological momentum; and to describe how that branding, if I can simplistically call it that, has spread and how in particular it has come into and excited and enlivened militancy in South-East Asia—and in other regions of the world, but particularly South-East Asia, that being our neighbourhood.

It will try to present a description of the way the threat can make itself felt. It is very much focused offshore; it is focused on the sorts of risks that travelling Australians face—Australian visitors offshore or people who live offshore. It is also going to set out the way in which the government has engaged internationally to deal with the threat and its commitment to continue doing so in the future. Part of the point is to get across the extent to which the threat is still with us. Our analysis of the way it has evolved shows that it is likely to be an enduring threat. That takes us to many factors, as you would imagine.

Senator BROWN—Will that include an assessment of the ongoing conflict between Israel and the Palestinians?

Mr Luck—There may be reference to that but I do not know that we would see an assessment of that as being central to the scope we have looked at.

Senator BROWN—The IISS report I referred to earlier does make specific reference to both the Palestine-Israel conflict and the events in Iraq, doesn't it?

Mr Luck—I believe so, yes.

Senator BROWN—How could a white paper like this explaining the threat to Australians travelling overseas in particular, as you just said, fail to have an assessment of the role of those two factors in terrorism and in stimulating terrorism or being an excuse for terrorism?

Mr Luck—I am not suggesting it will fail to do that.

Senator BROWN—So, at the moment, part of the working paper or the paper that is evolving will take those two factors into account?

Mr Luck—Certainly they are issues that we have been thinking hard about, yes.

Senator BROWN—Thank you. You spoke about the ideologies that have to be assessed if you are trying to understand terrorism. What about the social factors that it has been speculated give rise to terrorism—for example, the division between rich and poor in the world? Is that something that is being assessed in this white paper?

Mr Luck—Again, they are issues that we have been aware of in putting the paper together. There is a whole debate, as I am sure you know, on the issue of root causes. That is something that we will try and make some sense of in the paper. I think you talked about causes of terrorism and mentioned wealth disparities. I am not sure that that is how we would see it, or at the end of the day whether it will be in the paper.

Senator BROWN—Have you consulted on that factor? It has been referenced in many assessments on what is giving rise to the current era of terrorism.

Mr Luck—Certainly we are aware of the arguments that are put around. There is an argument about what is a cause and what is an excuse, and what are the issues that terrorist groups very cleverly invoke to try and have people either support them or excuse what they do. There is a wider set of issues about the circumstances which either encourage or deny opportunities for terrorists to thrive. Some of those can go to that broad gamut of issues such as the quality of governance, the fullness and capability of administrations, the problem of failed states, income disparities, legal systems, the adequacy of laws, the effectiveness of law enforcement and so on. So there is a big range of issues there that go to make up the picture.

Senator BROWN—You will be entertaining, then, the problem of failed states?

Mr Luck—I am just slightly hesitant to say what will be in there because we are writing for government, and government will reflect on that. But it seems to me to be one of the issues, among many, that could be canvassed in a paper of this kind.

[9.59 p.m.]

CHAIR—We will now move to 1.1.2, South and South-East Asia.

Senator FAULKNER—Mr Paterson, could you give the committee a brief status report, please, on the state of negotiations with East Timor on the maritime boundary negotiations.

Mr Paterson—I will get Dr French to do that.

Dr French—Australia is committed to negotiating permanent maritime boundaries with East Timor in good faith and consistent with international law. A first round of talks in relation to the negotiation of permanent maritime boundaries was held in Dili on 19 to 22 April 2004. Talks were broad ranging and substantive. Both sides outlined their respective views as to the appropriate location of permanent maritime boundaries. We look forward to

holding a second round of talks with regard to those boundaries later this year, probably in September in Australia, probably in—

Senator FAULKNER—What was the date of those negotiations?

Dr French—From 19 to 22 April.

Senator FAULKNER—I will ask you a couple of questions so I understand perhaps a little better what the result of those negotiations is. Could you explain very briefly to the committee what the position of East Timor was at those talks?

Dr French—We understand—and East Timor has made it known publicly as well—that East Timor is claiming an area which includes the Joint Petroleum Development Area which has been agreed under the Timor Sea Treaty, to which both countries are a party. In addition to that, they have made a claim to areas extending beyond the Joint Petroleum Development Area on the eastern and western side of the JPDA.

Senator FAULKNER—How would you characterise the Australian response?

Dr French—Australia considers that it has a longstanding and valid claim at international law, which has been stated many times in the past, to the entire natural prolongation of Australia's continental shelf, which extends from the coastline of Australia to the Timor Trough, which is a significant depression, the seabed feature going to a depth of approximately 3,000 metres. This has been the position of Australia for a number of decades and has a sound foundation in international law.

Senator FAULKNER—Are you able to say to the committee whether the Australian government is considering any compromise on boundaries at all?

Dr French—It is very early days in negotiations. As I mentioned, the first round has just been conducted. We, of course, are entering into these negotiations in good faith. It would be very early to be speculating now as to the result of that.

Senator FAULKNER—Does the same go to the issue of possible compromises on oil and gas resources in the Timor Sea?

