IX. Individuals

International Human Rights — Australian Approach

The following are extracts from a paper entitled *The United Nations Draft Declaration On The Rights Of Indigenous Peoples* prepared by Bill Barker, Director of the Human Rights and Indigenous Issues Section of the Department of Foreign Affairs and Trade, for the First National Conference of Legal and Policy Officers from Human Rights Organisations, held in Darwin, on 11 August 1995. For further extracts from the paper, see p 367 of this volume:

Australia's Approach to International Human Rights

Australia is an active participant in work internationally to promote and protect human rights. Whatever the obstacles or the imperfections in practice, Australia and Australians accept the moral imperative that we have a duty to our fellow human beings to take action to improve the circumstances in which they live. This is not primarily a prerogative of governments, for it derives directly from the wishes of ordinary people, expressed through the democratic process.

As well as principle, self-interest also motivates us to promote human rights internationally. That is, a world where human rights are observed will be one in which people will be likely to be more prosperous and peaceful. Better standards of human rights will thus help ensure our well being, both in economic and security terms. More specifically, the promotion of human rights internationally is very much in the interest of the preservation of human rights within Australia. As Senator Evans has put it, the historical record shows clearly that rights not defended are rights easily lost.

Further reasons for pursuing human rights internationally are found in the obligations of United Nations membership and the reciprocal commitments involved in adherence to the UN human rights instruments.

UN practice in the human rights field over the years has also underscored the legitimacy of pursuing human rights internationally. The United Nations has developed an extensive range of mechanisms and forums that provide for the scrutiny of the human rights performance of individual countries and in some cases the public criticism of that performance. This has been with the agreement or acquiescence of almost all UN members, including those that are the subject of criticism.

Australia considers therefore that it is entirely appropriate that it should promote better human rights observance internationally. However, Australia does not thereby suggest that our own human rights record is perfect. Australia argues in fact that no country is perfect, that human rights abuses occur everywhere and that it is the responsibility of all peoples and all governments to take action to bring about improvements. If the right to criticise others were reserved to those who had a perfect record, no country would ever be criticised. What is important is that countries, including Australia, should hold themselves open to international scrutiny and should act appropriately where abuses are identified. Clearly, this process can produce positive results. The

Commonwealth's response to the Human Rights Committee's view in the Toonen complaint regarding Tasmania's homosexual laws is a good example...

Regional Human Rights — Australian Approach

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*. This Response outlines Australia's position on a number of important human rights issues, and extracts from the various responses to recommendations are to be found in this volume listed under their respective topics. Extracts from the response concerning human rights in general follow (Senate, *Debates*, vol 176, pp 4246–4281):

> The Government wishes to express its appreciation to the Joint Standing Committee on Foreign Affairs, Defence and Trade for their work on the review of Australia's efforts to promote and protect human rights internationally. The Government accords a high priority to the promotion and protection of human rights internationally because we believe that the universal observance of the rights and principles contained in the Universal Declaration of Human Rights and other major international human rights instruments would result in a more just international order, from which security and prosperity of all nations and individuals would benefit...
>
> **Chapter One—Regional Human Rights in 1993–94**
>
> **Recommendation 1**
>
> *As an initiative to develop regional understanding on human rights matters, the Committee recommends that the Government explore with regional countries the possibility of establishing a regional dialogue on human rights through regular ministerial meetings of the foreign ministers as appropriate, of the APEC countries and through regular contacts between the Human Rights Commissions of regional countries.*
>
> **Response**
>
> Agree to explore further dialogue option.
>
> **Comment**
>
> The Government seeks to establish international mechanisms for contact and dialogue wherever possible. The Minister for Foreign Affairs and other ministers regularly discuss human rights in bilateral meetings in the region. As well, the two delegations to China and the Australian Parliamentary Consultative Delegation's visit this year to Vietnam have succeeded in establishing dialogue on a number of issues of mutual concern, including that of human rights.
>
> The Government also gives a high priority to encouraging the establishment and strengthening of national human rights institutions in countries in the region. Through the Human Rights and Equal Opportunity Commission, Australia has provided a substantial degree of cooperation and technical assistance on national human rights institutions to a number of countries including the Philippines, Indonesia, Thailand and Papua New Guinea. As well, the Government has

contributed $300,000 to the UN Voluntary Fund for Technical Cooperation for the purpose of strengthening the domestic infrastructures which support human rights and, in particular, national human rights machinery in the Asia-Pacific region.

The Government has long supported the development of Asia-Pacific human rights arrangements which would complement the UN human rights machinery and national institutions established in a number of countries in the region for the promotion and protection of human rights. In this context, the Government has been, over recent years, in consultation with other governments on the prospects for a structured dialogue, which might eventually extend to regular meetings at a ministerial level. The Asia-Pacific is the only region of the world which is still without such an arrangement. The Government believes a regional arrangement would foster greater understanding, cooperation and maintenance of universal human rights principles amongst the diverse and varied social systems and cultures in the Asia-Pacific. The Government's experience on this subject suggests that although there is interest by many countries of the region in closer cooperation on human rights some of them are not ready to formalise this and that further work will be required before such an arrangement could be set in place.

To advance work on a regional arrangement, three UN-sponsored meetings have been held, in Manila in 1990, Jakarta in 1993 and Seoul in 1994. At the meeting in Seoul, while there was no consensus on the establishment - of a formal regional mechanism there was a general desire that discussions should continue. A resolution supporting regional activity was introduced by the Republic of Korea and supported by Australia at the 1995 session of the UN Commission on Human Rights and was adopted by consensus. At a meeting of national human rights institutions held in Manila in April this year, participants, who represented national institutions not governments, affirmed their support for regional cooperation in the promotion and protection of human rights. The Government considers the strengthening of the networks that are developing between national commissions in the region will assist in the establishment of a regional human rights body.

The Government will continue to look for opportunities to extend dialogue on human rights within the limitations of available resources.

Human Rights — Bill of Rights — Australian Position

Further extracts from the response concerning human rights in general follow (Senate, *Debates*, vol 176, pp 4246–4281):

Chapter Three—Australian Human Rights Framework

Recommendation 18

The Committee recommends that the Government establish an inquiry into:

- *the desirability of developing a Bill of Rights for Australia*
- *the means by which such a Bill should be introduced—by statute or by referendum and change of the Constitution; and*
- *the nature of the rights which should be encompassed by an Australian Bill of Rights.*

A minority of the Committee dissented from this recommendation.

Response

Agree that the question of an Australian Bill of Rights should be kept under review.

Comment

The Government is sympathetic to Australia having a Bill of Rights, in the first instance in statutory rather than constitutional form, but unless there is evidence of bipartisan support for it, believes there is little to be gained in introducing legislation into the Parliament for the purpose.

Australia is a party to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These international instruments contain a set of rights and freedoms for all Australians.

There have been calls on the Government to refer the matter of an inquiry into the desirability of a Bill of Rights to the Law Reform Commission. The Government is reluctant to embark on a Law Reform Commission report at this time. The Government however, will be pursuing the Australian Law Reform Commission's Equality Act proposal and it is hoped that a response to this measure will give a clear view as to community attitudes to many of the issues. In this regard the Australian Law Reform Commission has recommended in its report, *Equality Before the Law: Women's Access to the Legal System*, that the Government enact equality legislation which would benefit both women and men. Initially, the legislation would take the form of an ordinary Act of Parliament, the long-term goal being entrenchment of the Equality Act in the Constitution. This proposal focuses primarily on providing for equality in law, which should be defined to include equality before the law, equality under the law, equal protection of the law, equal benefit of the law and the full and equal enjoyment of human rights and fundamental freedoms.

Following an assessment of community attitudes a further move on the Bill of Rights may be possible.

Human Rights — Right to Development — Australian View

On 7 February 1995, in Geneva, Mr Colin Willis, made a statement on behalf of the Australian Delegation to the Fifty-First Session of the Commission on Human Rights. The following is an extract of the statement concerning the question of the realisation of the right to development:

Mr Chairman

I turn now to the right to development. The realisation of the right to development is one of the most important items on our agenda. As well as reaffirming the right to development as a universal and inalienable right, the Vienna Declaration emphasised, as did the 1986 Declaration on the Right to Development, that the human person is the central subject of development, and that lack of development may not be invoked to justify the abridgement of internationally recognised human rights.

The International Conference on Population and Development held in Cairo in 1994 also reaffirmed these principles and sought to build on them by observing that the right to development must be fulfilled so as to equitably meet

the population, development and environment needs of present and future generations (Cairo Document A/Conf.171/13—Principle 3, page 14).

The World Summit for Social Development will also provide an opportunity to discuss key issues related to the right to development, namely, reduction of poverty, productive employment and social integration.

Australia has long supported the right to development and we are pleased that other nations, which have hitherto appeared reluctant to embrace the concept, are now also looking at the issues in a positive and helpful way.

We have before us the third report of the Working Group on the Right to Development. The Working Group has identified obstacles to the implementation and realisation of the right to development and has made significant progress in recommending ways and means by which states can realise the right to development.

The Working Group has identified as one of the critical issues the recognition that the right to development is more than development itself in that it implies a human rights approach to development. Australia welcomes the efforts made by the Working Group in considering ways of making the right to development is operational.

Two further sessions of the Working Group are envisaged for 1995, following which a final report will be completed. Australia regards the work of the working group as very significant for the future shape and direction of the human rights system as a whole. We are particularly pleased that a distinguished Australian with wide experience in development matters, Professor Stuart Harris, is a member of the Working Group.

Human Rights — Abuses — Iraq — Sudan — Australian Position

As stated above, 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 concerning Australia's position with regard to abuses committed in a number of countries follow (Senate, *Debates*, vol 176, pp 4246–4281):

Recommendation 51

The Committee recommends that the Australian Government seek the release of the Kuwaiti prisoners held in Iraq and the identification of those deceased through every avenue available.

Response

Accept.

Comment

The present whereabouts and release of Kuwaiti and other nationals still detained in Iraq are the subject of two UN Security Council Resolutions: 686 (paras. 2(c) and 3(c)) adopted 2 March 1991, which governed the cessation of hostilities; and 687 (paras. 30 and 31), the so-called "Ceasefire Resolution", adopted on 3 April 1991, and which outlined the framework for future international relations with Iraq.

Both resolutions commit Iraq to releasing unconditionally all such detainees and calls on Iraq to cooperate with the International Committee of the Red Cross (ICRC) to facilitate the compilation of lists of such detainees, access to detainees and assistance in locating nationals still unaccounted for. The resolutions specifically include the location and identification of human remains.

Australia's commitment to the comprehensive application of the UN Security Council Resolutions on Iraq remains undiminished. Australia believes there can be no loosening of the sanctions regime until Iraq complies with all relevant UN Security Council Resolutions, including the above-mentioned provisions in UN Security Council Resolutions 686 and 687 mentioned above. Australia continues to press the Iraqi Government, both multilaterally and bilaterally, to abide by all Security Council Resolutions and has, on numerous occasions, called publicly for the repatriation of Kuwaiti and other persons still detained in Iraq.

Recommendation 52

The Committee recommends that-

[i] the Australian Government use the forums of the General Assembly of the UN to publicise the human rights abuses in the Sudan, specifically highlighting the revival of slavery in that country;...

[i] Response

Accept.

Comment

The Government, in its statement to the Third Committee of the UN General Assembly on 25 November 1994, expressed its concern about human rights abuses in the Sudan in the following terms:

"Australia believes that the seriousness of the human rights violations in the Sudan demands intensive monitoring. We regret that the government of Sudan has not permitted the Commission's Special Rapporteur on the human rights situation to visit the country in order to carry out his mandate.

We are particularly concerned at continuing reports of harassment, intimidation, detention and torture of the Government's opponents and of forced displacement and relocation of people in various parts of the country.

Despite severe criticism levelled at the government of Sudan, by the international community about its human rights record, it continues to evade its human rights responsibilities. Australia calls on the Government of Sudan to abide by the International Covenant on Civil and Political Rights to which it is a party, to observe and protect the human rights and fundamental freedoms of all Sudanese people, and to negotiate a solution to the civil conflict."

Human Rights — Hong Kong — Transfer of Sovereignty to China — Continuation of Human Rights Obligations

On 31 January 1995, in the Senate, the Minister for Foreign Affairs, Senator Evans, answered a question upon notice from Senator Bourne (NSW, Australian Democrats). The following is an extract from the text of the question and answer (Senate, *Debates*, vol 169, p 191):

Senator Bourne asked the Minister for Foreign Affairs, upon notice, on 21 November 1994:

(1) What is the Government's response to a recent report by Amnesty International which details a number of human rights concerns in Hong Kong...

Senator Gareth Evans—The answer to the honourable senator's question is as follows:

(1) My Department has studied the Amnesty International report and noted its concerns about human rights in Hong Kong.

We are aware of the debate over how to strengthen institutions to promote and protect human rights in the Territory. This debate should not obscure the fact that Hong Kong is one of the freeest societies in the region, where the rule of law operates effectively.

The Australian Government considers that adequate provision has been made to safeguard human rights in the Hong Kong Special Administrative Region after 1 July 1997 under the 1984 Sino-British Joint Declaration, which has international treaty status and has been registered with the United Nations. We consider that the two sovereign powers, which are signatories to the Joint Declaration, have an obligation to ensure that its provisions are fully implemented after the transfer of sovereignty from Britain to China in 1997, including, in particular, the provisions guaranteeing independent judicial power, and rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief ensured by law.

We also hope that China will continue to report to the UN annually on human rights and civil liberties in Hong Kong, under the terms of the two human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which extend to Hong Kong, as mentioned in Annex One of the Joint Declaration...

Human Rights Instruments — Australian Reservations

On 23 October 1995, in the House of Representatives, the Attorney-General, Mr Lavarch, answered a question upon notice from Mr Melham (Banks, ALP). The following is the text of the question and answer (House of Representatives, *Debates*, vol 204, p 2722):

Mr Melham asked the Attorney-General, upon notice, on 30 August 1995:

(1) What are the texts of the reservations which were lodged by Australia in acceding to or ratifying UN human rights instruments and which are still in force.

(2) When was each reservation last considered.

(3) What progress has been made in (a) withdrawing or (b) modifying each reservation.

(4) What states have become parties to UN human rights instruments since 1993 and when did each become a party.

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

(1)(2) and (3) The information is contained in *National Action Plan Australia*, published by the Australian Government Publishing Service Canberra and available for purchase at AGPS. In particular I refer the Honourable member to:

Appendix C: Australia's Reservations to International Human Rights Treaties

The National Action Plan—1994 Progress Report includes the following comment in relation to part (c):

> "c) Indicate human rights treaty reservations Australia intends to remove:
>
> (1) Attorney-General's Department:
>
> i) Reservation to Article 20 of the ICCPR and Article 4(a) of CERD:
>
> Legislation relating to racial hatred was passed by the House of Representatives on 16 November 1994 and is awaiting debate in the Senate, expected to take place in early 1995."

In order to take account of recent significant developments the paragraph should now read: In order to remove these reservations the Government introduced legislation relating to racial hatred. However, the criminal sanctions regarded as necessary for the removal of the reservations were removed by the Senate. The Government has announced its intentions to reintroduce criminal sanctions after the next elections.

