XV. Use of Force and War

Nuclear Non-Proliferation Treaty — Extension and Review — Article IV — Use of Nuclear Energy for Peaceful Purposes — Australian Statement

The following is the text of the statement made by the Representative of Australia, Mr Ian Cousins, at the 1995 Conference on the Treaty on Non-Proliferation of Nuclear Weapons (NPT). The statement was delivered at the fourth session of the Preparatory Committee in New York on 24 January 1995.

Mr Chairman, Australia's statements to the previous sessions of this Committee have surveyed international developments since the 1990 NPT Review Conference and focused on issues relating to Articles III and VI. As I foreshadowed at the last meeting of the preparatory committee, I will today address issues relating to the third key Article, namely Article IV.

But first there have again been significant developments since September which warrant comment. Moldova, Turkmenistan, Ukraine and very recently Algeria have joined the Treaty. Australia warmly welcomes these new NPT members. We are particularly pleased that Ukraine finally removed the uncertainty surrounding its position and reaffirmed its commitment to relinquish all remaining nuclear weapons on its soil. This step by Ukraine is also a key element in ensuring that the next stage of historic and deep nuclear arms reductions by the United States and Russia will proceed.

We are pleased that good work on a CTBT has continued intersessionally, focusing on the major verification provisions and putting the negotiations in Geneva on a better foundation to address now the key issues outstanding. The General Assembly CTBT Resolution, again adopted in 1994 by consensus, made clear that the international community wants to see the negotiations completed without delay. It was heartening that for the very first time the Resolution was co-sponsored by all five nuclear weapons states demonstrating their commitment to a CTBT.

We look to all members of the CD to pursue the negotiations with energy when the CD resumes next week. It is reasonable to expect substantial progress on the key elements of the Treaty by the time the NPTREC convenes. Australia would also like to see the CD agree without delay a mandate for negotiations on a cut-off convention. The General Assembly has made clear that negotiation of this new disarmament measure should be commenced.

The framework agreement between the United States and the DPRK is a major contribution to non-proliferation and to international security and we congratulate both parties. The agreed framework represents a major breakthrough in resolving a very difficult issue for the Treaty and for the Asia Pacific region. We look forward to the early implementation of the agreement. Australia has informed the parties directly involved that it will contribute to the implementation process. This episode demonstrates yet again that proliferation is no longer acceptable to the international community and it is the success of the

NPT which has clearly established this international norm. We must all ensure that the outcome of the Review and Extension Conference strengthens and does not undermine this very important principle.

We again welcome the continuation of the Middle East peace process and, in particular, the achievements of the Arms Control and Regional Security Working Group. Progress in arms control and non-proliferation efforts in the Middle East is a key to preventing the spread of weapons of mass destruction in that region and beyond. Membership of the NPT by all countries in the region would be a crucial element in this respect. In this context we were pleased to support the decisions of the IAEA's General Conference in September to extend technical assistance to territories under the jurisdiction of the Palestinian authority, and to restore Israel's access to technical assistance.

Mr. Chairman, there have, however, been developments which are less pleasing. In October, China conducted a further nuclear test. We hope China will heed the views of the international community by ceasing testing and joining the other nuclear weapons states in a moratorium.

As we noted at the previous session of this Committee, there continues to be insufficient progress on nuclear security assurances. We hope that it will be possible soon for the nuclear weapon states to issue a new harmonised position on security assurances.

Mr Chairman, turning to Article IV, this Article is one of the major strands of the intertwining obligations and benefits which comprise the Treaty. From the beginning of the nuclear age countries have struggled with the challenge of how to cooperate with one another in the peaceful uses of nuclear energy while not assisting nuclear proliferation. No country wishes to find itself in the position, wittingly or unwittingly, of contributing to nuclear weapons proliferation.

It has long been recognised that peaceful nuclear trade and cooperation require an assured environment of security and stability over the long term. Providers, buyers and recipients benefit from such an environment and in our increasingly interdependent world most countries, as is the case for Australia, find themselves in more than one category. It should also be remembered that the planning, construction and operation of nuclear plants over their planned life and their final decommissioning covers a period of the order of fifty years.

The NPT has provided the long term secure environment needed, through the combination of the basic non-proliferation undertakings in Articles I and II, the verification and supply provisions of Article III and the peaceful nuclear cooperation provisions of Article IV.

The challenge for Parties of the Treaty is to ensure that we emerge from the Review and Extension Conference with that secure long term environment in tact.

Mr Chairman, the issues associated with Article IV of the Treaty—including the power and non-power uses of nuclear energy, multilateral, regional and bilateral technical cooperation, and technology transfer, and the relationships between these various strands—merit a thorough and objective review at the Conference with the aim of seeking ways to improve cooperation and the implementation of multilateral programs. The excellent background document prepared by the IAEA Secretariat on Article IV will greatly assist this task.

In looking at Article IV, we are not dealing with simple equations. Some argue that alleged limits to access to technology have hindered nuclear

development. This is not so. There are many factors why the nuclear industry has not developed further in many Parties to the Treaty whether developed or developing. These include a country's economic priorities and development needs; the availability of alternative and cheaper sources of energy; lack of public acceptance of nuclear power; the cost of developing infrastructure to support nuclear activities; the ability of the educational, scientific and industrial base of a country to absorb and utilise the technology; and the availability of international finance.

These considerations, in different combinations, inform the decisions of all countries whether to proceed or not with certain kinds of peaceful nuclear development. For a very small number of countries, there is an additional non-proliferation factor that has to be acknowledged. A few countries by refusing to enter into non-proliferation obligations or by not abiding by their non-proliferation obligations experience a self imposed barrier to nuclear cooperation with other countries. The solution to their situation is in their own hands.

Mr Chairman, we have all watched with mounting concern over recent months reports of the smuggling of sensitive nuclear material. This has underlined as nothing else could the obligations of states to take action at the national level to ensure that sensitive nuclear material does not end up in the hands of those who would misuse it for non-peaceful purposes. Clearly states need competent systems of nuclear material accountancy to keep track of nuclear material. Nuclear establishments and the transport of nuclear material need appropriate physical protection and states need to have effective border controls so that they have control over what leaves their territory and are able to carry out their non-proliferation obligations not to permit sensitive nuclear and nuclear-related items to be transferred to non-peaceful or unsafeguarded programs or to terrorist groups.

Many countries use export licensing arrangements to perform this latter function. They provide an effective mechanism for carrying out the non-proliferation obligations under Article I, II and III of the Treaty. They are a way through which governments can be assured that they are abiding by those obligations. If you do not know what leaves your country, where it is going and how it is to be used, it is very difficult for you to know whether you are abiding by your obligations or not.

Some have sought to portray export licensing as a north/south issue, as a conspiracy and as going beyond the NPT. This is not so. All Parties have an obligation not to contribute to proliferation. To do so Parties need to have in place effective measures to ensure that this is the case. I have spoken earlier about the factors effecting nuclear development. Export licensing arrangements do not impede legitimate nuclear trade and cooperation in the peaceful uses of nuclear energy. They are an important part of the environment of long term assurance and stability that underpins nuclear cooperation. For NPT Parties abiding by their Treaty obligations—the vast majority of countries—this does not constitute an impediment.

Some Parties have worked together to come to a common understanding about what items are sensitive in the nuclear proliferation process. This has been necessary as the Treaty does not provide such details. The lists of items developed are circulated as IAEA documents and are available to all members of the NPT and the IAEA. Their value has been recognised by previous Review

Conferences and by the IAEA using them as a basis for sensitive items to be reported under its new universal reporting system.

Mr Chairman, Australia engages in nuclear cooperation within a strict non-proliferation framework. We give strict preference for NPT Parties in technical cooperation activities. Adherence to the NPT is an essential minimum requirement for access to Australian uranium exports. At the same time, we take seriously our Article IV obligations. There has been a steady expansion of Australia's nuclear cooperation with NPT Parties since 1970.

Australia's contribution to the fulfilment of Article IV of the Treaty will be set out in a paper to be circulated at the Conference. I would, however, like to make a few points at this juncture.

Human resource development has been a feature of our cooperation programs over many years and we have offered facilities and courses for training in many areas since 1970. We have chosen, however, not to include nuclear power as part of our own energy mix for electricity generation, and hence have been unable to offer direct assistance in that field to other Parties.

We are nevertheless a significant uranium producer and since resuming uranium exports in 1976, we have exported over 52,000 tonnes of uranium to NPT Parties.

The IAEA's technical cooperation fund, or TACF, is the principal source of funding for international nuclear technical cooperation activities and Australia has long been a strong supporter and contributor to the fund. For the years 1990–1995, our contributions have slightly exceeded our assessed share of the agreed target figures. In addition, Australia routinely pays in a full and timely manner its assessed contributions to the IAEA's regular budget, a significant proportion of which supports the IAEA's technical cooperation activities.

A second major pillar of our nuclear technical cooperation activities has been the IAEA's Regional Cooperative Agreement for Asia and the Pacific, or RCA, which Australia joined in 1977. RCA projects emphasise the use of well-developed nuclear technologies to improve the standard of living in the region. Over the period 1977–1995, we have given more than $US3 million for RCA activities. This assistance, equal to one-third of our total contributions to the IAEA's TACF since 1970, is additional to those contributions.

In addition to nuclear cooperation undertaken under IAEA and RCA auspices, we have provided funds and technical assistance for several bilateral nuclear cooperation projects and for a regionally sponsored nuclear cooperation forum.

We recognise, however, that technical cooperation activities are not operating at full strength and that improvements are required in their execution. For example, the IAEA's ability to respond to member state interest in the technical cooperation program is constrained by the failure of many member states to contribute in full to the TACF. We urge all countries to pledge their assessed contributions and make full and timely payments to the TACF.

Mr. Chairman, Article IV of the NPT is a key Article. My delegation looks forward to a thorough and informed review of its operation at the Conference and is hopeful that ideas will emerge, as at previous Review Conferences, which will help in a practical way to improve cooperation in the peaceful uses of nuclear energy and the implementation of the multilateral programs of the IAEA.

Nuclear Non-Proliferation Treaty — Article X — Rolling Fixed Extensions — Australian Position

On 28 March 1995, in the Senate, the Minister for Foreign Affairs, Senator Evans, answered a question without notice from Senator Margetts (WA, Green), concerning the Nuclear Non-Proliferation Treaty. The following is an extract of the question and answer (Senate, *Debates*, vol 170, p 2225):

> Senator Margetts—My question is addressed to the Minister for Foreign Affairs... Is the minister aware of the arguments presented by democratic South Africa at the fourth preparatory conference which suggest that so-called rolling fixed extensions are permissible under article 10 of the Nuclear Non-Proliferation Treaty? Does Australia, despite its view on indefinite extension, concur with South Africa that rolling fixed extensions are permissible? If so, why? If not, why not?
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> Senator Gareth Evans—As I think I have said before, the question of the non-proliferation treaty review and extension conference, commencing in three weeks in New York, is probably the most important issue facing the international community this year. It is crucially important to get this one right. Australia is very firmly continuing to argue for an indefinite extension of that treaty. We do so essentially for three reasons. First, so far as the nuclear weapons states are concerned, we think that indefinite extension will offer far and away the most encouragement for them to continue the process of disarmament and nuclear arms reduction on which they have already embarked. It will enable this far more so than at any previous time under the START I and II treaties and related measures of that kind. The uncertainty generated by a non-indefinite extension and the prospect of proliferation elsewhere would be the last thing calculated to encourage that process to proceed. Secondly, so far as the twilight zone countries are concerned—I will not name them, but I think we know who they are—who are either thought to have nuclear weapons, although not declared, or are on the threshold of being able to do so, again it is our very firm view that indefinite extension is far and away the best way to maintain the discipline on them not to go any further or hopefully to wind back. If you create an environment in which intellectual credibility is given to the possibility of proliferation being allowed and not outlawed by the international community, you do not help in any way maintain the pressure on those twilight zone states. Thirdly, so far as those other countries which have no intention ever of getting into the nuclear arms business but want access to peaceful nuclear technology and material supplies are concerned, again indefinite extension is the best environment within which they can be guaranteed supply, their needs satisfied and their political willingness accordingly to support the maintenance of non-proliferation of weapons can be maintained. In a nutshell, they are the reasons why we are supporting indefinite extension...
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> As to your last question about South Africa, it may well be the case that the kind of extension that it is talking about with rolling fixed extensions is permissible under the terms of Article 10 of the treaty. Article 10 identifies several different options for extension after this current period has expired, as it has that is, indefinite, fixed or for fixed periods. That is not the point. The argument is not whether it is legally permissible to come up with one or other of these models and South Africa, to our knowledge, has not firmly advocated any particular position; it is just stating an option; the argument is about the policy

choices that we should be making. For all the reasons I have already indicated, Australia is of the very firm view that that policy choice ought to be for indefinite extension...

Nuclear Non-Proliferation Treaty — Review and Extension — Australian Statement

On 18 April 1995, the Minister for Foreign Affairs, Senator Evans, made the following statement entitled *Non-Proliferation and The NPT*, to the Nuclear Non-Proliferation (NPT) Treaty Review and Extension Conference, held in New York:

In a few months time the international community will mark the fiftieth anniversary of the foundation of the United Nations. That momentous event brought with it the promise of a new way of managing relations between states, and of a new order in the place of the failures and cynicism of the 1920s and 1930s which had produced war and destruction on a catastrophic scale. But this year also marks a more distressing anniversary. It is fifty years since the world first learned of the unparalleled destructive power of nuclear weapons, and first realised that our fate was to live under the shadow of nuclear holocaust—the possibility, unknown before in history, that civilisation might one day be brought to an abrupt and terrible end.

The two contradictory themes that these events produced—on the one hand, the promise of a new spirit of cooperation among nations, but on the other the fear of nuclear annihilation—intersected in 1970 with the entry into force of the Nuclear Non-Proliferation Treaty. Ours was a fearful world then, with the Cold War superpowers targeting civilian populations with weapons sufficient to assure their destruction many times over, and with a number of states seeking to acquire those weapons for themselves. The NPT was a bold commitment to constructing a better future, in which states would put their faith in international arrangements and turn their backs on the option of nuclear weaponry. It recognised the grave consequences for international security not only of the spread of nuclear weapons beyond those states which already had them, but also in the continued growth of existing nuclear arsenals. It has played a central role in our security. Its twenty-fifth anniversary this year is no less significant for us, and for the future of our children, than the anniversary of the founding of the UN itself.

All nations, the nuclear weapon states, the non-nuclear weapon states and even states which have not joined the NPT, derive major benefits from it and have major interests at stake in its continued success. That success, in the period of the Treaty's first twenty-five years, is unmistakable. It has been embraced by the very great majority of nations. Its present membership of 178 states makes it by far the most widely adhered-to security and arms control treaty in existence. Its achievement in attracting some 39 additional members over the last five years, including two of the original nuclear weapon states, one state which had formerly operated unsafeguarded nuclear facilities and 14 states which were formerly part of a nuclear weapon state, has advanced it far along the road to the goal of universal membership.

The growth of the Treaty's membership reflects most strikingly its success in preventing the horizontal spread of nuclear weapons. Despite challenges to the international non-proliferation regime, the disturbing predictions current in the

1960s that an additional 20 or 25 states would gain nuclear weapons by the 1980s, have not come to pass. And that has been a direct consequence of the NPT. I might add here that Australia itself was seen as one of those countries with the capability and possible intention to develop nuclear weapons. But we, like so many others, chose not to pursue that option and instead to put our faith in the Treaty, which we signed in 1970 and ratified in 1973.