Dr French—Recognising that there are major interests in seeking to develop promptly for the benefit of both Australia and East Timor the oil and gas resources of the Timor Sea, Australia and East Timor, pursuant to article 83 of the United Nations Convention on the Law of the Sea, entered into a provisional arrangement of a practical nature—that being the Timor Sea Treaty—to enable the development of those resources. That is indeed occurring and already revenue is flowing from the Bayu-Undan project located within the JPDA.

Senator FAULKNER—I think I read somewhere that the government thought it was likely to take 20 years to reach a boundary settlement. Does that ring a bell to you?

Dr French—I understand that there has been mention of the fact that some maritime boundaries have taken decades to negotiate. I can say that, for example with regard to Indonesia, the process of negotiating maritime boundaries did take in the order of two decades.

Senator FAULKNER—I suppose the implication that seems to underpin it is that there are changes to be made.

Dr French—As a matter of law, there exists no permanent maritime boundary. Both countries are obliged under international law to reach agreement on permanent maritime boundaries, and we will be working in good faith towards that end.

Senator FAULKNER—Are you able to say what the government's starting position is on the boundary negotiations?

Dr French—As I have briefly mentioned, Australia has a long-standing and valid claim to the entire extent of the continental shelf of Australia, which extends to the so-called thalweg, the bottom of the Timor Trough at a depth of about 3,000 metres.

Senator FAULKNER—What is the situation in relation to production and revenue-sharing arrangements that will apply to any oil or gas discoveries made under exploration licences from now on by Australia in territory claimed by East Timor to be in dispute? Are you able to assist us with that?

Dr French—I can distinguish there with respect to the area that has been defined as an area within which Australia and East Timor were not able to reach agreement, and that is the Joint Petroleum Development Area. In that area agreement has been reached in the context of the Timor Sea Treaty to divide the proceeds from development of the oil and gas resources on the basis of 90 per cent to East Timor and 10 per cent to Australia. If you are referring to areas outside the Joint Petroleum Development Area, that is an area, from the Australian perspective, of unambiguously Australian jurisdiction. It has been so for a number of decades and Australia has issued licences in those areas fully in accordance with the law.

Senator FAULKNER—A week ago the *Sydney Morning Herald* reported in an article that the President of East Timor desired to break off negotiations with Australia over permanent maritime boundaries and, if you like, start afresh. I do not know whether you saw the article or not; I assume it would have been in the DFAT clips. I think that is a pretty fair reflection of what it said. Are you able to assist me in understanding why the President of East Timor would want to do that.

Mr Chester—I am not aware of that particular statement.

Senator FAULKNER—The article was in the *Sydney Morning Herald* on 25 May. Like all these things, Mr Chester, I do not know about the accuracy of the reportage but I know about the existence of the article.

Mr Chester—I am not aware that he has said that to us, that he would want to break off negotiations and start again. It is certainly not something I am aware that the Prime Minister has said to Australia.

Senator FAULKNER—The same report said that Timor may be considering its negotiation options for the resumption of negotiations in September. This is just a report in the newspaper. I do not want to labour this point but I want to get an understanding of the status of things there and whether this is reflected in the situation as DFAT understood it to be.

Mr Chester—My understanding is that both sides are proceeding to resume the negotiations in September.

Senator FAULKNER—There have also been reports that Australian officials have asked East Timor to stop speaking publicly against the Australian position—is that right?

Mr Chester—No, it is not. Australian officials have said to the East Timorese leadership that some of the comments they are making publicly in relation to this issue are over the top and inflammatory and that, whilst they are free to say whatever they like, they need to understand that some of those statements are such that it would be naïve to think that comments like that would not have some impact on the broader bilateral relationship—and, secondly, that some of the comments they are making run the risk of developing an anti-Australian sentiment within the East Timorese community. That is something that we would wish to avoid, as we would hope they would wish to avoid it.

Senator FAULKNER—Who made this suggestion? Was it a DFAT official or DFAT officials who made this suggestion to the East Timorese that comments were over the top and ran the risk that you have outlined?

Mr Chester—The minister has made that statement a number of times publicly. Yes, a DFAT official did talk to the East Timorese.

Senator FAULKNER—That is what I wanted. I have read some of Mr Downer's comments. I think they have been in the public arena.

Mr Chester—That is right.

Senator FAULKNER—Which DFAT official—

Mr Chester—It was me.

Senator FAULKNER—Then you should be in a very good position to be able to tell us what you said.

Mr Chester—I just did.

Senator FAULKNER—Were you dispatched to East Timor to say that? Were they face-to-face discussions?

Mr Chester—Yes. I would not describe it as being dispatched, but it was discussions in East Timor recently.

Senator FAULKNER—When did they occur? When did you go to East Timor?

Mr Chester—I cannot remember the exact date. I think it was around 7 May, but I would not swear by that. I am told it was 6 and 7 May.

Senator FAULKNER—You can let us know precisely if that is not accurate. Why was it considered necessary for a senior official like you to go to East Timor to pass on that message?

Mr Chester—For the reasons I mentioned. There were quite a number of statements coming from elements of the leadership of East Timor that were, to put it mildly, over the top. It was, in our view, a deliberate process that they were getting into to develop sympathy for their negotiating position in these negotiations. We certainly do not have any problem with them talking publicly about their negotiating position, but some of the comments were extremely inflammatory and, as I said, they ran the risk of developing an anti-Australian sentiment within the community. I think the East Timorese leadership needed to understand that risk. Secondly, there was the obvious point that it would be naïve to think that comments

such as these—inflammatory comments and derogatory comments—would not necessarily have an impact on the broader relationship.

