

XII. International Organisations

United Nations — Fiftieth Anniversary — Australian Statement

The 26 June 1995 marked the Fiftieth Anniversary of the signing of the United Nations Charter at the San Francisco Conference. A special commemorative meeting on the occasion of the Fiftieth Anniversary of the United Nations was held from 22 to 24 October 1995. The Governor-General, Mr Hayden, delivered Australia's statement to the General Assembly on 23 October 1995, the text of which follows:

As I stand here today before representatives of nearly every nation on earth, I am deeply conscious that the world is a very different place from the one which, fifty years ago, gave birth to the United Nations. As delegates in San Francisco in June 1945 prepared to sign the Charter of the United Nations, most of Europe and a great deal of Asia stood in ruins, over 48 million people had died and the survivors of the greatest conflict in human history asked themselves what could be done to stop such a catastrophe from ever happening again.

Their answer was to create an organisation which sought to enshrine the universal values of tolerance, social progress and respect for human dignity within international machinery to ensure that all peoples and all nations, whether large or small, could be spared the scourge of war and provided the conditions for economic and social advancement.

The founders of the United Nations were not able to prevent war completely, either in their time or, regrettably, in ours. But the past fifty years has not seen global conflicts again and for that the United Nations can claim no small share. It has also been a time of unparalleled progress in a wide range of areas, some of which is immediately recognisable as the work of the United Nations but much of which has brought to the organisation only rare recognition.

The United Nations has played a crucial role in: the pursuit of arms control, in developing the infrastructure for the global nuclear safeguards system, and in identifying and defining international human rights. The United Nations has done much to promote economic and social development, to work to improve the status of women, provide humanitarian and disaster relief, and tackle head-on—with remarkable success—world health problems. And, as one of its greatest achievements the United Nations has played a central role in decolonisation, and in the exercise by hundreds of millions of people of the right of self-determination.

I recall with pride Australia's contribution to the founding of the United Nations, because of the central role played by Australia's then Foreign Minister Dr Herbert Vere Evatt. While Australia's primary goal for the United Nations in 1945 was the creation of a system in which conflicts between nations could be settled peacefully, in accordance with accepted international legal principles, Dr Evatt argued with great effect that the political activity of the United Nations would not be enough by itself to prevent future conflicts, and that the more fundamental causes of the world's problems would have to be tackled if international peace and stability were to be guaranteed.

The Government of Australia believes that, while the nature of the threats to global security and stability have changed dramatically since the Charter came into force fifty years ago, the Charter is as relevant today as it was in 1945, and that we need look no further than to a reaffirmation of its goals and objectives to guide the United Nations in the next millennium.

The challenge the United Nations faces now, and into the next century, is to reintegrate the functions of the organisation in the way the founders intended, to avoid the sterile and rigid division of peace and security issues, development issues, and human rights and justice issues. As Dr Evatt and the other founders of the United Nations recognised, international peace and—perhaps more appropriately in our day and age—peace within States must be based on an inextricable linking of the concept of peace and security and the concept of development. If human needs for dignity and liberty are not met, all the material gain imaginable is unlikely to lead to sustainable peace. Peace without freedom, without dignity, and without basic human rights is forlorn, barren and, at best, temporary peace.

Change and adaptation in the United Nations presents new challenges which will require innovative solutions. The United Nations can only do what its Member States allow it to do, and a reintegrated, revitalised United Nations needs not only to lead new thinking on the part of its member States but also to reflect new thinking. Any path forward must take account of that two-way process.

Moreover, we must not forget that, if the United Nations is to work in the way we want it to, it must be provided with appropriate resources and, ultimately, we must be prepared to pay for it. In the short-term, this means that Member States must pay their assessed contributions, in full and on time. Sadly, there are Member States who are in arrears not because they are unable to pay, but because they are unwilling to. Beyond this, if we are to address the longer-term problem of how to pay for the United Nations, we must look seriously at the options which exist for supplementing Member States' contributions by external sources of finance. To overcome the United Nations' present and likely continuing financial crisis, clear-sighted and innovative thinking is necessary to look at the entire issue of its funding.

The fiftieth anniversary should be a time to resolve what it is we *can* do for the United Nations, not what we cannot.

It seems certain that, whatever the United Nations' future, disarmament and arms control will continue to figure centrally. It is therefore deeply disturbing that in this, the fiftieth anniversary of an institution which has played such a significant role in maintaining the momentum of multilateral disarmament and non-proliferation efforts, some countries continue nuclear testing, and at a time when work on a Comprehensive Nuclear Test Ban Treaty is so close to conclusion. Those actions confront everything the United Nations is committed to, whether it be the protection of the environment or the ultimate elimination of all nuclear weapons. They are to be strongly deplored. This is not the time to be reinforcing nuclear stockpiles, nor is it the time to encourage scepticism about the Nuclear Non-Proliferation Treaty. The best way for the nuclear weapon States to show that they are serious about eliminating nuclear weapons everywhere and for all time is: for those countries which are testing to immediately cease testing, for those States to commit themselves wholeheartedly to negotiating genuinely comprehensive zero-threshold CTBT into place by the

middle of next year, and for all the nuclear weapon States to sign on to the nuclear weapons free zone treaties that now exist in the South Pacific and elsewhere, as the United States, the United Kingdom and France announced last Friday that they intend to do in relation to the South Pacific Nuclear Free Zone Treaty, a decision we warmly welcome.

The fiftieth anniversary year offers opportunities to reflect, with just pride, on the past achievements of the United Nations, to look closely at where it stands today, and to chart a course for the United Nations to the end of the century and beyond. In fifty years' time our grandchildren, celebrating the United Nations' 100th anniversary, will judge us on how vigorously and effectively we grasped the opportunities we now have to make the United Nations a world body which successfully realises the three pillars of peace and security, development and equity, and universal human rights.

We must act cooperatively, decisively, and quickly, to chart a way forward which will ensure that future generations inherit a world free from the threat of war and free from the curse of want and inequity, a world which is a living reaffirmation of the fundamental and inalienable dignity and worth of humankind.

United Nations — Fiftieth Anniversary — Australian Statement — Future Directions

Following are extracts from the statement entitled *The UN at Fifty: Looking Back and Looking Forward*, made by the Minister for Foreign Affairs, Senator Evans, on 2 October 1995, to the Fiftieth General Assembly of the United Nations:

If we are to effectively prepare for our future we must first be able clearly to see our past. If we are to see where we must go, we must know where we have been: we must be conscious of our failures, but we should be proud of our successes.

The structure of today's world community—of sovereign, self-determined, independent states working together on the basis of equality in a framework of international law—simply did not exist before the Charter of the United Nations. There were imaginings of it in the minds of many for a very long time, and we saw emerge, between the World Wars, a pale approximation of it with the League of Nations. But it was at that special moment in San Francisco, fifty years ago, that today's concept of a community of nations was first truly born. And that concept has passed the test of fifty years of life.

Gifted though the authors of the Charter were, they would I think be awed to see how very much their vision of a globalised world has now been answered, and exceeded. Today's world *is* one world, a world in which no individuals and no states can aspire to solve all their problems or fulfil all their dreams alone. The ideas of San Francisco *have* entered into the unconscious of people all over the world. Those who refuse to acknowledge the global character of our world, or recoil from it and retreat into unilateralism or, worse, isolationism, have simply not understood the new dynamics that are at work. Ours is an age in which we are called to more, not less, cooperation—and to ever more, and more responsible, sharing of our common destiny.

The ideas of San Francisco have assumed many concrete forms, which have deepened and expanded over the last five decades. States now habitually, virtually automatically, conduct their relations with each other on the basis of the

United Nations Charter. We have added continually to the corpus of international law and agreements made pursuant to the Charter, in ways that have touched every aspect of modern life. We have built institutions that have sought to deliver to the peoples of the world their most basic needs—for peace and security, for economic well-being, and for dignity and liberty.

It was natural that, following a devastating World War and the hideous brutality which accompanied it, that [sic] the Charter would have at its heart the maintenance of international peace and security. So far anyway, we have passed the test of ensuring that the world would never again be subjected to global conflict. The United Nations has been, of course, deeply challenged in the maintenance of peace, from the very beginning and ever since. There are areas in which its attempts to maintain and restore peace have been flawed, and where the UN has faltered. But for all that has gone wrong in places like Bosnia and Somalia and Rwanda we should not forget the successes, like those in El Salvador, Cambodia and Mozambique. To go back a generation, no one should forget the role that was played by the Security Council and the Secretary-General in that desperate month of October 1962 when the hands of the clock were seconds before midnight, and the world faced potential nuclear holocaust. And no one should forget the role that the Nuclear Non-Proliferation Treaty has played in falsifying the almost universal prediction in the 1960s that within two decades there would be twenty or more states possessing nuclear weapons.

In *development*, in seeking to fulfil its commitment to promote “social progress and better standards of life” the United Nations has laboured hard, sometimes in very difficult circumstances. The gap between developed and developing countries still remains unacceptably high; there have been and continue to be difficulties with the availability of resources for development assistance; and we have to acknowledge the awful reality, according to the World Bank, that 1.3 billion of our people still live in absolute poverty. But in food and agriculture, in employment and labour standards, in health, in education and in building the infrastructure so vital to communities in the developing world—roads, bridges, water systems—the United Nations and its agencies have worked relentlessly in the service of the human family. It is because of UNICEF that today 80 per cent of the world’s children are immunised against six killer diseases. And this is just one of hundreds of similar stories that the UN can and should be telling.

Basic to the United Nations’ concept of the world community was that it should operate under and foster the development of law, justice and human rights. A fundamental commitment of the United Nations is to establish conditions under which justice may prevail, international law will be respected and peace can be built. In fulfilment of this charge, the United Nations has provided the setting for the negotiation of over three hundred major treaties, including in such crucial fields as arms control, transport, navigation and communications. This very practical area of international cooperation has formed the framework of a globalised world.