However welcome these achievements, they should not lead us to assume that the dangers are essentially past. The historic global changes which brought an end to the Cold War and the rivalry between the superpowers have certainly offered new hope for building a less mistrustful and a more secure world. The threat of global nuclear war has clearly receded. But the decline of tension in the central balance has not carried over uniformly to a decline in regional confrontations. Events of the past few years in the Middle East, Africa and Europe provide a sharp reminder of the deep enmities that still persist in many parts of our world, enmities that have spilled over all too often into armed conflict with loss of life, abuses of human rights and destruction on a massive scale. Regional conflicts of the kind we have seen in recent years cannot be entirely insulated, and their effects cannot be confined to their immediate neighbourhood. The risk that they will provoke wider tensions, and that they will engage the interests of states possessing a nuclear weapon capability, cannot be ruled out.

Nor has the end of the Cold War brought any reduction in challenges to the nuclear non-proliferation regime itself. Cases of non-compliance; new concerns about nuclear smuggling; and the presence of sensitive unsafeguarded facilities in India, Pakistan and Israel are issues which must be faced by us all. There can be no grounds for complacency about the non-proliferation regime's ability to continue to provide the level of security of the past twenty-five years if these issues are not recognised and acted on.

It should be the aim of this Conference to make the decisions which will allow the NPT to operate better, so that it can continue to meet its objectives in the face of future challenges. Those objectives must be to establish non-proliferation irrevocably as the future standard for international behaviour, and to allow no other standard to apply; to continue and accelerate the progress which is being made toward eventual nuclear disarmament; to achieve universal membership of the Treaty, so that all the nations are bound to its non-proliferation provisions; and to strengthen cooperation in the peaceful uses of nuclear energy. The decisions which are made here, if they are to meet these objectives, must satisfy the varying interests of different groups of states, including the nuclear weapon states, the non-nuclear weapon states and those in particularly troubled regions.

The NPT is, with the United Nations Charter, fundamental to the maintenance of international security, part of the very framework of peaceful relations between states. This Conference, at the end of the Treaty's first twenty-five years, is facing the central issue of how it is to be extended into the future. Australia's position is one of very strong support for indefinite extension.

Our starting point in addressing this question is, for us, the absolute unthinkability intellectually and morally of a world which did not have a treaty regime in place dedicated to the containment of nuclear proliferation and the elimination, however long it takes, of existing nuclear weapons. The NPT is the only treaty of global reach that we have, or ever likely to have, binding its

members to these objectives. The idea that this Treaty, with these obligations, could ever come to an end—with nothing as strong or stronger to replace it—is simply not an idea that we could every comfortably embrace. So we see a decision of indefinite extension as the only possible position of principle to take for those of us resolutely committed to achieving a nuclear weapon free world.

We see indefinite extension, moreover, as the outcome which will be most effective in pressing the existing declared nuclear weapon states to continue the process of nuclear disarmament which has now begun; we see it as the outcome best calculated to contain the nuclear aspirations of the so called threshold states; and we see it as the outcome which will best meet the interests of all the other parties to the Treaty who want to utilise its provisions encouraging, and enabling, peaceful nuclear cooperation.

NWS and nuclear disarmament

For the nuclear weapon states indefinite extension offers by far the best encouragement to continue the historic process of nuclear arms reduction which has finally begun.

Australia shares the disappointment of many member states that more progress was not possible in reducing nuclear weapon stockpiles during the Cold War. But this Conference is not about the past, and we must not let the past preoccupy us with its regrets about what might or might not have been done. Nor must we see in the Conference an opportunity to single out any one group of member states for blame or for recrimination. To allow the decision on extension to be influenced by a desire to punish one group of states or another for their past performance would be as misguided as it would be dangerous for our wider interests in the Treaty. Our only purpose must be to build for the future, by finding ways in which the goal of non-proliferation and nuclear disarmament can be strengthened.

It is clear that the nuclear arms race has now been reversed, as called for by Article VI, and that nuclear disarmament of historic proportions is now happening. The end of the Cold War has produced an environment in which, for the first time since the beginning of the nuclear age, such progress is possible. The United States and Russia are each destroying about two thousand weapons a year under the provisions of the START I and START II agreements. Under the Lisbon Protocol to START II the process has been extended to the former Soviet states with nuclear weapons and missiles on their territory Ukraine, Kazakhstan and Belarus. Nuclear weapons have been removed from the surface vessels of the United States and United Kingdom navies. The United States, United Kingdom and Russia have de-targeted their strategic nuclear missiles. Negotiations on the Comprehensive Nuclear Test Ban Treaty are far advanced and are most likely to be concluded this year. All five nuclear weapon states now support the negotiation of a cut off convention to ban the production of fissile material for weapons purposes. They have also agreed on improved positive and negative nuclear security assurances for non-nuclear weapon states.

These are facts, the significance of which cannot be credibly denied without deliberately moving the goal posts of what is being demanded. To say that we hope and expect that more will be possible is in no way to deny that progress has been achieved of a kind, and on a scale, which would have seemed extremely improbable just a few years ago. In this process, the NPT has played a vital role in creating the conditions of confidence about non-proliferation which have

allowed nuclear disarmament to proceed. A qualified decision to extend the Treaty cannot possibly help the disarmament process. Placing limits on the Treaty or creating uncertainty about its future will not produce the results that the nuclear weapon states and the non-nuclear weapon states alike are seeking. As a matter of simple practicality, we must ask ourselves how the nuclear weapon states would ever proceed to further significant arms reductions in a climate of doubt about renewed horizontal proliferation of nuclear weapons. A qualified or temporary renewal of the Treaty is precisely the action which would trigger such doubts. If we are serious in our desire to lock in the progress which has already been made and achieve further nuclear disarmament, indefinite extension of the NPT is the only way to reassure the nuclear weapon states that it can be achieved without unacceptable security risks.

The argument that has been put sometimes that indefinite extension will somehow legitimise the status of the nuclear weapon states forever is quite unfounded. The NPT has been the single most important factor in establishing the international norm against nuclear weapons, and it remains the only international nuclear disarmament agreement which has been signed by all five nuclear weapon states. The division in the Treaty between the nuclear and the non-nuclear weapon states is in no sense a permanent one. The former are committed by the Treaty to removing that division. Indefinite extension of the Treaty will not weaken the obligations of the parties under Article VI.

We must press ahead toward the goal of eventual elimination of nuclear weapons. This Conference must provide the environment in which the process of deep reductions agreed between the United States and Russia can be continued and accelerated, including by moving on to a START III agreement. We look to the three smaller nuclear weapon states to join in this process of disarmament at the earliest appropriate opportunity. We wish to see a permanent and truly comprehensive end to the testing of nuclear weapons through the conclusion this year of the CTBT negotiations in Geneva, a Treaty to which it is very much Australia's intention to be an original signatory. And we look to see a start this year on negotiations for a convention banning the production of fissile material for weapons purposes.

Threshold states

The question of Treaty extension is also of direct significance for achieving universal membership and for the problem of the small handful of threshold or "twilight zone" states which remain outside the Treaty, about which there are strong grounds for suspecting that they possess a nuclear weapons capability. The existence of these states is sometimes used as a criticism of the Treaty. But this is a criticism without any basis in logic. States join the NPT as a sovereign unilateral decision. If threshold states are not prepared to forswear nuclear weapons forever, as some 170 other states have done, it is their decision, for which they alone have responsibility, and it cannot be portrayed as the result of any shortcoming by the Treaty.

Indefinite extension of the Treaty is the only response by this Conference that will make it more, rather than less, likely that threshold states will eventually decide to look for their security in the renunciation of nuclear weapons. Their interest in acquiring nuclear weapons has been driven largely by regional tensions and rivalries, which have at times been expressed in armed conflict and which fuel suspicions that neighbouring states are seeking a nuclear capability.

Self-perpetuating systems of nuclear escalation—regional arms races—are the result, and the dangers they pose for international security are disturbing. The NPT was designed to meet just such proliferation pressures, by offering the assurance, through international inspection, that states are adhering to their undertakings not to acquire nuclear weapons. An NPT which is renewed for only a limited period is unlikely to have much impact in these circumstances. It is only an NPT, renewed indefinitely, which can possibly offer threshold states the sort of assurance they will need if they are to break out of the circle of nuclear escalation.

Only with such an NPT will the parties to the Treaty be able to exert increased pressure on the threshold states and demonstrate to them that their nuclear ambitions are unacceptable to the vast majority of the world's nations. Such pressure may well generate the necessary reassessment of their position which could lead them to wind back their nuclear acquisition programs, or at least not to take them forward. To renew the Treaty with less than an indefinite extension would be to send quite the wrong signals to these states, telling them that the world is not irrevocably committed to non-proliferation, and thereby encouraging them to persevere in their ways.

Those who reject the likelihood of threshold states ever abandoning their nuclear capabilities should bear in mind the case of South Africa's decision to join the NPT four years ago, a decision which preceded the democratic reforms which brought about majority rule. That decision was influenced by the attraction of enhanced security and by the international pressures against possession of nuclear weapons, which a strong NPT was able to bring to bear. These are the factors which have encouraged so many new states to join the Treaty since the last Review Conference five years ago. If we are to have the best chance of achieving the goal of universal membership by bringing into the Treaty's fold the 10 or so remaining non-members, it will be vital to extend it indefinitely.

Peaceful Nuclear Cooperation

From the point of view of those who want to utilise, either as suppliers or recipients, the provisions of the NPT relating to peaceful nuclear cooperation, indefinite extension is also vital: those provisions depend heavily for their effectiveness on the existence of a climate of certainty about non-proliferation.

Article IV is one of the major strands of the interconnected obligations and benefits which comprise the NPT. The record of Article IV implementation has been a good one, characterised by large scale and effective assistance to member states through the IAEA's Technical Cooperation Fund as well as its Regional Cooperative Agreements. It has long been recognised that peaceful nuclear trade and cooperation requires an assured environment of security and stability over the long term. Providers, buyers and recipients benefit from such an environment and it is often the case that states find themselves in more than one category. Australia is, for example, a major supplier of uranium but has been a buyer of the technology required for the construction and operation of its research reactor. The significance of long term non-proliferation assurances is magnified by the fact that the planning, construction and operation of nuclear plants over their planned life spans, together with their final decommissioning, typically covers a period of the order of fifty years and involves major investments of financial and other resources.

It is clear that any uncertainty which may arise about possible proliferation is inimical to nuclear cooperation. A suggestion that the non-proliferation regime may be weakened in future, with the consequences that might have for the subsequent attitudes of either supplier or recipient states to acquiring nuclear weapons, would have grave consequences for decisions on cooperation. It would also provide additional ammunition for those opposed to the peaceful uses of nuclear energy, who are already sceptical about the NPT's ability to meet its non-proliferation objectives.

In all these circumstances, indefinite extension will provide the most stable environment for peaceful nuclear cooperation. It will provide a basis for the long term assurance that is essential, both for suppliers and recipients, that their nuclear cooperation is for exclusively peaceful purposes and does not risk proliferation. As a matter of prudent national policy, recipients need the assurances of long-term cooperation when embarking on costly, long-term projects. For their part, suppliers naturally require assurances that their nuclear exports will not contribute to proliferation.

In pursuing nuclear cooperation objectives it is common for states to give effect to their Treaty obligations under Articles I, II and III by applying export licensing arrangements or other types of export controls. Recent examples of non-compliance show just how important it is that export licensing arrangements be made fully effective. By ensuring that nuclear material, equipment and technology is provided to non-nuclear weapon states only where it is subject to fullscope IAEA safeguards, these controls underpin and reinforce the Treaty's essential non-proliferation objective. They play a legitimate complementary role in establishing an environment of long term assurance and stability which is necessary for effective cooperation.

A few states have sought to portray export controls as a North/South issue, as involving a cartel or as a conspiracy which goes beyond the legitimate terms of the NPT. This is not so. Export licensing arrangements do not impede legitimate nuclear trade and cooperation. Rather, they are an important part of the environment of long term assurance and stability that underpins nuclear cooperation. For NPT parties abiding by their Treaty obligations—and that is clearly the vast majority of countries—such controls do not constitute any sort of impediment. Nor do informal arrangements such as the Nuclear Suppliers Group operate as any sort of cartel.

An aspect of these controls which is of particular interest to Australia is the centrality of fullscope IAEA safeguards as a condition of nuclear supply to non-nuclear weapon states. Australia and a group of other states pursued this initiative with considerable success at the Fourth Review Conference in 1990, attracting wide co-sponsorship and support. As a result of that success, and because of a concern to tighten supply arrangements in the wake of the Gulf War, the fullscope safeguards supply principle—that nuclear supply to non-nuclear weapon states should only be on the basis of their having accepted comprehensive IAEA safeguards—has now become the accepted international standard for nuclear supply to non-nuclear weapon states. The principle has, in response to debate at the 1990 Conference, been adopted by the Nuclear Suppliers Group and is now formally incorporated into its supply guidelines. The principle is a most important one which has made a significant contribution to strengthening the non-proliferation regime. I commend it wholeheartedly to the

Conference and I hope that members will endorse it by consensus in reviewing the operations of the Treaty.

With this Conference we have reached a crucial point in our joint efforts to build a world free of the threat of nuclear destruction. The proliferation dangers which led to the Treaty's creation 25 years ago have been held in check. But we cannot un-invent nuclear weapons, however much we might like to do so, and we must not imagine that their power over us has been broken forever. On the contrary, such challenges as advances in science and technology, the dissemination of powerful computers and new threats arising from illicit transfers of nuclear material make our world more potentially vulnerable to nuclear proliferation than it has ever been. In the face of these new challenges the importance of the NPT, and the importance of the norm of behaviour which it entails, is correspondingly higher than ever before.

In an age of complex international agreements—START I, for example, is some 280 pages long—the NPT is a refreshing model of brevity and clarity, a simple treaty couched in direct language. Much of its strength lies in that simplicity and in the clear balance it strikes between the interests of different categories of states as they existed in the 1960s, a balance which is just as relevant and workable today.

The argument about the NPT's renewal is just as simple, and it can be summarised in a few words. There is no way in which a decision to place qualifications or limitations on renewal can do anything but weaken the Treaty. We cannot and should not pretend otherwise, and an outcome that damages the Treaty is something that we must not risk. Only a Treaty strengthened and supported by its members with a decision to extend it indefinitely can guarantee that its objectives will be met and that the interests of all its members will be protected.

Nuclear Non-Proliferation Treaty — Indefinite Extension

The following is extracted from the text of a news release issued by the Minister for Foreign Affairs, Senator Evans, on 12 May 1995:

The world now has a Nuclear Non-Proliferation Treaty for all nations for all time.

The Australian Government warmly welcomes the historic decision, by the Conference of States Party to the Nuclear Non-Proliferation Treaty (NPT) meeting in New York, that the Treaty continue in force indefinitely. The decision was adopted without a vote in the common interests of all parties to the Treaty.

The decision reinforces the commitment of the international community to a world free of nuclear weapons, and represents the achievement of a major security and foreign policy objective for Australia.

Indefinite extension of the NPT, for which Australia had worked long and hard -

- offers by far the best encouragement for the nuclear weapon states to continue the historic process of nuclear arms reductions which had finally begun;
- will make it more likely that the threshold or "twilight zone" states remaining outside the Treaty will eventually decide to look for their security in the renunciation of nuclear weapons; and

- is vital for implementation of the provisions of the Treaty on peaceful nuclear cooperation since they depend heavily on the existence of a climate of certainty about the non-proliferation of nuclear weapons.