Senator FAULKNER—Was it a ministerial decision for you to go or a departmental decision?

Mr Chester—It was a ministerial decision.

Senator FAULKNER—Was it in the department's mind that this might be seen as a heavy-handed response in the gentle world of diplomacy?

Mr Chester—No, Senator. I do not believe so.

Senator FAULKNER—Why not?

Senator Hill—It doesn't sound very heavy-handed to me.

Mr Chester—It certainly was not seen as heavy-handed; it was seen as providing advice to the East Timorese government—providing our perception of and our views on the impact of the comments that were being made.

Senator FAULKNER—You are directly involved, Mr Chester, so I accept your evidence in that regard. What does all this say about the state of our bilateral diplomatic relationship?

Mr Chester—I think it would be fair to characterise it as being a very strong and very close relationship.

Senator FAULKNER—What is your assessment of how your visit was received by the East Timorese?

Mr Chester—Very positively.

Senator FAULKNER—I think this is accurate but correct me if I am wrong: it did seem as if there was a decision to reduce aid funding to East Timor in this year's budget. I think that is correct, isn't it?

Mr Chester—I think I saw a media report to that effect but I understand that is not the case.

Senator FAULKNER—Because it is a media report I thought I would check with you as to whether that was accurate.

Mr Chester—My understanding is that it is not accurate.

Senator FAULKNER—If you can confirm that for me I won't ask a follow-up question.

Mr Chester—I am told it was dealt with this morning under AusAID and the answer will be in the *Hansard* of this morning's session.

Senator FAULKNER—That is the only time I have been able to tune out. It was riveting stuff—Senator Bartlett's cross-examination of the AusAID officers—but I would have to plead guilty and say I missed it. Can you say what the thrust of it was?

Mr Chester—All I know is that the issue was raised this morning.

Senator FAULKNER—Your understanding is that the report is not accurate?

Mr Chester—That is my understanding.

Senator FAULKNER—I will accept that at face value. If the situation is any different, could you let us know, and I will take your counsel and read Senator Bartlett's cross-examination of AusAID officials.

Senator BROWN—Just following on from Senator Faulkner's question, a report in the *Australian Financial Review* of last Monday by Lenore Taylor stated:

In an interview with Capital Moves, Foreign Minister Alexander Downer said the Timorese leaders' tactic of launching "fusilladive" (all guns blazing) and "extremely aggressive" abuse against Australia was "sorely misjudged". "Charm and flattery have more of an impact on me than fusilladive abuse. Whenever I am abused that's it, I don't like it," he said. "They are making a very bad misjudgement if they think the best way to deal with us is to abuse us."

Is that diplomatic language?

Mr Chester—Are you asking for an opinion?

Senator BROWN—Yes—an assessment.

Mr Chester—It depends what one means by diplomatic language. I see nothing wrong with that. It is, in my view, telling it as it is.

Senator BROWN—So the foreign minister works by giving favour if he is charmed and flattered?

Mr Chester—That was not what I was saying. When I said he was telling it as it is I was referring to his description of the way the East Timorese were handling this issue.

Senator BROWN—I know, but he is saying that he wants charm and flattery—that is his preference.

Mr Chester—I am not sure he was actually saying that. My understanding of the purpose of what he was saying is that it was to deliver the message that the use of the language that was being used was potentially counterproductive.

Senator BROWN—That was the use of the language coming from East Timorese leaders that Australia was a bully, that it was involved in theft, that—

Mr Chester—There was a bit more than that. There were allegations that the only reason we were involved in INTERFET was in relation to the Timor Sea oil, and we all know to say things like that is totally wrong and over the top—and, in fact, quite illogical. That point was made, I believe, by the President of East Timor. The Prime Minister of East Timor had made similar kinds of comments about Australia being responsible for the death of children and those kinds of things. They were inflammatory comments and totally wrong comments.

Senator BROWN—At dispute here is some \$8 billion in royalties over the next 30 years, isn't it?

Senator Hill—It depends on the extent of the development, doesn't it?

Mr Chester—I do not know the amount. This issue is a bit more complicated than the way it is often portrayed in the press. Australia and East Timor reached an agreement recently to allow the development of the Greater Sunrise field, which straddles the joint development area and an area of exclusive jurisdiction by Australia. That agreement will—

Senator BROWN—That exclusive jurisdiction is Australia's assertion, isn't it? Is that agreed by East Timor?

Mr Chester—That is the Australian assertion. That is the Australian position. It is a position that Indonesia agrees to, it is a position that the Portuguese gave de facto recognition to and it is a position that in our view the experts in this field would think was quite reasonable and justified.

Senator BROWN—And it is agreed by East Timor?

Mr Chester—No; it is an area where the East Timorese have an ambit claim.

Senator BROWN—There is a dispute, isn't there?

Mr Chester—To the extent that the East Timorese have indicated that they have a claim to that area, yes.

Senator BROWN—Yes, and it is a serious dispute with Australia, isn't it?