The Charter of the United Nations spoke not just of securing better standards of life, but of those better standards being enjoyed “in larger freedom”. And the articulation, development and implementation of human rights standards across the whole spectrum of rights—economic, social and cultural as well and political and civil—has been one of the UN’s most important and constructive roles.

One of the worst of all denials of personal and political freedom was that imposed by apartheid. The triumph over that evil was above all a victory for those South Africans and their leaders whose freedom and dignity apartheid had so long denied. But it would ignore the testimony of history not to recognise the importance of the role played by the General Assembly and the Security Council in creating the conditions for that to occur.

For the peoples of this world, no political right has been more important than the right to self-determination. The achievements of the United Nations in this field alone are testimony to the indispensable role it has played in human affairs, with hundreds of millions of people having exercised their right to self-determination in these last fifty years. It is the great movement of decolonisation, as much as the Cold War and its aftermath, that defines the modern world as we know it, and which shapes the world's agenda for the years that lie ahead.

The United Nations of the future will need to be, above all, an organisation which works and speaks for all its members, no matter how large or small, and whose legitimacy is thus without question. It must be an organisation better oriented to performance, to delivery to people of the things they need and have a right to expect. And it must be an organisation which seeks to reintegrate, and better coordinate, the implementation of the UN's three basic objectives so clearly articulated at San Francisco fifty years ago—the objectives of peace (meeting the need for security), development (meeting economic needs) and human rights and justice (meeting the need for individual and group dignity and liberty).

The Peace Agenda

Disarmament and arms control continue to be of crucial importance in the peace agenda, and a major challenge immediately ahead will be to maintain the momentum of multilateral disarmament and non-proliferation efforts. The decision by the Nuclear Non-Proliferation Review and Extension Conference to extend the Treaty indefinitely was, and remains—despite what has happened since—the right decision. The work on a Comprehensive Nuclear Test Ban Treaty must be brought to conclusion, as promised, in the first half of 1996. We must also begin as soon as possible negotiations on a treaty to ban the production of fissile material for nuclear weapons purposes. A further helpful step, although more difficult to achieve, would be a regime requiring all states to declare and account for their present stocks of fissile material. The basic objective in all of this is to move towards the goal that is agreed by all—and it should never be forgotten that it has been agreed by all—that we will, ultimately, eliminate all nuclear weapons.

It is in this context, particularly, that the decisions by France and China to continue nuclear testing are to be so strongly deplored. The environmental consequences are bad enough of setting off an explosion more than five times the size of that which destroyed Hiroshima—as France did yesterday on the fragile atoll of Fangataufa in Australia's Pacific neighbourhood. But the nuclear policy consequences are even worse. This is not the time to be reinforcing nuclear stockpiles and asserting their ongoing deterrent role: the world wants and needs to be moving in the opposite direction.

This *is* the time to be negotiating away those stockpiles, and building verification systems of the kind we did with the Chemical Weapons Convention—which needs still to be ratified into effect (and I urge those states

who have not yet acceded to it to urgently do so). This is not the time to be encouraging scepticism about the Nuclear Non-Proliferation Treaty, as the French and Chinese tests are doing. It is, rather, the time for the nuclear powers to be encouraging its universal observance in the way that they best can—by showing that they themselves are absolutely serious about moving to eliminate nuclear weapons from the face of the globe. The best way for them to do that right now is for France and China to immediately end their testing programs; for all the nuclear weapons states to sign on to the nuclear weapons free zone treaties that now exist in the South Pacific and elsewhere; and for those states to commit themselves wholeheartedly to negotiating a genuinely comprehensive zero-threshold CTBT into place by the middle of next year.

The past few turbulent years of United Nations experience on the ground in peace keeping and peace enforcement has underlined the need for it to improve the effectiveness of its work in these important fields. Australia has welcomed the Secretary-General's further work in this area in his very lucid January 1995 Supplement to *An Agenda for Peace*. In our own contributions to the debate on these issues, we have argued for the clearest possible thinking to be given to the achievability of objectives right across the whole spectrum of responses to security problems—from peace building to peace maintenance to peace restoration to peace enforcement.

We have consistently argued, and I make the point again briefly today, that if the United Nations is to be able to meet effectively the security challenges of the post-Cold War world it must begin to devote more resources to preventive strategies than to reactive strategies. It makes more sense to concentrate on prevention than on after-the-event peace restoration, both for inter-state conflict and in the unhappily now far more common case of intra-state conflict. Violent conflicts are always far more difficult and costly to resolve than non-violent disputes, and failed states are extremely difficult to piece back together.

All that said, it has been encouraging to see the progress made in recent days toward resolving the conflict in the former Yugoslavia, and in moving the Middle East peace process a substantial new step forward. The UN should always be prepared to lend its support and encouragement to preventive diplomacy and peace making efforts taking place outside the formal framework of the UN system, and it should remain particularly alert to the opportunities envisaged in the Charter for advancing the peace agenda through regional organisations. In this context, we in the Asia Pacific have been pleased with the rapid evolution of the ASEAN Regional Forum over the last two years as a new vehicle for dialogue, and trust and confidence building, in our own region.

Particular attention has been given recently to the question of improving the United Nations' rapid reaction capability, and I warmly commend the work that has been done to clarify our thinking on these issues by the Netherlands and Danish Governments, and particularly in the major Canadian report, *Towards a Rapid Reaction Capability for the United Nations*, just presented to the Assembly. The very useful emphasis of the Canadian study is on the idea of improving the UN system's capability at the centre first—particularly in the area of operational planning—and thereby encouraging greater willingness by troop contributors to give practical and more urgent effect to standby arrangements. No organisational arrangements will substitute for clear-eyed decision-making by the Security Council on the responses and mandates that are appropriate to particular situations, but the implementation of changes of this kind should make

us much better equipped as an international community to deal in the future with situations like that in Rwanda, where last time our response was so tragically inadequate.

The Development Agenda

The security agenda tends to dominate most popular perceptions of the UN's role, but we in the international community must never allow our attention to be diverted from the demands of the development agenda, now as pressing as ever. When historians hundreds of years hence look back at this last half century, the Cold War and its aftermath will not be the only great international current to be remembered: it will be the giant step of decolonisation that looms at least as large.

Decolonisation led to the emergence of a world economy which for many years has been seen as divided principally into two categories—the developed and developing countries. But today the picture is more complicated. Mainly for reasons of change in technology and information systems, we now live in a global economy. No part of it is entirely separate from the whole, and no-one can act in that economy in an effective way entirely alone. Because we live in a global economy a key part of our action to deal with the problems of development must be multilateral. And the key problem facing us—both multilaterally and in our bilateral donor roles—is that within the global economy the gap between rich and poor countries, despite all efforts to resist this, has grown. The fact that some 1.3 billion of the 5.7 billion people alive today live at an unacceptable level of poverty is morally insupportable, and dangerous.

The United Nations of the future must, as a matter of the most urgent priority, forge a new agenda for development and reshape its relevant institutions to implement that agenda effectively. This is as important as any task it faces in the service of the human family, and in recreating itself as an institution fit for the 21st Century. The agenda is available for all to see. It has been fulsomely described in the six global conferences held by the United Nations in the last four years—the conferences on children, the environment, human rights, population, social development and women. There have also been important studies by the international financial institutions and by academic institutions. We know now what we need to do. We must resolve, politically, to do it.

In pursuing these various themes it is important, however, for us not to lose sight of those geographic regions where particular focus is still required, and where the UN's role is more vital than ever. Africa's influence and importance continues to be felt throughout the world in every field of human activity and culture. Exciting political developments, including the ending of apartheid, have been accompanied by major new efforts to restructure and reform national economies: those efforts demand the continued support of the international community, and in particular the UN system. Other regions where the UN needs to play a particular role to facilitate economic and social development are the Central Asian republics, the Middle East, the Caribbean, and in a number of areas in the Indian Ocean region.

The Indian Ocean region is one where Australia, as an Indian Ocean country, has been promoting, with others in the region, both governmental and non-governmental efforts to enhance regional cooperation, particularly on economic and trade issues. The success to date of APEC in developing cooperative strategies in the Asia Pacific region to promote prosperity and stability,

complementing the UN's broader work for these goals at the international level, offers one possible model for the countries of the Indian Ocean Rim to consider.

The institutions of the United Nations relevant to economic and social development are urgently in need of reform. The General Assembly has created the high-level working group needed for political consensus on this. It must complete its work in this Fiftieth Anniversary year, and it must do so creatively, setting aside past vested interests in the system. We must implement the development agenda of the future in a way which ensures a productive and fair place in the global economy for all states.

Human Rights

The complex and inter-linked system of principles, legal regimes and machinery that the United Nations has established to promote human rights is one of its major achievements. It must be built upon and strengthened, recognising always that the human rights whose universality and indivisibility we assert, are about economic, social and cultural rights just as much as the civil and political rights on which developed countries tend to focus their attention. Priority must be given to the major international human rights instruments and machinery and the committees which monitor their implementation. By this means we can provide a frank, non-confrontational and constructive dialogue amongst states parties.

The advisory services and technical assistance activities of the United Nations can also play a role in promoting the observance of human rights and the implementation of democratic principles around the world. Programs to help countries develop national institutions and systems to promote and protect human rights will enhance their capacity to prevent violations and make a direct contribution to human security.

The Organisational Agenda

It cannot be emphasised enough that the peace and development and human rights agendas I have mentioned are all interlinked. We need to avoid the compartmentalisation that occurred throughout the Cold War years, in which peace and security issues, development issues and human rights and justice issues were isolated in completely different conceptual and institutional boxes. Any viable modern concept of international peace, let alone peace within states, must recognise that "peace and security" and "development" are indissolubly bound up with each other: there can be no sustainable peace without development and no development without peace. And human rights, in the fullest sense, have to come into the equation too: there is unlikely to be sustainable peace in any society if material needs are satisfied, but needs for dignity and liberty are not.