In an accompanying decision on principles and objectives, the Conference sets 1996 as a deadline for the completion of negotiations on a Comprehensive Test Ban Treaty, and calls for an immediate start to negotiations on a convention banning the production of fissile material for explosive purposes.

We very much welcome these decisions on disarmament objectives for which Australia has been working for many years. The Conference has called on the nuclear weapons states to exercise the utmost restraint pending conclusion of the Test Ban Treaty. I repeat my appeal to the new French President to maintain the suspension of nuclear testing in the South Pacific, and urge China to join the other nuclear weapons states in declaring a testing moratorium.

We also welcome the call for the determined pursuit of nuclear disarmament by the nuclear weapons states. Australia wishes to see the United States and Russia continue the process of deep nuclear reductions, and looks to China, France and the United Kingdom joining this process at the earliest possible time.

The Conference is continuing its work on reviewing the operation of the Treaty, and this important work covering disarmament, universal adherence to the treaty, safeguards and cooperation in the peaceful uses of nuclear energy is scheduled to be adopted at the conclusion of the Conference on 12 May.

Comprehensive Test Ban Treaty — Negotiations — Australia's View

The following article, entitled *A Comprehensive Test Ban Treaty: Australia's Goal*, was written by Fiona Skivington, a public affairs officer of the Department of Foreign Affairs and Trade, and appeared in *Insight* (1995, vol 4, 17), a publication of the Department:

> The signing of a Comprehensive Test Ban Treaty (CTBT) particularly by all nuclear weapon states, has been a long-standing Australian goal. The CTBT is intended to ban all nuclear tests in all environments for all time. It will act as a major impediment to the development of new generations of nuclear weapons by the nuclear weapon states. The treaty will perform a vital nuclear non-proliferation function by prohibiting nuclear testing and inhibiting weapons development by potential new nuclear weapon states, including the so-called nuclear threshold states. The CTBT will contribute to the eventual elimination of nuclear weapons.
>
> **The Negotiations**
>
> Negotiations for a CTBT began in earnest in January 1994 at the Conference on Disarmament (CD) in Geneva. In May 1995, 175 states, including the nuclear weapon states, made a commitment at the Nuclear Non-Proliferation Treaty Review and Extension Conference in New York to conclude a CTBT no later than 1996. The CTBT negotiations are conducted within the CD's Nuclear Test Ban Ad Hoc Committee. Work is divided between two working groups: one deals with verification, and the other with legal and institutional issues. The CTBT rolling text is divided into about 20 legal and institutional articles and a large section on verification. Drafting groups are dedicated to individual Treaty articles. The exact location of much of the verification material is yet to be agreed; but there will be protocols and appendices to the Treaty.

The single most important issue to be resolved concerns the scope of the CTBT: precisely what activities the CTBT will ban, and what safety and reliability measures the nuclear weapon states will be allowed to continue, that is, "activities not prohibited". The debate within and among the nuclear weapon states on what activities are required, and at what level, is based on scientific arguments about the acceptable minimum level of confidence for the safety and reliability of their nuclear weapons stockpiles. As yet there is no common view among the nuclear weapon states.

The recent US, French and UK announcements of commitment to a true zero-yield CTBT represent a major breakthrough in the negotiations, and have raised Australia's confidence that a strong and effective CTBT will be signed in 1996.

Australia's role

Australia brokered the original negotiating mandate for a CTBT in collaboration with Nigeria and Mexico in 1993, and has played a leading role throughout the negotiations. Australia has traditionally sponsored together with New Zealand a United Nations General Assembly (UNGA) resolution calling for the negotiation of a CTBT. In 1993, at UNGA48, the combined efforts of Australia, New Zealand and Mexico resulted in the first consensus CTBT resolution. The Australia/New Zealand/Mexico "troika" achieved a second consensus CTBT resolution at UNGA49 in 1994 with, for the first time, the co-sponsorship of the five nuclear weapon states and the call for conclusion of the negotiations "without delay". Australia was a key player in the negotiation of the Nuclear Non-Proliferation Treaty Review and Extension Conference document which for the first time set "no later than 1996" as the deadline for the completion of CTBT negotiations. The conference called on the nuclear weapon states to exercise utmost restraint on testing before a CTBT came into force.

In March 1994, in an effort to move the negotiations forward as quickly as possible, Australia tabled a comprehensive set of draft Treaty elements and accompanying explanatory notes which provided a solid foundation for the negotiations. Intensive negotiations throughout the 1994 CD session produced a complete rolling negotiating text which, to a large extent, reflected Australian ideas and objectives for the Treaty. Negotiations have proceeded on the basis of that text. Australia has tabled also a large number of working papers designed to clarify outstanding issues and promote Australian priorities. Members of the Australian delegation have convened a number of the working groups devoted to specific articles of the Treaty. Australia has also made a significant contribution to the development of the verification system by providing technical experts in the seismic, hydroacoustic, infrasound and radionuclide fields. Australian technical experts participate internationally in CTBT-related conferences and in the negotiations in Geneva. They also act as a consultative panel for the Department of Foreign Affairs and Trade to assist in the development of Australian policy in the verification field.

On the critical issue of CTBT scope, Australia's approach has always been that the Treaty must be truly comprehensive. This position has been made known to the nuclear weapon states repeatedly and emphatically.

In March 1995, Australia tabled a draft scope article in the CD which would ban "any nuclear weapon test explosion or any other nuclear explosion". So far the article has been endorsed by three of the five nuclear weapon states.

Suggestions for a threshold to allow for continued testing to qualify as "activities not prohibited" would be totally unacceptable and incompatible with the intended comprehensive nature of the CTBT. Australia has been at the forefront of non-nuclear weapon states' opposition to these suggestions.

As part of its response to France's announcement in June 1995 that it would resume nuclear testing, the Australian Government sent a high-level officials mission the following month to visit the nuclear weapon states for urgent discussions on the CTBT negotiations. This was the most recent in a series of Australian missions garnering support for a CTBT. The principal objectives of the July 1995 mission were to argue the case for a truly comprehensive CTBT and to urge an acceleration of the CTBT negotiations to ensure conclusion and signature of the Treaty by late 1996. The mission also reiterated Australian opposition to the nuclear testing programs of France and China.

Conclusion of negotiations

Australia firmly believes that the non-nuclear weapon states must continue to drive home to the nuclear weapon states the urgent need for acceleration of the CTBT negotiations and the importance of the Treaty for global nuclear non-proliferation and disarmament efforts. Australia will continue its intensive efforts until its objective of conclusion and signature of a comprehensive and permanent ban on nuclear testing is achieved in 1996.

Inhumane Weapons Convention — Use of Landmines — Australian Position

In Australia in 1995, the issue of the use of landmines emerged as an important topic of concern. A national day of awareness was marked on 28 August 1995, and a number of Australian statements on the issue were made throughout the year.

On 1 June 1995, the Minister for Foreign Affairs, Senator Evans, answered a question without notice from Senator Margetts (WA, Greens) concerning landmines. The following is an extract from the text of the question and answer (Senate, *Debates*, vol 171, p 697):

> Senator Margetts—My question is directed to the Minister for Foreign Affairs, Senator Gareth Evans. I refer to the Review Conference on Landmines in Cambodia this month and the Review Conference on the Inhumane Weapons Convention in Vienna in September. How can the government justify not supporting a complete ban on antipersonnel landmines, including their manufacture, given their appalling record as an indiscriminate destructive weapon which is mainly targeted at civilians in regions of conflict and whose effects are felt a long time after the conflict is over? Given that there is no guarantee that antipersonnel landmines with self destruct mechanisms will actually self destruct, and both self destruct and detectable landmines are far more expensive than cheaper plastic devices, why does the government believe that a partial ban on landmines would be at all effective?
>
> Senator Gareth Evans—The only reason we are opposing the banning absolutely of the production and deployment of landmines is that to seek to do that would be hopelessly utopian. I know that that is never a disincentive for your particular party in these matters, but it is one of the problems that we confront in the real

world that the rest of us inhabit. The difficulty about living in that particular real world is that most governments do regard landmines as a legitimate defensive conventional weapon when, of course, used in accordance with the rules of war—namely, that you map where you put them and you take them up afterwards. That is the way in which landmines had traditionally been deployed and utilised, until we got into the cycle of appalling civil war and utilisation of such weapons in Afghanistan, Cambodia and elsewhere of recent years where, obviously, no rules of that kind have remotely thought of being applied.

Landmines, as a remotely controlled or as a delayed action weapon, do perform a unique military function in protection of our defence forces and those of our allies in the field, and one simply cannot argue with the military realities in that respect. Certainly, those military realities are governing the reaction of governments all round the world when it comes to changing the Inhumane Weapons Convention.

The risk to civilians, the real issue that we are all trying to address, arises because mines remain unexploded after hostilities cease and when battlefields have returned to civilian uses. That is why we are pushing for this ban on long-lived landmines—those which do not self destruct over a certain period—and for a requirement for routine marking, monitoring and fencing of minefields to protect civilians. They are more costly, as you acknowledge; nonetheless, there is a mood among governments around the world to consider seriously that particular option and to pursue it. Given the available choices, which is between doing something and basically being able to do nothing, we are trying very hard to do something.

As we approach the Review Conference on the Inhumane Weapons Convention, and as we approach the NGO conference that you referred to, which will take place in Phnom Penh, as you say, later this week, and where our ambassador will be participating and where we are in fact making a financial contribution to that conference, our priority has been to try to get support for such a selective ban on the use of long-lived antipersonnel landmines.

We also want to put a ban on the transfer of prohibited classes of landmines to non-states parties to the convention, and we want to restrict the transfers of permitted landmines, as a consequence, to states parties. We want to extend the protocol to cover non-international conflicts, these crucially important internal ones where most of the problem has been, and we want to try to develop better verification and compliance provisions so far as use is concerned. That is our strategy. Obviously, you do not regard it as an optimal one, and I can understand that. But, realistically, it is the only one available.

What we are trying to do in addition to all of that is make a major contribution to the demining of all those various parts of the world where the legacy of past misbehaviour in this respect continues to wreak havoc. We are making a significant financial contribution to the Cambodian government. We are making a financial contribution to the UN mine clearance program in Afghanistan. We will also be announcing a significant contribution to the newly established UN voluntary trust fund on mine clearance at the international meeting on mine clearance which will be held in Geneva next month.

In July 1995, the United Nations held an International Meeting on Mine Clearance. On 6 July 1995, at the Meeting, the Minister for Defence Science and Personnel, Mr Punch, gave the following speech:

I would like to extend my appreciation, and that of the Australian Government, to the Secretary-General, Dr Boutros Boutros-Ghali, for the sense of urgency he has displayed in organising this Conference so promptly. The terrible human costs brought about by the misuse of landmines makes a concerted international demining effort one of the most pressing requirements of our time.

Antipersonnel mines result in horrendous physical injuries and carnage, often long after conflict has ended. The term "weapons of mass destruction in slow motion" has unfortunately been well earned. The need for the medical treatment and rehabilitation of victims places great strain on countries with severely limited resources.

Mines have an effect beyond the visible, and often tragic, impact of human suffering.

Mines also result in widespread disruption to social and economic activity. Mines restrict the productive use of arable land in war ravaged countries where the people rely heavily on agriculture for their livelihood. In Cambodia, for example, fertile rice growing areas remain unused, refugees are prevented from returning to their homes, and the country's ability to move towards self sufficiency in feeding its own people has been sorely restricted.

The Australian Government has long recognised the importance of this issue. We have a proud record of contributing to international demining activity:

- We were one of the first countries into Afghanistan in 1989 and the last to leave in 1993. In that time we helped to train over 14,000 Afghans in mine clearance.

- Australian defence personnel continue to serve in Mozambique and Cambodia. We provide funding to UN agencies for work in both countries and in Afghanistan.

- Our contribution to the international demining effort to date is worth almost $15 million, with nearly $4 million spent on demining in Cambodia alone in 1994/95.

The challenge we now face is to address these problems in a concrete way, and with an increased sense of urgency. The removal of landmines and the treatment and rehabilitation of victims must remain a priority. But our efforts cannot be restricted to clearing up the legacy of the past. It is also imperative that we develop an agreed and workable set of controls to ensure that the terrible situation we are witnessing today cannot be repeated in the future...

While the humanitarian and development assistance work of the UN, national Governments, and international organisations will remain important, limiting our efforts to these programs cannot solve the problems created by antipersonnel mines. It would be like a doctor who treats a patient's symptoms, yet fails to cure the underlying disease. As a result, the patient continues to suffer.

The international community must establish clear and unambiguous controls which ensure that the practices of the past are not repeated. The laws governing war reflect international consensus that war, abhorrent though it is, must comply with humanitarian constraints. This consensus needs to be expanded.

In this endeavour, we attach considerable importance to this September's Review Conference on the 1980 Convention on the Use of Certain Conventional

Weapons Which May Be Deemed to be Excessively Injurious—"the Inhumane Weapons Convention".

At the root of the landmines problem is the fact that indiscriminate injury and death to civilians continues well after conflict has ended. The measures Australia is, and will continue to argue for, go to the heart of that problem. The Australian Government is urging all countries to support:

- a ban on antipersonnel mines, that is a ban on landmines which do not have both self destruction and self deactivation capability; and
- a ban on non detectable mines.

And to reinforce the effect of those measures, we are also urging:

- a ban on trade in any mines which are not sanctioned by the Convention;
- a ban on the supply of mines to all countries not party to the Convention and to all non government entities; and
- the extension of the Convention to cover internal conflict.

We believe these proposals are realistic. And we are very sure that, if implemented, they would greatly alleviate the problems posed by the misuse of landmines.

To demonstrate the strength of our commitment, Australia is now preparing a plan to allow replacement of our own current mine stocks to comply with the conditions we are proposing. While there could be considerable costs involved in converting from long-lived to self destructing landmines, this financial cost is small when compared to the humanitarian costs, in terms of the loss of life, the rehabilitation of victims and the clearing of long-lived landmines.

Australia is also seeking to enhance the authority of the 1980 Inhumane Weapons Convention, by encouraging a larger number of countries, especially those in the Asia Pacific, to become a party to it.

Australia believes we must make the Convention the undisputed international standard on mine matters, so that its provisions have the force of accepted international law. We should remember that, had the provisions of even the present Convention been followed by insurgent forces, the extent of the problems we face would have been much less. Our proposed improvements would further reduce the likelihood of problems of today's extent. These are especially important points, which we must not overlook.

The international community has made significant progress in demining. Continued assistance and support by governments and non government organisations to the international demining effort is imperative if we are to achieve further progress in solving today's problem. More importantly, greater authority and stronger provisions for the Inhumane Weapons Convention will prevent tomorrow's problem. I am encouraged by the commitment the international community is showing, as witnessed by our participation here. Australia looks forward to working with you all to achieve a successful outcome from this meeting and the September Review Conference.

Inhumane Weapons Convention — Review — Australian Position

On 26 September 1995, the Minister for Defence, Science and Personnel, Mr Punch, made the Australian Statement to the First Review Conference of the

States Parties of the Inhumane Weapons Convention, held in Vienna. The following are extracts from the text of the statement:

Mr President

May I start by giving credit where it is due, to France for taking the initiative at the United Nations General Assembly two years ago to propose this Review Conference. I would also like to congratulate Ambassador Molander on his appointment as President of the Conference and offer our thanks to the Government of Austria for hosting the meeting.

Our presence at this conference reflects a shared belief that even the harsh reality of armed conflict should be tempered by humanitarian constraints. Participants in the diplomatic conferences on humanitarian law of the late 1970s concluded that the international community should develop a framework for specific regulations on the use of those conventional weapons which are indiscriminate or disproportionate in their effects. Those weapons have come to include landmines and booby traps, incendiary devices and weapons which injure by means of non-detectable fragments.