Mr Chester—I do not know that it is a serious dispute. We have had one round of the negotiations where both sides have set out what their position is. The East Timorese have chosen to go public immediately after one round of negotiations. We do not believe it is a serious dispute. The East Timorese are portraying these negotiations after, as I said, one round as if there is an impasse and a serious dispute. We do not interpret that.

Senator BROWN—Don't you understand, Mr Chester, that when there is \$8 billion involved for the poorest country in Asia on our northern doorstep, where the current budget available is about \$100 per head, where children are starving, where schools do not have electricity and running water—

CHAIR—Put the question please, Senator Brown

Senator BROWN—and where there is 90 per cent unemployment, there is real dismay in East Timor? Is that not understood by the department?

Senator Hill—The witness has said there are differences and the differences are being negotiated. To introduce this emotional language for the purpose of trying to make a political point is not appropriate in this committee.

Senator BROWN—It is not appropriate for you to ascribe motivation when I am asking a question, Minister, and I will continue to ask the question.

Senator Hill—Senator Brown wants to make a speech. If you want to make a speech on the subject, you ought to do it in the chamber.

Senator BROWN—I ask you again, Mr Chester: are you aware of that degree of feeling about that situation in East Timor? This \$8 billion is extraordinarily important to—

Senator Hill—We do not know that there is \$8 billion. You leap to conclusions all the time. Without development, there is not a dollar.

Senator BROWN—Are you aware of that dismay in East Timor, Mr Chester?

Mr Chester—I am aware of the situation in East Timor. I am also aware—I believe this is right—that the relative wealth of countries that are negotiating maritime boundaries is not an issue in those legal negotiations. Mr French will correct me if I am wrong. Is that correct?

Dr French—That is correct.

Mr Chester—I am also aware that the East Timorese are seeking to link these issues. At the same time, of course, Australia has in a sense renegotiated the share out of the joint development area. Greater revenue is flowing to East Timor as a result of the Australian government's decision to change from a fifty-fifty share to a ninety-ten share in East Timor's favour. The Australian government negotiated and signed an agreement that would allow for quite substantial royalties of many tens of millions of dollars a year to flow to East Timor as a result of the development of Greater Sunrise.

Senator BROWN—Ninety per cent again.

Mr Chester—Of the Greater Sunrise?

Senator BROWN—Yes.

Mr Chester—It is 90 per cent of that area of the Greater Sunrise field that is in the joint development zone.

Senator BROWN—No, is 90 per cent of the revenue going to East Timor as it is in the joint development area?

Mr Chester—Ninety per cent of the revenue from the joint development area goes to East Timor.

Senator BROWN—What about Greater Sunrise?

Mr Chester—Ninety per cent of the revenue from that area of that field. That field overlaps the joint area and an area where Australia has the right under international law at present. Ninety per cent of that field that is in the joint area goes to East Timor.

Senator BROWN—And outside the area?

Mr Chester—One hundred per cent goes to Australia.

Senator BROWN—Is the majority of Greater Sunrise inside or outside the area, Mr Chester?

Mr Chester—My understanding is that the overall revenue share is something like 19 per cent to East Timor. Is that correct?

Dr French—That is approximately correct. It is 90 per cent of 20.1 per cent.

Mr Chester—Roughly 20 per cent of Greater Sunrise revenue will go to East Timor and 80 per cent to Australia.

Senator BROWN—The arrangement in this biggest of the fields is 19 per cent to East Timor and 81 per cent to Australia—and it is disputed. Mr French, you said that Australia has a longstanding and valid claim to all of the continental shelf. Does East Timor believe that?

Dr French—East Timor does not agree with that.

Senator BROWN—Has Australia agreed to have that settled in the international court?

Senator Hill—We are trying to negotiate.

Dr French—No. As I mentioned, Australia is entering into bilateral negotiations with East Timor in good faith to reach agreement as required under the relevant international law.

Senator BROWN—So when you said ‘valid’, you meant ‘disputed’?

Dr French—No, it is a valid exercise of jurisdiction which has been occurring now for over 30 years.

Senator BROWN—But one that has never been recognised by East Timor and one that the Australian government refused to allow to be arbitrated in the international court arena.

Dr French—In the first case, as I mentioned, Australia and East Timor, pursuant to article 83 of the law of the sea convention, have entered into a provisional arrangement—that being the Timor Sea Treaty—where they did agree that 20.1 per cent of the Greater Sunrise field would be within the Joint Petroleum Development Area and 79.9 per cent would be attributed to Australia. So there was agreement in the context of the provisional arrangements.

Senator BROWN—There was, but is there now?

Dr French—Yes. As a matter of law, both countries are parties to the Timor Sea Treaty and that is expressly on paper as the international legal situation.

Senator BROWN—Dr French, isn’t it a fact that East Timor disputes and has refused to ratify that agreement that you tell us has been signed?

Dr French—No, the Timor Sea Treaty has been in force since April 2003. You may be referring to the international unitisation agreement—

Senator BROWN—I am.

Dr French—which is a technical agreement pursuant to the Timor Sea Treaty. That is not yet in force. But the specific agreement on the divvying up of the Greater Sunrise field is contained within the Timor Sea Treaty, which has been in force since April 2003.

Senator BROWN—The development of the Greater Sunrise is dependent upon the agreement, isn’t it?