> "(2) The Office of the Status of Women:
>
> i) Maternity Leave:
>
> Australia currently has reservations to CEDAW (Article 11(2)), regarding maternity leave.
>
> The Government has not removed the existing reservation given that full implementation would require the introduction of maternity leave with pay or comparable social benefits throughout the country. Maternity leave with pay is provided for most women employed in NSW and to women employed under Federal, and some State, industrial awards. In the private sector maternity leave is usually granted without pay."

To take account of recent developments this paragraph should now read as follows: Australia currently has a reservation to CEDAW (Article 11(2)(b)), regarding paid maternity leave.

The Government is considering removal of the reservation. As part of the process State and Territory Governments are being consulted.

> "In 1993 OSW convened a seminar on paid maternity leave with the National Women's Consultative Council to further stimulate debate on this issue. The seminar resulted in the release of a document titled Paid Maternity Leave—a discussion paper on Paid Maternity Leave in Australia.
>
> ii) Australian Defence Forces:
>
> Australia has a reservation to CEDAW and Article III of the Convention on the Political Rights of Women (CPRW) in relation to service in the armed forces. In domestic legislation, the Sex Discrimination Act 1984 has had, until recently, an exemption for

> women serving in combat and combat-related duties. In 1990 this was changed to exempt, Infantry, Armour, Artillery and Engineers in the Army. Further changes took place in 1992 and as a result 99% of positions in the Navy and Airforce and 87% of positions in the Army are now open to women."

To take account of recent developments this paragraph should now read as follows: Australia has a reservation to CEDAW and Article III of the Convention on the Political Rights of Women (CPRW) in relation to service in the armed forces. In domestic legislation, the Sex Discrimination Act 1984 contains an exemption for women serving in combat and combat-related duties. The Sex Discrimination Amendment Bill 1995, which was passed in the House in June 1995, contains a proposal to narrow the exemption so that it only applies to women in positions involving combat duties. This will reflect changes in defence force policy.

> "(3) Department of Industrial Relations:
>
> Government is committed to considering implementation of ILO 103 of [sic] Maternity Protection, which calls for at least 12 weeks of paid maternity leave for women in paid employment. Ratification would have obvious implications for the reservation to CEDAW.
>
> i) ILO 103 Maternity Protection (Revised), 1952
>
> ILO 103 provides for cash and medical benefits while on maternity leave, and states that the employer shall not be liable for the cost of such benefits.
>
> Until recently, there were major impediments to compliance in Australia, in that most employees (except those in government employment who were covered by legislation) relied on the inclusion of maternity leave provisions in industrial awards for protection. Employees not covered by awards, or employees whose awards did not include maternity leave provisions, were not protected. There was no absolute prohibition on dismissal of a woman on maternity leave. Furthermore, women were not entitled to receive cash benefits while on maternity leave (although some, mostly public servants, were entitled to paid leave).
>
> The federal Industrial Relations Act 1988, as amended, now ensures maternity leave for all employees in Australia, as well as protection from dismissal. In addition, the Commonwealth Government recently announced that it intended to introduce cash payments for women on maternity leave in the 1995/96 budget. This will bring Australia closer to compliance with the Convention, but other impediments still exist which prevent Australia from ratifying:
>
> The Industrial Relations Act 1988 requires a 12 months period of continuous service with the same employer before a women becomes eligible for maternity leave, whereas the Convention does not make allowance for qualifying periods; Australia has no provision for paid 'nursing breaks'."

(4) I have addressed only the major human rights instruments: the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights; the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of

Discrimination against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Economic, Social and Cultural Rights. The following information was compiled from information provided by the Department of Foreign Affairs and Trade:

Convention on the Rights of the Child

Party	*Date*
Afghanistan	28 March 1994
Botswana	4 March 1995
Eritrea	4 August 1994
Gabon	9 February 1994
Georgia	2 June 1994
Haiti	8 June 1995
Iran	13 July 1994
Iraq	15 June 1994
Japan	22 April 1994
Kazakhstan	12 August 1994
Kyrgyzstan	7 October 1994
Luxembourg	7 March 1994
Malaysia	7 February 1995
Mozambique	26 April 1994
Nauru	27 July 1994
Netherlands	6 February 1995
Palau	4 August 1995
Qatar	3 April 1995
Samoa	29 November 1994
Solomon Islands	10 April 1995
South Africa	16 June 1995
Turkey	4 April 1995
Anguilla	7 September 1994
Bermuda	7 September 1994
British Virgin Is.	7 September 1994
Cayman Is.	7 September 1994
Falkland Is.	7 September 1994
Hong Kong	7 September 1994
Isle of Man	7 September 1994
Montserrat	7 September 1994
Pitcairn, Henderson, Dulcie and Oeno Is.	7 September 1994
St Helena & Depend.	7 September 1994
South Georgia and South Sandwich Is.	7 September 1994

Convention on the Rights of the Child

Party	*Date*
Turks and Caicos Is.	7 September 1994
Uzbekistan	29 June 1994

International Covenant on Civil and Political Rights

Party	*Date*
Chad	9 June 1995
Georgia	3 May 1994
Kyrgyzstan	7 October 1994
Former Yugoslav Republic of Macedonia	18 January 1994
Namibia	28 November 1994
Uganda	21 June 1995

International Convention on the Elimination of all Forms of Racial Discrimination

Party	*Date*
Albania	11 May 1994
Switzerland	29 November 1994
Tajikistan	11 January 1995
Former Yugoslav Republic of Macedonia	18 January 1994
Turkmenistan	19 September 1994
United States of America	21 October 1994

Convention on the Elimination of all Forms of Discrimination against Women

Party	*Date*
Albania	11 May 1994
Azerbaijan	10 July 1995
Chad	9 June 1995
Comoros	31 October 1994
Georgia	26 October 1994
Kuwait	2 September 1994
Malaysia	5 July 1995
Papua New Guinea	12 January 1995
Former Yugoslav Republic of Macedonia	18 January 1994
Uzbekistan	9 July 1995

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Party	*Date*
Albania	11 May 1995
Chad	9 June 1995
Cuba	7 May 1995
Ethiopia	14 March 1994
Georgia	26 October 1994
Korea	9 January 1995
Namibia	28 November 1994
Sri Lanka	3 January 1994
Former Yugoslav Republic of Macedonia	12 December 1994
United States of America	21 October 1994
Tajikistan	11 January 1995

International Covenant on Economic, Social and Cultural Rights

Party	*Date*
Chad	9 June 1995
Georgia	3 May 1994
Kyrgyzstan	7 October 1994
Namibia	28 November 1994
Former Yugoslav Republic of Macedonia	18 January 1994

Draft Code of Crimes against the Peace and Security of Mankind — Australian View

The following is an extract from the text of the statement made by Mr James Baxter on 20 October 1995 on behalf of the Australian Delegation to the Sixth Committee of the General Assembly of the United Nations, concerning the Report of the International Law Commission on the Work of its Forty-Seventh session, and focusing on Chapter II:

> My delegation notes Australia's continuing interest in the work of the Commission on the draft Code of Crimes against the Peace and Security of Mankind. My delegation welcomes the report of the work at this year's session and commends the efforts of the Special Rapporteur, Mr Doudou Thiam.
>
> The Report refers to the long standing divergence of opinions within the Commission between the maximalist and minimalist views of what should be the scope of the draft Code. The content *ratione materiae* of the Code is clearly an issue of fundamental importance and one on which a range of views will continue to be strongly held—we have already seen that during the debate on this item. My delegation believes that crimes must be included in the Code on the basis of their very serious nature, so as to avoid any doubt that they truly

constitute crimes against the peace and security of mankind. As a practical matter, my delegation considers this approach is the most likely to attract wide adherence to the eventual Code.

My delegation has noted the similarities of aspects of the Commission's discussion of crimes and the discussion in the Ad Hoc Committee on the Establishment of an International Criminal Court about which crimes should be within the [C]ourt's jurisdiction. There appears, for example, to have been agreement in both forums on the need to deal at a minimum with abhorrent acts, such as genocide, crimes against humanity and serious war crimes. The consideration of aggression in the Commission has not surprisingly raised many of the same issues in relation to the draft Code and the [C]ourt—for example, the role of the Security Council in determining the existence of an act of aggression. Several delegations have remarked upon the need for coordination between the Commission's consideration of the draft Code and the Ad Hoc Committee's debate on the crimes which would be dealt with by the Court. My delegation endorses those comments.

I should now like to make a couple of brief observations on specific crimes on behalf of my delegation.

There can be no doubt that the crime of genocide must be included in the draft Code. My delegation believes that the definition of the crime used must be that found in the Genocide Convention. This is the position my delegation has taken in relation to the treatment of genocide in the Statute of the International Criminal Court. Concerns were expressed in discussions in the Ad Hoc Committee about the lack of protection offered by the Genocide Convention to political and social groups. My delegation believes these concerns would be substantially addressed if acts committed against members of these groups, for example, a systematic campaign of killings, could be considered crimes against humanity.

My delegation supports the use of the term "crimes against humanity" in Article 21 of the draft Code. This term has been used in the Statutes of the International Tribunals for the Former Yugoslavia and Rwanda, and is also employed in the criminal legislation and codes of a number of countries. My delegation does not believe that any linkage is required at customary international law between crimes against humanity and armed conflict, be it of an international or internal character. Crimes against humanity can be committed in times of peace, as well as during armed conflict.

Article 22 of the draft Code deals with exceptionally serious war crimes. The scope of this provision should extend to internal armed conflicts. Clearly, the notion of grave breaches of the Geneva Conventions applies only to acts committed in international armed conflicts. A failure to cover internal armed conflicts, however, would be a serious omission, given the number of these conflicts which have occurred in recent decades.

Convention on the Prevention and Punishment of the Crime of Genocide — Australian Obligations — Non-necessity for Incorporation by Legislation

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 concerning the Convention on the Prevention and Punishment of the Crime of Genocide follow (Senate, *Debates*, vol 176, pp 4246–4281), and further extracts are to be found throughout this volume:

Recommendation 8

The Committee draws the attention of the Government to the lack of legislation for implementation of the Genocide Convention.

Response

Do not agree that legislation is necessary.

Comment

The Government does not accept the assumption implicit in the recommendation that specific legislation is necessary in order to fulfil Australia's obligations under the Convention. The approach until now has been that common law and criminal code of States and Territories provide adequate punishment for acts prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide.

This approach accords with the practice of most other State parties to the Genocide Convention, and has not put us in breach of our obligations under the Convention.

Refugees — Resettlement — Temporary Protection Status — Australian Views

The following is an extract from the Australian statement made by Mr Conybeare on 16 October 1995 to the Executive Committee (EXCOM) of the United Nations High Commission for Refugees (UNHCR) 46:

It is important that this forum is composed of those countries which deal with the often difficult and diverse range of refugee situations. Their experience in protecting refugees and the constraints they face enable conclusions to be reached for an agreed program of action to relieve the plight of refugees around the world. Australia is therefore very pleased to welcome the Russian Federation, India and Bangladesh as members of EXCOM.

I welcome the opportunity to provide an Australian perspective on developments in the refugee arena and to detail challenges faced by member countries and UNHCR in the current refugee environment...

As a major contribution to the International Year for Tolerance Australia hosted the world's first International Conference on Global Cultural Diversity in Sydney in April this year. The Conference was an excellent showcase for Australia's multicultural society and an opportunity to further the rights of indigenous peoples. With the aim of promoting and reinforcing a commitment to the concept and practice of tolerance, Australia is celebrating the year with a range of activities building on its achievements as a socially just, democratic and tolerant community...

Within the total human rights context, the acceptance of diversity and the promotion of tolerance by all countries, and specifically by members of EXCOM and UNHCR, will go some way towards preventing refugee-producing situations.

I was interested in hearing the High Commissioner's promise of increased commitment to women refugees in her speech this morning. The last twelve months have seen a global approach to a number of issues involving women in refugee situations. Increasingly, it has been recognised that women are particularly susceptible to becoming refugees, that they can experience persecution in ways quite different to men and that they are vulnerable in their roles as child bearers and carers.

The United Nations International Conference on Population and Development, held in Cairo last year, accepted that population growth cannot be addressed in isolation from social and economic conditions, particularly those which limit the power of women to control their own lives. It condemned the use of rape—a crime in any culture—and other forms of degrading treatment of women and called for sensitivity in addressing the asylum claims of women.

At the United Nations World Summit for Social Development in Copenhagen in March this year, our Prime Minister, Mr Paul Keating, emphasised the commitment of Australia to improving the education, health, and living and working conditions of women who are particularly susceptible to poverty.

Australia's interest in the improvement in the lives of women around the world was further evidenced by our participation in the Fourth World Conference on Women recently held in Beijing. Australia initiated the idea that the Conference should be one of "commitments", whereby Governments would make practical, achievable promises to improve the status of women. It is Australia's hope that this concept will help the work of the UN to become more focused, pragmatic and concrete.

Australia, along with other nations, negotiated agreements in the Beijing Platform for Action to further address the issues which affect refugee women. As Australia works towards implementing the strategies of the Beijing Platform, careful consideration will be given to ensuring that women are provided with programs which take into account issues which are particularly relevant to their needs.

Australia is currently developing gender guidelines for refugee decision makers, the application of which will be actively monitored.

The proposals put forward at these conferences are consistent with the approach to the protection needs of women which Australia has taken in recent years. In 1989 Australia introduced the Women at Risk program in recognition of the priority given by UNHCR to the protection of refugee women in particularly vulnerable situations. The program provides resettlement and special settlement assistance for refugee women who are alone or are the heads of families and are identified as being in danger of victimisation, harassment or serious abuse because of their gender. In this current program year, 500 resettlement places have been allocated to the women at risk program in Australia.

Australia agrees with the High Commissioners's statement that the admission and protection of persons fleeing danger and persecution are still the essential responses to refugee flows. We believe that UNHCR and resettlement countries must continue to work effectively together to provide this form of protection to those most in need and we welcome UNHCR's initiative in bringing together resettlement countries for formal consultations.

Australia regards resettlement as an appropriate solution for refugees in circumstances where their protection needs cannot otherwise be resolved. We are, therefore, concerned at the apparent decrease in emphasis on resettlement as a durable solution and encourage UNHCR to play a significant leadership role in stressing its importance. I was personally encouraged to hear Madame Ogata's words this morning on this important topic.

Australia's humanitarian program, which is separate to the general migration program, is, on a per capita basis, the largest in the world and enjoys wide community support.

Resettlement is a mechanism through which we can effectively contribute to international burden sharing. For each of the last three years the humanitarian program has offered 13,000 resettlement places. It has three major components, enabling a flexible response to constantly changing humanitarian pressures.

The first is the refugee component, which includes the women at risk and emergency rescue programs. It provides resettlement opportunities for those who are determined to be Convention refugees.

The second is the special humanitarian program, for those people who are subject to gross discrimination amounting to a substantial violation of their human rights. Strong family or community support in Australia is an important requirement.

The third consists of special assistance categories, intended for people who are in particularly vulnerable situations and who have close family in Australia. Unlike the other two categories, this element provides for the resettlement of people who are still in their country of nationality.

All arrivals under the humanitarian program are granted permanent resident status and are eligible for a wide range of resettlement assistance, including torture and trauma counselling, English language tuition, social welfare payments, Medicare (the Government public health scheme) and other general health, education and training services. In addition, refugees and some other humanitarian program entrants may be provided with short term access to the support of a community refugee settlement scheme group, which consists of trained volunteers who provide settlement assistance for the first six months after arrival.