The constraints in the Inhumane Weapons Convention on the use of incendiary devices and weapons which injure by non-detectable fragments are strong and clear. We are encouraged there seems to be near consensus on the need for a new Protocol to prohibit the use of weapons designed, or intentionally used, to permanently blind. The Australian Government strongly supports that proposal and looks forward to its early adoption.

Unfortunately, there is no such consensus on how best to solve the problems posed by the misuse of antipersonnel landmines. During this conference, the focus of our work will undoubtedly be on landmines. In the 14 years since the Convention was opened for signature, problems resulting from the misuse of antipersonnel landmines have increased exponentially. The consequences have been devastating for many countries.

Australia has been acutely aware of the growth of the landmines problem. In terms of mine clearance operations, we have long been in the front line. We were one of the first countries into Afghanistan in 1989 and the last to leave in 1993. In that time we helped to train over 14,000 Afghans in mine clearance. Today Australian Defence personnel are serving in Mozambique and Cambodia. And Australia is providing funding to UN agencies for work in all of these countries.

We are committed to continuing our support for international demining activities. I announced in Geneva in July that, over the next year, Australia will provide a $5m package of international assistance, bringing our total commitment to date to about $20m. This package includes support for clearance operations in Cambodia, Afghanistan, Mozambique, Angola and a contribution of $500,000 to the recently established UN Voluntary Trust Fund.

We know that mines prolong the disruption to social and economic development caused by military conflict. Long after wars have ended, the threat of active mines prevents the productive use of agricultural land. Their presence impedes peacekeeping and peace building. For the citizens of those countries burdened with the threat of active mines, the ravages of conflict do not come to an end when the fighting stops. Landmines can and do kill the children of the generation which laid the mines. And, if we are not successful at this Conference, future generations of children will face the same tragedy.

The Australian Government is justly proud of its record in contributing to demining operations. But we wish that such operations were not necessary. Rather than having to spend scarce resources on clearing mines, we would far prefer that our foreign aid was going directly into fields such as health, education and food production.

In short, Australia would much prefer to look towards building the future, than having to clear up the destructive legacy of the past.

Mr President, we are all aware of the horrifying statistics flowing from the misuse of landmines. An estimated 26,000 people each year—500 people each week are killed or maimed by landmines. Most mine victims are civilians. Many of them are children.

Surely the time has come for bold action to address this problem.

To make real progress, we must combine efforts to clear existing minefields with action that attacks the problem at its source. We have an opportunity to do that at this conference. We must meet the challenge.

There is growing public support for a ban on all antipersonnel landmines. This is a laudable goal. Last year, Australia supported a UN General Assembly Resolution which affirmed "the ultimate goal of the eventual elimination of antipersonnel landmines as viable and humane alternatives are developed".

The Australian Government is committed to the eventual elimination of all antipersonnel landmines as an ultimate goal. But, in the absence of widespread international support for an absolute ban, at least pending the development of viable and humane alternatives, the Australian Government is strongly of the view that it makes sense to pursue lesser but still eminently worthwhile practical solutions to begin to reverse the appalling problems created by the proliferation and misuse of these weapons.

There is no reason to delay imposing very strict constraints on antipersonnel landmines. Such constraints can ensure that the terrible situation we are witnessing today is not repeated in the future. To postpone practical and effective action now, with a view to the eventual achievement of a distant, perfect goal, would be a massive failure of hope and humanity. It would ignore the very great suffering we wish to alleviate.

The root of the landmines problem is the continued indiscriminate injury and death to civilians after conflict has ended. This is what makes landmines so abhorrent.

The practical action the Australian Government would like to see taken now is very clear. We urge all countries to support:

- a ban on long-lived antipersonnel mines, that is, a ban on landmines which do not have both self destruction and self deactivation capability; and
- a ban on non-detectable mines.

We are proposing a bold approach to a dramatic problem. And, to illustrate the strength of our commitment, Australia is now preparing a plan which would allow us to replace our current mine stocks to comply with the conditions I have just proposed.

We are aware that we will incur financial costs in converting our stocks from long-lived to self destructing landmines. I want to stress, however, that the

technology involved in producing self destructing and deactivating mines is simple, highly cost effective, and already available.

So we don't think this cost will be great particularly when compared to the costs of continued reliance on long-lived mines. Those costs include loss of life, the rehabilitation of victims, development opportunities foregone and the cost of clearance operations. They are enormous in comparison.

We hope others will make the same judgment and begin to replace their existing stocks with mines that self destruct and deactivate.

Australia is aware that some countries see a need for static, long-lived minefields in specific locations, like along borders and around installations important to national security.

We have listened carefully to these concerns. But exceptions to the principle of using self destructing mines should be as narrow as we can bear. At the very least, we certainly should aim at ensuring through this Conference that the only antipersonnel mines to be used in the heat of battle should self destruct and deactivate.

We hope there will be a solid consensus at this Conference in support of the principle that long-lived landmines have no place in the heat of conflict. The reason is simple: it is then that agreed international constraints—like sign posting and fencing—break down.

Mr President, recording, fencing, signposting and monitoring minefields are important well-established measures designed to protect civilians. Indeed, Australia thinks some of those measures, particularly recording, should apply even to self destructing mines, since there is always a period in which mines are live.

But the real answer to the problem posed by antipersonnel landmines does not lie in fences, signs and sentries. As it stands, the revised draft Protocol II of the Inhumane Weapons Convention relies too much on these measures. Fences and signs erected with every good intention, and in adherence to the Convention, can be removed, either deliberately or accidentally. Troops monitoring minefields in a conflict may be forced to leave their positions by enemy action—leaving mines active and unprotected, and with little or no warning of their presence.

These predictions are not the product of idle pessimism. The fencing monitoring system has broken down many times in the past. Our troops have seen that reality many times—and even where fences have been erected our troops have seen the desperate and economically oppressed trying to remove the fencing material. So the fencing monitoring system will continue to break down. And whenever that happens, civilians will be threatened.

The answer we must strive for at this conference needs to go beyond fencing, marking and monitoring. It must be to separate the use of long-lived antipersonnel landmines from the heat and confusion of battle. If we can do that, we will have taken a major step forward. Australia will be tabling a paper showing how the revised draft Article 4 of Protocol II can be further strengthened to meet this aim.

Mr President

So far, most of my comments have focused on the need to strengthen the provisions of Protocol II, and more specifically, Article 4. But there are wider issues which need to be addressed at this conference.

Australia also strongly supports extending the application of the Convention, or at the very least Protocol II, to non-international conflicts. I am heartened at the extent of support for this in the Experts' Group meetings. I urge all of you to maintain this momentum.

Australia is also urging that the Convention incorporate restrictions on the production and transfer of landmines. This is potentially one of the most effective ways to deal with the problem. If we are not prepared to impose such restrictions the seriousness of our endeavours will inevitably—and correctly—be brought into question. The Convention should affirm the principle that antipersonnel landmines should only be supplied to states who are committed to obeying the laws of war.

Accordingly, we consider the Convention should prohibit the transfer of mines to states not party to the Convention. And it should prohibit the production and export of mines of a type, or for a purpose, not sanctioned under the Convention.

Further, Australia also urges all countries to take unilateral measures to counter the problem posed by the proliferation of long-lived, antipersonnel landmines. Placing a moratorium on their production and export would give us all some breathing space to address the problem posed by the existing stockpiles.

If such measures are not forthcoming, strenuous and very costly mine clearance measures will need to go on indefinitely. Mines are as cheap as $3 to buy, but can cost $1,000 to clear. So the cost of those clearance operations will put an increasing burden on us all. And we will still lose the race against new mine laying. Speaking of races, there is a saying in Australia that in any race you should always back self-interest: it is always trying. In this case, our shared self-interest is clear.

An effective verification and compliance regime is also needed. We are prepared to discuss the degree of intrusiveness and other potentially controversial issues. But the underlying principle that such a regime is needed should not be in question.

As a complement to the stronger provisions we propose for the Inhumane Weapons Convention, I think it is incumbent on us all to seek to enhance its authority. It is extremely important that we increase dramatically the number of countries who are party to the Convention. Australia is actively encouraging countries, especially those in the Asia-Pacific region, to make a commitment in this regard. We believe the Convention must become the undisputed international standard on all matters relating to landmines.

Mr President, I would like to express my appreciation for the very valuable preparations made by the Geneva Experts' Group. The experts have squarely set out the issues for us. But the negotiations are not over. There is no point protecting "consensus" positions if they do not deliver an effective approach. This is not a signing ceremony. We are here to debate, on their merits, possible solutions. The issues will not go away. What is not agreed at this Review Conference will only be carried over to the agenda of the next, which should be no later than 5 years from now.

> We must remember the Experts' Group had to start from a very low base. The rolling text is a commendable effort, but it does not go far enough—particularly the proposed text for Article 4 of Protocol II. I ask you to be more than experts. I ask that you go further and be statesmen and stateswomen, with the boldness of vision that are inherent in those terms. I ask you to think laterally about your military doctrines and approaches to national security. I ask you to take a long term perspective—to recognise that the cost of converting stocks to self destructing and deactivating mines will be small in comparison to the costs of inaction. It will be a prudent investment in the safety and security of future generations.

On 13 October 1995, the Minister for Defence Science and Personnel, Mr Punch, released the following news release:

> The Australian Government is bitterly disappointed that the Inhumane Weapons Convention Review Conference in Vienna has apparently failed to reach agreement on limitations on the use of antipersonnel landmines, the Minister for Defence Science and Personnel, the Hon Gary Punch MP, said today.
>
> "I said very clearly to the Review Conference that the Australian Government is committed to the eventual elimination of all antipersonnel landmines as an ultimate goal", Mr Punch said.
>
> "Unfortunately, it quickly became obvious at the Conference that very few countries, certainly no more than a half a dozen, were prepared to commit themselves to a total ban on antipersonnel mines in the immediate future", he said.
>
> "In the absence of widespread international support for a total ban, I put to the Conference Australia's bold and practical proposal directed at getting rid of the long-lived landmines that are killing and maiming civilians today."
>
> "Officials on the Australian delegation have told me that no country actually worked for a total ban as a practical proposition in the Conference Working Groups. Instead, the real battle was to achieve adoption of Australia's position, which was supported by the Mandela Government of South Africa, Canada and New Zealand, as well as a number of other countries who had previously committed themselves to a total ban."
>
> "Although Australia's position did receive wide support, even it was considered too radical by a number of countries. As any outcome from the Conference was by consensus, this meant that the Australian proposal was not adopted."

On 27 November 1995, in the House of Representatives, the Minister representing the Minister for Defence, Mr Punch, answered a question upon notice from Mr Cleary (Independent, Wills). The following is an extract of the text of the answer (House of Representatives, *Debates*, vol 205, p 3486):

> This Government is committed to the elimination of all antipersonnel landmines as an ultimate goal. However, in the absence of widespread international support for a total ban as evidenced at the Inhumane Weapons Convention Review Conference held in Vienna from 25 September to 12 October 1995, the Government is advancing a number of other proposals, which include tight restrictions on international transfers of mines and a complete moratorium on the export of the long-lived antipersonnel landmines that are killing and maiming civilians today.

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 27

The Committee recommends that the Government consider ways in which the following propositions can be put forward internationally for the better control of landmines:

[i] *Landmines should be on the list of weapons that are monitored by the UN under the United Nations arms register.*

[ii] *The current convention and protocol should be strengthened.*

[iii] *Mine clearance should be a major issue for aid for both governments and humanitarian agencies and in particular should be included in Australia's aid program.*

[iv] *Campaigns need to be mounted to get more countries to sign and ratify the landmines protocol.*

[v] *Consideration should be given to instituting a total ban on the manufacture and export of landmines, using the models of the current international disarmament law, particularly the Chemical Weapons Convention.*

[vi] *International conventions relating to landmines could be couched in terms of rights and obligations, thereby making international criminal law applicable and making breaches subject to international criminal tribunals or war crimes tribunals.*

[vii] *There should be campaigns against the companies which export land mines for profit.*

[i] Response

Agree in principle, but we consider it more productive to concentrate on improving the Inhumane Weapons Convention as described in the "Comment" section under [ii] below.

Comment

In its present form, the UN Register of Conventional Arms covers seven categories of large scale military equipment: battle tanks, armoured fighting vehicles, large calibre artillery, combat aircraft, attack helicopters, warships and long range missiles and missile launchers. During meetings of an expert group convened in 1994, it became apparent that member States did not support expansion of the register at this stage, either to include new categories of weapons or to include production and holdings as well as transfers. The question of expanding the register will not be considered again until 1997.

Participation in the register is voluntary. The objective of the register is to promote transparency between States. The UN does not use the information provided to "monitor" arms transfers. In view of the widespread suffering caused

by landmines, this issue needs to be addressed more comprehensively than would be possible under the UN Conventional Arms Register.

[ii] Response

Accept.

Comment

The Government considers that the Review Conference mechanism of the Inhumane Weapons Convention is the best forum for consideration of the landmines issue. Australia was among the States Parties which called for a Review Conference to strengthen the Convention and participated actively and constructively in the four meetings of governmental experts to prepare proposals for consideration by the States parties at the Review Conference. In the lead-up to the Review Conference in Vienna (25 September to 13 October 1995), the Australian Government developed a number of concrete proposals for strengthening the Convention and its landmines Protocol, including:

- a ban on the use, production and transfer of antipersonnel mines which do not have self destruct and self-deactivating mechanisms, that is a ban on long-lived landmines
- greater international commitment to expediting demining of currently mined areas
- making the Convention more consistent with the principles of basic humanitarian law, to ensure mines cannot be directed at civilians or used indiscriminately
- extending the scope of the Convention to cover internal conflicts
- the inclusion in the Convention of production and trade restrictions to help enforce compliance with other provisions, in particular
- a ban on trade in any mines not sanctioned by the Convention
- a ban on the supply of any form of antipersonnel landmines to all non-government entities, such as guerrilla forces, and
- a ban on the supply of any type of antipersonnel landmine to any country not party to the Convention
- incorporation of verification and compliance provisions
- amendment of the Convention to enable Review Conferences to be held more frequently.

The Vienna Conference was not able to finalise negotiations on an amended landmines protocol. It will reconvene in January and April 1996 to complete its work. While disappointed at the inability of the Conference to agree in its first session, the Government remains committed to the review process and to achieving through it a strengthened landmines protocol.

The Government also considers that the Convention would be strengthened through wider adherence to it and has raised this issue with other governments, particularly those of our region (see also below). Membership of the treaty has increased from about 30 to the current 54 since the review process began two years ago.

[iii] Response

Accept.

Comment

The development prospects of landmine-affected countries are seriously constrained by the widespread and indiscriminate use of landmines. It is clear that demining activities and the treatment and rehabilitation of landmine victims will continue to be a priority for development assistance, especially in those countries striving for rehabilitation and reconstruction after protracted civil war.

Australia has made a significant contribution to demining efforts in Afghanistan, Cambodia, Angola and Mozambique. Through the aid program and the efforts of the Australian Defence Force (ADF) almost $20 million has been provided since 1991 for mine awareness, training and clearance operations and treatment and rehabilitation programs.