No agendas of substance, no matter how clear in concept and well-coordinated in principle they may be, will mean anything to people if they are not able to be implemented through effective organisational structures and instruments. There has been widespread recognition in recent years that the structure of the United Nations that grew up during the last fifty years is simply not adequate to the tasks of the next.

We now have an embarrassment of riches with respect to ideas and proposals for change to the United Nations organisation. Just as it is urgent that we complete work on *An Agenda for Development* in this fiftieth year, it is equally

urgent that we complete the work of the high-level working group on the reform of the United Nations system, also within the fiftieth year.

The structural problem that it is probably the most urgently necessary to resolve, if the credibility of the UN system is to be maintained, is that of the Security Council. The debate on this subject has been long and detailed and is familiar to all of us. Australia's definite view is that it has been going on for long enough, and we are now at the time where action is required. Last year we submitted some illustrative models on the basis of which consideration could be given to an expansion in the membership of the Council. Others have made very specific proposals. Again, in this field there is no lack of ideas. What we must now do is move to the stage of forging political consensus on a new Security Council which will be effective, represents the whole membership of the United Nations and sensibly reflects the realities of today and the future, not those of 1945.

There are many structural changes and personnel reforms that could and should be made within the UN system to improve its efficiency. But ultimately the quality of that system depends on what we are prepared to pay for it.

It is important to appreciate at the outset the order of magnitude of the sums we are talking about. The core functions of the UN (involving the Headquarters in New York, the Offices in Geneva, Vienna and Nairobi, and the five regional Commissions) cost just \$US1.2 billion between them: to take just one comparison last year the annual budget of just one Department in one United States city—the New York Police Department—exceeded that by \$600 million.

The total number of personnel needed to run those UN's core functions is around 10,700: compare the local administration of my own national capital, Canberra—again just one city in one of the UN's 185 member states—which employs some 22,000 people on the public payroll.

The cost of the UN's peace operations last year—in Cyprus and the Western Sahara and the former Yugoslavia and thirteen other locations—was \$3.2 billion: that's less than what it takes to run just three New York City Departments (Police, Fire and Corrections).

Add to the core functions of the UN all the related programs and organs (including UNDP, UNFPA, UNHCR, UNICEF, UNCTAD and International Drug Control) and you are talking about a total of around 33,000 people and a total budget (including both assessed and voluntary contributions) of \$6.3 billion: that sounds a lot, but not quite so much when one considers, for example, that the annual global turnover of just one international accounting firm, Price Waterhouse, is around \$4.5 billion.

Go further, and add to the core functions and the related programs all the other specialised programs and agencies of the entire UN family—that is, add agencies like the FAO, ILO, UNESCO and WHO, plus the IAEA, and put into the equation as well the Bretton Woods Institutions (the World Bank group and the IMF, which between them employ nearly 10,000 people and spend nearly \$5 billion annually) and you are still talking about total UN personnel of just around 61,400 and a total UN system dollar cost of \$18.2 billion.

61,400 may sound like a lot of people, but not when you consider that more than this number—65,000 in fact—are employed by the three Disneylands in California, Florida and France. Three times as many people—183,000—sell McDonald's hamburgers around the world as work for the UN system.

And \$18.2 billion might be a lot of money, but just one major multinational corporation, Dow Chemical, which happens also to have 61,000 employees world-wide, has an annual revenue in excess of \$20 billion.

When you put the UN's financial problems into this kind of perspective, the solutions do not look quite so hard. Surely between us the 185 member states, with our combined defence expenditure alone of around \$767 billion (as calculated in the UNDP's 1994 Human Development Report), can find that kind of money? But of course the problem of paying for the UN has now become critical because of the unwillingness, or inability, of so many of the member states (including the biggest of us all) to pay their assessed contributions—notwithstanding that the cost of these for the major developed country contributors works out at between \$7 and \$15 per head per year, the price of no more than one or two movie tickets in this city.

We have a short-term problem, which can and should be solved within the UN system by allowing the UN to borrow from the World Bank. But we also have a longer-term problem which, frankly, does not look as though it is going to be solved—however much we continue to work at adjusting assessment scales, and however much we exhort member states to pay up, and remind them of the consequences under Article 19 of the Charter if they fail to do so.

So what are we to do about all this? In my judgment, it is time to look again—this time very seriously indeed—at the options which do exist for supplementing member states' contributions by external sources of finance. The practicability of collecting a levy on every one of the \$300 thousand billion worth of foreign exchange transactions that now occur every year remains to be fully assessed, but simple arithmetic tells us that if we strike a rate for such a levy of just .001 per cent—which hardly seems likely to have any significant economic consequences—we could generate \$3 billion. And we know that if we could levy international airline passengers just \$10 for every international sector flown—which would be very easily collectable indeed—we could also raise \$3 billion, nearly the whole annual cost of UN peace operations.

There are as well other revenue options that have, to a greater or lesser extent, the same rational nexus with UN costs that these do, in the sense that they involve transactions which are international, which take place within a framework of law and cooperation provided by the United Nations, and can be harmed by a breakdown in international peace and security—precisely the areas in which the United Nations has a fundamental responsibility.

But traditionally a threshold objection of principle has been mounted against any such talk. Member states, it has been said, should themselves own the UN system: if the Secretariat had direct access to non-member state revenue, who knows what adventures it might be inclined to get up to. But ownership and control are totally separate issues. The UN operates on a sovereign equality principle which means that, for example, those six states which presently between them pay over 65 per cent of the UN's regular budget should under no circumstances have greater authority over how it is spent than the overwhelming majority of members who each pay much lesser proportions of the total.

Surely, whatever the funding sources involved, the crucial question is how and by whom the money is spent: it is absolutely crucial that there be appropriate control of funds by member states, with all the accountability mechanisms that

implies, but that doesn't mean that those member states should themselves have to provide all the funds in the first place.

In talking to many of my foreign ministerial colleagues from a wide range of countries and across all continents on these issues over the last few days, I have found an almost unanimous reaction that the UN's present and likely continuing financial crisis demands that these issues be looked at again, without any pre-judgments of the questions of principle or practicability involved.

I would suggest, accordingly, that the time is right for the Secretary-General to convene once again a high-level advisory group, like the Volcker/Ogata group established in 1992, with a mandate explicitly to think through what has hitherto been more or less unthinkable—how to fund the UN system in a way that reaches out beyond the resources that member states are prepared to directly put into it. Such a group could report to, or work with, a committee of representatives of member states—one in existence already (like the High Level Working Group on the Financial Situation of the United Nations) or one newly created for the purpose.

A great deal of work has been already, or is being, done on many of these issues, and it should be possible for such a group to report within six months or so, and certainly within a year. The parameters of the debate have to be changed, and for that to happen we need an authoritative new statement of the art of the possible.

Here as elsewhere, we have to move forward. We have to look to new ideas. We have to encourage humankind's ingenuity to search for better ways for states to deal with each other as relationships take new shape, as new states emerge and as problems which could not have been conceived of a few years ago become the challenges of the day.

We will fail to meet those challenges if we adhere solely to the ideas and dogma of the past. The United Nations was itself founded on a mixture of idealism and pragmatism. Both were essential to build a new world fifty years ago, and in the past fifty years that idealism has not disappeared. It was an important force in bringing about the end of the Cold War, and more than anything else it was idealism that lay behind the process of decolonisation which shifted the tectonic plates of history.

To some, idealism will always be the enemy of practicality. But to others, it will always involve, more than anything else, the courage to take advantage of new opportunities, ensuring that at least some of today's ideals will become tomorrow's reality. Perhaps now, fifty years beyond San Francisco, we need to renew that idealism, and walk down some of the uncharted paths that idealists have always been prepared to tread.

United Nations — Member States in Arrears — Australian Attitude

On 18 September 1995, in the House of Representatives, the Minister representing the Minister for Foreign Affairs, Mr Bilney, answered a question upon notice from Mr Langmore (Fraser, ALP). Extracts from the question and answer follow (House of Representatives, *Debates*, vol 203, p 1155):

Mr Langmore asked the Minister representing the Minister for Foreign Affairs, upon notice, on the 11 May 1995:

(2) What action is (a) the UN and (b) Australia taking to require those countries [in arrears to the UN] to pay their assessed contributions?

Mr Bilney—The Minister for Foreign Affairs has provided the following answer to the honourable member's question:

(2)(a) The UN Secretary-General noted in his statement to last year's annual session of the UN General Assembly (UNGA49) and repeated subsequently on 22 June this year that the financial crisis of the UN was threatening the Organisation's ability to carry out its major functions, including peace keeping and other programs and activities funded from the regular and peace keeping budgets. He also said that due to the level of outstanding contributions to the regular budget he had stopped making reimbursements to contributors of troops and equipment to peace keeping operations. The UN Secretary-General suggested that Member States in arrears issue bonds which could be taken over by Member States who are owed for troop and equipment reimbursement. This proposal has, however, received little support from Member States.

(b) Australia continues to urge other Member States to pay their assessed contributions to the UN on time and in full, as is our own practice. We also support the tighter interpretation of the provisions of Article 19 of the UN Charter, under which Member States can lose their voting rights in the General Assembly. These provisions can be invoked once a Member State's arrears equal or exceed the amount of the contributions due from it for the preceding two years. At the end of June there were 21 Member States who risked losing their voting rights under the provisions of Article 19 and several more who could be affected if the provisions were interpreted more strictly.

United Nations — Sanctions

For information on the use of economic sanctions relating to the Federal Republic of Yugoslavia and the Bosnian-Serb Republic, see Chapter VIII of this Practice Section.