Australia is currently trialing a case coordination scheme whereby newly arrived refugees are allocated to specific case managers who are responsible for ensuring that the refugees are provided, on an on-going individualised basis, with the support services they need, such as appropriate health care and welfare benefits. The scheme is to be extended nationally in the near future.

UNHCR has been handed a huge challenge in providing humanitarian relief to refugees in first asylum countries and those returning to their homes. Australia has recognised this through the announcement of an increase of more than 18 per cent in emergency and refugee assistance (from A$71 million in 1994/95 to $A84 million in 1995/96) through non-government organisations and UN agencies. Included in this is a 75 per cent increase in our core contribution to UNHCR's general programs (from A$7.7 million to A$13.5 million).

Australia has demonstrated its commitment to a coordinated response through the establishment of an emergency stand-by staffing scheme with Red R Australia. This arrangement can deliver a senior professional engineer to join UNHCR's emergency relief operations within 72 hours. Some seven engineers,

with expertise in sanitation, water supply, road and bridge construction, have already been deployed this year for two to three month assignments.

Australia played a significant role on the Working Group on Executive Committee working methods. We support the recommendations that would make the Executive Committee a more efficient and accountable body. For this reason, Australia supports the establishment of a Standing Committee of the whole responsible for policy and financial matters.

However, in supporting the proposed changes, we would not want the reforms to seriously impinge on the rights of member states. In addition, we need to monitor the impact of the reforms to ensure that the Committee continues to be an effective source of both policy formation and program management.

Three major refugee situations continue to loom large:

- In the former Yugoslavia, UNHCR has continued to provide humanitarian relief and protection in a rapidly changing situation and its intervention has saved hundreds of thousands of lives.

  In addition to providing humanitarian relief funding, Australia has resettled some 14,000 people from the former Yugoslavia since the outbreak of the conflict. Of those who were in Australia, many have been granted asylum and allowed to remain permanently; others have been allowed to remain under temporary stay arrangements. Australia is currently giving consideration to UNHCR's recent request for further resettlement places;

- In the Central Lakes region of Africa, the sheer volume of the outflow has put enormous strain on neighbouring countries. Their generosity in providing asylum deserves acknowledgment, as does UNHCR's response.

  Australia has assisted by providing an Australian Defence Force medical contingent, which was present in Rwanda until August this year, and considerable financial support to United Nations agencies and non-government organisations working in the region;

- In our own region, the Comprehensive Plan of Action is a good example of an innovative and effective response by the UNHCR and the international community to a refugee crisis situation. Notwithstanding some remaining obstacles to a fully successful conclusion to the CPA, in many respects it provides a useful model for the possible need for regional reception regimes in the future.

  For its part, Australia has contributed substantially to the CPA. We have provided $9.7 million in funding, and have resettled over 18,500 Indochinese refugees in response to UNHCR's request. We are currently re-examining the residual caseload to determine who may qualify for resettlement in Australia. As part of our humanitarian resettlement program, we recently established a special assistance category for those screened-out Vietnamese, who have family links to Australia, and who return to Vietnam from a CPA camp.

The High Commissioner in her Note on International Protection has suggested that a flexible and imaginative approach is required to the crisis currently facing the international community. It is Australia's view that mechanisms other than

the 1951 Convention need to be employed to deal with the massive numbers of persons displaced by civil strife.

We support the use of temporary protection in situations of mass influx. However, we believe that there needs to be a clear distinction between Convention refugee status and temporary protection status. There needs to be a separate regime for temporary protection which might identify a period of stay and detail the conditions, such as access to work rights and limited family reunion rights and the like. In certain circumstances, prolonged temporary protection may require permanent protection as a durable solution.

Australia strongly supports UNHCR's efforts to deal with the issue of statelessness as part of its prevention-related promotion activities. As a party to both the 1954 Convention Relating to the Status of Stateless Persons and the 1951 Convention on the Reduction of Statelessness, Australia urges other countries to accede to the Conventions and to legislate to deal with the problem of statelessness.

The Australian Citizenship Act contains provisions to prevent persons from being stateless.

Australia is a strong advocate of the international harmonisation of approaches to asylum issues, provided that safeguards exist to ensure that the refugees are given appropriate protection. Within this framework, Australia has introduced safe third country legislation which incorporates as a pre-condition, human rights safeguards on the return of asylum seekers to a third country. The legislation can only come into operation when there is an agreement between Australia and the safe third country and it contains a provision to exempt people from its coverage under certain circumstances.

Our safe third country legislation was prompted by the arrival in Australia of persons who had been assessed under the comprehensive plan of action process and determined not to be refugees. Australia was determined not to compromise the integrity of the comprehensive plan of action by allowing those people to access our asylum system.

The safe third country legislation was also employed following the arrival in Australia of a number of Vietnamese refugees who had been resettled and given protection in China under UNHCR auspices. An agreement with China was negotiated for their return to China, where they continue to receive the protection of that country.

Australia has also instituted other procedures to minimise the abuse of our asylum system, including legislation to prevent repeat applications for asylum, which are often used to delay removal and which prevent genuine asylum seekers from being dealt with quickly. Again, the legislation contains a provision to exempt people from its coverage under certain circumstances.

Australia has recently reviewed its health requirements for permanent entry. As a result, flexible procedures are being put in place to enable faster and more compassionate consideration to be given to persons seeking to enter Australia under the humanitarian program. Our women at risk program in particular will benefit from these changes.

I would like to reiterate Australia's appreciation of the complexity and difficulty of the tasks confronting UNHCR in the world today. Our appreciation and sympathy goes to the UNHCR staff who with their families have made many sacrifices in the field, including of life and limb. In conclusion, as I have

highlighted, Australia has taken a comprehensive and multifaceted approach to providing solutions to refugee problems. We take our obligations under the Refugee Convention seriously:

- We are committed to alleviating the humanitarian plight of refugees and displaced persons, as demonstrated by our comprehensive settlement services;
- We are willing to respond generously to humanitarian need in the field, through both Government and NGO efforts, and in international fora;
- We are pleased to acknowledge and celebrate the fact that refugees have made a significant contribution towards the shaping of Australia as an exciting culturally diverse nation.

Convention Relating to the Status Of Refugees — Definition of Refugee — Australian View on Role of Convention

On 21 June 1995, the Minister for Development Cooperation and Pacific Island Affairs, Mr Bilney, gave a speech to the Australian National Refugee Week Summit, held in Canberra, entitled *The Role And The Relevance Of The 1951 Refugee Convention In 1995*. Extracts from the text of the speech follow:

I am delighted to be asked ... to speak to you today on the role and relevance of the 1951 Convention On The Status Of Refugees...

First, a little history. The 1951 Convention was the achievement of a conference of 26 states held in Geneva in July 1950. It was the product of debate between states which we can perhaps describe as "universalists"—those who wanted a broad definition of refugees and their status and "restrictionists", who wanted these more narrowly defined. This basic divergence of views is still apparent to some extent today.

In those years, Australia and the United States were the two major resettlement countries for refugees and displaced persons in those years. We had a major role to play then and subsequently—indeed it was our accession on 22 April 1954 as the 6th state to do so brought the Convention into force.

The succeeding forty-five years have underlined the Convention's wide international acceptance. A total of 128 states have acceded—the latest two, Western Samoa and the Solomon Islands, thanks largely to the work of Pierre Michel Fontaine. And it is clear that it still commands international support.

This does not mean, however, that the Convention or the Protocol should be immune to basic questions about their current role, or that their relevance should not be tested anew. When we come to assess whether the Convention and Protocol we have are good enough for the future we need to keep clearly in our minds the uncomfortable facts about the situation of the world's refugees today.

Some basic statistics set the scene. As I said in the House yesterday, there are now some 23 million refugees and people in refugee-like situations around the world. An additional 25 million have been displaced within their own countries for a variety of reasons, often to do with internal armed conflict.

There are new challenges to human security globally as threats within countries rapidly spill over national frontiers. Economic disparities between states are encouraging millions of people to leave their homes in search of a better life whether or not the receiving countries want them, or have the resources to deal with them. Ever-increasing population pressures are at work in

many areas, threatening fragile environments and undermining efforts to provide populations with food and shelter. Global communications enable many of those on the move to respond quickly to the changing domestic policies of receiving countries.

Where does this leave the concept of "temporary protection", and its continued acceptance by signatories to the Convention? How temporary, for example, is the protection offered to the hundreds of thousands living in states adjacent to the former Yugoslavia? How temporary is temporary when, as the longer conflict drags on the more those being protected are progressively integrated into the countries of temporary protection?

What significance do these facts have for UNHCR's mandate, particularly now that its operations have expanded to cover a broader humanitarian role such as displaced persons in certain circumstances, and what is now being termed the "relief to development continuum"? The delegates who worked so painstakingly in 1950 to elaborate the current definition, which was itself far beyond the expectations of the "lowest common denominator" outcome, would be amazed at the range of activities being carried out by UNHCR today around the world. Should protection end with relief, repatriation, rehabilitation, rebuilding, or quick impact projects in the countries of temporary protection?

A new Convention?

Many of these questions come together in a broader question: should we be thinking of creating a new Convention? It is clear that among community views in Australia there are some who would like to see the Convention renegotiated and the refugee definition expanded in order to capture people displaced by all kinds of disasters and civil conflicts around the world.

That is understandable and I have some sympathy for the motives which lie behind it. But any reopening of the Convention could only occur if that were the will of the majority of its member states; and the effort could only be justified if we could be at least reasonably certain that the outcome would be likely to produce beneficial humanitarian effects on the lives of refugees. The stakes are too high to proceed on any other basis.

It is not perhaps widely known that three years ago Australia quietly floated a proposal among a number of countries, which we considered "like-minded", to establish elements of an international regime for the treatment of displaced persons. We were surprised that most reactions were along the lines that the time was not ripe to take on additional obligations for yet a new category of persons. But a seed had been planted with UNHCR and at the 1994 Executive Committee meeting we witnessed the adoption of a modest "conclusion" on internally displaced persons. The point here is that success in multilateral diplomacy is usually achieved by building coalitions of like-minded countries who see, or can be persuaded to see, that it is in their own interests to move ahead on a particular issue. It is not possible to move faster than the political will of member states will allow, nor to impose outcomes on them, however desirable. We should bear in mind the uncomfortable fact that there are countries, even in our own region, who have had 44 years of opportunity to accede to the 1951 Convention but who have not yet done so—even though some of them have become generous countries of first asylum to the outflow of refugees from Indo-China.

UNHCR itself raised the possibility of a new Convention in its "note on international protection" late last year, canvassing the idea of broadening the

scope of the Convention to include displaced persons. However it came swiftly to the conclusion that very few countries were in favour of expanding their responsibilities freely entered into in the early 1950s. What is more, Mrs Ogata explained clearly and bluntly in her EXCOM address that "protection principles that were once clearly recognised are now being questioned".

At the UNHCR Sub-committee on International Protection last year Australia noted that the answer to larger and more complex movements of people was not to stretch the existing definition or formally widen it. We argued that the concept of persecution remained the core element, the essential humanitarian idea of the Convention which is recognised by all 128 member states. It would therefore not be helpful for those whose real claims to persecution are recognised, to be entitled to no greater rights than those who are merely seeking better economic circumstances for themselves.

Negotiating an entirely new Convention is not the only option, of course. Other possibilities, which this summit may want to investigate include an initiative within ECOSOC to convene a conference of states parties to the Convention in order to re-examine a range of issues; a broader mandate under statute for the UN High Commissioner for Refugees; or a new protocol to the existing Convention. At the "softer law" end of the spectrum, other options might include a declaration by all states parties broadening the definition; the elaboration of new international guiding principles to cover an expanded definition; promotion of the enshrining of refugee protection principles and humanitarian law in domestic law within states; and a declaration by a limited number of like minded states parties to expand the definition.

There is as well a range of temporary, non-legal approaches which could be undertaken within the existing framework of the Convention. There could for example be greater concentration of resources on finding durable solutions to the causes of mass outflows and developing preventive strategies within the existing UNHCR budget. There could be greater and more effective pressure by NGO bodes like PARINAC in the refugee area on other governments.

In 1950 UN Secretary-General Trygve Lie expressed a pragmatic view about the Convention, which seems to me a sensible one. He preferred a Convention of limited scope, which would be capable of attracting a wide range of signatories, to one which had higher ideals but which could not find general support. I think that holds good today. I expect we would find few states prepared to sign a "blank cheque" as it were, in respect of obligations to unknown groups of people—for example "persons of concern"—if we were to open up negotiations on a new Convention.

What do other countries feel about the Convention? So far as Africa and Latin America are concerned, they already have the OAU Convention and the Cartagena Declaration respectively which are broader than the Convention definition. These instruments could not readily be used to form the basis of a new definition against the wishes of major countries of reception. And it is an unfortunate fact that we have indications—particularly from Europe—that a range of countries would like to renegotiate a more restrictive interpretation of the refugee definition.

Conclusion

The sheer frustration of witnessing the plight, and the growing numbers, of those "in need of protection" places pressures on all of us, governments and NGOs

alike, to do something. But what should that be? Mrs Ogata told delegates at UNHCR's Executive Committee last year that "our action must be part of a global strategy for international peace and security, human rights and economic and social development". She added that "we must develop a strategy of vision and a plan of action" and that the time was ripe to launch an agenda for humanitarian action. I am not so sure that the time *is* ripe. I believe it would be irresponsible to initiate a new multilateral process at a time when there is little international enthusiasm for a more generous approach to refugee problems. If and when there are signs that the atmosphere is more open to change we will certainly look at this possibility very carefully.

Instead, in the interim, I believe a more effective approach may be through the development of customary international law aimed at establishing more generous practices by like-minded states.

There are certainly a number of signs emerging that this approach might work. Principles of action are emerging from the field—from Rwanda, from the former Yugoslavia—which are useful reference points. ECOSOC is being revitalised and is playing a more effective role in co-ordinating the activities of UN specialised agencies. There has been steady development of human rights instruments which underpin much of this Convention; human rights abuses are being targeted and enforcement action is increasing. Moreover as I mentioned earlier, NGO bodies may be able to bring to bear greater influence on other governments.

The path of international diplomacy is littered with discarded unrealistic dreams. I think it is important that in whatever way we seek to improve our handling of refugee issues, whether through a new Convention, or a new protocol or some more modest strategy, we not only keep our hearts filled with lofty ideals, but our heads attuned to the limits of the possible.

Convention Relating to the Status of Refugees — Definition of Refugee — Australian Policy

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 47

The Committee recommends that the Government review its current policy for the detention of refugees and asylum seekers.

Response

Do not accept.

Comment

The wording of this recommendation raises an issue of definition which needs to be clarified before the substance of the recommendation is addressed. The matter that needs clarification is the use of the word "refugee". The Government does not detain refugees, ie, those who have sought Australia's protection and have

been granted a protection visa. It is assumed that the Committee's reference to "refugees" is a reference to unauthorised boat people or asylum claimants in general. The use of the term "refugee" in this context is misleading as it assumes that all boat arrivals/asylum claimants are in fact refugees in terms of the 1951 Convention and the 1967 Protocol relating to the status of refugees. Australia does not recognise its asylum claimants, whether or not they arrive by boat, as refugees until their claims under the Convention have been heard and accepted. Once a person's claims are accepted he or she is granted a protection visa and is no longer detained...