Australia actively supports the efforts of the United Nations system to improve the coordination of international demining activities. At the International Meeting on Mine Clearance in Geneva in July 1995, Australia pledged a financial contribution of $500,000 to the UN Voluntary Trust Fund for Assistance in Mine Clearance. The fund was established by the Secretary-General in November 1994 and its purpose is to provide special and additional resources for urgent mine clearance operations. Australia also announced a further $3.6 million in 1995–96 for bilateral demining activities, the bulk of which will be channelled through UN agencies with existing programs. These funds have been allocated from AusAID's Humanitarian Relief Program and from the Cambodian Bilateral Program. The package includes:

- $2.5 million for the Cambodian Mines Action Centre (CMAC) administered by the United Nations Development Program (UNDP). CMAC is Cambodia's principal mine clearance organisation and has received substantial support from AusAID and the ADF for several years.
- $400,000 for training and mine clearance operations in Afghanistan administered by the United Nations Office for the Coordination of Assistance to Afghanistan (UNOCAA). Australia remains a consistent supporter of UNOCAA's efforts. Between 1989 to 1993, the ADF helped to train over 14,000 Afghan people in mine clearance.
- $300,000 for mine awareness and clearance operations in Mozambique through an appropriate UN agency. In 1993–94, AusAID channelled $350,000 through the United Nations High Commissioner for Refugees (UNHCR) for its mine awareness campaign. In 1995–96, the funds are likely to be directed to the UN's Accelerated Demining Program.
- $250,000 for mine awareness and clearance operations in Angola through the Humanitarian Assistance Coordination Unit (UCAH) Central Mine Action Office.
- $150,000 for the treatment and rehabilitation of landmine victims in Cambodia through the Australian Red Cross.

[iv] Response

Accept.

Comment

There are currently 54 States parties to the Inhumane Weapons Convention and Protocol II on Mines, Booby Traps and Other Devices. The Government considers that the Convention and the Protocol would be strengthened by a greater number of adherents. To this end we made representations on a regular basis through our Embassies in the Asia-Pacific region, capitalising on the higher profile of the Convention and Protocol in the lead up to the Review Conference. We have also raised, and will continue to raise the issue of adherence at Ministerial and senior officials levels in regular political, and arms control and disarmament exchanges. Of the countries in our region, only Laos is a State party. The Philippines and Vietnam are signatories while Cambodia has indicated its intention to adhere. Thailand participated in the Third and Cambodia in the Fourth of the expert groups preparing for the Review Conference. Cambodia, Singapore, Indonesia, the Philippines and the Republic of Korea participated in the Vienna Conference as observers.

[v] Response

Accept in part.

Comment

The Australian Government is committed to the elimination of all antipersonnel landmines as an ultimate goal. But in the absence of widespread international support for an absolute ban, at least pending the development of viable and humane alternatives, it will continue to make sense to pursue lesser, but still eminently worthwhile, practical solutions to begin to reverse the appalling problems created by the proliferation and misuse of these weapons.

Last year, the Government supported a UN General Assembly resolution adopted by consensus, that affirmed "the ultimate goal of the eventual elimination of antipersonnel landmines as viable and humane alternatives are developed". At present, however, landmines, like other conventional weapons, are regarded by most States parties to the Inhumane Weapons Convention (IWC) as a legitimate weapon when used responsibly and only against potential enemy combatant forces in times of armed conflict. Today's problems are due to the misuse of landmines, and what makes this misuse so reprehensible is that mines continue to kill and maim long after conflict is over. The Government's approach is focused on achieving concrete results which would have a practical effect in saving lives.

We do not believe that simply advocating a total ban now offers an effective and realistic response to the pressing problems that the indiscriminate use of landmines is causing now for communities in many parts of the world. From discussions we have had, in particular as part of the diplomatic activity leading up to the Review Conference of the IWC, it has become apparent that adequate international support for an immediate and total ban does not exist at present. There are only nine countries which, ostensibly and in principle, support a total ban. They are Austria, Belgium, Cambodia, Colombia, Estonia, Ireland, Mexico, Norway and Sweden (of which Cambodia, Colombia and Estonia are not members of the IWC). Few of these countries have abolished their stocks of antipersonnel landmines or instructed their armed forces not to use mines. Further, most have significant qualifications to their positions.

Until humane and viable alternatives are developed, the creation of a sufficiently broad international consensus favouring a total ban remains unlikely.

The Government believes that the international leadership role which Australia has adopted in pursuing a ban on non-detectable and non-self destructing/self-deactivating mines, and pursuing increased participation in the IWC represents a practical and productive approach to the landmine problem at the present time, while meeting legitimate security concerns.

Mines are a unique type of defensive weapon. For Australia—with a vast amount of territory to defend with a very small force—the task of defending Australia, and in particular, of protecting vital installations in a conflict, would be more difficult if the ADF were denied the use of all types of antipersonnel landmines. Mines represent a threat, an obstacle or a delay, which decreases the mobility and manoeuvre opportunities for an opponent and reduces the number of troops needed for the defence of an area or a facility. For Australia, with vital forward operating bases and important surveillance facilities in remote parts of the continent, this latter role is particularly important. The Department of Defence has looked at this issue in detail and concluded that while long-lived mines were not essential in modern warfare or to defend Australia, there is no doubt that the ADF would be significantly disadvantaged if it were unable to use short lived antipersonnel mines. This would risk Australian lives, threaten the success of our military operations, risk prolonging the conflict, and threaten Australian security. And the dangers would be even higher if the opponent was using mines while the ADF, through a unilateral decision to support a total ban, could not.

The Government is therefore of the view that, in the absence of widespread international support for an absolute ban at the present time, the misuse of landmines by some groups or countries should not result in their denial to responsible defence forces such as Australia's. Australia of course is a party to the Inhumane Weapons Convention, and the Government takes its obligations under the Convention most seriously. The provisions of the Convention are built into the training and operational doctrine of the Australian Defence Forces. The problem is that the improper use of antipersonnel landmines can cause indiscriminate death and injury, including to non-combatants, long after conflicts have finished. This is the problem which Australia's approach is intended to solve.

[vi] Response

Accept.

Comment

There is currently only one international convention on landmines: Protocol II of the Inhumane Weapons Convention. In considering our approach to the Review Conference we took the view that developing consistency between the fundamental humanitarian law instruments and the Convention, and introducing language and principles from those instruments into the Convention should be encouraged.

One of our proposals for the Review Conference was to have the States parties acknowledge in their conference declaration that a deliberate or indiscriminate use of mines against civilians ought to attract the same criminal responsibility as it does under other humanitarian law instruments.

It is envisaged that the outcomes of the Review Conference will be taken up in other international humanitarian law forums, particularly in relation to work under way for the protection of war victims.

[vii] Response

Do not accept.

Comment

As far as the Government is aware, no Australian company produces or exports landmines as these devices are defined in the Inhumane Weapons Convention.

In the review process Australia has supported, and will continue to support, a proposal which would restrict trade in landmines to States parties to the Convention. The proposal involves undertakings by States parties that they would not provide any mines to non-State entities. The Government does not consider it appropriate to conduct campaigns against foreign companies or other non-State entities which are engaged in activities not prohibited under international law.

Inhumane Weapons Convention — Definition of Landmines — Australian Products

On 22 August 1995, in the Senate, the Minister for Defence, Senator Ray, answered a question upon notice from Senator Margetts (Greens, WA). The following are extracts from the text of the question and answer (Senate, *Debates*, vol 173, p 96):

Senator Margetts asked the Minister for Defence, upon notice, on 3 May 1995:

With reference to the 1981 United Nations (UN) Convention on "Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects" and its relevant protocol, Protocol II, on the "Prohibitions or Restrictions on the use of Mines, Booby-Traps and other Devices", and with reference to the definitions of "mine" in this Protocol, which defines a "mine" as "any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle", and "remotely delivered mine" means any mine so defined delivered by artillery, rocket, mortar or similar means or dropped from an aircraft:

(1) Could the Australian Defence Industries (ADI) HE fragmentation grenade fitted with any trip wire accessories and/or firing device F1A1 constitute a land mine under the above 1981 UN Convention and Protocol; if so, why; if not, why not.

(2) Could any grenade in the ADI system fitted with any trip wire accessories and/or firing device F1A1 constitute a land mine under the above 1981 UN Convention and Protocol; if so, why; if not, why not.

(3) Could any grenade in the ADI system which can be activated by rifle projector constitute a remotely delivered mine under the above 1981 UN Convention and Protocol; if so, why; if not, why not.

(4) Does the ADI incendiary grenade (thermite) and the ADI illuminating grenade/trip flare constitute a land mine under the above 1981 UN Convention and Protocol; if so, why; if not, why not.

(5) Once the Government signs the partial ban on land mines currently being negotiated at the UN: (a) will the Government review the grenades, accessories, projectors and land mines that ADI produces to ensure they comply; if not, why not; and (b) which grenades, accessories, land mines and projectors will either be banned or need to be modified to ensure they are detectable and have self destructuct mechanisms.

Senator Robert Ray—The answer to the honourable senator's question is as follows:

(1) No. Grenades, including high explosive (HE) fragmentation grenades, incendiary grenades, and illuminating grenades, do not come within the definition of a mine, because of their means of operation. Grenades are armed and thrown; they automatically explode several seconds later. They are not mines because they are not "designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle" (that is, target actuated).

Similarly, rifle grenades do not come within the definition of a mine. Such grenades are launched from a rifle. Firing the rifle both launches the grenade and initiates the process of arming it. The grenade automatically detonates seconds later, either on impact with the target or after a set delay period. Like ordinary grenades, rifle grenades are not target actuated, and therefore are not mines or remotely delivered mines.

By itself, the firing device F1A1 does not come within the definition of a mine, because it is not a munition. It is intended for detonating munitions, often in conjunction with trip wires.

In addition, the opinion of the Group of Governmental Experts preparing for the review of the Inhumane Weapons Convention is that the definition of a mine is only intended to cover individual munitions manufactured as mines. Combinations of other forms of munitions with additional components (such as grenade and trip wire) are regarded as a "construct" and hence do not constitute a mine under the definitions contained in Article 2 of Protocol II of the Convention. Lethal "constructs" can be easily made from commonly available components such as batteries, wire, string, garden fertiliser and sugar. It is intended that "constructs" be dealt with in other articles to Protocol II of the Convention.

(2) See (1).

(3) See (1).

(4) See (1).

(5) (a) and (b) It is unfortunately by no means certain that there will be international consensus at the Review Conference on the Inhumane Weapons Convention, to be held in September and October, on the Australian Government's proposal to ban those landmines which are not detectable and which do not self destruct and passively deactivate.

The Review Conference will conclude in mid-October. At that time, the Government will review all items manufactured, sold, used or stockpiled in Australia which fall within the definitions contained in the revised Convention.

Decisions on changes to export controls, and possible replacement of items used by the Australian Defence Force, will be made at that time. At present antipersonnel mines are not manufactured in, or exported from, Australia.

I cannot speculate as to what form the revised Convention will take or, what decisions we will make. However, I can confirm that Australia will remain a party to the Convention, and will comply with its rules, and I can guarantee that the position I stated in February 1994 will continue in force: Australia will not export mines to countries not party to the Convention. However, because there are so many different civil and military items which could be used in landmines, this does not apply to components or possible components of mines.

Chemical Weapons Convention — Terrorist Use of Weapons

On 27 March 1995, in the Senate, the Minister for Foreign Affairs, Senator Evans, answered a question without notice from Senator Colston (Qld, ALP). The following is the text of the question and answer (Senate, *Debates*, vol 170, p 2107):

Senator Colston—My question is directed to the Leader of the Government in the Senate. My question is set against the background of suggestions that last week's horrific Tokyo subway chemical weapons attack could herald a new wave of international chemical weapons terrorism. Given the apparent ready availability of materials which can be used to manufacture chemical weapons, such as the extremely toxic nerve agent sarin, can the leader advise the Senate how effective the chemical weapons convention is likely to be in combating terrorist use of this type of material? In addition, when is the chemical weapons convention likely to enter into force?

Senator Gareth Evans—Needless to say, the Australian government was appalled, as I am sure all honourable senators were, by the attack in Tokyo and condemns it in the strongest possible terms. We do express our deepest condolences to the victims of this mindless act of terror and indeed the Japanese government, which has had to deal with the problem.

While the sense of public outrage is entirely appropriate, I think it is fair to say that there is no real evidence to suppose that this incident does herald a new era of terrorism characterised by the use of chemical weapons. It is true that the technology and materials to produce some chemical weapons, such as sarin, are theoretically available to those with appropriate qualifications in chemistry and access to commercial chemicals. But the nature of these weapons is such that, at least in the home-made form, they are likely to be difficult to manage, unpredictable, indiscriminate and extraordinarily dangerous to those who would seek to employ them.

Among the measures which states can take to minimise the risk of CW use by terrorists is to bring about the speedy entry into force of the Chemical Weapons Convention, which bans the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons and does put in place a comprehensive verification regime to ensure compliance. Of course, the CWC's verification regime is aimed at states and is primarily designed to detect and deter military related chemical weapons activity. The use of these weapons in war, as during the Iran-Iraq conflict, remains the greatest threat associated with CW. For example, the worrying reports of Iran stockpiling CW in the

Straits of Hormuz is exactly the sort of issue the CWC was designed to deal with. But the global banning and destruction of CW will also reduce the chance of their falling into the hands of terrorist groups.

Equally importantly, the strict controls which the Convention will put in place will make the illicit procurement of the necessary chemical weapons precursors, particularly from international sources, that much more difficult. Article VII of the Convention requires states to implement measures to prevent production of CW in any place in their jurisdiction. Thus the Convention does oblige governments to take steps to ensure that individuals or groups of individuals do not make, keep or use CW within their territories.

I think we are already seeing, in states' implementation of the legislation pursuant to this treaty, that states are concentrating their minds on the need to fill various legislative and regulatory vacuums that did previously exist before the convention. Australia's implementing legislation, the Chemical Weapons (Prohibition) Act, which we passed last year, for example, as well as expressly prohibiting production or use of chemical weapons, will establish a system of permits and notifications allowing monitoring and control of production, possession or use of a range of chemicals which are useable either as chemical weapons or as precursors to their production. These certainly include sarin and precursors for its manufacture. The maximum penalty prescribed by the act for serious breaches is, in fact, life imprisonment, so you are talking about a very serious set of legislative sanctions.

As to your last question, 159 states have signed the convention, and 27 states, including Australia, have so far ratified the Convention. Current indications are that the trigger for entry into force—that is, the deposit of the 65th instrument of ratification—will occur sometime towards the end of this year. Entry into force will then occur automatically 180 days later.

The impact of the Tokyo attack on this legislative and ratification activity has already been shown in the steps taken by the Japanese government itself, for example, to accelerate its ratification of the CWC and to pass necessary legislation through the Diet as early as next week. That is something we very warmly welcome.

I should just finally add by way of a footnote that our commitment to preventing the proliferation of weapons of mass destruction, including chemical weapons, is further underlined by the Weapons of Mass Destruction (Prevention of Proliferation) Bill, which is currently before the parliament, and that will strengthen our control over involvement by Australians in producing weapons of mass destruction anywhere in the world.

Nuclear Testing — Test by China — Australian Reaction

The Minister for Foreign Affairs, Senator Evans, issued the following news release on 15 May 1995:

The Minister for Foreign Affairs, Senator Gareth Evans, has condemned today's nuclear test by China.

The explosion, which took place at Lop Nor at 1406 (AEST) was detected by the Australian Seismological Centre. It had a yield estimated at the equivalent of between 40 and 150 kilotonnes of TNT.

Senator Evans said it was deeply disappointing that China had once again shown disregard for international opposition to nuclear testing, and, all the more so, in the positive aftermath of the Review and Extension Conference of the Nuclear Non-Proliferation Treaty which concluded in New York last week.

"Australia, along with many other countries, protested against the nuclear tests carried out by China in June and October 1994. We have consistently urged China to join other nuclear weapon states in declaring a moratorium on its testing program," he said.