United Nations — Sanctions — Use as a Tool of Peaceful Settlement of Disputes — Australia and The Netherlands — Non-paper

At the United Nations Congress on Public International Law, held in New York from 13-17 March 1995, Australia and The Netherlands submitted a non-paper entitled *UN Sanctions as a Tool in the Peaceful Settlement of Disputes*. Extracts of the document, which was also published on 3 August 1995 as a document of the UN General Assembly (A/50/322), follow:

II. PREPARING A SANCTIONS REGIME

II.1 Defining the Situations where the Use of Sanctions is Appropriate and Effective

The basic objective of imposing sanctions should be to induce a change in the behaviour of a particular state (or sometimes an organization), whether that may be to compel a desired course of conduct or to bring to an end a course of conduct since by such behaviour, international peace and security are threatened. For example, sanctions have been used to attempt to bring an end to Apartheid in South Africa, to put pressure on Libya to release its nationals for trial, to force

the return of President Aristide (and hence to ensure the restoration of democracy as in Haiti), as a measure to assist in restoring order to the anarchy of Rwanda and Somalia, and to force Iraq to change its behaviour following its invasion of Kuwait. In some cases, sanctions are imposed, being at the same time a signal to the international community of the unacceptability of certain behaviour. In the context of the sanctions against Libya, for example, several members of the Security Council referred to the action as a means of deterring state sponsored terrorism generally.

If sanctions are to be a credible collective policy measure and to play an effective role in the graduated response to threats to international peace and security, it is important that they should have defined and achievable objectives within a realistic time frame. The following are some of the factors that can be used in assessing the appropriateness of the use of sanctions and the likely effectiveness of a specific regime.

II.1.1 The level of threat to global peace and security

The UN Charter prescribes measures against "any threat to the peace, breach of the peace, or act of aggression" which the Security Council may determine (Article 39). This implies that sanctions are to be used in situations where there is a threat to peace and security. In some situations this is clearly the case, for example the Iraq invasion of Kuwait was an act of aggression which breached a basic rule of international law. However, the Security Council is not limited in its operation to circumstances where the threat to or breach of security is obvious. The meaning of security is not limited to situations of armed conflict. Threats to human rights, the potential flow of refugees, criminal activity such as aviation terrorism may result in threats of international peace and security.¹

II.1.2 Failure of conciliatory measures

Sanctions can play an important role in the graduated response to threats to international peace and security. The UN Charter prescribes sanctions as an intermediate measure between the use of force and other measures such as dispute resolution or other humanitarian assistance. The decision to impose sanctions should preferably only be taken when it is clear that the means for "peaceful settlement of disputes" provided in the Charter is not effective in resolving the conflict.

There has been considerable discussion in recent years of the concept of preventative diplomacy as a means of preventing situations which may require the United Nations to resort to sanctions or ultimately to military intervention. Rwanda is an horrific example of a complete collapse of civil order which the United Nations was all but powerless to stop by the time it erupted. Preventative diplomacy does not necessarily need to be the responsibility of the United Nations but can often be most effectively carried out by regional organizations. However, when such measures fail, sanctions may be the next step to be considered and should be coordinated in consultation with the relevant regional organization and taking into account action already taken by that organization.

¹ In 1992, the President of the Security Council said that "...the non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security." (Note by the President of the Security Council S/23500 of 31 January 1992, p 3).

II.1.3 Types of sanctions

Because of the need to differentiate as much as possible between the general population and the perpetrators of the conflict, a sanctions regime can be tailored to more closely target specific offenders. And, also in this context, the increased use of analysis of the target state's economy could be useful. In the case studies, the kinds of sanctions imposed vary from the comprehensive sanctions targeting trade, cultural and diplomatic links (Iraq and the FRY), to the much more specific sanctions (Libya) and arms embargoes. In some circumstances a package of selective sanctions may be able to minimize civilian impact, while still effectively pressuring the relevant actors.

Since arms and military equipment are primarily used by governments and parties warring against governments, an embargo on goods such as these is likely to be more effective where the primary aim of the sanctions is to weaken the military capacity of parties to a war. In countries such as Somalia and Rwanda, where the civil war was associated with widespread famine, comprehensive economic sanctions would have been inappropriate, whereas the selective embargo on export of military and related equipment may have a more helpful effect on the immediate problem.

Selective prohibition of specified goods can also be a useful way of streamlining the impact of sanctions. By choosing specific goods which are strategically important to the target group within the country, other goods which may have economic importance to sanctioning countries can be excluded. One problem with targeting specific goods is that goods which are economically important to the target country are usually also economically important to the sanctioning states. In the Southern Rhodesia case, the sanctions were initially focused on the primary commodities which were Southern Rhodesia's staple exports. However, because these exports were required by a number of other countries, there was a reluctance to comply with the sanctions and hence significant circumvention of the embargo.

II.1.4 Coordinating sanctions with other measures

Collective sanctions in the post cold war era have not been used as an isolated instrument of UN policy. Unlike the cases of Southern Rhodesia and South Africa, where the sanctions were primarily symbolic and were the only direct measures taken by the United Nations against those countries, the more recent sanctions cases have often been part of a much more comprehensive program of decisions. On the part of the UN, these have included mediation, negotiations, arbitration, negotiations between parties, election monitoring, humanitarian efforts and the deployment of peacekeeping forces.

Regional organizations have taken a leading role in conflict resolution; sanctions have been coordinated with the efforts of those regional organizations in order to maximize effectiveness. In the case of Haiti, the Organization of American States (OAS) had imposed sanctions against Haiti though these were not mandatory. The Security Council, using its authority under Chapter VII, then reinforced the measures of the OAS by imposing Article 41 sanctions, binding upon all states. Sanctions can play an important role in a graduated response to threats to international peace and security and, as noted above, could in certain cases be coordinated in consultation with the relevant regional organization and taking into account action already taken by that organization.

II.2 Avoiding Ambiguity in Drafting a Resolution

Unlike a treaty which has been carefully negotiated and where the implementing legislation (if necessary) can be prepared in advance of the instrument entering into force, a sanctions resolution is binding on member states of the United Nations from the date stipulated by the Security Council (often with near immediate effect). As the decisions of the Security Council become binding obligations on states in international law, it is important that those obligations be clearly understood by the parties which are obliged to implement them. This is important for both the target state in understanding what the Security Council is requiring of it, and member states in understanding exactly what the responsibility to implement requires of them. Clarity of drafting, and where appropriate the increased use of uniform provisions, will limit also the need for states to approach the relevant Sanctions Committee, which are already burdened with a considerable amount of paperwork, with queries about interpretation...

II.3 The necessity of analysing economies

With the imposition of a sanctions regime on a particular country several choices need to be made with regard to its content.

In the case of a UNSC decision to impose economic sanctions it is valuable to assess as precisely as possible what the effect of an economic sanctions regime will be. It should not be the intention to affect the civilian population of the target country, but to affect that part with the economic and political power.

To facilitate this assessment three issues could be analysed:

- the national economy of the target state;
- in close relation to this, its economic relations with other states;
- the society and social structure of the target state.

The first issue refers to the economic situation of the state in question. Without proper data of its processes and indicators, including major imports and exports, trading patterns etc, it is difficult to determine what the effects of an economic sanctions regime will be on the national economy of the target state. The third issue will give insight into the national social problems that might occur as a result of the imposition of the measures.

II.3.1 The economy of the target state

The economy of a state consists of several economic indicators and processes (among others):

- division between and the size of the primary, secondary, tertiary and quaternary sector;²
- an open or a closed economy;
- presence of natural resources (especially crude oil and natural gas);
- refinery capabilities;
- military expenditure;

2 An economic division between different kinds of work. Primary sector: agriculture, mining, fishing and hunting; Secondary sector: industry; Tertiary sector: service providing sector; Quaternary: part of social public life that includes the Public Services, Defence, Public Health and Public Transportation.

- possibilities for economic growth: employment; inflation (hyperinflation); import and export; investments;
- multiplier effect: the expected effect of investments on the national economy;
- Budget deficit;
- Gross National Product (GNP).

By collecting the necessary data and analysing these indicators for a particular country, it is possible to determine what the strong and weak points of its economy are. Using this basic information in the preparatory stage/phase of a sanctions regime, the UNSC can shape a sanctions regime more precisely. Most of the required data will be available through the international financial institutions (IMF, World Bank), UNDP or OECD.

An economic sanctions regime can be divided into 4 forms, which can be applied simultaneously or separately:

1. to limit or ban export (embargo);
2. to limit or ban import (boycott);
3. the institution of financial measures;
4. the suspension of concessional relations (sports, culture).³

Lifted and still existing economic sanctions regimes vary from case to case. Against one country a limitation of export (embargo) is in force, while against another country a limitation of import is in force (boycott), or both in combination.

With the use of the national economic indicators and the characteristics of the different forms of an economic sanctions regime it is possible to decide on what form to use in that specific economic embargo.

II.3.2 Economic relations with other states

Economic sanctions can only be effective if the target state is part of a structure of international economic transactions. In the world today it is difficult for a state to exclude its national economy from the world economy. No state can afford to discount the possibility of suspension of economic transactions with other states. There are always export and import relations and no country has the possibility to have an entirely closed economy.

Thus, not only the state's economy must be analysed, but its economic relations with other states are also of importance.

II.3.3 Analysis of society and social structure of a target state

In addition to an economic analysis, the social structure of a society should be reviewed. Whenever an economic sanctions regime is imposed it will most likely have consequences for the social environment of the target country's population. Due to the sanctions, the economic climate could deteriorate, causing (among other effects) withdrawal and suspension of investments, raising unemployment, and (hyper)inflation. The major aim of the analysis of the social structure is to avoid as much as possible the unintended negative effects for the civilian

3 Van der Laan R, *Economic Sanctions in Theory and Practice* November (1994), no 44, p 16.

population and to establish a clear picture of the most likely effects on this social structure.