Convention Relating to the Status of Refugees — Definition of Refugee — Nationality of East Timorese — Australia's Obligations

On 17 October 1995, in the Senate, the Minister for Immigration and Ethnic Affairs, Senator Bolkus, answered a question without notice from Senator Jacinta Collins (Vic, ALP). The following is an extract from the text of the question and answer (Senate, *Debates*, vol 174, p 1898):

Senator Jacinta Collins—My question is directed to the Minister for Immigration and Ethnic Affairs. I refer the Minister to the recent comments the government has made on the issue of how citizenship laws impact on the assessment of claims for refugee status in Australia. Can the Minister inform the Senate of the legal advice his department has received on the issue of Portuguese nationality and asylum seekers from East Timor?

Senator Bolkus—I thank Senator Jacinta Collins for raising this question. She is right: we have had advice prepared for us, and it should be placed in context. That advice was prepared because the refugee determination process has been considering this issue and that process has asked government to submit advice to it.

In terms of how the request for advice arose, the Refugee Review Tribunal has been set up under legislation passed by this parliament to be an independent review body for those who seek to challenge refusals of refugee status. It assesses cases before it on a case by case basis and makes up its mind on the basis of the law, the facts and Australia's obligations under the Refugees Convention.

The Tribunal, it must be made clear, does not act at the direction of Government. It does, however, seek submissions from my Department from time to time to assist it with decision making. As Senators will know, the Government may appeal decisions of the Tribunal and sometimes does so to the Federal Court where particularly important aspects of law are at issue.

In terms of this process, in February this year, in the context of a case concerning an East Timorese asylum seeker, the Tribunal wrote to the Secretary to my Department asking for submissions from the Department on the Portuguese nationality issue. In June it wrote again asking for submissions or information on the issue of the nationality of East Timorese. It raised related citizenship and other nationality issues again in June, July and September this year.

The issue of citizenship was raised. The question of citizenship is one that is determined by the domestic law of particular countries. My Department, in an attempt to settle the citizenship issue once and for all, responded to the request

from the Tribunal by seeking information from an expert on Portuguese citizenship law, Professor Ramos of the University of Coimbra in Portugal. When that advice was received, the Department sought further legal advice from the AG's department about Australia's obligations under the Refugees Convention. Once that advice was received, it was submitted to the Tribunal, as requested, so the Tribunal could inform itself of the issue...

... the advice indicates that, if East Timorese asylum seekers have available to them Portuguese citizenship, Australia does not have protection obligations towards them under the Refugees Convention unless they exhaust other citizenship rights. This particular aspect arises from the UN definition of refugee, which provides that people have to exhaust all available citizenship rights before obtaining asylum status in a particular country. The advice also makes clear that those who have citizenship available to them are not able to enliven our protection obligations by merely refusing to take up that citizenship.

So what is the status of the legal advice? It forms the basis of a submission from the Department which is forwarded to the Refugee Review Tribunal for consideration by decision makers. Of course, the Tribunal and decision makers will each be able to take this into account as well as other relevant factors that are before them in each particular case and make a decision based on the case before them and based also on the international definition of "refugee".

Convention Relating to the Status of Refugees — Definition of Refugee — Population Control Policy — Question of Relationship to a Well Founded Fear of Persecution

The decision by Justice Sackville in the Federal Court in *Minister for Immigration and Ethnic Affairs v Respondent A and Others* (1994) 127 ALR 383 ruled that a Government's fertility control policies might identify a "particular social group" within the meaning of refugee contained in the Convention Relating to the Status of Refugees. As a result, the Migration Legislation Amendment Bill (No 3) 1995 was introduced into Parliament in order to over-rule the decision. This Bill was later withdrawn, and the Migration Legislation Amendment Bill (No 4) 1995 in similar terms was introduced on 9 March 1995 in the Senate by the Minister for Defence, Senator Ray (Senate, *Debates*, vol 170, p 1676). However, the Federal Court overturned the decision of Justice Sackville on appeal in *Minister for Immigration and Ethnic Affairs v Respondent A and Others* (1995) 130 ALR 48, and the Bill was never passed.

A number of statements relating to the issues raised by the case were made throughout the year.

On 1 February 1995, in the Senate, the Minister for Foreign Affairs, Senator Evans, answered a question without notice from Senator Harradine (Tas, Independent), concerning China's population control methods, and the proposed changes to Australia's migration legislation. The following is an extract from the text of the question and answer (Senate, *Debates*, vol 169, p 267):

Senator Harradine—My question is directed to the Minister for Foreign Affairs. The Human Rights Subcommittee of this Parliament and the Joint Committee on Foreign Affairs, Defence and Trade in its report last year requested the Government to make bilateral and multilateral representations to urge the cessation of coercive population programs...

Senator Gareth Evans—... There is an obvious problem, as has been identified by Senator Bolkus, with the court ruling which makes potentially almost the entire population of 1.2 billion people in China refugees simply by virtue of the population policies and the one child limitation that applies in that country. Manifestly, that is simply an unsustainable basis on which to conduct any kind of rational refugee humanitarian policy. That has been the view taken by the UN High Commission on Refugees and others.

I do not think we have anything to defend in that respect. We are concerned and have been concerned all along—as Senator Harradine well knows from the extensive debate on these matters in Estimates Committees and elsewhere—about those elements of the Chinese population program which are coercive in character. A number of representations have been made on that subject and will continue to be made, not least in the context of the human rights delegations that we have managed to send to China on two occasions and which we are now trying to negotiate for a further instalment.

Further to the answer given to the above question, Senator Evans gave a supplementary reply in the form of a document which was tabled in the Senate on the following day, 2 February 1995. Extracts from the document follow (Senate, *Debates*, vol 169, p 418):

China's human rights performance is closely monitored by the Department of Foreign Affairs and Trade including the Human Rights Section. The human rights situation overall in China remains of concern to Australia and this Government has expressed its concern about human rights in China on numerous occasions. In addition to multilateral efforts to foster observance of internationally accepted standards of human rights in China, I have raised the Australian Government's concerns about continuing human rights violations at the highest levels, including during discussions with Chinese Foreign Minister Qian Qichen in Jakarta in November 1994.

Australia's obligation under the 1951 Convention Relating to the Status of Refugees is to provide protection to those with a well-founded fear of persecution due to their nationality, race, religion, political opinion or membership of a particular social group. Under the Convention, there is no obligation to provide refuge to those who are subject to generalised policies applicable to all citizens without discrimination. The only obligation is to protect people who fear persecution because they belong to particular groups.

My Department, including the Human Rights Section, has been regularly consulted by the Department of Immigration and Ethnic Affairs in the development of the amendments to the Migration Act before the Senate. The Department's assessment is that there is no evidence to suggest that returned asylum seekers will suffer any discrimination or persecution on their return to China.

In relation to Senator Harradine's concern about the possibility of a pregnant woman asylum seeker being returned to China, it is longstanding government policy that the return of people with no right to remain in Australia is only carried out where the returnee's safety and dignity is assured. This will apply to pregnant women.

I would point out that the application of China's one-child policy does not generally provide for forced abortions however in particular provinces or

villages there may be an application of the policy which differs from central Government directives and a risk of forced abortion may exist.

The Migration Act amendment legislation provides only that fertility control policies shall not be taken into account in refugee applications where they are argued as the basis for establishing the applicant's membership of a particular social group.

However, where a Chinese refugee applicant is a member of a pre-existing social group, such as an inhabitant of a particular village or province or a member of a particular factory or work unit in which fertility control policies are carried out in a persecutory manner—such as by the practice of forced abortion—they are not excluded from the protection of the legislation. This is because they fear persecution on the basis of their membership of a social group other than the unacceptably broad group of "Chinese subject to fertility control policies."

I further understand the Act allows for a non-compellable Ministerial discretion in particular circumstances to allow individuals to make applications for refugee status despite their initial exclusion by other provisions.

The Act also contains health provisions which would preclude travel by any women in an advanced stage of pregnancy.

On 9 March 1995, in the Senate, the Minister for Defence, Senator Ray, tabled the second reading speech explaining the Migration Legislation Amendment Bill (No 4) 1995. During the course of the speech, Senator Ray said the following (Senate, *Debates*, vol 170, p 1676):

> To regard a large proportion of the population of China, or any country, as a social group and therefore as potential refugees simply on the basis of their government's fertility control policies is inconsistent with the intention of the Convention to provide protection to refugees with a well founded fear of persecution.

The response to the recommendation to which Senator Harradine referred in his question above was tabled in the Senate on 29 November 1995, by the Minister for Small Business, Customs and Construction, Senator Schacht, as part of 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 21

The Committee recommends that the Australian Government make bilateral representations where necessary and use multilateral forums where appropriate to urge the cessation of coercive population control programs, while at the same time continuing to fund education and health programs in developing countries to enhance the rights of parents to determine freely and responsibly the appropriate size and spacing of their families.

Response

Accept.

Comment

The Australian Government, along with 179 other nations, endorsed the Program of Action (POA) of the UN International Conference on Population and Development held in Cairo in 1994. The POA establishes the framework within which multilateral and bilateral population assistance programs operate and emphasises that coercion has no place in family planning programs. Such programs must be based on the right of individuals and couples to decide freely and responsibly on the size and spacing of their family.

Australia is opposed to the exercise of coercion in family planning programs. In developing countries such as China, we seek to demonstrate the benefits of voluntarism in family planning programs through Australian aid projects. The Chinese authorities have agreed that the principle of voluntarism will be upheld in our aid activities. For example, the Ningxia Family Planning, Women's and Children's Health project is safeguarded by an agreement with the Chinese authorities that coercive practices will not take place in the area of project activity. Thorough monitoring by the Embassy ensures that this agreement is upheld. In addition, in relation to China, a number of representations have been made on the issue of coercion and will continue to be made, including in the context of human rights delegations such as those Australia has sent to China.

The Government makes bilateral representations to recipient countries to emphasise the efficacy of family planning services based on the principles agreed in the POA. Australia monitors the performance of the multilateral population agencies in this regard through our participation at governing board meetings, and liaison as appropriate at country level. AusAID maintains close contact with the United Nations Population Fund (UNFPA) in Beijing and seeks to reinforce UNFPA's commitment to combating the use of coercion in China's family planning programs.

The primary goals of population assistance are to improve women's health and status and to contribute to sustainable development and the alleviation of poverty. To achieve these goals Australia's program of population assistance combines support for family planning with programs devoted to maternal and child health. In addition, the Government provides support to general health and education programs.

Definition of Refugee — Migration Legislation Amendment Bill (No 2) — Safe Third Country Provisions — Extension

On 31 January 1995, in the Senate, the Minister for Defence, Senator Ray, tabled the second reading speech explaining the Migration Legislation Amendment Bill (No 2) 1995. The following are extracts from the text of the speech (Senate, *Debates*, vol 169, p 34):

The purpose of this bill is to enable the recently enacted safe third country provisions of the Migration Act 1958 to cover Vietnamese refugees who had already been successfully resettled in the People's Republic of China but who lodged claims for a protection visa in Australia after 30 December 1994. More generally the bill is also to enable the safe third country (STC) provisions of the Act to have effect from a specified date preceding the date of commencement of any future agreements and relevant regulations.

In the last session of Parliament the Government introduced safe third country amendments to the Migration Act to ensure that certain non-citizens in

relation to whom there is a safe third country, or who are covered by the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA), should not be allowed to apply for a protection visa. The purpose of the legislation was to prevent forum shopping by people who had already found a country which offered them protection, or whose claims for refugee status had been rejected under an appropriate determination system. The first application of the legislation was in respect of people who arrived in Australia from Galang in Indonesia where they had been assessed as not being refugees under a refugee determination process approved by the United Nations High Commissioner for Refugees.

The legislation has been effective in ensuring that the relatively small numbers of asylum seekers from Galang arriving here after the legislation was passed were returned and others in similar circumstances were discouraged from attempting to circumvent the Comprehensive Plan of Action brokered by UNHCR. What the current legislation did not foresee was a situation where large numbers of people arrive very quickly from a place where they have received effective and on-going protection, but with which Australia does not have an existing safe third country agreement. Under the legislation as it stands, Australia has no choice but to process to finality all claims from these people lodged before a safe third country agreement has been reached. In other words, it is possible for people to arrive in Australia from what is in fact a safe third country, and access our refugee determination system because an agreement between that country and Australia has not been negotiated. This is not in the interests of the safe third country, the country to which the asylum seekers travel or UNHCR. It encourages rapid and destabilising irregular movements of people and undermines the concerted actions of governments and the UNHCR to provide durable solutions in countries of first asylum.

From October 1994, 695 people, largely ethnic Chinese Vietnamese from Southern China, have arrived by boat in Australia. Neither Australia nor China considers it desirable to encourage this flow of people. More importantly, information from UNHCR, the Government of China and our own representatives in southern China has shown conclusively that these people have received the protection of China since they began arriving there from Vietnam in the late 1970s. The details outlined in the statement on the prescribing of the PRC as a safe third country, which will be tabled in Parliament shortly, reveal the group in question to have been treated humanely and that every effort has been made to help them integrate socially and economically into Chinese society. To encourage the belief that simply by sailing to Australia they, and the many like them who remain in China, can undermine the resettlement efforts made on their behalf by China and the UNHCR is wrong. The Government does not believe that this in the best interests of the ethnic Chinese Vietnamese community in China and it is not in the best interests of the international community.

Australia makes a considerable effort internationally, through our overseas aid program, our significant contribution to UN peacekeeping initiatives and our assistance to the United Nations High Commissioner for Refugees, to support efforts to help refugees return to their own country or to resettle in their country of first asylum. Where resettlement in Australia is the most appropriate approach, cases are considered in an orderly way under our Humanitarian Program, which this year will bring 13,000 people in need of resettlement to

Australia to begin a new life. The irregular and illegal movement to Australia of people who have no grounds for claiming to be refugees from China undermines these and similar efforts made by the international community.

On 30 December 1994, it was announced that the Government would introduce into this session of Parliament legislation designed to ensure that, from that date, certain unauthorised arrivals from the PRC would not be allowed to gain access to Australia's refugee determination system. The announcement underlines the fact that a country may have, in fact, been a safe third country well before it has been prescribed as one by Australia. To alleviate the paradoxical situation of a country appearing to be an unsafe country one day and a safe country the next, and to avoid the possibility of a similar situation to that which we have recently found ourselves in respect of China, Australia would have to negotiate safe third country agreements with every country in the world.

The sensible alternative, clearly signalled on 30 December 1994 in the case of the boat arrivals from China, is to amend the legislation to enable Australian law to reflect the pre-existing reality.

The bill being introduced today will allow the sensible operation of the safe third country legislation by ensuring that all people who have protection in a safe third country will be treated in the same way, rather than the anomalous situation that exists under present law where people from the STC who apply before a safe third country agreement is concluded are allowed to engage our protection obligations whereas those who arrive in precisely the same circumstances but after an agreement has been reached cannot.

The legislation will not, and cannot result in people being returned to a country that is not a safe third country. No-one will be returned unless they are covered by a safe third country agreement or there has been proper examination of their claim for protection. The legislation also does not apply to anyone who has been granted a substantive visa or to whom it has been determined Australia owes protection obligations before the safe third country regulation takes effect.

It should also be noted that the Minister retains a non-compellable discretion to allow a person's application to remain valid despite this legislation if the Minister judges that to be in the public interest.