Senator Evans said the negotiations on a Comprehensive Test Ban Treaty, which had been a long-standing Australian goal, were moving steadily towards conclusion. Australia was hopeful that the Treaty would be finalised by the end of the year, and open for signature in 1996. We looked to the nuclear weapon states to desist from further testing as the CTBT negotiations entered this final, critical stage.

"China's continued testing is out of step with the positive atmosphere of the CTBT negotiations, as well as with China's own support for nuclear disarmament and its stated commitment to negotiation of a CTBT by 1996."

"China, and other nuclear weapon states, must come to terms with the imminent fact of a ban on nuclear testing for all time and in all environments," he said.

Nuclear Testing — Resumption by France — Australian Attitude — Parliamentary Motion

On 19 June 1995, in the House of Representatives, the Prime Minister, Mr Keating, moved a motion relating to the French decision to resume nuclear testing in the Pacific. A motion in similar terms was moved in the Senate by Senator Ray on the same day (Senate, *Debates*, vol 172, p 1315). After debate, the motion received bipartisan support, and was subsequently passed in both Houses of Parliament, with some minor amendments and additions in the Senate (see Senate, *Debates*, vol 172, pp 1317, 1331). Extracts of the text of the motion follow (House of Representatives, *Debates*, vol 202, p 1685):

Mr Keating—I move:

That this House:

(1) condemns the decision of the Government of France to resume testing in the South Pacific;

(2) calls on the French Government to reverse its decision and not to resume testing;

(3) shares the resentment of South Pacific countries at nuclear testing in the South Pacific and endorses the statement condemning the decision issued by the South Pacific Forum;

(4) deplores France's decision to breach its 1992 moratorium which had improved relations between France and countries in the region;

(5) expresses its outrage that France's decision undermines the outcome of the recent Treaty on the Non-Proliferation of Nuclear Weapons Review and Extension Conference, particularly the commitment made at the Conference that, pending entry into force of the Comprehensive Test Ban Treaty (CTBT), the nuclear weapon states should exercise utmost restraint;

(6) notes that Australia will do all in its power and urge all other countries to hold France to President Chirac's statement that France would sign a CTBT without reservation in autumn 1996; and

(7) calls on France to sign and ratify the protocols of the South Pacific Nuclear Free Zone Treaty.

This motion is intended to convey as clearly as possible to the government of France the firm condemnation by the people of Australia, acting through their representatives in this House, of the decision announced by the government of France to resume the testing of nuclear weapons at Mururoa Atoll. It also expresses our hope that the decision might yet be reversed.

The president of France, President Chirac, announced the decision to resume underground nuclear testing on 13 June. He said that a program of eight tests would be conducted between September 1995 and May 1996. President Chirac said that the testing was essential in order to ensure the security, safety and reliability of France's nuclear weapons. He said that, after completing this series of tests, France would intend to sign the Comprehensive Test Ban Treaty and to rely thereafter on simulation techniques to maintain its nuclear capabilities. The decision reversed the moratorium on nuclear testing announced by President Mitterrand in 1992, a moratorium which had been widely welcomed and which—together with the earlier Matignon accords, which set up a basis for reconciliation in New Caledonia—formed the foundation on which a new cooperative partnership between France and the countries of the South Pacific was emerging. President Chirac's announcement on 13 June followed widespread speculation in France about the future of the testing program during the presidential election campaign and afterwards.

In response to this speculation, Australia, along with many other countries, had made known to the French government our hopes that the moratorium would be maintained. I wrote to President Chirac about this matter following earlier representations made by the Minister for Foreign Affairs (Senator Gareth Evans). The French moratorium matched separate commitments by the United States, Russian and British governments to refrain from testing. In the end, however, the French government ignored the views of the vast majority of members of the international community and decided to proceed with its program. That is an indefensible decision, and the Australian people and the Australian government condemn it.

Australia's opposition to the resumed testing of nuclear weapons by France stems from a number of concerns, of which the most fundamental is the security implications of the decision for Australia, for the South Pacific region and for the international community. The end of the Cold War, having removed the spectre of global nuclear conflict which had thrown such a dark shadow on the second half of the 20th century, gave new hope to the world that we might at last see a world free of nuclear weapons.

An important signpost towards a safer world was the decision by the international community on 11 May of this year in New York to extend indefinitely the Treaty on the Non-Proliferation of Nuclear Weapons. Critical to achieving the indefinite extension of the NPT was the simultaneous negotiation and adoption by all parties to the NPT, including the nuclear weapon states, of a "declaration of principles and objectives on non-proliferation and disarmament". This declaration included, centrally, a commitment to the goal of nuclear

disarmament, with the ultimate objective of the total elimination of nuclear weapons. It gave encouragement to the further development of nuclear weapon free zones, and it said that one important measure towards the elimination of nuclear weapons was the early conclusion—in fact, no later than 1996—of a Comprehensive Test Ban Treaty. Pending the entry into force of a test ban treaty, the nuclear weapon states were committed to exercise "utmost restraint".

The French decision clearly contradicts this undertaking. "Utmost restraint" on nuclear testing cannot possibly comprehend a program of eight tests. The decision is certain to raise in the minds of non-nuclear weapons states questions about the good faith of all the nuclear weapons states. It will add to the negotiating difficulties over the Comprehensive Test Ban Treaty. France's action might well provide a convenient excuse for others who might want to join the nuclear club and who will now argue that the commitment of the nuclear weapons states to the eventual elimination of nuclear weapons is a sham.

This is a critical time for the world. The Cold War has ended but what will shape our future security and prosperity is still uncertain. We are moulding the building blocks of that now. It is particularly important that all governments work together to ensure that the international system we have in the 21st century is one that suits all of us better than the one we have had.

The French decision is a narrow decision, made according to a narrow definition of narrowly French interests. It defies world opinion, but that is the only bold thing about it—that is, the fact that it defies world opinion is its only defining thing. In every other sense it betrays timidity. It is an act of retreat; it is not an act of engagement.

As I said on 15 June, why should a country of such substance undertake this program? What is there to fear in cooperative engagement with the rest of the world? What will best protect the French people is not a 1990s version of the Maginot line but participation in the global dialogue. The French government claims that this nuclear capacity—this force de frappe—is a deterrent, but in the post Cold War world a deterrent to what? It is certainly no deterrent against the greatest nuclear threats to Europe and the world now, including the emergence of new nuclear weapons states.

France, by its inflammatory action with regard to its testing program, now runs the greater risk of losing international support, both moral and material, for cleaning up the rotting carcasses of the old Soviet reactors, whose presence still hangs over Europe and France like a pall. This is one of France's and Europe's greatest challenges. These dangers, like the stockpiles of degrading nuclear weapons and weapons systems, and contaminated nuclear sites, cannot be deterred through the further development of an offensive nuclear weapon capability. These considerations are international in scope. They also shape Australia's opposition to nuclear testing by China...

But Australia and the other members of the South Pacific Forum have a particular concern with French testing because it is being conducted not in France's metropolitan territory but in the South Pacific. Most countries in this region are small island-states. For many years they have made clear their opposition to nuclear weapons. They have shown this year after year in the resolutions of the South Pacific Forum and, most clearly, in the creation of the South Pacific nuclear-free zone. The government of France is defying not only

their wishes but their moral rights. This action will call into question for many in the South Pacific the legitimacy of the French presence there.

The French government has defended the environmental safety of the tests at Mururoa and it has alluded to the possibility that international scientists might observe the tests. But the fact is that accidents happen and no-one can foresee the longer term dangers associated with possible leakage from the underground coral structures housing the tests. The fact remains that, if these tests are perfectly safe, they could be made perfectly well in France.

Condemnation of the French decision has not been confined to the 15 members of the South Pacific Forum. Critical statements have been issued by Belgium, Chile, Denmark, Indonesia, Ireland, Japan, Kenya, Luxembourg, Mexico, Norway, Peru, the Philippines, Korea, Russia, South Africa, and Switzerland. On 15 June the European Parliament in Strasbourg adopted a resolution expressing shock at the decision and urging France to reconsider. Canada and the United States have regretted the decision.

Australia's response has been strong and unequivocal. The government has deplored the decision. We have frozen defence relations with France and we will not engage in any defence activity which would in any way assist the testing program. We have protested against the French decision in the International Atomic Energy Agency board of governors meeting in Vienna, and other international bodies, including the Conference on Disarmament in Geneva and the United Nations in New York.

Australia has a particular responsibility in this matter this year because we are chair of the South Pacific Forum. I have been in close touch with my Forum colleagues about it. On their behalf, I issued a statement condemning the decision and expressing our unequivocal opposition to it. I said that forum leaders hoped that France will hear and take note of what the world is saying.

To make sure that France does hear, we proposed to send a delegation of members of the South Pacific Forum to Paris to put the views of Forum countries directly and unambiguously to the French government. Because of the limited time available, and in accordance with Forum practice, the delegation comprises the past, present and next Forum chairs. So Senator Evans is leading the delegation. He is accompanied by President Bernard Dowiyogo of Nauru and Mr Tsiamilili, a special envoy from the government of Papua New Guinea, which takes over the forum chair in September. The New Zealand Minister for Justice, Mr Graham, and the Western Samoan Minister of Education, Ms Fiami, are also represented on the delegation, as is the Secretary-General of the Forum, the Hon. Jeremiah Tabai. The delegation will meet the French government later tonight, Paris time.

The passing of this resolution by the House will assist it to convey to the French government the depth of Forum countries' concerns...

The concerns of the Australian people about the French decision have been demonstrated clearly over recent days. I hope they will continue to be expressed and in ways which help bring home to the French government how widespread is the opposition to these policies.

But, Mr Speaker, some important things need to be remembered in this debate and some have been lost sight of. The government's position in this matter—and I believe the position of most Australians—is not shaped by hostility towards France or the French people, or to France's role in the Pacific.

It is shaped solely by our opposition to this specific policy of the government of France to resume testing nuclear weapons in the South Pacific.

French people and Australians who have come from France have made a valuable contribution to Australia. I have spoken before of the opportunities which exist for French business in Australia and for Australian businesses in France. I have also said that we welcome constructive French participation in the South Pacific. It is very important that the expressions of Australian concern about this French policy do not flow over into racist attacks on France or French people. It is this particular French government policy which we object to.

It is important for Australians to remember that many French people object to this decision as well. A number of members of the French delegation to the European Parliament voted in favour of the resolution I referred to earlier. I am sure that all members of this House will share the view that terrorist acts, like the arson reported to be the cause of the fire at the office of the Honorary French Consul in Perth on 17 June, must be utterly rejected and condemned.

It would be a very sorry consequence if our opposition to an act which contravenes our every sense of fairness, democracy and decency should erode these values in our own society. Such acts as that which occurred in Perth the government utterly condemns as both illegal and un-Australian. Such acts are not only objectionable but also counterproductive to our cause. Those with influential positions in the community, in politics and in the media must be aware of their responsibilities...

And when they voice their concerns they should be careful not to encourage acts of violence or acts which undermine the legitimacy and moral authority of Australia's protest...

It should be a concern of all members that Australians have an accurate knowledge of the French proposals, not least because our protests will have more effect if they do not contain exaggerations and inaccuracies. Our arguments will be more persuasive if they are based on reality and not irrational fear.

I doubt if there is any Australian who does not feel anger about the French decision. What we must take to the French government is a collective concerted response—the response of all the Australian people channelled through the best means available to us.

This decision to resume testing is a bad decision by the government of France. It is bad because it endangers progress towards a world free of nuclear weapons. It is bad because it ignores the views of the people of the region in which the tests are being conducted. It is bad because it sets back so far the cause of constructive French participation in the South Pacific region. It is bad because it is a decision which is essentially self-absorbed rather than showing a wider vision. It is important that this parliament, representing the people of Australia, convey clearly to the government of France the extent of our concern at its wilful and unnecessary decision. I commend the motion to the House.

Nuclear Testing — Resumption by France — Australian Attitude

On 28 July 1995, the French newspaper *Le Monde* published an article by the Prime Minister, Mr Keating, entitled *Why Australia Says No to Testing*. Extracts from the original English text follow:

Australia and its citizens, along with the peoples and governments of many other countries, have been angered by the French government's announcement that it will resume nuclear testing at Mururoa. I believe the French people will have no difficulty understanding such feelings.

The sentiment in the countries of the South Pacific is all but universal: if France must test these weapons, let her test them in metropolitan France. Whatever the French government intends by these actions, they are read by the great majority of people in this region as an assault upon the rights of small nations by a large one. Inevitably, the decision to resume tests is seen as a regression to old colonial attitudes. This is all the more tragic because in recent years France's relationship with the countries of the region has become much more positive and fruitful...

Australia's concerns are heightened further by the added responsibility which derives from our role this year as Chair of the 15-member South Pacific Forum. In this capacity we speak on behalf of all the countries in the region, many of them small and ecologically vulnerable, all of them in a profound material and spiritual relationship with the Pacific Ocean.

I am confident that I speak for the members of the Forum in continuing to press France to reverse her decision, and in asserting that if she were to do so she would gain greatly in prestige, not only among the countries of the South Pacific, but among the peoples of the world...

Australia's is not a hastily considered or reflexive reaction. Australia has a long history of responsible diplomatic effort on nuclear issues. Along with other countries of the South Pacific, Australia opposed France's atmospheric tests in the 1970s and on our initiative the South Pacific Nuclear Free Zone was created in 1985...

Australia has also been consistently active on nuclear matters in the United Nations and other international forums. We have often acted in close cooperation with France, in particular since the very welcome decision by President Mitterrand in 1992 to declare a moratorium on nuclear tests. These efforts moved forward on 11 May with the decision of the international community to indefinitely extend the Treaty on the Non-Proliferation of Nuclear Weapons—a vital element in the security of both our countries...

We believe these tests pose a threat to our efforts to sustain the effectiveness of the Nuclear Non-Proliferation Treaty and achieve universal membership. Critical to the indefinite extension of that treaty was the simultaneous negotiation and adoption by all parties, including the nuclear weapon states, of a "declaration of principles and objectives on non-proliferation and disarmament".

That declaration foreshadowed the early conclusion, no later than 1996 of a Comprehensive Test Ban Treaty. And pending the entry into force of such a treaty, the nuclear weapon states committed themselves to exercise "utmost restraint".

But "utmost restraint" on nuclear testing cannot possibly comprehend a program of eight tests. France's decision is certain to raise in the minds of non-nuclear weapon states questions about the good faith of all the nuclear weapon states. That will put pressure on the credibility of the treaty, which must be maintained if some of the states which have not yet signed it are to be persuaded to do so.

The decision will also add to the negotiating difficulties over the Comprehensive Test Ban Treaty.

Despite the very welcome declaration by President Chirac that France will sign the CTBT, there is a real danger that the very difficult series of negotiations which lie ahead in Geneva over the treaty will be made even harder...

Nuclear Testing — Resumption by France and China — United Nations Resolution

The Minister for Foreign Affairs, Senator Evans, issued the following news release on 17 October 1995:

Member countries of the United Nations have today delivered a strong rebuke to France and China for their actions in persisting with nuclear testing. Both nations have ignored the enormous international opposition to such tests. The rebuke was delivered in the form of a resolution "strongly deploring" nuclear testing and "strongly urging" its immediate cessation.

The resolution underlines the risks posed by continued nuclear testing to global nuclear non-proliferation and disarmament efforts as well as the potential unacceptable costs to health and the environment from continued testing. This is a message that France and China will ignore only at high cost to their international reputations.