II.3.4 Conclusion

From the above the following can be concluded:

Whenever the decision is made to impose an economic sanctions regime, the analysis of the national economy will indicate which set of measures is expected to be the most effective.

Secondly, the analysis gives insight in the interweaving of the economy of the target state with economies of other states.

It is necessary to assess the effects of sanctions on the civilian population because it could contribute to a reduction of unintended side effects. An analysis of the social structure of the target state can indicate where these problems might occur.

II.4 Analysis of possible unintended negative effects for third states (Article 50 Charter)

As sanctions become more frequently used as an international policy tool (and this seems currently to be the case), the effectiveness of the regimes will be increasingly dependant on the success of measures aimed at mitigating the effect of sanctions on third states (third states are countries bordering the target state or closely related by history or economic relations). Sanctions are weakened if they are not widely supported, and neighbouring states may be reluctant to enforce the regimes rigorously if they are likely to suffer considerable economic hardship (and particularly if little thought has been given to ways of mitigating such effects).

The Security Council could consider ways in which a sanctions regime could be streamlined to minimize the effect on third states (again this underlines the potential benefits of increased use of economic analysis). In his report on article 50, the Secretary General recommended that:

...the Security Council might, when considering the imposition of enforcement measures, request the Secretariat to prepare background material on the economies of the neighbouring States or of States that have particular economic links with the target States, as well as some prospective analysis on the predictable effects of the intended measures at the macroeconomic level.⁴

Armed with such information, the Security Council would be able to better consider the effect of the sanctions on third states, the degree to which it would impact on the effectiveness of the sanctions regime as well as the kinds of measures which would minimize the effect on third states while not compromising the effect on the target.

4 Report of the Secretary General pursuant to the note by the President of the Security Council (S/25036) regarding the question of special economic problems of states as a result of sanctions imposed under Chapter VII of the Charter of the United Nations. A/48/573, p 49.

Further, the UNSC indicated that:

It is important that states confronted with special economic problems not only have the right to consult the UNSC regarding such problems, as Article 50 provides, but also have a realistic possibility of having their difficulties addressed.⁵

In analysing possible unintended negative effects for third states the following distinctions can be made:

1. "Categories of losses and costs.

A general framework for identifying special economic problems arising from the carrying out of those measures should include, basically, three broad categories of specific losses and costs:

- (a) those relating to the trade links with a target country (import and export);
- (b) those relating to the financial links with a target country;
- (c) those relating to sectoral or other special links with a target country."⁶

2. Timeframe: long-term and short-term impact of sanctions.

Long-term impact of sanctions (the impact lasting well beyond the date when sanctions are lifted) may be as severe as the short-term impact (the impact until the moment of lifting the sanctions). In other words, the revocation of sanctions by the UN will not lead to an automatic recovery of the economy.

3. Directly or indirectly related economic problems.

A third country with direct links to the economy of the target state can experience direct economic problems, as a result of the implementation of a sanctions regime.

Indirect economic problems occur if countries, other than third, develop problems because of the international crisis in general, such as the impact of the sudden rise of oil prices, lost business opportunities, or the stopping of financial aid. These indirect problems are not necessarily the result of the sanctions regime.

With the use of these distinctions a clear overview can be made of the most problematic effects countries can experience or are experiencing...

II.5 Analysis of unintended social and humanitarian effects

Through the increased use of economic and political analysis of the target state by the UN Secretariat, the Security Council could be in a position to make better informed decisions regarding the likely effectiveness of the sanctions, including information on vital sectors of the target state's economy as well as the potential effects of the sanctions on the general population.⁷ In some cases, sanctions can affect the actual offenders less than they do the civilian population, and this is

5 *An Agenda for Peace*, Report of the Secretary General, A/47/277, S/24111.

6 *Economic assistance to states affected by the implementation of the UNSC resolutions imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro)*. A/48/573, S/26705, p 23.

7 Requiring this type of analysis, to be prepared by the Secretariat in advance of the imposition of a sanctions regime, would of course have resource implications for the UN.

one of the primary reasons for some commentators to express a lack of confidence in the effectiveness of sanctions as an instrument of foreign policy.⁸ The use of such specific economic analysis, which is discussed further below, could assist in determining types of sanctions which, for example, would minimize the effect on the civilian population while maximizing the effect on the target state's economy and, in particular, on the offending parties (usually the government) within the target state.

It seems that in some cases the underlying rationale behind the imposition of wide ranging sanctions is the assumption that such sanctions will make the target state's government change its behaviour because of the effect of the measures on the civilian population or the measures will provoke the civilian population in the target state in a way that they force their government to change its behaviour. On the other hand, as the targets of sanctions may not be states organized on the basis of fully democratic principles, the link between power and popular legitimacy is likely to be weak and the capacity of a population suffering from the effects of economic sanctions to pressure for change in government policy may be limited. Indeed, it can have the contrary result, with the power of the government being reinforced and the international community perceived as the villain.

II.5.1 Social Effects

Sanctions can be especially hard on the vulnerable layers of the populations. Problems in obtaining food, fresh drinking water, healthcare, housing and fuel are common and likely to be exacerbated by sanctions.

Unemployment rates are likely to increase, as the industry stops producing, export of products, and import of raw materials may be banned and the national market in most cases will not be large enough to provide enough trading possibilities. This will have a drastic effect on the civilian population.

The case of the former Yugoslavia has demonstrated that a new kind of social class is likely to emerge under influence of the applied sanctions regime. With the emergence of a black market, huge profits can be made. The difference between the several layers in society will increase. In the former Yugoslavia this resulted in severe reduction of the middle class and the predominant presence of mafia like organised crime syndicates.

II.5.2 Humanitarian effects

Unbalanced nutrition and shortage of medical supplies could seriously affect the medical situation in a country under sanctions. Although every sanctions regime includes an exemption for the provision of foodstuffs and medical supplies, the distribution of these items is not always adequately undertaken due to obstruction by the Government of the particular country subjected to UN sanctions.

When applying a sanctions regime, it is important to seek close cooperation with organisations specialized in the field of social and medical problems. Most of these organisations (UNHCR, the Red Cross, Unicef) are likely to be present in the target country. Therefore, they are in a position to provide information before the imposition of a sanctions regime as well as after.

8 "The Civilian Impact of Economic Sanctions", in Damrosch LF, *Collective Intervention in Internal Conflicts*, (1993), pp 274-316.

It should be stressed that humanitarian relief efforts are also undertaken by individual UN member states, regional organisations (European Union) and other non-governmental organisations...

V. SANCTIONS REGIMES AND THIRD STATES

V.1 History of Article 50 of the UN Charter

The Covenant of the League of Nations already referred to an agreement between the Members states with reference to possible negative consequences suffered by those Member states as a result of the imposition of a sanctions regime.

Article 16, section 3 stated: "The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimise the loss and inconvenience resulting from the above measures (...)"

With the demise of the League of Nations and the creation of the United Nations this section was integrated into draft Article 50. This was seen however as providing the possibility for the target state itself to make an appeal to the UN on basis of this article.

Such a situation could obviously have led to a conflict, with the result of nullifying the effect of sanctions where target states have been given assistance under the article. On the one hand the Security Council had the possibility to impose a sanctions regime on a target state, while on the other hand it had to advise that target state on possibilities to solve the negative consequences. In order to prevent a situation arising, Article 50 was drafted in its present form and is clearly intended to apply only to third states.

V.2 The theory and practice of Article 50

The network of international economic and diplomatic relationships is built upon the premise that such links operate to the advantage of all states. When sanctions are imposed, not only the target state but also the sanctioning states themselves (and some more than others) can often suffer from the severance of economic relationships. The purpose of Article 50 of the UN Charter is to address the problems of states (most often neighbouring states of the target state) which suffer from severe disruption of trading patterns as a result of sanctions. However, because sanctions have so rarely been used since the Charter was drafted, the practical effect of Article 50 had not been brought into question till the moment of increased use of sanctions by the Security Council in recent times.

In the cases of Iraq and the FRY, numerous applications for assistance under Article 50 have been made by states adversely affected by the sanctions regimes, and there has been little consideration of how these applications can be addressed. In each case, the Security Council has acknowledged the legitimacy of the request of the affected state and called upon other member states to render technical and financial assistance. But, in practical terms, the issue of specific compensation has not been elaborated upon extensively.

Currently, submissions under Article 50 are made to the committee established to oversee the relevant sanctions regime. There have been petitions made under Article 50 in relation to Southern Rhodesia (2 states), former

Yugoslavia (8 states) and Iraq (21 states). Bulgaria and Sudan have foreshadowed Article 50 requests in relation to sanctions against Libya.

The response has invariably been an appeal to all states to render "immediate technical, financial and material assistance" to the requesting state and an invitation to "competent organs and specialized agencies of the United Nations system, including the international financial institutions, and the regional development banks to consider how their assistance programs and facilities might be helpful to the requesting state."⁹ In a few cases, a study of the economic difficulties of the requesting state has been conducted¹⁰. In each case, the Secretary General has requested reports from states and international organizations on the implementation of the request for Article 50 assistance.

V.5 The discussion on Article 50

V.5.1 The Charter Committee

Several proposals have been made to assist states adversely affected by a sanctions regime. They include the establishment of a fund to compensate affected states, the improvement of consultations (both before and after the imposition of sanctions) between the Security Council and those [s]tates most likely to be affected, enhancing the role of international financial institutions in this field, and the adoption of a more flexible approach by the competent committees and organs of the Security Council in discharging their mandate with respect to sanctions regimes. It has also been stated that a focal point should be established for coordinating the assistance to affected third states.¹¹ This diversity in proposals reflects the discord existing between member states regarding the economic problems arising for third states.