This bill seeks to make Australia's contribution to international efforts to reduce the large-scale illegal movement of people effective and consistent. Its main effect will be to eliminate inconsistencies in the way people are dealt with under the safe third country provisions of the Migration Act who are in all respects the same, other than in the date they arrived in Australia. It contains a very effective safety net to ensure that people affected by it are either returned to a prescribed safe third country or allowed into our refugee determination system.

United Nations — World Conference on Women — Australian Statement

The United Nations Fourth World Conference on Women was held from 4 to 15 September 1995 in Beijing, China. Dr Lawrence, Head of the Australian Delegation, and the Minister for Human Services and Health and the Minister Assisting the Prime Minister for the Status of Women, made the Australian National Statement, a presentation of Australia's commitments to women, on 6 September 1995. The text of the statement follows:

Madam Chair, Excellencies, and Distinguished Delegates,

I am extremely proud to represent the women of Australia at this Conference because, as many of you would know, it was Australia that insisted that this should be a *"Conference of Commitments"*.

The women of Australia want to see the work of the UN become more focused, pragmatic and concrete and we are delighted that the concept of Governments making practical, achievable promises to improve the status of women has been well and truly embraced—not only by women but by Governments.

I would like to congratulate all the delegations that have seized this opportunity to improve the status of the women of their nations.

May I also applaud the United Nations. In endorsing the Conference of Commitments proposal, the United Nations has shown that it is open to reform—that it will accommodate new ideas and new ways of achieving real change.

Madam Chair, Australia believes that a Conference of Commitments will avoid what happened after Nairobi.

I'm sure many of you would agree that the lengthy document which emerged from the Nairobi Conference failed to achieve the progress that we all desired. It gave Governments too much choice with the result that many countries took little or no action to improve the status of women over the last ten years.

We must avoid repeating this mistake. We must make this conference relevant to the lives of women in each of our countries and by focusing on key strategic areas, each of us can make a real difference.

But we don't have long. There are only five more years till the end of the century. We must accelerate our action for change. We must ensure that when, at the next conference, we reflect on the decade that has passed, that we are celebrating the conclusion of a decade of real reform.

Madam Chair, I am delighted that this Conference has forced Australia to examine what still needs to be done to ensure Australian women achieve equal status with our male colleagues, partners and friends.

The lead up to this conference has been a time for both the Governments and people of Australia to take stock of the past and prepare for the future—to envision what kind of nation we want for the next century.

We have had cause to celebrate all that we have achieved and how far we have come because Australian women *have* come a long way in the last 10 years.

A report released recently by the UN Development Program ranked Australia 6th out of 130 countries on a range of criteria including women's share of income and participation in education.

Through tougher anti-discrimination laws, better education, a more flexible industrial system, real increases in family assistance paid to women, the establishment of a national women's health program, and a huge boost to child care, we have achieved real improvements in the status of women.

Since 1980, life expectancy at birth for Australia women has increased from just over 78 years to nearly 81 years in 1993. Women's total earnings are now 84 per cent of men's for full-time workers. More than 81 per cent of girls now

complete the final year of high school—that is twice the rate of 15 years ago. Also, some 53 per cent of university students are now women.

Australia was also one of the first countries to sign the Convention on the Elimination of All Forms of Discrimination Against Women.

This led to the landmark Sex Discrimination Act of 1984 (which we are now upgrading) and the Affirmative Action Act of 1986.

Australia is also the first country in the world to develop national strategy on women and the new information technologies.

Australian women have told us in the lead up to this Conference that they now have more freedom, more choices and more opportunities. They also have higher expectations of what they can achieve. That is why the Australian Government is not complacent about our achievements.

The Commitments I am announcing here today will ensure we build on this strong foundation. They will ensure that as a nation, we continue the reform agenda.

In this, the Australian Government has a direct mandate from the women of Australia.

Our commitments have not been plucked out of thin air—they are the result of extensive community consultations with women's organisations and with individual women.

From this dialogue four priorities emerged: the difficulty women face balancing work and family responsibilities; a fear of violence; health; and the need for more women to enter public life and assume the decision making positions.

On the basis of this information we offer commitments on six of the eleven critical areas of concern identified in the Conference's draft Platform for Action.

The first area of critical concern is the Contribution of Women to Economic Structures, Paid and Unpaid Work.

As I have previously mentioned, we have made real advances in the workplaces of Australian women, but there is still some way to go before women can claim equity.

We have already established what we call Working Women's Centres in some of our [s]tates. These centres play a key role in achieving equity by providing women with information and assistance on pay, working conditions and industrial rights.

As part of our commitment to assisting working women the Government will extend the Working Women's Centres to all Australian states.

The Australian Government is also committed to ensuring that all Australians obtain the benefits of new information technologies

Accordingly the Prime Minister's National Information Services Council has been asked to develop advice on proposals which ensure that all women have access to these services, especially those in rural and remote communities.

The Council will also examine ways in which we can ensure that the new information technologies take account of the needs of women who work at home.

A Task Force on Women and Communications Technologies will be extended to ensure that the contribution and participation of women in the development of these new technologies is also maximised.

The second area of critical concern is Violence Against Women.

Compared to many parts of the world, Australia is fortunate to be a fairly safe place to live. However, many women still live in fear of violence, even in their own homes.

Most Australians recognise that the solution to reducing violence is not simply to introduce tougher laws and harsher penalties.

Australians recognise that education must be given priority.

Consequently the Government will contribute to the development of a national approach for our schools to address the issue of violence.

The Australian Government will also join international efforts to develop an integrated approach to stopping violence against women.

Such projects have been successful in Hamilton, New Zealand and Duluth, USA. They've shown that integrated community approaches can lead to a lower incidence of violence, particularly in the number of repeat offenders.

Protocols will be developed to enable police, lawyers, courts, community and government agencies to co-ordinate their responses to the problem.

The third area of critical concern is Women in Power and Decision-Making at all levels.

To promote women's participation in public-life and decision-making the Government will help establish a national peak body of women in business.

The Australian Council of Businesswomen will strengthen the voice of women in business to Governments, the media and the community as a whole.

The Government will also encourage the advancement of women in the private sector by joining with Australia's major business organisations to develop a three-year initiative aimed at increasing the number of women on private sector company boards.

The fourth area of critical concern is Health Care and Related Services.

Australia has led the world in developing a number of innovative health programs for women, such as national breast screening and cervical cancer screening.

However indigenous women in Australia continue to suffer much poorer health than the general population.

The Australian Government is committed to addressing this inequality and will introduce a new health program specifically for Aboriginal and Torres Strait Islander Women.

It will focus on preventing ill health by promoting regular health checks for Aboriginal and Torres Strait Islander mothers and children.

The Government will work with our indigenous communities to employ teams of indigenous health workers, medical practitioners, women's health nurses, midwives, child health nurses and other health professionals.

The fifth area of critical concern is Mechanisms to Promote the Advancement of Women.

Australia is very conscious of its responsibilities as a princip[al] player in the Asia-Pacific region and is keen to support the reform efforts of our neighbouring countries.

To that end, we will provide funds to groups and organisations representing women in Pacific Island nations to assist them in implementing the commitments that arise from this Conference.

Madam Chair, these commitments won't be the last the Government makes to the women of Australia. We recognise that improving the status of women makes our nation stronger. It means more equitable workplaces, stronger families and a brighter future for us all.

I urge all delegations to embrace the challenges and opportunities of improving the status of women. May I also urge delegations to acknowledge and fight against the forces that would seek to undermine this.

This conference is, in part, about the world community accepting the fundamental nature of individual and collective security. That security can only be achieved if we work towards—not against—a nuclear free world.

Madam Chair, that effort is being breached by some nations represented at this Conference. Indeed, delegates would be aware that a nuclear device was detonated in the South Pacific this morning.

Australia deplores continued nuclear testing. We believe the dangers testing pose can not and must not be ignored. The threat to health, to the environment and to world peace is real and it's an issue integral to this Conference's Platform for Action.

Women's rights are human rights, universal and indivisible but these rights are being breached by China and France. I urge the delegations of these two nations to commit to bringing about an end to this abuse—not only to advance the status and well being of their countrywomen, but also of women worldwide.

United Nations — World Conference on Women — Conclusion of Platform

On 19 September 1995, in the House of Representatives, the Minister Assisting the Prime Minister for the Status of Women, Dr Lawrence, answered a question without notice from Ms Deahm (Macquarie, ALP). The following is an extract from the text of the question and answer (House of Representatives, *Debates*, vol 203, p 1205):

Ms Deahm—My question is directed to the Minister Assisting the Prime Minister for the Status of Women. It refers to the recent conference on women in Beijing. Can the minister tell us what that conference achieved?

Dr Lawrence—I am sure members will be aware that the United Nations fourth world conference has just concluded on a platform that clearly promotes women's rights both domestically and internationally...

I think it needs to be understood that a platform is not legally binding but it does provide internationally agreed benchmarks to measure how well countries are advancing the status of women, and that includes Australia. It clearly consolidates gains from previous conferences and goes further in some areas. The test for all of us now will be to see how well these commitments are implemented.

The issues which are clearly of concern to women around the world are principally violence against women in all its forms and the lack of women in public life and decision making positions. I am sure members will remember that these were two areas of concern to Australian women which we have given priority to addressing. The conference actually moved further than previous conferences on key issues such as measuring unpaid work, promoting the education of women and girls, identifying ways to phase out child labour and early marriage and, of course, eliminating violence against women. It also achieved a considerable degree of consensus on greater protection for women against rape and war crimes.

Both India and China ultimately had no reservations to the platform for action, which means that by far the majority of the world's women can potentially be covered by the platform. Australia, as I am sure members will know, was instrumental in initiating the conference of commitments proposal and some 65 countries embraced Australia's idea of making very firm commitments. Again I would like to thank all those people involved in a conference which, from Australia's point of view, was a very considerable success.

United Nations — World Conference on Women — Tibetan Delegation — Denial of Accreditation

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 concerning the accreditation of the Tibetan Women's Delegation follow (Senate, *Debates*, vol 176, pp 4246–4281). Further extracts are to be found throughout this volume:

Recommendation 49

The Committee recommends that:

[i] in the eventuality of the Tibetan Women's Association being denied accreditation to the World Conference on Women in Beijing in 1995, the Australian delegation to that conference be briefed fully on issues of specific concern to Tibetan women, with a view to ensuring that those issues are raised at the conference ...

[i] Response

Accept in part.

Comment

The Australian Government consistently supported the right of all women, including Tibetan women, to participate in the UN Fourth World Conference on Women and the associated Non-Governmental Forum '95. In the preparatory process leading to the Beijing Conference, Australia strongly supported accreditation procedures that were transparent and fair.

Prior to the Beijing Conference on Women, Australia made enquiries to the United Nations seeking clarification of the Tibetan Women's Association's accreditation (TWA) to the Conference on behalf of the TWA. However, the

> Secretary General of the Fourth World Conference on Women, Mrs Gertrude Mongella advised that the TWA did not meet UN accreditation guidelines and thus would not be able to participate at the intergovernmental level. Mrs Mongella advised, however, that it would be acceptable for the TWA to attend the NGO Forum.
>
> As soon as the Government was alerted that the President of the TWA and eleven other Tibetan women in India registered to attend the NGO Forum had been refused visas to enter China, we made representations to the Chinese authorities in Beijing and Canberra to request them to issue visas for all NGOs registered to attend the Conference, including those from the TWA. As well, Australia made representations to the United Nations to emphasise the importance we placed on the resolution of this problem. Unfortunately, despite our best efforts, China did not issue visas to members of the TWA in India and the NGO Forum had to proceed without their valuable input ...

Convention for the Elimination of all Forms of Discrimination Against Women — Sex Discrimination Act — Special Measures to Ensure Equal Opportunity

The report of the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into equal opportunity and equal status for women, *Half way to Equal*, released in April 1992, made a number of recommendations for amendment to the Sex Discrimination Act 1984. A response to the *Half way to Equal* report was announced by the Prime Minister, Mr Keating, on 19 September 1992 and tabled in the Parliament on 7 October 1992. The Prime Minister announced a staged implementation process for the recommendations in *Half way to Equal* dealing with the Sex Discrimination Act. On 28 June 1995, in the House of Representatives, the Attorney-General, Mr Lavarch, gave the second reading speech explaining the Sex Discrimination Amendment Bill 1995, which comprised the second stage of the implementation process. During the course of his speech, Mr Lavarch said the following (House of Representatives, *Debates*, vol 202, p 2461):

> An issue raised by both the *Half way to Equal* committee and by the Australian Law Reform Commission under its reference "Equality before the law" is whether the "special measures" provision in the Act as presently worded is achieving its purpose. The legislation currently provides that an act which would otherwise be discriminatory for the purposes of the Act is not unlawful if a purpose of that act is to ensure equal opportunity. The legislation currently treats special measures as discriminatory, but lawful, an approach which reflects the fact that the legislation is structured on an "equal treatment" model under which any difference in treatment is *prima facie* discriminatory.
>
> The amendment proposed in the bill makes two significant changes. First, it provides that special measures are not treated as a form of discrimination; instead, they would be considered as part of the threshold question of whether there is discrimination at all. Consequently, the "special measures" provision will be moved from that part of the Act which provides exemptions. Special measures should be presented and understood as an expression of equality rather than an exception to it.

Second, the special measures provision currently focuses on the attainment of equal opportunities. This focus ignores the historical and structural barriers which impede women's utilisation of formal equal opportunities. The Convention for the Elimination of All Forms of Discrimination Against Women refers to measures "aimed at accelerating defacto equality", and our emphasis should be on measures to achieve real or substantive equality.

To attain substantive equality, it is necessary to look at the end result of a practice that purports to treat people equally. In this way structural barriers that prevent a disadvantaged group from attaining real equality can be taken into account. A narrow and formalistic interpretation of equality will not produce equality in fact and may entrench existing discrimination or create new discriminatory situations.

Convention for the Elimination of all Forms of Discrimination Against Women — Women in Combat Related Duties — Australian Reservation — Modification

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 concerning women and combat duties follow (Senate, *Debates*, vol 176, pp 4246–4281), and further extracts are to be found throughout this volume:

Recommendation 35

The Committee recommends that, in the light of the revision in the Defence Forces' employment policy, similar adjustments be made to the reservation on Article III of the Convention on the Political Rights of Women.

Response

Accept in part.

Comment

The Convention on the Political Rights of Women has been superseded by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Currently Australia has a reservation to CEDAW relating to the Australian Defence Forces (ADF), which states that CEDAW is not applicable to the ADF policy that women are excluded from combat and combat related duties.

Since 1992, it has been the policy of the ADF that women could serve in all units except "direct combat" units. In July 1994, the Prime Minister announced an amendment to the Sex Discrimination Act to reflect this policy change and a Bill containing the amendments is currently before the Senate. It is expected that steps to modify this reservation will be undertaken later this year.

On 28 June 1995, in the House of Representatives, the Attorney-General, Mr Lavarch, gave the second reading speech explaining the Sex Discrimination Amendment Bill 1995, further extracts of which are at p 518. During the course of his speech, Mr Lavarch said the following (House of Representatives, *Debates*, vol 202, p 2460):

Australian Defence Force exemption—combat and combat-related duties

The bill also recognises and embodies another important step which has been taken towards eliminating discrimination within our defence forces. The *Half way to Equal* committee recommended that section 43 of the Sex Discrimination Act be amended to include a specified time period not exceeding two years to allow the removal of prohibitive and discriminatory provisions from Defence Force legislative requirements and administrative procedures.