Australia initiated the resolution, consistent with our established place at the forefront of international disarmament and non-proliferation efforts. We have worked assiduously to ensure that our message was both strong and as strongly supported as possible.

By standing up in support of the resolution, in the face of extraordinarily intensive efforts by France to oppose it, countries have sent the clear message to those states which continue to conduct nuclear tests that their activities are unacceptable. The resolution underlines the conviction of a majority of countries that, at this crucial stage in our collective search for a more secure world free of nuclear weapons, and in the finalisation of a Comprehensive Test Ban Treaty, the continuation of nuclear testing by some states is an aberration. It belongs to a different era, and harks back to the age of nuclear confrontation in a world we have deliberately and decisively put behind us.

It is now incumbent on France and China to listen to the international community, to adjust their thinking to the realities and the promise[s] of the post Cold War world, and to stop nuclear testing now and forever.

Nuclear Testing — Resumption by France — Further Tests — Australian Condemnation

On 28 October 1995, the Prime Minister, Mr Keating, issued a statement condemning the third French nuclear test at Mururoa Atoll. After the fourth test, the Prime Minister issued a further statement on 22 November 1995, again condemning these actions. An extract from this second statement follows:

I strongly condemn the latest French nuclear test at Mururoa Atoll...

Australia warmly welcomed the recent United Nations General Assembly resolution calling for an immediate end to nuclear testing. It is clear the international community shares Australia's conviction that continued nuclear

testing is not consistent with changed global strategic circumstances and changing world opinion.

The Government fully supports the recent Commonwealth statement on disarmament in which the overwhelming majority of leaders condemned continued nuclear testing and all leaders emphasised the importance of the determined pursuit of the elimination of nuclear weapons. This confirmed to me the breadth and depth of opposition to continued nuclear testing...

Nuclear Testing — Resumption by France — South Pacific Forum — Opposition

The following statement on the resumption of nuclear testing by France, issued at Canberra on 15 June 1995 by the Chairman of the South Pacific Forum, the Prime Minister of Australia, Mr Paul Keating, was circulated as an official document at the Fiftieth Session of the UN General Assembly:

On behalf of South Pacific Forum Heads of Government as current Chair of the Forum, I condemn France's decision to resume nuclear testing in the South Pacific.

Individual Forum Governments have already issued statements and protests that reflect the depth of their disappointment. The immediate widespread public antagonism to France's decision right across the South Pacific reflects the resentment felt by our peoples.

Forum Heads of Government understand and share these feelings. On their behalf, I express our unequivocal opposition to France's decision.

The statements that have been issued by other nuclear powers, and by other countries in Asia and in other parts of the world are welcome. Forum leaders hope that France will hear and take note of what the world is saying.

France has exercised a choice about the nature of its engagement in the South Pacific. Forum members had welcomed the improved relations between France and countries in the region. France's decision is a major setback to this trend which was partly founded on its 1992 moratorium on nuclear testing in the South Pacific.

The wider implications of France's decision are also of deep concern to Forum Heads of Government.

France's decision undermines the outcome of the 1995 Review and Extension Conference of the Parties to Treaty on the Non-Proliferation of Nuclear Weapons. The decision is particularly regrettable in the light of agreement reached at that Conference, including by France, that negotiations on a Comprehensive Test Ban Treaty should be completed by no later than 1996 and that, pending such a treaty, nuclear weapon States would exercise the utmost restraint.

The South Pacific Forum remains strongly committed to a comprehensive test ban treaty as a key step in global efforts to prevent nuclear proliferation and eventually to eliminate nuclear weapons. It offers the prospect of ending testing completely in the South Pacific as elsewhere. The Heads of Government have noted President Chirac's commitment that France would sign such a treaty. They will hold France to that commitment.

The Heads of Government also call upon France to abide by the protocols to the South Pacific Nuclear Pacific Zone Treaty.

South Pacific Nuclear Free Zone Treaty — United States, United Kingdom and France — Announcement of Intention to Sign — Australian Reaction

On 21 October 1995, the following statement was made by the Prime Minister, Mr Keating:

> I warmly welcome the announcements by the governments of the United States, the United Kingdom and France of their intention to sign the Protocols in the South Pacific Nuclear Free Zone (SPNFZ) Treaty in the first half of 1996.
>
> The People's Republic of China and the Russian Federation have signed and ratified the Protocols open to them. All five nuclear weapon states have now formally recognised the desire of South Pacific countries to live in a region free of nuclear weapons and nuclear testing.
>
> There are three Protocols to the Treaty under which the nuclear weapon states agree not to use or threaten to use nuclear explosive devices against any other SPNFZ member and undertake not to test nuclear explosive devices within the territorial boundaries defined by the Treaty.
>
> Australia has worked tirelessly towards this objective, one which we have shared with the nations of the South Pacific. We took a leading role in the establishment of the SPNFZ as a means of preserving the peace and security of the region and its environment.
>
> The decisions of the governments of the United States, France and the United Kingdom will send a strong message to the international community on non-proliferation and disarmament. This will help drive negotiations for the completion of a truly Comprehensive Test Ban Treaty in 1996.
>
> In taking this welcome decision the French Government has also underlined the anomaly of its nuclear testing program in the South Pacific.
>
> Each test is an affront to the aspirations of the region embodied in the SPNFZ Treaty.
>
> France's decision will not lessen our resolve to go on campaigning actively for an immediate end to French testing.

Arms Control and Disarmament — Australian Policy

The following are extracts from a speech entitled *Australia and a World Without Nuclear Weapons* given by the Prime Minister, Mr Keating, at Parliament House, Canberra, on 24 October 1995 to mark the fiftieth anniversary of the United Nations:

> As we have seen again over the past few days, this 50th anniversary has already generated another round of critical debate about the role and functions of the United Nations...
>
> But another reason for this gathering today is to thank the United Nations for what it has done for Australia.
>
> Because the United Nations has given us a forum where nations can resolve differences in an environment bounded by agreed rules and norms. It has provided a space in which the challenges facing humanity can be discussed and our experiences shared.
>
> For all its faults and imperfections, it is impossible to imagine a world without it—without international forums for the discussion of human rights,

setting universal standards, and developing measures to prevent human rights abuse. A world without bodies to address issues like the status of women and racial discrimination or to give voice to the aspirations of indigenous peoples.

A world without the capacity to negotiate the pressing transnational challenges of the environment or to tackle the most difficult problems of economic development.

But in addition to these large issues the United Nations also affects for the better the lives of ordinary Australians through the web of international agreements which have been negotiated under its auspices. These cover issues as diverse as weather monitoring and prediction through the World Meteorological Organisation; improved labour standards and protection of workers' rights through the International Labor Organisation; safety standards in civil aviation and maritime transport; the placement of satellites and even the transfer of mail between countries.

But for all the good work which the UN does in such areas, its ultimate success or failure will have to be judged by the impact it has on international security.

Because above all else, the people who drafted the Charter 50 years ago, who had just experienced a global conflict—the most destructive in all of human history—were motivated by the desire to rid the world of the scourge of war. But their hopes were almost immediately crushed with the coming of the cold war. For the first time, the international community had to contemplate the possibility that another world war would destroy our civilisation.

The UN system has a great responsibility to help the world avoid such a catastrophe. The disarmament goals of the international community are set in resolutions adopted by the General Assembly.

The vital international treaties to turn these goals into reality are negotiated in the Conference on Disarmament in Geneva. And the ultimate recourse for enforcing compliance with international disarmament obligations lies with the UN Security Council, as we have seen in the Council's actions on Iraq and North Korea.

This central role of the United Nations makes today's occasion an appropriate one to make a major announcement about Australia's arms control and disarmament policy.

In all the debate and anger over the past months about the French Government's decision to resume nuclear testing in the South Pacific, there is one point which consistently recurs in our thinking about the issue.

I have made that point publicly. It is that, however strong our opposition to them, those tests at Mururoa, and China's continued testing, are not themselves the core of the problem. They are instead a symptom of the problem—the deeper and more troubling problem of nuclear weapons in the world.

The reason we have seen such a huge outpouring of public concern about the French tests, not only in this region where they are being held, but also in Europe and Japan and elsewhere, has been a feeling that we have been cheated—robbed of the chance of a world free of nuclear weapons.

With the end of the cold war, we all breathed more easily. We allowed ourselves to think that the nuclear threat, the nightmare of two generations, had

finally passed. The thought of nuclear weapons and nuclear war faded from our minds.

But the reality has not faded. Fifty thousand nuclear war heads remain in the arsenals of the five declared nuclear powers. And it is no less real and frightening that others—not just the so called threshold states of India, Pakistan and Israel, but others like Iraq—wait and work to acquire nuclear weapons.

The French decision to resume testing—announced within weeks of the indefinite renewal of the Nuclear Non-Proliferation Treaty—was an outrage and a folly. It has produced an entirely understandable wave of anger around the world. But we may yet be able to derive something positive from it because it has jolted us back to the reality of nuclear weapons in the world.

I now feel a growing certainty that some great good might yet be got out of the present bitterness if we make this the moment to take on the challenge of nuclear weapons.

I believe we can turn the global outrage at French and Chinese testing into something broader and more ambitious—I mean the creation of a world totally free of nuclear weapons.

This has often been talked about in the past, of course. It is a goal which has been forcefully articulated by Professor Joseph Rotblat, who won this year's Nobel Peace Prize. It has long been an aim of Australian policy.

However, to most people, including me, it has always seemed an unachievable ambition, at least in our own lifetimes.

The strategic uncertainties and deep political suspicions of the cold war would surely have made this goal impossible.

But that world has now changed.

We still have conflict, of course. We still have competing national interests. But the strategic framework in which nations operate has changed profoundly and I believe it is now possible to contemplate getting a concrete program to achieve a nuclear weapons free world.

Because the truth is that the sort of world we now have, with nuclear powers committed to reducing their arsenals and unlikely to use their weapons offensively, will not continue forever. We can be certain of this.

Unless we take action now, the nuclear competition that characterised most of the second half of this century will very likely return and probably in a much more unstable and multipolar form.

The world must extricate itself from the circular argument that we need nuclear weapons because we have nuclear weapons.

The nuclear powers cannot be excluded from this: they must understand that the most likely threats to their security lie in the proliferation of nuclear weapons.

This is a point we have made often about the French tests and the way they cut across the Nuclear Non-Proliferation Treaty, the most important arms control treaty ever negotiated within the UN system.

I notice that former French President Giscard D'Estaing made a similar point in an article in the French press on 12 October. He said that "the increase in the number of states, be they big or small, who manage to develop nuclear weapons,

now constitutes for France a threat just as serious, if not more serious, than that of a strategic strike decided by one of the rare countries with nuclear weaponry."

I believe that a world free of nuclear weapons is now attainable. It can be done and it will be in the best security interests of Australia and our allies and friends if we do it.

As we saw in the Gulf War, new technology has given weaponry an accuracy that substitutes precision for brute explosive force, and with far less risk to civilians than those from nuclear weapons.

With the collapse of the Soviet Union, we have also seen how real is the potential for catastrophic nuclear accidents.

The Government believes the time has come for more determined movement towards the goal of a world free of nuclear weapons.

There is no magic wand we can wave to make this happen. As with the long negotiations in the Conference on Disarmament to get rid of chemical weapons, ultimate success may be decades away. And getting there involves security issues of the greatest complexity and profundity. We do not minimise the difficulties or the dangers.

Success depends ultimately on having the will as well as the ambition. The Chemical Weapons Convention, endorsed by the UN General Assembly in 1992 has shown that where there is a will there is a way to put the genie back in the bottle. We proved it was possible to rid the world of a whole class of weapons of mass destruction. And the verification problems for a total ban on nuclear weapons should be easier to solve than those for a ban on chemical weapons.

A key building block for a nuclear weapons free world is already in place with the Nuclear Non-Proliferation Treaty, Article VI of which commits the nuclear weapon states to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament."

But this generalised statement of principle is not nearly enough.

What we need now is action to achieve the abolition of all nuclear weapons.

These are the next steps the Government has in mind.

In our own region we want an end to nuclear testing by France and the closure of the Mururoa test site.

For nearly 50 years—since the beginning of the nuclear weapons era—the Pacific has been used as a testing ground. The Americans began testing in the Pacific in 1946 and continued until 1962; the British tested in Australia from 1952 until 1963; and the French are still testing in French Polynesia.

In 1983 the Australian Government set the objective of ridding the region of testing and began its campaign to declare a South Pacific Nuclear Free Zone. With the announcement on 20 October by France, the United Kingdom and the United States that they would sign the protocols of the South Pacific Nuclear Free Zone Treaty in the first half of 1996, we can say that we are on the point of achieving our objective and ending a dark period of the region's history.

The Government's deep regret, of course, is that France is not drawing the logical conclusion from its intention to sign the SPNFZ protocols and ending its tests now as we urge it to do.

We also want the nuclear weapons states to support the African Nuclear Weapon Free Zone Treaty, which is being presented to the current session of the General Assembly, as well as the South East Asian Nuclear Weapon Free Zone which is nearing completion.

We believe that progress towards a nuclear weapons free world would be given a major boost through the creation of linkages between existing or potential nuclear weapons free zones in the South Pacific, Latin America, Africa and the Indian Ocean which already cover most of the southern hemisphere.

Globally, the most immediate priority has to be the conclusion of a genuinely Comprehensive Test Ban Treaty by mid–1996, followed by its early entry into force. Australia, together with Mexico and New Zealand, is presenting a resolution to the current session of the General Assembly to entrench this deadline.

In Geneva, Australia has been consulting closely with key countries on ways to expedite the CTBT negotiations in the Conference on Disarmament to take advantage of this opportunity. Over the next few months the Government will be devoting substantial resources—as we did for the Chemical Weapons Convention—to doing what we can to help bring this about.

Next, we want to see the immediate start and early conclusion of negotiations on a convention to ban the production of fissile material for weapons purposes—the so-called "cut off" convention. And we want to see the development of a regime requiring all states to declare and account for their present stocks of fissile material, as another necessary prelude to the elimination of nuclear weapons.

We want to encourage the further strengthening of international safeguards, in particular by building up the International Atomic Energy Agency's ability to detect illegal undeclared nuclear facilities.

We want universal membership of the Nuclear Non-Proliferation Treaty, particularly by the nuclear threshold states of India, Israel and Pakistan.

But as I said earlier, Australia is determined to pursue the complete elimination of nuclear weapons.

We want the nuclear weapons states to carry out their commitment to the elimination of their nuclear stockpiles by adopting a systematic process to achieve that result.

The next steps towards this are the adherence by the United States and Russia to the destruction timetable under START, and further nuclear reduction agreements between the United States and Russia, with the earliest possible involvement of the United Kingdom, France and China.

We acknowledge the need, as we always have, for a system of stable deterrence to be maintained while the reduction and eventual elimination of nuclear weapons is being achieved.

All these elements constitute a program which will set norms for international behaviour, establish new international legal obligations and further develop international control mechanisms which will serve as an essential framework for the safe and secure elimination of nuclear weapons.

I am writing to other heads of government who share Australia's concerns, suggesting that we look at the means by which we can advance the cause of a

nuclear weapons free world. I hope a new coalition of international interests will emerge from these consultations.

As its contribution to this, the Government will establish a group of knowledgeable and imaginative individuals from around the world. In a major series of meetings in Australia, this group will be tasked to produce a report to be submitted to the next United Nations General Assembly and to the Conference on Disarmament in Geneva.

The group will examine the problems of security in a nuclear weapons free world and suggest practical steps towards the goal, including the ways of dealing with stability and security in the transitional period.