Dr French—It is important for the commercial development of Greater Sunrise that there be an agreement on the actual mechanics of the development of that field on the basis of unitisation. I might mention it is theoretically possible to enter into the development of the field in the absence of a unitisation agreement where there is an agreed share—and there is an agreed share—on the basis of the Timor Sea Treaty itself, which already encompasses the 20.1 per cent-79.9 per cent.

Senator BROWN—Is Australia considering proceeding with the development of the Greater Sunrise without the ratification of that agreement by East Timor?

Dr French—No, that is not what I meant.

Senator BROWN—What did you mean?

Dr French—What I did mean is that the international unitisation agreement is a standard means for ensuring the development of a field as a unit. It is a technical agreement pursuant to the overarching agreement, which is the Timor Sea Treaty.

Senator BROWN—Are there circumstances in which Australia could proceed without that technical agreement being in place?

Dr French—I cannot imagine circumstances of that nature—bearing in mind it is the companies, of course, that actually do the development.

Senator BROWN—You said that from the Australian position the areas outside the joint development area were unambiguously Australian, but East Timor does not agree, does it?

Dr French—That is correct.

Senator BROWN—So, despite the presentation, we are again back to the fact that there is disagreement with East Timor. We heard that the first talks took place in April and there are further talks coming in September. Is that a schedule that the East Timorese agreed to in April?

Mr Chester—Senator, if I can just go back to your earlier point: the fact that the East Timorese do not agree with our position that those areas outside the joint area are unambiguously Australian does not change the fact that that is our position and we feel very strongly about that position.

Senator BROWN—It does not change the fact that their position is the contrary, does it?

Mr Chester—No, but that does not mean they are right.

Senator BROWN—Nor does it mean that you are right. There are negotiations taking place.

Mr Chester—Exactly.

Senator BROWN—The East Timorese have said that they would like this adjudicated in one of the international courts, but the government has said it will not allow for that and nor will it allow for a third party to mediate in the matter.

Mr Chester—We do not believe either of those things are necessary. The history of our negotiations on these issues is that we have reached agreement bilaterally with our neighbours. Our view is that that is the best type of agreement—when both parties do agree to boundaries.

Senator BROWN—This is Australia, the big neighbour, standing over East Timor.

Senator Hill—No.

Senator BROWN—It is.

Senator Hill—Are you asking a question?

Senator BROWN—Yes, I am.

Senator Hill—What is the question?

Senator BROWN—You let me finish.

Senator Hill—No, you are not asking a question. You are making a speech.

Senator BROWN—You just wait for the question. You can answer it if you want to defend Mr Chester. You are not the chair of this committee either, Minister.

Senator Hill—Mr Chairman, can you tell him the rules.

CHAIR—I would encourage you to ask a question, Senator Brown, because you are delaying us.

Senator BROWN—I put it to you, Mr Chester, that the situation here is that Australia is refusing to go to arbitration on this matter, is dug in and is not agreeing to an intermediary, a third party, and that you have described to this committee your trip across to East Timor recently to tell the East Timorese leaders that their language—

Senator Hill—Are we getting to a question?

Senator BROWN—Yes.

Senator Hill—What's the question?

Senator BROWN—You let me finish and you will hear the question.

Senator Hill—No, you are giving a speech.

Senator BROWN—You let me finish. That is up to me, not you.

Senator Hill—The witness says he is totally lost. I am not surprised.

Senator BROWN—It is late at night. If you are getting lost, leave it to Mr Chester.

Senator Hill—He keeps looking for the question in the statement, and it is very hard to find.

Senator BROWN—I will start again.

Senator Hill—With a question?

Senator BROWN—That is right. The minister has brought that upon himself. Let me put the situation again. There is a dispute between Australia and East Timor. Australia is that the party here. East Timor is the small party and poor party—

Senator Hill—Mr Chairman, I object to this process. We have been sitting here for three days and Senator Brown comes in at this time of night and starts lecturing to everybody.

Senator BROWN—and you have been across to East Timor to remonstrate with the leaders about the language—

Mr Chester—Senator, I did not remonstrate with the leaders. That is not correct.

Senator BROWN—You told the leaders of East Timor that the language they were using was not acceptable and should not persist.

CHAIR—Senator Brown, please ask questions. You do not have to make statements. If you want to make a statement by putting it in the form of a question it can be confirmed or denied but it is not taken as read by you making the statement first. So please ask questions.

Senator BROWN—Is Australia the richest country in the region?

Senator Hill—On what criteria? I suppose on a per capita basis we have the highest GDP.

Mr Chester—You need to define the region, Senator.

Senator BROWN—Per capita in resources in Asia.

Mr Chester—I am not sure. Brunei may well be per capita richer, and with resources—I am not sure.

Senator BROWN—One of the two. If Brunei is, I can tell you that—

Mr Chester—If we are going north, Japan—

CHAIR—Another question, please, Senator Brown.

Senator BROWN—Let the respondent answer, Chair.

Mr Chester—If the question is, ‘Is Australia a richer country than East Timor?’ then the answer is yes.

Senator BROWN—What is the comparative richness of the two countries in per capita income?

Mr Chester—As I said earlier, this issue is not relevant.

Senator BROWN—Do you know what it is? Does the minister know what it is?