Section 43 of the Act provides that it is not unlawful for a person to discriminate against a woman on the ground of her sex in connection with employment, engagement or appointment in the Defence Force in a position involving performance of combat duties or combat related duties. The combat related duties exclusion has not been applied since May 1990 when the chiefs of staff recommended against its continued application and the then Minister for Defence announced a new policy based on this advice. On 18 December 1992 the Minister for Defence announced that women may serve in all army, navy and air force units, except direct combat units. As the exemption from the Act in relation to combat related duties is no longer applicable, section 43 will be amended to reflect this change.

Convention on the Elimination of All Forms of Racial Discrimination — Australian Reservation — Acts to be Treated as Criminal Offences — Intention to Implement in Australian Legislation

Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination requires states to "declare an offence punishable by law" a number of acts (see extract below). Australia deposited a declaration/reservation concerning this Article with its instrument of ratification of the Convention on 30 September 1975.

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 concerning Article 4(a) follow (Senate, *Debates*, vol 176, pp 4246–4281), and further extracts are to be found throughout this volume:

Recommendation 7

The Committee draws the attention of the Government to those areas not yet subject to legislation under Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination.

Response

Agree that further legislation appropriate here.

Comment

The Government took action to meet its obligations under Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) by introducing legislation addressing the incitement of racial hatred. Article 4(a) states:

> Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.

Work on redrafting racial vilification legislation was completed in 1994 following community consultations held in 1993 to gauge public reaction to the Racial Vilification Bill 1992, which lapsed following the proroguing of Parliament on the calling of the March 1993 Federal Election.

The redrafted legislation—the Racial Hatred Bill 1994—originated in three major inquiries which found gaps in the protection provided by the Racial Discrimination Act 1975. The National Inquiry into Racist Violence, the Australian Law Reform Commission Report into Multiculturalism and the Law, and the Royal Commission into Aboriginal Deaths in Custody all favoured an extension of Australia's human rights regime to explicitly protect the victims of extreme racism.

The Racial Hatred Bill was intended to close a gap in the legal protection available to the victims of extreme racist behaviour, and to provide a safety net for racial harmony in Australia as both a warning to those who might attack the principle of tolerance and an assurance to their potential victims.

The Racial Hatred Bill was passed by the House of Representatives on 16 November 1994. It was introduced to the Senate on 28 November 1994 and referred to the Senate Legal and Constitutional Legislation Committee for report by 7 March 1995. In the Committees's report, the majority recommended that the Bill be enacted as introduced.

The Bill as introduced to the Parliament sought to amend the Crimes Act 1914 to provide for three criminal offences. However, the criminal offence provisions were deleted by the Senate during the Committee stages of debate on 24 August 1995.

The remaining provisions of the Bill were passed without amendment by the Senate. They created a civil prohibition against racial hatred by inserting new sections 18B to 18E into the Racial Discrimination Act 1975 to make it unlawful for a person to do an act, otherwise than in private, if:

> the act is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people; and
>
> the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

On 31 August 1995, the Government agreed to accept the Senate's amendments so that Australians gained the benefit of the remaining provisions of the Bill. Importantly this provides an avenue of complaint to the Human Rights and Equal Opportunity Commission. It is a vast improvement for people in States or Territories that currently have no such avenues of redress.

The Racial Hatred Act (No 101 of 1995) came into effect on 13 October 1995.

However, the Government remains convinced of the need for appropriate remedies in the criminal law to deal with extreme racist behaviour. It therefore,

will go to the next election firmly committed to the introduction of another Bill to include such protection in the Crimes Act 1914 in the next Parliament.

Enactment of the criminal sanctions would enable Australia to withdraw its current reservation to Article 4(a) of CERD. The reservation is as follows:

> The Government of Australia declares that Australia is not at present in a position specifically to treat as offences all the matters covered by Article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of Article 4(a).

Convention on the Elimination of All Forms of Racial Discrimination — Australian Reservation — Acts to be Treated as Criminal Offences — Racial Hatred Bill — Deletion of Provision Creating Criminal Offences

On 31 August 1995, in the consideration of the Senate message concerning the Racial Hatred Bill 1994, the Minister for Communications and the Arts and Minister for Tourism, Mr Lee, moved that the amendments to the Bill proposed by the Senate be agreed to. During the course of his speech, Mr Lee said the following (House of Representatives, *Debates*, vol 203, p 945):

> The amendment made by the Senate deletes from the government's Racial Hatred Bill 1994 the proposed amendment of the federal Crimes Act to create three criminal offences. The offences provided for are threats against people and property together with the offence of incitement to racial violence because of race, colour or national or ethnic origin.
>
> The Senate did not amend the civil prohibition in the bill. Once enacted, it will therefore provide an avenue of complaint through the Human Rights and Equal Opportunity Commission for people who suffer offence or who are insulted, humiliated or intim[id]ated because of race, colour or national or ethnic origin.
>
> The government accepts the Senate amendment solely on the basis that the community must have the protections provided by the bill, even if limited to the civil prohibition. However, the government is committed to amending the Crimes Act by reintroducing after the next federal election the criminal offence provisions based on racial hatred...

Convention on the Elimination of All Forms of Racial Discrimination — Australian Reservation — Acts to be Treated as Criminal Offences — Non-withdrawal of Reservation

On 23 November 1995, in the House of Representatives, the Attorney-General, Mr Lavarch, answered a question upon notice from Mr Melham (Banks, ALP). The following is the text of the question and answer (House of Representatives, *Debates*, vol 205, p 3744):

> Mr Melham asked the Attorney-General, upon notice, on 17 October 1995:
>
> (1) Did the Racial Hatred Act 1995 receive assent on 15 September 1995.

(2) Has he advised the Government to amend or withdraw the declaration /reservation which Australia deposited with its instrument of ratification of the [I]nternational Convention on the Elimination of All Forms of Racial Discrimination on 30 September 1975.

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

(1) Yes.

(2) No. I am advised that the withdrawal of the declaration/reservation is not possible at this stage as the Racial Hatred Act 1995 did not create "an offence punishable by law" (namely, a criminal offence) within the meaning of Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination.

United Nations Standard Rules for the Equalisation of Opportunities for Persons with Disabilities — Australian Strategy

On 16 October 1995, in the House of Representatives, the Minister for Employment, Education and Training, Mr Crean, gave an answer to a question upon notice from Dr Kemp (Vic, Liberal Party) concerning the Disability Discrimination Act 1992. During the course of his answer, Mr Crean said the following (House of Representatives, *Debates*, vol 204, p 2163):

... the Commonwealth Disability Strategy, introduced in November 1994, provides a plan to enhance, over time, opportunities for people with a disability to access all Commonwealth programs, services and facilities. The Strategy, which established a ten year framework for this purpose, was developed by the Government to provide a framework to meet the Commonwealth's obligations under the Disability Discrimination Act 1992 and the United Nations Standard Rules for the Equalisation of Opportunities for Persons with Disabilities adopted by the United Nations General Assembly in late 1993. In October 1995 (and every two years thereafter) the Minister for Human Services and Health will table a report in Parliament on the overall progress in implementing the Strategy.

Child Prostitution — Australian Strategies for Eradication

The international End Child Prostitution in Asian Tourism (ECPAT) Executive Meeting was held in Sydney from 21 to 25 March 1995. The Minister for Development, Cooperation and Pacific Island Affairs, Mr Bilney, gave the formal opening and keynote address on 21 March 1995. Extracts from the text of the speech follow:

Firstly I would like to congratulate this most active and committed of organisations for its important work in putting the issue of the sexual exploitation of children high on the international agenda. I commend ECPAT for its tireless efforts which have already achieved concrete results in our region.

There is a deep level of concern about child prostitution in the international community, which is shared by this Government, and by all decent Australians. This concern must be translated into a unified resolve to end child prostitution throughout the Asia-Pacific region.

To meet such a challenge there will clearly have to be a number of strategies adopted.

As a start, I should like to refer you to the Convention on the Rights of the Child and the World Declaration on the Survival, Protection and Development of Children. I am sure many of you are familiar with these agreements which Australia has ratified, along with over 140 other nations.

These international instruments define our collective responsibilities to give children every chance of a safe, healthy and productive life. They respond to the plight of children world wide who are living in poverty and vulnerable to abuse and neglect.

The World Declaration sets international goals to improve the lives of children in key areas such as health, education and nutrition. It also calls for better protection for children in especially difficult circumstances, including those subject to sexual abuse.

Without doubt child prostitution involves the most profound violation of children's rights, and one of the most offensive consequences of extreme poverty. It demands concerted and coordinated national and international responses.

Australia played an active role in the development of the Convention on the Rights of the Child and we have already given substance to the commitment.

One significant step this government has taken is to ensure that Australians involved in the child prostitution industry overseas can be prosecuted in Australia for their actions. Last year the Crimes (Child Sex Tourism) Amendment Bill 1994 was passed by Parliament.

This Bill criminalises the actions of Australians overseas who knowingly engage child prostitutes and criminalises the activities of tour operators who organise child sex tours. The principal aim of this legislation is to provide a real—and enforceable—deterrent to the sexual abuse of children outside Australia by Australian citizens and residents. This is landmark legislation.

Australia is also working internationally, through its overseas aid agency, AIDAB, with governments, non-government organisations and UN agencies in an attempt to assist those children already trapped in the sex trade, and those at risk...

The international community must firmly grasp the magnitude of the task ahead to meet perhaps the most basic of human responsibilities—the care of children.

Our collective response must be driven by our repulsion at the suffering of children in developing countries abused in the sex industry, and at the involvement of our own citizens in this abuse.

Ending child prostitution must be a shared imperative. If we do not take concerted action together we are failing these children dismally.

I am pleased to open the international ECPAT executive meeting officially and to urge you on in your endeavours to combat child prostitution in our region.

Convention on the Rights of the Child — Australian Implementation — Non-necessity for Incorporation by Legislation

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:

Chapter Nine—Protecting The Rights of Children

Recommendation 40

The Committee recommends that:

[i] the Australian Government introduce legislation which incorporates the Convention on the Rights of the Child into domestic law;...

[i] Response

For further consideration.

Comment

In Australia, the Convention on the Rights of the Child is implemented through a range of law and practice at both the Commonwealth and State and Territory level. A thorough review was undertaken of Australian law and practice before Australia ratified the Convention to ensure that they conformed with the Convention.

In addition, the Convention on the Rights of the Child has been declared to be an international instrument relating to human rights and freedoms for the purposes of the Human Rights and Equal Opportunity Commission Act 1986. The effect of the declaration is to extend the statutory functions of the Human Rights and Equal Opportunity Commission to issues relating to children. This means that a person can lodge a complaint with HREOC if they consider that there has been a breach of the Convention on the Rights of the Child. HREOC can also inquire into whether Commonwealth acts or practices are inconsistent with the Convention. It can also report to the Attorney-General on action that should be taken by the Commonwealth on matters relating to human rights.

Recently the High Court considered the role of the Convention in Australian administrative decision-making in *Minister for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) 128 ALR 353. As a result of the *Teoh* decision treaties acquired a force in domestic law which was previously assumed to be dependent upon parliamentary legislative action. It also would have introduced considerable uncertainty into administrative decision-making. In the Government's view, the *Teoh* case resulted in Parliament being inappropriately by-passed where the implementation of treaties in Australia is concerned. As a result of this decision the Government introduced the Administrative Decisions (Effect of International Instruments) Bill 1995 which was passed by the House of Representatives on 21 September 1995 and introduced into the Senate on 27 September 1995.

In addition, the Attorney-General announced on 5 July 1995 that a review would be conducted to ensure that Australia's treaty commitments are adequately recognised in Commonwealth administrative decision-making. That review will have an initial focus on Australia's international human rights obligations, including the Convention on the Rights of the Child, and will be

conducted by the Attorney-General's Department in conjunction with the Human Rights and Equal Opportunity Commission.

Convention on the Rights of the Child — Australian Report

In December 1995, the Commonwealth Attorney-General's Department issued *Australia's Report under the Convention on the Rights of the Child.* This first report provides information concerning legislation, policies and programs in relation to areas affecting the rights of the child. For further information on the Report, contact the Attorney-General's Department.

Convention on the Rights of the Child — Conformance of State Legislation

On 10 May 1995, in the Senate, Senator Bolkus answered a question upon notice from Senator Spindler (Vic, Australian Democrats). The following is the text of the question and answer (Senate, *Debates*, vol 171, p 3372):

Senator Spindler asked the Attorney-General, upon notice, on 9 December 1994:

(1) With reference to the answer to question on notice [N]o. 900 (Senate, *Debates*, 28 November 1994, p.3372) (a) on what date, and in what form, did the Commonwealth, after the Convention on the Rights of the Child was drafted, consult with each State and Territory Government (i) on the question of Australia's signature of the Convention, and (ii) for confirmation that their laws already enabled Australia to meet all obligations imposed by the Convention; (b) on what date, and in what form, did each State and Territory Government respond; and (c) what was the content of these communications.

(2) (a) On what dates were the Victorian Crimes Amendment Bill 1993 and the Sentencing Amendment Bill 1993 passed by the Victorian Parliament, and on what dates did they enter into force; (b) what were the dates and content of the correspondence concerning the bills between the Commonwealth and Victorian Attorneys-General; and (c) what action has the Attorney-General taken, and what further action does the Attorney-General intend to take to ensure that these Acts do not infringe Australia's international human rights obligations, in particular those under the Convention on the Rights of the Child.

(3) (a) Has the South Australian Parliament enacted legislation in similar terms to the Victorian Acts; (b) what were the dates and content of the correspondence concerning the Acts between the Commonwealth and the South Australian Attorneys-General; and (c) what action has the Commonwealth Attorney-General taken, and what further action does the Attorney-General intend to take, to ensure that any such legislation does not infringe Australia's international human rights obligations, in particular those under the Convention on the Rights of the Child.

(4) (a) How many State parties are there to the Convention; (b) which States have lodged instruments of ratification or accession since question on notice no. 900 was placed on notice.

(5) In what circumstances, and with what results, has Australia considered withdrawing its reservation.

Senator Bolkus—The Attorney-General has provided the following answer to the honourable senator's question:

(1)(a)&(b) The Commonwealth consulted the State and Territory Governments throughout the 10 years it took to draft the Convention on the Rights of the Child. After the final draft of the Convention was completed, consultation continued with regard to both signature and ratification of the Convention. On the 23 June 1989, the Commonwealth asked the States to assess their laws in light of the Convention. Follow up requests were made in this regard on the 8th August 1989. Replies were received from Tasmania on 31st July and 22nd August, Queensland on 25th August, South Australia on 22nd August and 23rd October, Northern Territory on 21 August and Western Australia on 25th August 1989.

The Prime Minister wrote to each Premier and Chief Minister on 29 January 1990 informing them of the intention to sign the Convention after proper consultation and negotiation. Replies were received from Queensland on 1st March, Northern Territory on 15th and 27th February, Western Australia on 22nd February and 12 June, Tasmania on the 15th March, South Australia on 7th February 1990 and ACT on 23rd May 1990 and Victoria (although it was undated). A note was also sent to Victoria and NSW on the 17th May 1990, requesting that they reply to previous correspondence. Victoria replied on the 8 August 1990.