The most significant proposal—one that has caused considerable discussion—is the establishment of a trust fund by the Security Council or the UN General Assembly. Especially the proposal has, naturally, been supported by third states suffering from economic problems caused by a sanctions regime.

Arguments against such a fund are (among others) that no support for the concept can be found in the UN Charter. Another argument against a compensation system is the diversity of problems relating to the sanctions regime. No one case is the same and it would therefore be extremely difficult to establish procedural guidelines to assess economic damage directly related to a sanctions regime. For this reason it may be preferable to consider each case on its merits.

The Special Committee on the Charter of the UN is aware of the existence of the problem and has recommended that discussion on the issue be confirmed in an appropriate forum. Further, the proposals made by delegations on this issue during the discussion in the Committee should continue to be analysed. It has also been argued that proposals made by delegations in the Committee should be analysed further.

9 Identical words were used both in response to the claims with respect to sanctions against Iraq (S/22021, 20 December 1990) and the claims with respect to sanctions against the former Yugoslavia (S/26040, 8 July 1993).

10 Zambia in relation to Southern Rhodesia and Jordan in relation to Iraq.

11 Report of the Special Committee on the Charter of the UN and on the Strengthening of the Role of the Organisation, A/49/33, at 50–83.

V.5.2 View of the Security Council

The question of special economic problems of [s]tates as a result of sanctions imposed under Chapter VII of the UN Charter has been examined by the Security Council. In a Note of the President, the Security Council agreed with the Secretary General that special consideration should be given to states adversely affected by sanctions and that they should have the right to consult the Security Council with regard to their problems.

In other fora of the UN, the involvement of financial institutions and other components of the UN system is also being considered. The Security Council has determined that the matter should be considered further and has noted the Secretary General's recommendation that the Council should devise a set of measures.¹²

VI. CHANGES IN THE SANCTIONS REGIME

VI.1 The "Sticks and Carrots" approach: the gradual lifting of sanctions

As the Australian Foreign Minister, Gareth Evans, states in "Cooperating For Peace": one way to ensure that sanctions play an effective role in the graduated response to threats to international peace and security "is to introduce a broad range of sanctions measures and undertake to lift them progressively as particular targets are achieved"¹³. He continues: "This has been the Commonwealth approach to its South African sanctions. Four "tranches" of sanctions have been identified (viz the sports boycott and other "people to people" sanctions; trade sanctions; financial sanctions; and the arms embargo); each has a different "trigger" for its lifting—from the abolition of Apartheid in sport for the first tranche, to installation of a fully-elected government for the last"¹⁴. Such a strategy has been used recently in relation to the former Yugoslavia where sanctions were partially lifted for an initial period of 100 days on the basis that the government of the former Yugoslavia had made genuine efforts to control the border with Serbia and Montenegro. In conjunction with sanctions, other types of positive motivators can be used, such as aid programs by the IMF and World Bank, trade agreements with neighbouring states or a series of trading preferences such as those under the GATT.

The "oil for food" agreement established in relation to Iraq (Resolution 706 August 1991) is another example of the kind of compromise which can be made in this context. In this agreement, Iraq was to have been permitted to export petroleum and petroleum products with the express permission of the relevant Security Council Sanctions Committee. The payment for these exports would have been placed in a special account for the purpose of providing humanitarian assistance to the people of Iraq and for the Compensation Fund established to assist in covering the costs of the United Nations in the Iraq-Kuwait crisis. This agreement was eventually rejected by Iraq on the grounds that it was an

12 Note by the President of the Security Council, S/25036.

13 Evans G, *Cooperating for Peace*, p 139.

14 Ibid. Senator Evans also comments *ibid*: "[t]he joint action by the UN and the OAS in response to the crisis in Haiti is a good example of a similar strategy: in an agreement brokered by the UN and OAS between the de facto authorities and the legitimate government, a series of steps was established to restore democratic processes and return President Aristide, with specific triggers to allow for the suspension and eventual lifting of sanctions".

infringement of its sovereignty. None the less, the “oil for food” agreement can be seen as a constructive model of the kind of agreement which could be used in the future.

United Nations — Sanctions — Assistance to States Specially Affected — Australian View

The following is an extract from the statement for the Australian delegation made by Mr James Baxter on 13 November 1995 to the United Nations Sixth Committee of the General Assembly concerning the Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organisation:

Mr Chairman

My delegation also thanks the Chair of the Working Group of this Committee, Ms Maria Flores, for her efforts in coordinating the discussions which have taken place in the course of this session on sanctions. This discussion has been of particular interest to my delegation, which has, in conjunction with the delegation of The Netherlands, been studying sanctions as a tool for the peaceful settlement of disputes. Delegations may recall that a joint paper was presented on this issue to the UN Congress on Public International Law in March 1995 by Australia and The Netherlands. A questionnaire on the implementation of sanctions which was attached to the joint paper has been distributed to missions in New York, and responses have been provided by a number of delegations. We shall be examining these responses in taking forward our consideration of this issue.

Mr Chairman

The discussion on assistance to States specially affected by sanctions has been concerned with finding the right balance between the need for the Security Council to retain maximum flexibility in designing and imposing sanctions in order to maintain international peace and security, and the need to minimise the negative collateral impact of such regimes and address it where this does occur. The debate has thrown up important questions of principle, such as whether the Security Council should be subject to any procedural constraints when taking action under Chapter VII, or whether action taken by the Security Council should give rise to a right to compensation for those [S]tates which incur damage because of it.

My delegation does not consider that the Charter Committee’s current mandate—which is concerned with the implementation of the provisions of the Charter relating to sanctions—can be the basis for resolving differences of principle on questions such as these. What we need to focus on are essentially practical questions. For instance, what problems have arisen for States which have been specially affected by sanctions regimes? How might existing practices and procedures be improved to alleviate their difficulties?

The debates in the Charter Committee and in the Working Group of the Sixth Committee which has been meeting during the fiftieth session have made clear that the various sanctions regimes have given rise to problems for a number of States. The principal problem is that there are insufficient mechanisms available which may be employed by innocent States to remedy the adverse economic effects which flow from the imposition of sanctions on another State which has a close economic relationship with the first. But delegations have also

noted problems of communication of information between the Security Council and States specially affected by sanctions. My delegation would note another problem, that is the lack of a standard for measuring economic damage incurred as a result of sanctions regimes.

At the same time, the debate has also confirmed the willingness of the Security Council to take on board the concerns of specially affected States. More importantly, the Council has already modified its procedures in a number of respects to improve the transparency of their operations and to facilitate access by specially affected States. We also note the significance of changes in policies by international financial institutions, such as the IMF, which have increased the level of assistance available to specially affected States. My delegation welcomes these changes and the cooperative spirit which they evidence.

These improvements notwithstanding, Mr Chairman, we do need to do more. Some States are obviously concerned they are shouldering an inequitable share of the burden of individual sanctions regimes, which are after all intended to ensure the maintenance of international peace and security for the benefit of all. In these circumstances, Member States must work together so that such States do not incur any damage unnecessarily, and must put in place procedures to ensure this is avoided. My delegation believes that we have seen the most constructive discussion of the problems of third States when the debate has focused on procedural and operational aspects of the issue. Improved flows of information to specially affected States at all stages, from the design of new sanctions regimes to their review, can only assist them to address changes in trade flows which are bound to result from sanctions regimes. Such States need more information about how the Security Council intends a sanctions regime to operate, where assistance might be available from and what form it might take.

Improvements can be achieved by changes to the way information flows between the Secretariat and specially affected States, as well as by enhanced analysis of it within the Secretariat. But my delegation has reservations about taking our discussion in this Committee beyond changes of this order. A number of delegations have proposed that a trust fund should be established which would be devoted to assisting States specially affected by sanctions. In response, other delegations have remarked that they cannot support the proposal that a trust fund should be established, either on the grounds of cost or principle. My delegation has serious reservations about the trust fund proposal on both grounds. We simply do not see that there is authority under the Charter to set up such a fund. It certainly goes beyond the scope of Article 50, which is concerned with the right of specially affected States to consult the Security Council.

This is in no way to suggest that we do not accord full weight to the concerns expressed by specially affected States. But we believe we need to be looking at alternative approaches which enhance the operation of existing mechanisms, rather than rely on the establishment of new ones. At a practical level, we have in the course of an extensive and protracted debate seen no sign of a proposal which will satisfy both the advocates and the opponents of the trust fund concept. Against this background, my delegation is of the view that it would be a mistake to delay argument on other initiatives until this problem is sorted out. The whole point of this debate is that certain States are suffering now from sanctions regimes which are currently in operation. We must do whatever we can to assist them now. What we can agree upon here may be more modest than what some delegations would like. But my delegation considers it would be

of more practical value than waiting for an unlikely consensus on more ambitious proposals if it delays implementation of improvements that can be made. Holding out for agreement on unrealistic proposals itself involves a cost to States specially affected by sanctions.

Mr Chairman

The debate in the Charter Committee and in the Working Group has been an important one, and my delegation believes it has seen the formulation of constructive proposals which have the potential to be of real assistance to States specially affected by sanctions. During the debate, we have seen some discussion of issues which, strictly speaking, fall outside the scope of assistance to third States. My delegation considers that it is necessary in order properly to fulfil the mandate of this Committee on this item to touch on broader questions from time to time (for example, relating to how reviews of sanctions are conducted). However, this makes it all the more important that we should bear in mind in our Charter Committee debate that there are other forums currently considering the operation of sanctions regimes, and in a more general context. We should ensure the parallel discussions avoid duplication of effort, let alone any inconsistency of approach.