Senator Hill—There would be a substantial difference, obviously. So what? That is not the point. The point is that there is a negotiation between parties. We would like to be negotiating with goodwill, which was the purpose of the visit of Mr Chester to East Timor. We have a proud record of assisting East Timor. It would not be independent about Australia’s assistance. Mr Paterson wants to add to my answer.

Mr Paterson—Could I make a point, perhaps partly in answer to Senator Faulkner’s question earlier but I think it bears very directly on the questioning by Senator Brown. In the impression that has been left at the moment, one huge part of the relationship with East Timor has been omitted, and that is the aid program. Australia, I think, is the largest bilateral aid donor to East Timor. AusAID alone will have spent \$235 million over the five years 1999-2000 to 2003-04, including support for multilateral trust funds and bilateral assistance in areas of governance, education, health, water supply, sanitation and rural development as well as some budget support. Australian assistance to East Timor—and this bears on the question asked by Senator Faulkner—will be maintained at about \$40 million per annum over the next three years, with a major focus on law and justice and improved governance, particularly in budget planning and management for the delivery of basic services. I can go into that in further detail, but that point needs to be registered.

I also travelled to East Timor earlier this year and I had some discussions with the government. I found very considerable gratitude for the assistance we had given and an understanding that Australia was not about to leave East Timor in the lurch—we were in there for the long haul. They were very grateful for that. They see us as their most constant partner in their quest for development.

We fully accept that this country is perhaps the poorest, in developmental terms, in East Asia and we are strongly committed to helping them build capacity steadily over the period ahead to ensure that living standards, health standards, education standards, infrastructure, law and order capability and governance are steadily built over a period of time, commensurate with their ability to absorb funds and build capability.

Senator BROWN—You said that the budget for the coming years is about \$40 million per annum. The budget for 2003-04 was \$43.9 million. So we are seeing a reduction in the coming four years, on average, as against the current financial year.

Mr Paterson—I would have to check these figures—and I am reading from an AusAID brief—but AusAID have advised that in 2003-04 Australia will provide an estimated \$42.5 million, which will, in fact, fully discharge the government's four-year \$150 million pledge to East Timor.

Senator BROWN—What are the royalties that Australia has from the Laminaria/Coralina field in the period 1999 to 2004?

Mr Paterson—I do not have that figure with me.

Mr Chester—We will have to take that on notice.

Senator BROWN—I hope you will. It is very germane here because the development of that field is disputed by East Timor. Let me tell you what the figures are. Prime Minister Alkatiri has said that \$1 million a day is going to Australia that should be going to East Timor.

Senator Hill—Are you asking if this is correct or are you telling us?

Senator BROWN—I am going to finish this with a question. I am making a statement of fact because your advisers did not have the information, Minister. That adds up to \$1.5 billion over that period. Mr Paterson, you are saying that Australia has given \$235 million in aid. East Timorese tell me—and this includes Prime Minister Alkatiri, when I visited at the same time as your colleagues, in April—that in that period \$1.5 billion has been taken from East Timor in the form of these disputed royalties. So the East Timorese point of view is—and have you had this expressed to you—

Senator Hill—The question is apparently about whether we have a response to that statement. Does Dr French want to volunteer?

Dr French—Only to say that matters of calculating particular revenues is dealt with by the portfolio of DITR.

Senator BROWN—Have you seen that statement from Prime Minister Alkatiri and other leaders?

Dr French—I am aware of reference to that.

Senator BROWN—I can tell you, gentlemen, that in my experience—

Senator Hill—We do not want to know your experience.

Senator BROWN—You are going to hear it. In East Timor—and the same occurs in Australia—if you read the letter columns, and I am sure you do, there is a great deal of anger about this equation.

Senator Hill—We can hear of your experience in the Senate. Tonight is not the night to learn of your experiences. What is the question, Senator?

Senator BROWN—I will start again because I am sure your colleagues could not hear me. My experience is that both in East Timor—

Senator Hill—Mr Chairman, I object to this.

Senator BROWN—I object to your interjecting, Minister.

Senator Hill—I cannot even say that I object to this line of questioning, because it is not questions.

CHAIR—Let us have some questions, Senator Brown.

Senator Hill—It is too late at night for grandstanding, even by Senator Brown.

Senator BROWN—Is it true that on Prime Minister Alkatiri's calculation, \$1.5 billion in royalties has gone to Australia which ought to have gone to East Timor? Are you aware of that contention by the Prime Minister of that country?

Senator Hill—You have asked the question. In fact, I think you have had an answer.

Senator BROWN—No, I have not.

Mr Chester—Yes, we are aware of the statement. We do not agree with it.

Senator Hill—Officials are aware of it. They do not agree with it but they are aware of it.

Mr Chester—I would like to make the point—and we have said this a couple of times—there has been one round of these negotiations, two months ago. There is another round scheduled for September. As these negotiations proceed I have no doubt that the two parties will come closer together because that is what has happened with all our bilateral negotiations.

Senator BROWN—Did East Timor ask for monthly negotiations?

Mr Chester—Possibly. I am aware of some suggestion of that. That is correct.

Senator BROWN—It did. Why did Australia not agree to monthly negotiations?

Mr Chester—I think there were probably a couple of reasons. One is the availability of experts to do that.