Another letter was sent by the Attorney-General on the 26th June 1990, about delays in signing the Convention. Replies were received from Queensland on 30th July, Tasmania on 10th July, ACT on 24th July and Victoria on 13 August. On the 4th September 1990, the Attorneys-General wrote to all the [S]tate Attorneys-Generals informing them that he would seek ratification as State laws were consistent with the Convention. Replies were received from Queensland on 27th September, ACT on 17th September, South Australia on 27th September, Western Australia on 13th and 28th September, Northern Territory on 11 December and NSW on 14th December 1990. During this time the Standing Committee of Attorneys-General also discussed the issue several times.

(c) The responses from all States (other than that eventually provided by NSW) were supportive of ratification. Most States raised some concerns about the interpretation of the Convention, particularly in relation to the separate imprisonment of juveniles (the subject of Australia's reservation) and also its implications for abortion and juvenile employment laws. Several States expressed concern about the potential increase in scope of Commonwealth legislative power to override State laws in reliance on the Convention.

(2)(a) The Victorian Crimes (Amendment) Bill 1993 was passed by the Victorian parliament on 14 December 1993. The Sentencing (Amendment) Bill 1993 was passed by the Victorian Parliament on 1 June 1993. The Sentencing (Amendment) Act 1993 ss.1 and 2 commenced on the 1st June 1993; s.2(1). On the 15th August 1993, the rest of the Sentencing (Amendment) Act (except ss.13, 15) commenced. On the 1st November 1993, ss.13, 15 of the Sentencing (Amendment) Act commenced. The Crimes (Amendment) Act, Pt 1(ss.1–3) came into effect on 14th December 1993; s.2(1). On the 21st December 1993, ss.10 commenced. On the 1st June 1994, ss.4–9, and 11 of the Crimes (Amendment) Act commenced.

(b) The Attorney-General first wrote to Ms Wade, the Victorian Attorney-General, on the 7th May 1993. He sought assurances that the Sentencing (Amendment) Bill, 1993 and the Crimes (Amendment) Bill, 1993 were not in

breach of our international obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. On the 10th May 1993, Ms Wade replied and stated that the amendments were not in breach of international obligations, given the safeguards in the legislation. On 17th November 1993, the acting Attorney-General Mr Duncan Kerr wrote to Ms Wade and express concern about its continued potential to infringe Australia's international human rights obligations. On the 29th November 1993, Ms Wade replied and stated her Government's intention not to amend the legislation.

(c) The Government has already expressed its concern to the Victorian Government over the Crimes Act (Amendment) Act and Sentencing (Amendment) Act.

(3) No, not so far as I am aware.

(4)(a) As of the 7th December 1994, there were 168 countries which had ratified or acceded to the Convention on the Rights of the Child.

(b) Since 20 December 1993, fourteen countries have ratified or acceded to the Convention. They are: Afghanistan, Eritrea, Gabon, Georgia, Iran, Iraq, Japan, Kazakhstan, Krygyzstan, Luxembourg, Mozambique, Nauru, Samoa and Uzbekistan.

(5) Australia has a reservation to Article 37(c) of the Convention on the Rights of the Child in relation to the separation of adults and children during imprisonment. Although Australia agrees with the general principle of Article 37(c) no consideration has been given to withdrawing this reservation. Australia's demographic and geographic features make it difficult to achieve the total segregation of children or juvenile prisoners from adult prisoners. Furthermore the Australian Government remains convinced that it is appropriate to allow the responsible authorities discretion to determine whether it is beneficial for a child or juvenile to be imprisoned with adults.

Torture and Summary or Arbitrary Execution of Children — 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*. Extracts from the response follow (Senate, *Debates*, vol 176, pp 4246–4281), and further extracts are to be found throughout this volume:

Recommendation 43

The Committee recommends that the Australian Government monitor closely reports of torture and summary or arbitrary execution of children and subsequently make strong representations to those governments who are breaching international standards on the rights of children.

Response

Accept.

Comment

The Government will monitor closely reports of torture and summary or arbitrary execution of children and, in keeping with its overall human rights policy, make representations to governments in breach of their international obligations.

It is Government policy to follow up all allegations of human rights violations against children and, where these are substantiated, to make representations to the responsible authorities.

Violations of children's human rights are of serious concern to the Government which is active in monitoring the situation of children in vulnerable situations, including those caught up in armed conflict, those affected by exploitative labour or slavery-like practices and street children. Australia is also particularly active in monitoring the use of the death penalty, making representations on all individual cases brought to our attention and in urging States to abolish the death penalty, especially in those States where it is applied to minors.

Australian officials are participating in the work of two open-ended UN working groups elaborating possible optional protocols to the Convention on the Rights of the Child, one relating to the sexual exploitation of children and the other to children in armed conflict. These additional instruments will strengthen the international legal regime for the protection of children. Australia supports the work of the United Nations, its subsidiary bodies and specialised agencies in their efforts to protect children and improve implementation of the legal safeguards for the children's rights.

Australia also takes an active role in the drafting of the Optional Protocol to the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment. The Optional Protocol would provide for visits by a United Nations Sub-Committee of the Committee against Torture to places of detention within the jurisdiction of a State party.

Exploitative Child Labour — Australian View

The following is extracted from the Parliamentary Report entitled *Australia's Overseas Aid Program 1995–96,* p 11:

Exploitative Child Labour

The internationally recognised definition of exploitative child labour (under ILO Convention 138) focuses on labour that is likely to jeopardise the health, safety or morals of children.

The International Labour Organisation (ILO) estimates that between 100 million and 200 million children under the age of 15 are engaged in some form of work. It is important to distinguish work from exploitation in this context, as some work may be essential (subsistence agriculture in poorer countries) or beneficial (training, skills development). However, there is much work that is extremely harmful, jeopardising as it does children's health, access to education and full social and psychological development.

The Australian Government's approach to the issue of exploitative child labour recognises that the problem is primarily a symptom of extreme poverty. In this respect the aid program makes a significant contribution to reducing child labour through assisting social and economic development in developing countries, particularly in the Asia-Pacific region. The Australia[n] Government

also taking measures, including action in multilateral fora and on a bilateral basis, to raise the profile of exploitative child labour as an international human rights issue and to support the efforts of developing countries to address this.

A research project has also been commissioned by the Government to examine the issue at a domestic level in six countries in South and South-East Asia where child labour is predominant. The research will build on the work already undertaken by multilateral organisations such as the ILO and UNICEF and will identify specific measures Australia can take to improve children's lives in a constructive and effective way through the aid program.

Bilateral activities include support for an International seminar on "Combating Child Labour", a project in Nepal, and support for a Philippines project on protecting exploited labourers and sexually prostituted children, which is being implemented through UNICEF. Australia also provides support through NGOs for activities in Thailand implemented by the End Child Prostitution in Asian Tourism (ECPAT) and a Child Rights Advocacy project in Bangladesh through Save the Children Fund (Australia).

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 44

The Committee recommends that the Australian Government propose an initiative at the UN to ensure the development of an international treaty to address the question of child exploitation.

Response

This recommendation is under consideration.

Comment

The Government set up the Tripartite Working Party on Labour Standards. Its recommendations will be considered carefully as a contribution to the development of Government policy in this area. The possibility of such an international instrument is part of current thinking on possible additional responses to the problem of exploitative child labour.

The Department of Foreign Affairs and Trade in its submission to the Working Party outlined as an option the development of an Optional Protocol to the UN Convention on the Rights of the Child dealing specifically with trade in the products of exploitative child labour. The development of an Optional Protocol would greatly raise the profile of the problem of exploitative child labour and, if adopted, would strengthen existing international standards. Such an initiative would, however, be a long-term undertaking involving an extensive diplomatic campaign.

A number of international instruments addressing the question of child exploitation are already in existence.

The United Nations adopted the Convention on the Rights of the Child on 20 November 1989. This Convention has been ratified by 175 countries, including Australia (on 17 December 1990).

States that ratify this Convention must, *inter alia*, protect the child from economic exploitation and from performing any work that is likely to interfere with his or her education or be harmful to his or her health or well-being. Article 32 of the Convention deals with the economic exploitation of children, including child labour. Measures taken by States to implement Article 32, however, are to have regard to the relevant provisions of other international instruments.

The ILO has been concerned with the issue of child labour since its inception in 1919. In 1973 the ILO consolidated previous conventions on the subject into a revised convention, Convention 138, the Minimum Age Convention, 1973. Only 46 of the ILO's 175 member States have ratified the Convention.

Australia has not ratified Convention 138. The Inter-governmental Task Force established in 1991 to review unratified ILO Conventions and an independent expert have examined in detail the ratification prospects for the Convention. Both enquiries identified significant compliance problems for Australia concerning the Convention.

Australia's non-ratification of Convention 138 has been due to the different approaches adopted to prohibiting work for children below 15 years of age by the Convention, which is highly prescriptive, and by Australian legislation, which provides for compulsory school attendance and child welfare protection. Convention 138 requires legislation fixing the minimum age of not less than 15 years for entry into employment or work. While the Convention allows some exclusions on matters such as artistic performances or light work, the conditions under which these are permissible are quite strict. The Convention deals only with minimum age, and does not recognise that child labour encompasses a wide range of activities, not all of which are considered harmful or exploitative. By contrast, UNICEF has developed a set of criteria to assist in determining when work done by children becomes exploitative.

The Government is concerned that a Convention on such an important issue has only been ratified by some 46 countries. The ILO, however, is actively promoting observance of the Convention as part of its wider promotion of human rights labour standards in line with the outcomes of the World Summit for Social Development held in Copenhagen in March 1995 to promote respect for basic human rights as embodied in relevant ILO Conventions (including Convention 138).

As part of its follow-up action to the World Summit, the ILO is currently seeking information on the difficulties and obstacles to ratification from those countries which have not ratified Convention 138 and other core human rights conventions. This information will be consolidated into a report for consideration by the ILO Governing Body in November 1995. The ILO Governing Body will also be holding a discussion in its employment committee on a report on child labour prepared by the International Labour Office.

These ILO activities will provide an opportunity to consider what further action might be possible in terms of either ensuring greater observance or ratification of Convention 138 or whether other options should be pursued. One possible option would be to revise Convention 138. A revised Convention which

establishes effective and workable standards and which can be widely ratified would underline the ILO's authority in this field and provide direction for its technical assistance activities.

Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others — Traffic in Women — 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*. Extracts from the response follow (Senate, *Debates*, vol 176, pp 4246–4281), and further extracts are to be found throughout this volume:

Recommendation 39

The Committee recommends that:

[i] the Australian Government urge the Government of Thailand to ratify or accede to key international instruments relevant to the trafficking in women and girls, namely the International Covenant on Civil and Political Rights and the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others;

[ii] The Australian Government develop programs in conjunction with the local authorities to change social attitudes towards traffic and exploitation of women in order to secure the elevation of the status of women in Indo-China and elsewhere;

[i] Response

Accept in part.

Comment

The Government has urged all countries in the region to accede to the International Covenant on Civil and Political Rights (ICCPR) and other major human rights instruments. The Government has not made specific proposals to Thailand on the ICCPR but is currently working on promoting greater effectiveness of the human rights treaty system and in that context is considering making representations to individual countries.

Australia has not ratified the 1949 Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others as we believe that the views expressed on the issue of prostitution are outmoded and because Australia is a party to each of the four international instruments dealing with the traffic of women and children that the 1949 Convention sought to consolidate. (Australia has also ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CROC) and supports the establishment of an Optional Protocol to the CROC on the sale of children, child prostitution and child pornography. The obligations imposed under these more recent international instruments render ratification of the 1949 Convention unnecessary.) While Australia condemns both traffic in persons and the exploitation of prostitution, the 1949 Convention also seeks indirectly to make the practice of prostitution itself illegal which

conflicts with trends in Australia towards the legalisation of prostitution. For these reasons it would seem inappropriate for Australia to urge other states to ratify the 1949 Convention.

[ii] Response

Accept.

Comment

The Government recognises the serious impact of trafficking in and other exploitation of women. The practice of trafficking and exploitation is viewed as an outcome of extreme poverty and denial of human rights. The Government considers that trafficking of women is an issue which needs to be resolved by the Asia-Pacific region as a whole. Strategies developed should relate to both the woman's country of origin and the country to which she is moved.

AusAID's Women in Development policy has as a key goal the improvement in the status of women. A wide range of measures across all sectors and programs support this, including activities to increase access to education, health, employment and income-generation, and to improve women's legal and social status. It is necessary to address local social attitudes to trafficking and exploitation as well, but the problem is broader than this.

AusAID has also funded activities at the local level to improve women's awareness of their legal and economic rights. An example includes support for the Fiji Women's Rights Movement. AusAID has supported the Non-Governmental Organisation (NGO) in Thailand called End Child Prostitution in Asian Tourism and, through several small NGO activities, supported awareness raising in Australia about the impact on women of sex tourism in Asia. Under the HIV/AIDS program, AusAID is funding education and prevention activities in Thailand which target commercial sex workers and young female factory workers.

Migrant Trafficking — Possibility of International Instrument — 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*. Extracts from the response follow (Senate, *Debates*, vol 176, pp 4246–4281), and further extracts are to be found throughout this volume:

Recommendation 48

The Committee urges the Australian Government to recommend that the UNHCR conduct an investigation into the allegations of organised international traffic in illegal departures with a view to getting international agreement on the means to prohibit or limit such practices.

Response

Accept in part.

Comment

The Government accepts that the organised international traffic in illegal departures is an increasing problem worldwide. Australia currently participates in a variety of international fora dealing with migrant trafficking with a view to developing strategies for overcoming this problem. These have included:

- The Regional Consultations on Illegal Migration which were held in Canberra on 11 and 12 April 1994. These were an Australian initiative aimed at encouraging better cooperation and coordination in the dissemination of information on illegal migration (including migrant trafficking) throughout the Asia Pacific region. Australia is encouraging the continuation of the consultations in the belief that such a forum would provide the vehicle for dealing with migrant trafficking in the region.

- The International Organisation for Migration (IOM) eleventh seminar on migration, held in October 1994, was on the issue of the International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights and was chaired by the Deputy Secretary DIEA. The three day meeting enabled representatives from countries of origin, transit and destination to meet and discuss the problem and appropriate responses. The seminar participants called on IOM to act as a catalyst to advance international and policy dialogue on migrant trafficking by helping to forge and consolidate the necessary alliances between countries, intergovernmental and non governmental organisations and other key actors. To this end a Working Group on Migrant Trafficking was established.

Australia has also been active in support of measures aimed at combating migrant trafficking in various United Nations organs and agencies, including the General Assembly, the Commission on Crime Prevention and Criminal Justice and the International Maritime Organisation (IMO), by co-sponsoring and supporting the following resolutions:

- the IMO resolution "Enhancement of Safety of Life at Sea by the Prevention and Suppression of Unsafe Practices Associated with Migrant Trafficking by Ships". This resolution which was adopted on 4 November 1993, addressed both safety and humanitarian issues;

- the UN Commission on Crime Prevention and Criminal Justice's third session in May 1994 adopted a resolution on "Criminal Justice Action to Combat the Organised Smuggling of Illegal Migrants Across National Boundaries". The resolution draws out the links between organised crime and migrant trafficking, condemns the practice and urges states to cooperate in undertaking effective and expeditious measures to prevent and punish this activity;

- the UN General Assembly adopted a resolution on "Prevention of Migrant Trafficking" on 19 November 1993, which is largely concerned with the criminal aspects of migrant trafficking. The resolution condemned the practice of migrant trafficking as a violation of international and national law and as an activity conducted without regard for the safety, well being and human rights of the migrants concerned. States were urged to cooperate and take

steps to frustrate this activity, including reporting to the General Assembly on measures taken to combat migrant trafficking.