United Nations — Charter Committee — Recommendations — Australian Views

The following is an extract from the statement for the Australian delegation made by Mr James Baxter on 13 November 1995 to the United Nations Sixth Committee of the General Assembly concerning the Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organisation, and with particular regard to the Australian reaction to a number of the Committee's recommendations:

Mr Chairman

My delegation welcomes the substantive results that have been achieved by the Charter Committee in 1995. In particular, the proposal for the deletion of the "enemy states" clauses from the Charter is the basis for a valuable updating of the Charter in this area. We also endorse the recommendation to expand the Membership of the Charter Committee, so that it will be open to all Member States. Thirdly, the adoption of the Model Rules for Conciliation of Disputes between States represents the most substantial outcome of the Charter Committee's 1995 meeting, and my delegation thanks and congratulates the delegation of Guatemala in particular on its fruitful efforts.

United Nations — Reform — Human Rights — Australian Position

On 29 November 1995, the Minister for Small Business, Customs and Construction, Senator Schacht, tabled in the Senate the Government Response to the Joint Standing Committee on Foreign Affairs, Defence and Trade Report entitled *A Review of Australia's Efforts to Promote and Protect Human Rights* (Senate, *Debates*, vol 176, pp 4246-4281). Extracts from the response follow, and further extracts are to be found throughout this volume:

Chapter Two—The United Nations

Recommendation 3

The Committee recommends that, in the current reforms of the UN, the financing and structure of the human rights regime be addressed and urges the Australian Government to continue its support for greater funding and coordination in the system.

Response

Accept.

Comment

The Government is committed to ensuring that adequate resources from within the UN system are made available for strengthening the operation of the UN human rights system including the Centre for Human Rights. At the 1993 World Conference on Human Rights in Vienna, Australia argued strongly for the United Nations to devote the financial resources necessary for strengthening human rights activities. Since then, Australia has continued to argue in the UN Commission on Human Rights and at the UN General Assembly, for a greater proportion of the UN budget to be devoted to human rights.

In addition to increased financial resources for UN human rights machinery, the Government has strongly encouraged the UN to provide the administrative, managerial and staff resources required by the UN Centre for Human Rights to carry out its core functions as the focal point for the human rights activities of the UN, and has supported reform efforts currently underway in the Centre. Australia has urged the Centre for Human Rights to strengthen its management so that it can operate more efficiently and effectively.

The position of UN High Commissioner for Human Rights was set up in 1994 to develop coordination between the various UN agencies on human rights as well as to integrate human rights activities in peace keeping and humanitarian assistance operations. Australia fought hard for the appointment of a High Commissioner for Human Rights and has consistently supported the development of his role as the head of the UN human rights system and in coordinating human rights activities in the UN. The first incumbent, Mr. Jose Ayala Lasso, visited Australia in April 1995 as a guest of the Government.

In keeping with the high priority the Government places on the need to ensure that adequate resources are made available for strengthening the operation of the UN human rights system and the importance of effective national human rights institutions, the Government has provided financial support to the UN for the creation of the position of Special Adviser to the UN High Commissioner for Human Rights on National Human Rights Institutions. Mr Brian Burdekin, former Australian Federal Human Rights Commissioner and an internationally regarded expert on national human rights institutions, has been appointed to the position for a two-year period. Mr. Burdekin commenced duty in Geneva on 26 July 1995.

Recommendation 6

The Committee recommends that, in the process of UN reform, the Australian Government should press for a review of the committee structure to address questions of the independence of members of UN committees. In particular, the

Government might urge the UN to confine the eligibility for membership of the Human Rights Committee to nationals of those countries which have ratified the First (Optional) Protocol.

Response

Agree on the importance of the independence of members of UN Committees but do not accept that the present structure should be changed.

Comment

Criteria for membership of UN human rights committees established pursuant to the key UN human rights instruments are contained within each instrument. In summary, the instruments stipulate that committees should be made up of experts of high moral standing and competence in fields covered by the Conventions and elected by States parties from amongst their nationals. Experts are to serve in their personal capacity but consideration should also be given to equitable geographic distribution and principal legal systems. Alteration of this committee structure would require amendment of individual instruments. Opening for negotiation previously agreed language is an uncertain process and could result in amendments that would limit rather than enhance committee independence. In addition, amendment of UN conventions is time-consuming and expensive due to the requirement to consult widely and thoroughly amongst member States of the United Nations.

It is the view of the Australian Government that efforts should be focused on ensuring that membership criteria are adhered to rather than revising the present committee structure. To this end, Australia carefully scrutinises each application for membership to UN human rights committees to ensure that high quality candidates are selected for vacant positions. In addition, Australia advocates and promotes the continual strengthening of the international human rights system of which the human rights treaty committees are an integral element. The Government does not agree that membership of the Human Rights Committee should be confined to experts elected by States parties which have signed the First (Optional) Protocol. This would require amendment of the International Covenant on Cultural and Political Rights (ICCPR), raising the problems set out above. It is the view of the Australian Government that the existing guidelines for membership of the Human Rights Committee are appropriate and that efforts should be concentrated on ensuring the guidelines are adhered to in electing committee members.

Limiting membership of the Human Rights Committee by the method suggested would elevate the complaints mechanism above other key functions of the Committee, including the consideration of reports on measures adopted and progress made by States in achieving observance of the rights enshrined in the Covenant. Moreover, States which have not ratified the First (Optional) Protocol may be reluctant to participate in the reporting process if they were not able to nominate their nationals for election to the Committee. Membership of other human rights committees is not limited to those which have agreed to be bound by the complaints mechanism contained within the instrument.

United Nations — ECOSOC Reform — Australian Position

On 17 November 1995, Mr Richard Butler, the Permanent Representative of Australia to the United Nations, New York, made a statement to the Economic

and Social Council (ECOSOC) concerning the restructuring and revitalisation of the United Nations in economic, social and related fields. The following is an extract from that statement:

Mr President, three weeks ago, on the occasion of the 50th Anniversary of the United Nations, we declared in this hall that:

The commemoration of the Fiftieth Anniversary of the United Nations must be seized as an opportunity to redirect it to greater service to human kind, especially to those who are suffering and are deeply deprived. This is the practical and moral challenge of our time. Our obligation to this end is found in the Charter. The need for it is manifest in the condition of human kind.

It is therefore right to us to focus today on the work of the United Nations system in the economic, social and related fields.

Two basic questions need to be answered—what to do and how to do it best.

The answer to the first question has been given in the cycle of six great conferences which have identified and proposed solutions to the central economic and social issues confronting people around the world today. Those conferences have given us the agenda we need on: children, the environment, human rights, population, social development and women. And it will be completed at the habitat conference in the middle of next year.

Simply, we now have the new human focused agenda that is relevant to people today and addresses the future for all people which we have promised to work to create.

Clearly, the first requirement for progress is to know what to do but there will be no practical progress unless that knowledge is matched with a clear answer to the second question, that is, how to do it best.

This answer is being given by the General Assembly of the United Nations. It has underway four ad hoc working groups on reform with the fifth about to start. These groups are focused on an agenda for peace, an agenda for development, reform of the Security Council and the crucial issue of the financial situation of the United Nations. The fifth group will deal with the United Nations system we will need for the 21st century.

In this context it is appropriate to refer again to the 50th Anniversary where we pledged to:

Give to the 21st century a United Nations equipped, financed and structured to serve effectively the peoples in whose name it was established.

No one should have any doubt—the work we are undertaking in five working groups is crucial to the future health of the United Nations and above all to its ability to respond effectively to the needs of people all over the world.

Mr President, central to the creation of a new and more effective United Nations is the future role of the Economic and Social Council. The Council is the principal organ established in the Charter of the United Nations through which the Charter's promise of "social progress and better standards of life in larger freedom" should be realised.

Two years have passed since the General Assembly adopted Resolution 48/162 on Reform of the Economic and Social Work of the United Nations. It is

now time to look at the progress made and to consider those areas where further progress is needed.

My statement today will not comment on every aspect of 48/162 but seek to highlight some areas of key improvements and matters on which Australia believes further work needs to be done.

Overall, there has been considerable improvement in the effectiveness of the executive boards. They have become better focused and more able to grapple with substantive issues. UNDP's discussion of the successor arrangements to the fifth programming cycle represents clear evidence of this improvement. Other examples could be given.

The revised operational segment of ECOSOC now provides a valuable opportunity for dialogue. The opportunity the operational segment provides to discuss with the Heads of the Funds and Programs the performance of their agencies, the key issues they confront and the chance to provide their own views on these issues, is very valuable.

On the functioning of ECOSOC as a whole, its meetings still see too many set piece statements. We need more robust and constructive dialogue. We may also need to think again about the way the different segments of the Council interact and keep open the option of further structural change to achieve greater effectiveness of ECOSOC. It also is important that the body charged with coordination in the social, economic and related fields should be able to take into account the full range of the UN's activities embracing not only the Funds and Programs but the Specialised Agencies as well. In our view, the Specialised Agencies do not participate in this process effectively, some appear to remain fixated with their statutory independence of the United Nations instead of seeking opportunities, in a pro-active manner, to collaborate cooperatively with the United Nations, its funds and it[s] programs.

Mr President, Australia acknowledges that progress has been made. However, we need to do more. If we are to find the right opportunity to amplify or fine tune Resolution 48/162, it is our firm view that subsequent detailed decisions on reform need to be carefully crafted, in negotiations, in joint discussions. To be successful, these discussions must be truly open-minded. We need freedom from the mind-sets of the past. We have witnessed momentous change in recent years in political terms, in technological terms and in economic terms. This changing order provides this body the opportunity for robust, constructive and bold action to revitalize the work of the United Nations in the economic, social and related fields.

Australia will not spell out in this statement specific actions to abolish, reduce, revise or renew discrete entities of the system. We believe that such decisions should only be arrived at through negotiation. Governance by fiat is both confrontational and poorly suited to this body. However, in looking to further reform of ECOSOC and the role of the United Nations in the economic and social arena, we should insist on the rigorous application of the following three key principles:

1. There must be clear and unambiguous coherence of United Nations action. Development is a complex process and integrated responses are required for gains to be sustainable. Effective mechanisms must therefore be established to place ECOSOC at the forefront of this

coordination so as to ensure a unified coordinated response across regions and across sectors.