Dr French—It is possibly worth mentioning that, in our experience over many years negotiating a range of boundaries—with Indonesia, Papua New Guinea, the Solomon Islands, France and latterly with New Zealand, although those negotiations have not been completed—there has been a rhythm of approximately—and I think this is probably fair to say of many negotiations involving maritime boundaries, not just those involving Australia—six months, about half a year, with several months between negotiations simply by virtue of the nature of the negotiations and discussions that are involved to hear the arguments of one side, to digest those arguments and to develop positions on the basis of where the negotiation has got thus far. It is probably fair to say that, as progress is made on negotiations, in the latter period there may be more frequent meetings. Certainly, in terms of the experience of Australia—and, as far as we are aware, other countries as well—approximately twice a year is a normal rhythm for such negotiations.

CHAIR—Senator Brown, I am going to call on Senator Faulkner. Mr Paterson was called back this evening. He has some matters that he would like to address tonight and we have only 12 minutes to do that.

Senator FAULKNER—I think I will be quite brief. Thank you, Mr Paterson, for attending late at night. It is appreciated. Could I just ask you something in relation to the withdrawal of Australia's military contingent in Afghanistan? We had a government announcement in

November 2002 that that contingent would be withdrawn by the end of that year. My first question is this, and perhaps it is best directed to Senator Hill. Was that a cabinet decision? I assume it was.

Senator Hill—My recollection is that it was a deployment for a fixed period of time and that that time expired. As to whether the withdrawal was then confirmed by NSC I cannot recall; I would need to check that.

Senator FAULKNER—Would you mind taking that on notice? I am interested as to whether that was a decision of cabinet.

Mr Paterson—Could I add something to that? As I understand it, in part the decision was taken because the tasks for which those specialist forces had been sent to Afghanistan—and that was essentially an SAS group and an air-to-air refuelling aircraft—were essentially complete.

Senator FAULKNER—The issues I wanted to canvass are these. Was it a decision made by cabinet? If you would let me know, I would appreciate it. If so, was it made on the basis of a cabinet decision? If you could take those on notice, I do not think there is anything we need to delay the committee with. Are you happy to take those on notice, Senator Hill, so we can be clear?

Senator Hill—Yes. I was thinking about what Mr Paterson said. I can remember that there was a reduction in appropriate work for special forces. In relation to the aircraft, I do not think we had the capability for a further rotation. But I will get that information.

Senator FAULKNER—The reason I am raising it here is that I am interested in the DFAT involvement in the process—whether it was a co-sponsor of such a cabinet submission, whether it might have provided coordination and comments, whether it was just consulted informally. I know this was some time ago and you may not know as we speak, but if you do not you might take that on notice. I am not necessarily expecting you to have—

Senator Hill—I am not sure whether we would say that in any event, but any of our deployments are subject to constant and ongoing review by the national security committee of cabinet. That obviously involved DFAT participation, both of the minister and of the secretary.

Senator FAULKNER—I am interested in—and I would like a response to this if you are able to give it, please, Mr Paterson—a brief assessment of Afghanistan's current security situation. Would you mind taking those other matters on notice, Senator Hill? I do not think there is any point getting bogged down in that.

Mr Paterson—You mean a contemporary assessment?

Senator FAULKNER—Yes.

Mr Paterson—It is our view that the International Security Assistance Force, known as ISAF, has helped to stabilise the situation in Kabul, in particular, but the situation country wide remains far from secure. Outside Kabul the security situation remains patchy, in our judgment, due to warlordism or factional rivalries. In some areas, particularly in the south-west and south-east, there are continuing attacks by al-Qaeda and Taliban remnants against coalition forces as well as against international and local relief organisations. Al-Qaeda and the Taliban continue to operate in areas of western and south-western Afghanistan, and indeed

in contiguous areas of Pakistan. But there are efforts under way to extend ISAF's mandate beyond Kabul and to increase the number of troops on the ground.

You would be aware that ISAF is currently a NATO command and NATO countries are the main contributors to that force. A subset of NATO known as the Eurocorps—forces from France, Germany, Spain, Belgium and Luxembourg—will take over ISAF command in August this year. ISAF is leading a provincial reconstruction team of both civilian and military personnel to Kunduz. This is an effort headed by Germany. It is a pilot project to extend ISAF's mandate more broadly in Afghanistan. Those provisional reconstruction teams may be further extended if the current pattern works out positively. In the north, a trial disarmament, demobilisation and reintegration program to help former combatants return to civilian life is under way. Broadly, that is how we assess the current situation.

Senator FAULKNER—I appreciate that and thank you for it, Mr Paterson. Is there some evidence of the Taliban regrouping in parts of the country?

Mr Paterson—There is some evidence of Taliban reorganising or regrouping, yes.

Senator FAULKNER—Can the same be said about al-Qaeda and other terrorist groups?

Mr Paterson—I do not think you could really say that al-Qaeda, by its nature, regroup. It is a rather more amorphous outfit than that. But there is certainly evidence of continuing al-Qaeda activity, as I mentioned, in the south and south-west and across the border in north-west areas of Pakistan.

Senator FAULKNER—What about progress by the Afghani government in those efforts to crack down on the illegal opium and heroin production? That is obviously another very important issue, isn't it?