The Government accepts the Committee's recommendation that an investigation into the allegations of organised international traffic in illegal departures should be conducted with a view to getting international agreement on the means to prohibit or limit such practices. However, the Government does not accept that the United Nations High Commissioner for Refugees (UNHCR) is the appropriate body to carry out this investigation.

UNHCR's mandate is to protect refugees and seek durable solutions to their problems. The UNHCR's main concern is that governments' actions to manage irregular migratory flows do not jeopardise the institution of asylum and the principle of non-refoulement for refugees. The Government considers that the focus of the UNHCR on these vital issues should not be jeopardised by other programs such as that proposed, given that there are other organisations to address these issues.

The IOM has undertaken research on migrant trafficking and provided a forum for international and regional discussions on the issue. IOM would be a more appropriate body to undertake the proposed investigation and has advanced itself as a catalyst in this area.

Narcotics Trafficking — Controlled Delivery — International Acceptance as Investigatory Technique — Crimes Amendment (Controlled Operations) Bill

On 22 August 1995, in the House of Representatives, the Minister for Justice, Mr Kerr gave the second reading speech for the Crimes Amendment (Controlled Operations) Bill 1995. However, this Bill was not passed by the Parliament in 1995. It was subsequently passed in similar terms by the new Government on 8 July 1996, in the form of the Crimes Amendment (Controlled Operations) Act 1996. The following is an extract from the original second reading speech (House of Representatives, *Debates,* vol 203, p 4):

On 19 April 1995 the High Court handed down its decision in the matter of *Ridgeway v. The Queen*. By a majority of six to one the court decided that, where law enforcement officials use a controlled operation during an investigation into narcotics trafficking and, as a result, commit an element of an offence with which a defendant is charged, a court should normally refuse to admit the evidence of that element against the defendant. Some members of the court indicated that if law enforcement officers are to engage in such conduct in the course of investigations, a legislative scheme authorising this conduct would need to be established.

The bill that is now before the House responds to that judgment. The bill will ensure that there is a legislative base for controlled operations by law enforcement agencies and that the officers participating in such operations are protected from criminal responsibility for conduct undertaken in the course of their duty. The bill will also provide an avenue for the admission of evidence obtained from controlled operations prior to its commencement, provided the operation was conducted in conformity with established procedures...

Drug crime is peculiarly difficult to combat. Rarely are there complainants about this conduct. The importation of large quantities of drugs is a clandestine

criminal activity involving complicity, or participants who will remain silent for fear of retribution. Organised crime does not tolerate complaint.

As a result, the struggle against this trade involves very difficult choices for us as legislators and for the community. We are all committed to the preservation of fundamental values of equality, privacy, freedom of expression, the right to a fair trial and so on. Equally, however, there is the right of the individual to protection by the state. There is a powerful public interest in opposing the spread of illegal drug trafficking, and the official corruption it can spawn...

The law as regards accepting or rejecting evidence obtained by improper methods will be maintained. However, controlled operations may lead to the detection of principals whose activities might otherwise never be discovered, let alone prosecuted. I should emphasise that controlled operations are an internationally accepted investigatory technique.

On 14 February 1993 the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances came into force in Australia. That convention was implemented by legislation that commenced operation that same day. Article 11(1) of the convention provides as follows:

Article 11—Controlled delivery

1. If permitted by the basic principles of their respective domestic legal systems, the parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

This article indicates the recognition by the international community of the need to employ specialised investigative techniques, like the controlled operation, to deal with organised and sophisticated traffickers.

International Labor Organisation — Termination of Employment Convention — Remedies Available under State Law — Industrial Relations and Other Legislation Amendment Bill

On 30 August 1995, in the House of Representatives, the Special Minister of State, Assistant Minister for Industrial Relations and Minister Assisting the Prime Minister for Public Service Matters, Mr Johns, gave the second reading speech explaining the Industrial Relations and Other Legislation Amendment Bill 1995. Extracts from the text of the speech follow (House of Representatives, *Debates*, vol 203, p 819):

The main amendments in this bill will change the existing unfair dismissal provisions of the Industrial Relations Act 1988. The handling of cases will become simpler, more effective and less legalistic.

These proposals reflect the outcome of discussions with employer representatives, the ACTU and state governments. The amendments have been widely welcomed by leading business groups, including the ACCI and the MTIA, and have the support of the union movement as part of the latest accord between the government and the ACTU...

A number of fundamental minimum entitlements for Australian employees were introduced into the Industrial Relations Act by the Industrial Relations Reform Act 1993.

A key initiative was to ensure that employees are guaranteed a fair level of employment protection. This gives effect to the internationally recognised standards contained in the ILO's Termination of Employment Convention...

The Industrial Relations Act now ensures that employees have a remedy if they are unfairly dismissed. The legislation was not intended to supplant other fair remedies under state laws which met the international standard. Instead, it meant that an employee whose protection was inadequate, or who had no remedy at all, could use the federal system...

This has been a new field for federal legislation, which previously only provided remedies where dismissals were discriminatory, leaving the general area of unfair dismissals to state laws. Clearly, by enacting the legislation, the Commonwealth has filled in gaps in employment protection: gaps which had previously existed or which were created by regressive state legislation.

The government has carefully monitored the operation of the legislation, including by consultation with the National Labour Consultative Council and state industrial relations ministers. As a result of the consultative process, we now propose four changes to the existing provisions...

The third amendment will clarify when state law provides an acceptable alternative to the federal remedy. The government has always intended that dismissed employees use state remedies rather than the federal provisions when the state remedies provide satisfactory protection against unfair dismissals. The existing test of what is an acceptable alternative remedy has two elements: the remedy must be provided under machinery which gives effect to the ILO Convention; and the remedy must also be one which the court decides is adequate. This aspect of the legislation has operated more strictly than anticipated, so that only state laws which virtually replicate the federal legislation could be treated as adequate alternative remedies.

Most states have indicated that they are willing to provide protection against unfair dismissal which will meet the requirements of the ILO Convention but which may involve a different approach from that taken under the federal laws. This has been accepted by the members of the National Labor Consultative Council as an acceptable approach. Accordingly, under these amendments, if the court is satisfied that an alternative remedy meets the relevant requirements of the ILO Convention, no remedy will be available under the unlawful termination provisions of the Industrial Relations Act. It is of course implicit in this new provision that the state law must genuinely conform to the ILO Convention if it is to be regarded as satisfying the requirements of that Convention.

Under the amendment, a state will be able to give effect to the convention in its own way. Provision will also be made to give greater certainty to a state as to what will be taken to be an adequate alternative remedy. This is in response to requests by some states for such a provision. Accordingly, a state law will be taken to be an adequate alternative remedy where it requires the relevant state tribunal to give effect to the Convention and gives it the necessary powers to do so. This does not prevent a state from choosing another suitable approach to meeting the requirements of the Convention. Whichever approach is taken in the state law, it must also provide for the making of late applications by dismissed

employees who mistakenly applied for a remedy in the federal system rather than under the relevant state law...

Core Labour Standards — Australian Position

On 20 November 1995, in the House of Representatives, the Minister representing the Minister for Foreign Affairs, Mr Bilney, answered a question upon notice from Mr Ferguson (Reid, ALP), concerning the imprisonment overseas of several human rights campaigners. During the course of his answer, Mr Bilney said the following (House of Representatives, *Debates*, vol 205, p 3259):

> Mr Bilney—The Minister for Foreign Affairs has provided the following answer to the honourable member's question:
>
> The Australian Government is committed to the protection and promotion of core labour standards in the region as part of its overall human rights diplomacy. Australia is active in promoting support for freedom of expression, freedom of association and the activities of non-governmental organisations and individuals in civil society...

Core Labour Standards — International Organisations — Role in Protection — Australian View

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 46**
>
> *The Committee recommends that:...*
>
> *[ii] Australia initiate, through the UN and as necessary and appropriate in the future, the World Trade Organisation (WTO) a campaign to introduce international standards of minimum age and minimum conditions of work for the employed.*
>
> **[ii] Response**
>
> Accept in part.
>
> **Comment**
>
> Australia has already begun to raise the profile of labour standards issues within the UN system, is an active member of the ILO, and is engaged in regional and bilateral dialogue and projects aimed at protecting and promoting core labour standards. Australia's efforts in this area involve the Government, unions and industry reflecting our belief that a tripartite approach to the problem is the most effective way of achieving concrete results.
>
> The promotion and protection of core labour standards is an integral part of Australia's human rights diplomacy. Within the UN system, the ILO is the key organisation responsible for protecting and promoting core labour standards. The Australian Government strongly supports its role in elaborating, promoting and

monitoring international standards as well as its educational, information and technical assistance activities designed to enable countries to implement those standards. The Government considers that the ILO's capacity to monitor standards, identify abuses and ensure better compliance needs to be strengthened and will continue to work towards this end.

Elsewhere in the UN system, the Government will continue to support, and where appropriate promote, action on labour standards within the human rights machinery (eg, the Commission on Human Rights and its subsidiary bodies), working groups and special rapporteurs (eg, those working on contemporary forms of slavery) and the UN specialised agencies and funds (eg, UNICEF).

As well as working to introduce international standards, the Government is concerned that they are effectively implemented. The realisation of core labour standards is an important development goal and the aid program will seek further appropriate opportunities to protect and promote those standards through bilateral, regional and international programs eg, the Australian Support for ILO Objectives in Asia Project (ASILO), the Project to Support the Development of Departments of Labour in the Pacific (PACLAB) and the ILO's International Program on the Elimination of Child Labour (IPEC).

As outlined in the response to Recommendation 19 above, the Government has reservations about labour standards being raised in the WTO. The issue of whether there are enough trade related interests to warrant further discussion of trade and labour standards in the WTO has been raised by the United States and some European countries. The Government stands ready to contribute to such discussion in the WTO, but remains concerned that any links between labour standards and trade rules and obligations are not used for protectionist purposes, and do not create a North-South divide in the international trading system.

Core Labour Standards — Forced Prison Labour — 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*. Extracts from the response follow (Senate, *Debates*, vol 176, pp 4246–4281), and further extracts are to be found throughout this volume:

Recommendation 46

The Committee recommends that:...

[i] appropriate legislation be enacted to ensure that goods made in prison under conditions of forced labour are prohibited entry into Australia;

[i] Response

This recommendation is under consideration.

Comment

Australia considers forced prison labour to be a serious abuse of human rights. Forced prison labour is also a violation of a core ILO labour standard—freedom from forced or compulsory labour. It is important to distinguish between forced

prison labour and work done by prisoners under conditions which comply with the relevant international standards.

The Tripartite Working Party on Labour Standards which the Government established to explore ways in which Australia could better promote core labour standards in the region, is currently considering the possible use of legislation aimed at addressing trade in the products of forced prison labour.

The Working Party will look at several legislative options, including an import ban and a point-of-sale ban. In order to ensure that any proposed measure is effective and workable, previous Australian legislation addressing prison labour goods as well as legislation in place in countries such as the United States, the United Kingdom, Canada and New Zealand will be assessed.

The Working Party will take into account a wide range of factors that could impinge on the effectiveness of legislative measures, including identification and verification mechanisms, enforcement mechanisms and GATT obligations. The Working Party is also exploring approaches such as bilateral agreements with specific countries, cooperation between Australian and other Customs services and consumer/industry-driven practices such as product labelling and information campaigns. These could be used to complement, or as alternatives to, legislation.

The Working Party will report to Government later this year.

Recognition of Studies and Qualifications In Higher Education — Conventions — Australian Position

On 22 August 1995, in the House of Representatives, the Minister representing the Minister for Foreign Affairs, Mr Bilney, answered a question upon notice from Mr Jones (Lalor, ALP). The text of the question and answer follow (House of Representatives, *Debates*, vol 203, p 115):

Mr Jones asked the Minister representing the Minister for Foreign Affairs, upon notice, on 2 March 1995:

(1) Which states were represented at the International Conference of States with a View to Adoption of the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific which was held in Bangkok from 12 to 16 December 1983.

(2) On what date and in what context did Australia last raise the question of ratification or accession with each of the states referred to in part (1) which have not become parties to the Convention.

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

(1) Member States: Australia, Bhutan, China, Democratic Kampuchea, Democratic People's Republic of Korea, India, Japan, Lao People's Democratic Republic, Malaysia, Nepal, New Zealand, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Socialist Republic of Vietnam, Sri Lanka, Thailand, Turkey.

Non-Member States: Holy See, Brunei

2) Australia has not formally raised the question of ratification or accession with each of the States referred to in part (1) which have not become parties to the Convention, since 1990.

On 23 August 1995, in the House of Representatives, the Minister representing the Minister for Foreign Affairs, Mr Bilney, answered a question upon notice from Mr Jones (Lalor, ALP). Extracts from the text of the question and answer follow (House of Representatives, *Debates*, vol 203, p 349):

> Mr Jones asked the Minister representing the Minister for Foreign Affairs, upon notice, on 2 March 1995:
>
> (1) At its 144th session (25 April–5 May 1994), did the Executive Board of UNESCO (a) consider it desirable, timely and feasible to elaborate, in collaboration with the Council of Europe, a joint convention on academic mobility and recognition of studies and qualifications in higher education and (b) invite the Director General to carry out, in collaboration with the Council of Europe, the activities proposed for the drafting of a joint convention and to submit the results thereof to the Executive Board at its 147th session.
>
> (2) By its accession on 6 August 1986 did Australia become (a) the 21st party and (b) the first non-European party to the 1979 UNESCO Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region...
>
> 5) Since the answer to question No. 2077 (*Debates*, 17 December 1992, page 4285), has Australia conferred with (a) New Zealand and (b) member states of the Council of Europe on the education conventions adopted by the Council.
>
> Mr Bilney -The answer to the honourable member's question is as follows:
>
> (1) Yes to both parts (a) and (b).
>
> (2) (a) Australia became the 22nd party. (b) Yes.
>
> (5) No.

Further to this same topic, on 20 September 1995, in the House of Representatives, the Minister for Employment, Education and Training, Mr Crean, answered a further question upon notice from Mr Jones (Lalor, ALP). Extracts from the text of the question and answer follow (House of Representatives, *Debates*, vol 203, p 1434):

> Mr Jones asked the Minister for Employment, Education and Training, upon notice, on 28 August 1995:
>
> (2) What steps has his Department taken to assist UNESCO and the Council of Europe in drafting a joint convention on academic mobility and recognition of studies and qualifications in higher education for submission to the Executive Board of UNESCO at its 147th session in Paris on 3 October 1995.
>
> Mr Crean—The answer to the honourable member's question is as follows:
>
> (2) A working group was established by UNESCO and the Council of Europe to make progress with the joint Convention. While Australia is not on the working group, we fully support the proposal. My Department has helped in drafting the joint Convention by active participation in UNESCO/Council of Europe meetings in Malta (1994), Budapest (1994) and Ljubljana (1995), where the joint Convention has been on the agenda.
>
> As the report on the draft joint Convention will be submitted to the Executive Board of UNESCO in Paris on 3 October 1995...

Following the Executive Board meeting and the subsequent General Conference of UNESCO in November 1995, I understand that Australia and other signatory countries to the UNESCO Convention will be formally consulted on the joint Convention.