2. We must put behind us both the reality and perception of duplication. Each major subject area should be addressed in only one institution. The first is wantonly wasteful of scarce resources and the latter engenders a form of competition which distracts from performance.
3. Finally, there must be true commitment to effectiveness and accountability. As the 50th Anniversary Declaration notes, action on development objectives "has not been adequately implemented". This must be redressed without delay and greater, more strategic effort applied to priority activities that support and augment national development efforts.

Mr President, reform and revitalising of the United Nations' economic and social programs remains an urgent task. The eradication of poverty, the enhancement of the status of women, the protection of our shared environment, the provision of basic rights and the more equitable distribution of wealth have become key issues for member States and for the peoples of the world. We expect the United Nations to be capable of responding effectively on these issues in accordance with its mandate.

In the year in which we have recommitted ourselves to the Charter of the United Nations we now need to act to provide the very best instruments for the achievement of those goals.

Australia will not resile from the difficult choices that will need to be made and made quickly to achieve reform.

Protection of Volunteers Involved in United Nations Operations — Convention on the Safety of United Nations and Associated Personnel

As previously noted, on 29 November 1995, the Minister for Small Business, Customs and Construction, Senator Schacht, tabled in the Senate the Government Response to the Joint Standing Committee on Foreign Affairs, Defence and Trade Report entitled *A Review of Australia's Efforts to Promote and Protect Human Rights* (Senate, *Debates*, vol 176, pp 4246-4281). Extracts from the response concerning the protection of volunteers involved in United Nations operations follow, and further extracts are to be found throughout this volume:

Recommendation 25

The Committee recommends that the Government encourage policy changes at the UN to set guidelines for the protection of volunteers involved in UN operations.

Response

Accept.

Comment

The UN Convention on the Safety of United Nations and Associated Personnel was adopted on 9 December 1994, after eighteen months of negotiations. Australia strongly supported the conclusion of the Convention, which codifies

and strengthens the arrangements for the protection of UN and associated personnel involved in operations conducted by the UN and its organs. The Government is considering what arrangements need to be made for the Australian ratification of the Convention, and is consulting the State and Territory Governments about this.

Establishment of International War Crimes Tribunals — International War Crimes Tribunal Bill

On 10 February 1994, legislation in the form of the International War Crimes Tribunal Bill 1994 was introduced into the Senate to allow Australia to fulfil its obligations towards the work of the International Tribunal set up to prosecute persons responsible for serious violations of international humanitarian law in the former Yugoslavia (see the second reading speech set out in *Aust YBIL*, 1995, vol 16, pp 515-518). However, while the legislation was being considered by the Australian Parliament, on 8 November 1994, the United Nations Security Council established a second Tribunal to deal with similar cases in Rwanda.

On 1 February 1995, in the Senate, in Committee, the Minister for Immigration and Ethnic Affairs and Minister Assisting the Prime Minister for Multicultural Affairs, Senator Bolkus, moved a number of amendments to the International War Crimes Tribunal Bill 1994 and the International War Crimes Tribunal (Consequential Amendments) Bill 1994 in order to permit the legislation to encompass the formation of the new Tribunal (Senate, *Debates*, vol 169, p 302).

On 8 March 1995, the following was said by Mr Duncan, Parliamentary Secretary to the Attorney-General, in the House of Representatives, in the course of the consideration of the Senate message with respect to the proposed amendments to the Bill (House of Representatives, *Debates*, vol 200, p 1870):

Both the International War Crimes Tribunal Bill 1994 and the International War Crimes Tribunal (Consequential Amendments) Bill 1994 have already been considered in some detail by this House. They were originally introduced in the Senate in February 1994. After being passed with minor amendments, they were introduced into the House in May last year and were subsequently referred to the House of Representatives Standing Committee on Legal and Constitutional Affairs.

That committee examined the bills in considerable detail and a number of amendments were made as a result. The bills were then returned to the Senate in order for the Senate to agree to those amendments made by the House. The Senate agreed to those amendments on Monday, 27 February 1995.

However, while the bills were waiting to return to the Senate, the United Nations established another tribunal. The bills were originally designed to enable Australia to comply with obligations pursuant to the former Yugoslavia War Crimes Tribunal. However, on 8 November 1994 the United Nations Security Council established a Rwanda tribunal.

Australia's obligations in relation to both tribunals are essentially identical. Australia is required to extend identical assistance to the Rwanda tribunal as is already provided for in the bill in relation to the former Yugoslavia tribunal. The amendments were therefore made in the Senate to extend the bill to the Rwanda tribunal.

The opportunity was also taken in the Senate to make further minor amendments and to correct some deficiencies in the main bill. Those amendments simply consist of minor drafting changes which are, in fact, consequential on amendments made in this House. In accordance with the committee's recommendations, the term "exceptional circumstances" was replaced by "special circumstances" in a number of places in the bill. However, some occurrences of the term were overlooked resulting in inconsistent terminology. These amendments will simply remedy this deficiency.

Therefore, all the House is being asked to do today is to agree to the additional amendments made in the Senate. Those amendments will extend the bills to enable assistance to be given to the Rwanda tribunal in accordance with binding international obligations, and replace "exceptional circumstances" by "special circumstances" in a number of places in the bill for consistency purposes.

International War Crimes Tribunal for the Former Yugoslavia — Australian Assistance in Investigations

On 29 November 1995, the Minister for Small Business, Customs and Construction, Senator Schacht, tabled in the Senate the Government Response to the Joint Standing Committee on Foreign Affairs, Defence and Trade Report entitled *A Review of Australia's Efforts to Promote and Protect Human Rights*. Extracts from the response follow (Senate, *Debates*, vol 176, pp 4246-4281), and further extracts are to be found throughout this volume:

Recommendation 37

The Committee recommends that:

[i] the Australian Government, as part of an international effort, put in train mechanism for investigating and identifying those responsible for crimes committed in the former Yugoslavia, particularly the raping of Bosnian women as part of the policy of ethnic cleansing, in order to ensure that they are prevented from entering Australia, and that if any have managed to enter that they be identified and extradited to face trial; and

[ii] the Government ensure that those women living in Australia and who appear before the War Crimes Tribunal are given appropriate protection from threats of harm and intimidation and that this issue be raised at international forums to ensure similar commitment by the international community.

[i] Response

Accept: consistent with current arrangements.

Comment

There is already a mechanism for identifying and prosecuting those responsible for serious crimes, including rape, committed in the territory of the former Yugoslavia in the form of the International Criminal Tribunal for the Former Yugoslavia. Legislation to permit Australian cooperation with the Tribunal, the International War Crimes Tribunals Act 1995, came into force on 28 August 1995. This Act, which will enable Australia to assist and comply with requests from the Tribunal, provides for various forms of assistance, including the taking

of evidence in Australia for Tribunal purposes and the surrendering of suspects in Australia to the Tribunal for trial if the Tribunal so requests.

This is in addition to Australia's existing extradition network enabling the extradition of a person in Australia to face war crimes charges in a country with which we have an extradition relationship and for which war crimes are extraditable offences, if that country so requested. (It should be noted that country may be subsequently asked to defer to the competence of the Tribunal.)

It is already government policy to prevent the entry of persons identified as war criminals into Australia. The Department of Foreign Affairs and Trade has approached the Tribunal on behalf of the Department of Immigration and Ethnic Affairs in order to obtain access to additional information to assist in the identification of war criminals attempting to enter Australia.

Australia has supported initiatives for rape in war to be recognised as a war crime, including co-sponsorship of a resolution at CSW 38 condemning the abhorrent practice of rape and abuse of women and children in areas of armed conflict in former Yugoslavia. The resolution was adopted by CSW without a vote on 18 March 1994. In addition, Australia supported the appointment of a Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in the territory of the former Yugoslavia. Australia supported also the recent establishment by the United Nations of the International War Crimes Tribunal referred to above. The Tribunal will prosecute, amongst other things, crimes against humanity including rape of women and children.

[ii] Response

Accept.

Comment

Rule 75 of the Tribunal's Rules of Procedure and Evidence already allows orders to be made by a Chamber of the Tribunal for the protection of victims and witnesses, including: measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness by various means; closed sessions; and appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one way closed circuit television. In addition, Rules 71 and 90 provide for evidence to be submitted by way of deposition, that is, testimony given by witnesses who are unable or unwilling to testify subsequently in open court. Another protection is that arrangements may be made for the identity of a witness who may be at risk not to be disclosed to the accused until such time as the witness is brought under the protection of the Tribunal (Rule 69).

Since the publication of the Report, the Tribunal has commenced its first prosecution (Tadic), and has recently granted various protective measures. The Trial Chamber made orders, amongst other things, on confidentiality (victims and witnesses would not be identified to the public and the media and their evidence would be given in closed sessions), protection from retraumatisation (by avoiding confrontation with the accused through the use of screening or other methods in the court room or closed circuit television), and anonymity (certain victims and witnesses would not be identified to the accused or to his lawyers). The Trial Chamber also ruled that the protected witnesses should not be photographed, recorded or sketched while in the precincts of the Tribunal.

A Victims and Witnesses Unit has been established within the Registry of the Tribunal. This is a special unit created by the Tribunal (pursuant to Rule 34 of the Rules of Procedure and Evidence) to recommend protective measures for victims and witnesses where required, and to provide counselling, not only on legal rights but also to give psychological help and support. The Government understands that, as it is intended that this Unit will deal mainly with female victims of rape and sexual assault, due consideration will be given, in the appointment of staff, to the employment of qualified women.