Mr Paterson—Yes, it is. I do not have the statistics here but I think there has been a good deal of concern about the expansion in the area under cultivation of opium in the period since the Taliban government was overturned.

Senator FAULKNER—Is the picture any clearer to us as to how important this narcofinance—that is the trendy term and I think we understand what that means—is to terrorist groups? Is that becoming more and more important? I am focusing here on the Afghanistan experience.

Mr Paterson—I do not have that information to hand. I think it would be a reasonable assumption that some of that money could find its way to terrorist groups operating within Afghanistan.

Senator FAULKNER—It is very late at night, and I think you understand the issues that I am interested in. If there is anything that you can add on notice so the committee can get a broader understanding of what the current status of and situation in Afghanistan is, I would appreciate that.

Mr Paterson—You would be aware that internationally a lot of effort has been put into the issue of terrorist financing and flows of money to terrorist groups. It is complicated obviously for a whole range of reasons—geographic and otherwise—in a place like Afghanistan and also by what is known as the Hawala system of payments, which is quite widespread there.

That is proving very hard to get definitive answers on, but I think your assumption that there is probably some money flow going from narcotics to terrorist groups is probably correct.

Senator FAULKNER—If you are able to give the committee a more considered view, given the hour, that would be appreciated. I am very interested in what the situation was in Afghanistan at the time of our withdrawal at the end of 2002, the broad understanding or take that the department had in terms of our foreign policy and international security interests at that time and any reflections you can make on what has occurred since. If you are able to do that, that would be appreciated. I do not expect a thesis in response, but if there are a few considered words that you are able to give us that would be of interest.

Senator Hill—If you are going to look from that date in 2002, you really have to look at how the situation has evolved. My recollection is that it was our assessment that appropriate work for special forces had significantly reduced—and if the work is done we do not leave forces there. On the other hand, some other countries have subsequently sent special forces to do other work that has developed down on the border with Pakistan and in the south-eastern parts of the country. So I think the response has to look at the picture as it has evolved. I think it also ought to look at the really very significant successes that have been achieved in Afghanistan. I think the picture of doom and gloom that some want to paint of Afghanistan is actually not valid.

Senator FAULKNER—I am actually not painting a picture of doom and gloom, Minister. I think it is fair to say that with all the focus on and concentration on Iraq, this is an issue that does not receive much focus and this committee has tried to keep abreast of the situation. What I am really asking Mr Paterson to do if he is able to—and he has provided information, and I appreciate that, on what is happening in this important area—is to provide more information. I would appreciate that.

Before I hand over to Senator Brown, I understand that there have just been reports in the Australian media that Sidney Jones, the International Crisis Group representative in Indonesia, has been expelled from Indonesia by the Indonesian government. I appreciate that this is something that has just been reported in the media—and I do not know, Mr Paterson, if you have any knowledge of this or not—but obviously it is, on the face of it, a concerning development. I wonder if you would be able to assist the committee with any knowledge or information you have on that matter.

Mr Paterson—We understand that the Indonesian government has decided not to renew the work permit for Sidney Jones and for one of her associates working with her, who comprise in effect the International Crisis Group office in Jakarta.

Senator FAULKNER—Thanks for confirming that. The assistant analyst there is an Australian by the name of Francesca Lawe-Davies—a Canberran, I think. Are you able to give us an immediate response or a reflection? Perhaps that may be better directed to Senator Hill if you would prefer. This does appear to be a quite concerning development. That is my initial and immediate reaction without knowing any other detail than what you have provided, Mr Paterson, to the committee. Any early reaction to this response by the Indonesian government would be appreciated.

Mr Paterson—To say this in fairly short order, it is a matter of concern. We believe that the International Crisis Group's representation in Indonesia has played a helpful and thoughtful role in the analysis of events in Indonesia, including at the macropolitical level in Indonesia, and on issues such as Aceh, the situation in the Moluccas and of course in analysis of the Jemaah Islamiyah presence in Indonesia. That work we would judge to have been of high quality and I think it will be missed.

Senator FAULKNER—Obviously these two issues—the expulsion of the two representatives of the International Crisis Group and of course the other issue I have raised on Afghanistan—are important ones and I just want to record that the amount of time to deal with these does not obviously represent the significance of these issues. We have a very short time available to us tomorrow, as you know, Mr Chairman. We may not have time to revisit these issues, but I do appreciate what Mr Paterson has been able to say in just the few minutes that we have had available to us.

Senator Hill—But I do not think he said that they were expelled. You said 'the expulsion' of them. I do not think that is technically correct.

Mr Paterson—To the best of my knowledge, the Indonesian government has decided that they would not renew the work permits of the two people involved.

Senator FAULKNER—I used the verb 'expelled'—Senator Hill is right.

Mr Paterson—Earlier today both people were still, we understand, in Indonesia although our expectation is that they would have to leave pretty soon.

Senator FAULKNER—I know that we are winding up, but it is important to understand that the amount of time spent on these issues does not represent a lack of significance. This committee is under enormous time pressure and I just want the *Hansard* record—and I am sure Mr Paterson would appreciate this, as would the minister and you, Mr Chairman—

CHAIR—You have already made that point.

Senator FAULKNER—to show that.

CHAIR—Thank you, gentleman, and thank you, Minister.

Committee adjourned at 11.03 p.m.