Next week, the International Court of Justice will be hearing a case referred to it by the UN General Assembly, asking it to give an advisory judgment on the legality of the use and threat of use of nuclear weapons. We believe, and will argue before the Court, that it would be best for the Court not to make a judgment—the legality of nuclear weapons is a different matter, of course, from their utility or strategic value or even their morality.

A judgment by the Court that the use or threat of use of nuclear weapons is legal, even if only in some limited circumstances, runs the profound risk of achieving precisely the opposite of what those seeking the Court's opinions want—namely the encouragement of others who want to join the nuclear club.

Even a judgment that nuclear weapons use or threat is illegal—unless very carefully framed to deal with how that conclusion might be put into practical effect—would likely be ignored by the nuclear powers and, as a result, serve no purpose other than to weaken the standing of the Court itself.

The Government has now decided, however, that Australia will also argue to the court that if, despite the good reasons for not making a decision, the court is minded to make a decision in the case, it should decide in favour of the illegality of those weapons.

We are not naive about our role in this enterprise to make the world free of nuclear weapons. We are a nation of only medium size and weight in the world, and we are not a nuclear power.

On the other hand, we are skilled at multilateral diplomacy and have demonstrated on issues like the peace process in Cambodia and APEC and the Chemical Weapons Convention and the protection of Antarctica as a wilderness reserve and the campaign against apartheid, that we have the energy and ideas and the capacity to create coalitions with others, to make a real difference in the world.

With the same energy we gave to those projects we will now commit ourselves to the goal of a nuclear free world.

Reflecting on the history of nuclear strategy, the American writer Fred Kaplan says that nuclear strategies were contrived to disguise the real nature of the nuclear bomb. It is in fact, he writes, "a device of sheer mayhem, a weapon whose cataclysmic powers no one really had the faintest idea of how to control. The nuclear strategists had come to impose order but in the end chaos still prevailed."

The world has a chance just now to find a way out of the chaos. The chance will not last long. We can help the world to grasp it, even show the way.

At the beginning of the United Nations' second fifty years, there could be no better way for us to show our commitment to the ideals which motivated the men and women who drew up the Charter than by working, like them, to turn a coalition of noble ideas into a concrete and enduring reality.

Use of Force — Peace Operations

The following is extracted from the text of the Keynote Address entitled *The Use of Force In Peace Operations* given by the Minister for Foreign Affairs, Senator Gareth Evans, at the Stockholm International Peace Research Institute (SIPRI) and Australian Department of Foreign Affairs and Trade Seminar in Stockholm on 10 April 1995.

Traditional understandings about the use of force. The Organisation's founders certainly contemplated the use of force as a legitimate response to particular kinds of security problems; indeed the enforcement provisions of Chapter VII were in many respects at the heart of the reason for the UN's foundation. After the failure of the League of Nations to control the militarism and expansionism that led to World War II, governments, in particular those of smaller and more vulnerable countries, wanted an organisation which could credibly act as a guarantor of international security—including in resisting through collective action blatant acts of aggression. But it is also clear in both the letter and spirit of the Charter that military force is a last resort measure, to be used only after the exhaustion of efforts to settle disputes and to bring an end to conflicts by peaceful means.

For most of the UN's first forty-five years, the period of the Cold War, these elements of the UN Charter lay dormant and, Korea apart, the Congo in 1960 provided the UN's only direct involvement in enforcement through military action. This operation's original Chapter VII mandate (SCR143), to assist the newly independent government in maintaining law and order and to provide technical assistance, was expanded when the Security Council authorised enforcement action to prevent civil war (SCR161) and to complete the removal of mercenaries (SCR169) following the secession of Katanga province. The UN's experience in the Congo was not a happy one. The operation incurred many casualties among UN forces. It was controversial and lacked solid support from permanent members of the Security Council. It saw a reaction against forceful UN operations, and against putting Blue Helmets into situations of active conflict.

The only other enforcement action in this period was, of course, the operation in Korea in 1950, which the UN authorised, but did not command. The Security Council, which was able to act during a temporary withdrawal by the Soviet Union, recommended that member states provide assistance to the ROK to repel the armed attack (SCR83), created a Unified Command to which member states contributed troops, asked the United States to designate the commander and authorised the Unified Command to use the UN flag (SCR84). There is no express provision in the UN Charter for the deployment of military personnel with a mandate inhibiting the use of force. Yet peace keeping, which involves just that, is fairly claimed as an invention of the UN, one which has won it deserved credit—including, in 1988 the Nobel Peace prize. The beginnings of the notion of peace keeping go back to 1948 and the establishment of the UN Truce Supervision Organisation (UNTSO). A key element in these operations has been, from their start, the principle of non use of force. In the

case of UNTSO, Ralphe Bunche, then deputy to the Mediator for Palestine, insisted that military observers should not carry any arms at all. Secretary-General Dag Hammarskjold further refined the applicable principles, however, with the establishment of UNEF I to contain the Suez crisis in 1956, stating that:

> ...men engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions which they occupy under orders from the Commander, acting under the authority of the Assembly and within the scope of its resolutions.

There are several reasons why non use of force is an integral part of the concept of peace keeping as it emerged in the first fifty years of the UN. First there are reasons of Charter authority and principle. Peace keeping is seen as an extension of the peaceful settlement of disputes under Chapter VI—and that Chapter gives commanders in the field no clear authority for anything other than peaceful measures. It evolved essentially as an experiment in defining a useful role for the UN as a third party facilitating the peaceful settlements of conflicts which the US and the Soviet Union could support, or in some cases tolerate, in a period in which bipolar tensions ruled out more active approaches by the Security Council.

At a more practical level, as it became clear that Charter provisions for a command and control structure through the Military Staff Committee were a dead letter, there was no readily available mechanism for the organisation of enforcement operations, which would have required higher levels of interoperability and greater demands on equipment and force numbers than typical peace keeping operations, which latter simply acted as a buffer between forces or in a monitoring capacity Moreover, it was of the nature of UN peacekeeping operations (PKOs) that they were essentially a political tool, and peace keepers had to function in a way consistent with the political objective of their mission. The use of force by UN forces would have complicated the peace making diplomacy which was the rationale for their existence. But the most compelling practical reason for non use of force in peace keeping was that PKOs were, by their very nature, premised on the consent by the warring parties to the UN's presence and on the essential need to preserve impartiality and neutrality. Any use of force by peace keepers needed to be weighed against the need to retain the confidence of the parties.

A further deterrent to the use of force was the usual expectation of troop contributing countries that they were committing their forces to situations of low level risk only. This was not unreasonable, given that the UN's operations were not supported by an elaborate, sophisticated international command and that the diverse forces provided by member states were often at quite different levels of preparedness and efficiency. Moreover, while troops may have been willing to lay down their lives for their countries, peace keeping missions were not usually directly related to a threat to the national defence of those countries making up the contingents. In these circumstances many governments were often understandably unwilling—as they still are—to expose their contingents to highly dangerous situations and to the domestic reactions which casualties would bring.

The principle of non use of force was not, of course, an absolute prohibition. At least from 1956, it was acknowledged that rules of engagement (ROE) should

permit the use of force in self defence. This was, however, defined tightly. In the case of UNTAC, for example, the ROE first stated in general terms that "the use of force is authorised either in self defence or in resisting attempts by forceful means to prevent UNTAC from accomplishing its mission". The ROE then specified that UNTAC personnel were authorised to use "unarmed force", being the use of all means, short of weapons, in a range of situations including threat to the safety of UN personnel, infiltrations attempted without firing, violations of UN premises and in self defence against unarmed attack. They were authorised to use armed force against armed persons in self defence; against attempts to disarm UNTAC personnel; if other UN personnel were in mortal danger; in defence of UNTAC posts; to defend positions or vehicles under armed attack; against attempts made to compel UNTAC personnel by force to withdraw from a position they were ordered to occupy by their commanders; against attempts to penetrate a UN post or cut off a UN force with the use of armed force; and if attempts were made to abduct or arrest UN civilians or military personnel using force. The ROEs also stated that in all forceful actions by UNTAC personnel, the principle of minimum force and proportionate response applied, and set out the sequence to be followed in all situations other than in the case of immediate threat to life or if casualties had already been sustained.

The new environment of the 1990s. While political constraints on decision making by the Security Council have lessened significantly with the passing of the Cold War and the virtual disappearance of the veto, the experience of more UN operations, and of more ambitious UN operations, has exposed important constraints on the UN's effectiveness. In the last few years, we have tested the limits of how far the UN's secretariat resources can stretch, and of how much member states are willing to contribute, in troops and finance. We have discovered that, even with generous arrangements for seconding military staff into UN headquarters (the Australian Defence Force, for example, has seven staff seconded into the Department of Peace Keeping), there are serious limits to the capacity of the UN Secretariat to act as a strategic headquarters handling, as at the present time, 17 operations around the world. Our Ministers for Defence have come to focus with greater preoccupation on the limited headquarters capacity for planning and administration.

We have learnt that, at least for the moment, there seems to be a ceiling of around 70–80,000 troops which member states will collectively make available to the Secretary General at any one time, and that there is often a considerable lag before these forces can be deployed to the field. The budget for peace operations has risen tenfold in three years, and we are now seeing that the largest contributor has decided unilaterally to cut its share of that budget, and that many developing countries fear that the expansion in payments for such operations will be at the expense of funding for their priority concern of economic and social development.

We have also observed the limitations on Security Council mandates for many operations. The last few years have given us all too many examples of politically influenced mandates which have not been achievable in the field or which have lacked the clarity about goals and time frames which commanders could reasonably expect. Similarly, we have seen missions undertaken without providing the necessary resources, and the UN assuming a role in complex situations without sufficient thought given to how Blue Helmeted forces should interact with other international actors, whether these be non-governmental aid

bodies or major UN organs or agencies such as the UNHCR. On a more heartening note, we have also seen that the Security Council can improve the quality of its output, with an increasing effort being made to be more specific in framing mandates about such crucial elements as the time frame for missions.

A good deal has been written, including by some at this table, about "second generation" peace keeping and so called "Chapter VI½" operations. Certainly we have seen a change in the character of many peace keeping operations since the late 1980s. This has had much to do with the changing nature of the conflicts the UN has faced. Traditional inter-state war, with its relative simplicities and certitudes, is now conspicuously rare, and the new problems are overwhelmingly to do with intra-state conflict. According to SIPRI's 1994 Yearbook, every one of the 34 major armed conflicts waged in 1993 were intra-state conflicts. There is an evident "zone of conflict" including the former communist states, much of Africa, and parts of Central and Latin America and South Asia, where too many states seem caught by a downward spiral of economic decline, often exacerbated by official corruption and mismanagement, creating governments which are at or near collapse and which are being challenged, often violently, by their own citizens. Economic decline has hastened the process of national disintegration, and vice versa.

Intra-state conflict poses a whole range of new complications, involving more often than not the emergence of non-State actors as relevant players, multi-sided disputes, and the consequent difficulty of maintaining an image of impartiality, and it has required new responses from peace keepers. "Traditional" PKOs involved not much more than unarmed or lightly armed military contingents being engaged in the monitoring, supervision and verification of ceasefire, buffer zone, withdrawal and related agreements, usually involving clearly defined borders or demarcation lines. The more recent generation of "expanded" peace keeping operations involves in addition a wide range of activities such as cantonment and demobilisation of troops; election monitoring or organisation; assistance with the repatriation of refugees; human rights protection; monitoring police activities and training new police forces; and exercising civil administration functions during transition to independence or democracy. Operations in Rwanda, Cambodia, Angola and Mozambique, for example, have been more activist and multi-functional in character than nearly all those that the UN had previously undertaken. "Expanded" peace keeping has recognised the reality that "traditional" peace keeping was often not enough to achieve a lasting peaceful settlement—it was both a response to the challenge for the UN to do more and in itself a new challenge for the UN to plan and manage these more ambitious operations.

Inevitably, the expansion of UN peace keeping operations has increased the frequency and intensity with which personnel are exposed to danger. Some 754 Blue Helmets died in the forty years of UN peace keeping, up to and including 1988, nearly a third of them (234) in just one operation the Congo. But 528 have been lost since; of these deaths, almost half (293) have been in the two recent operations in Somalia and the former Yugoslavia. We have been confronted starkly as a result with a series of conceptual and practical questions about the legitimacy and desirability of using force in peace keeping operations.

While most of the new "expanded" peace keeping functions can be accommodated easily enough within a Chapter VI framework, problems do arise when one seeks to add an enforcement role of some kind to a traditional peace

keeping operation, particularly in the context of protecting humanitarian relief operations, protecting peace keeper's under threat, preventing or reacting to major human rights violations, or, more generally, acting to "defend the mission". It is to these problems that I now turn.

II Using Force by Mandate

Recent recourse to Chapter VII authority. The two Chapter VII enforcement operations in the 45 years to 1990 were followed in quick succession by five more in the next four years, in response to Iraq's invasion of Kuwait; the breakdown of law and order in Somalia; the support of humanitarian aid, freedom of movement of UN personnel and protection of safe areas in former Yugoslavia; systematic and widespread killings in Rwanda; and the restoration of democratically elected government in Haiti. In the case of the operations mounted under French command in Rwanda last year and under United States command in Haiti, the enforcement mandates were limited in time, and gave way relatively soon to Chapter VI UN operations. The Unified Task Force in Somalia (UNITAF), which was authorised under Chapter VII, was succeeded in mid–1993 by an expanded UNOSOM with a mandate which mixed elements of Chapter VI and Chapter VII. The mandate of UNPROFOR in Bosnia began as a Chapter VI mandate but developed various Chapter VII strands. These operations were varied in nature and their outcomes, and they offer different lessons for us.

This increasing recourse to Chapter VII action has not gone unquestioned. Somalia, in particular, has frequently been cited as a model of an operation gone wrong—not just because it largely failed to achieve its mandate, but because it introduced a new element into peace enforcement, in which the UN came to be seen as a partisan protagonist in the fighting. The reaction by UNOSOM II forces to the killing of 24 Pakistani troops in June 1993 (the largest UN loss since the Congo) was seen by many as excessively violent, a futile effort to fight fire with fire which brought with it many unforeseen consequences and which stood in contrast to the restraint which operations in the Congo and Lebanon had shown in the face of similar provocation. Attacks by helicopter gunships on civilians, documented abuse of detainees, racist attitudes by some UN troops, vain boasting and a descent to tragic farce in pursuing General Aideed—all these helped make Somalia a watershed in ideas about what sort of force, and how much, should be used in UN operations.

Somalia raised as well questions about approaches to the arming of UN forces. There is evidence to suggest that the availability to UNOSOM of heavy weapons helped shape its responses, complicating the usual gradualist approaches which demand that proportionality be a condition of each heightened step of response. The possession of heavy fire-power predisposed decisions to use it, before less violent options were fully explored. When UN operations are initiated under Chapter VI, but are subsequently given a Chapter VII dimension, the result has been, as in Bosnia and Somalia, an acceptance of the UN's presence that is ambivalent at best. Traditional understanding about the appropriate use of force has come under much strain, at times causing frustration for commanders who become unsure about how to guarantee the safety of their troops. Such situations are often newsworthy because of the ready images which contrast aspects of the UN's role, for example on the one hand, its humanitarian or human rights obligations and, on the other hand, its prudent practices of

maintaining neutrality. This is a tension sometimes exploited by the parties to their own ends. There are thus two key reasons for seeking greater clarity about the UN's legitimate role and its legitimate reaction to threat: on the one hand to give commanders clearer guidance, and put pressure on political decision makers, in the Council and within Governments, to establish clear and achievable goals for UN operations; and on the other to counteract the often ill-informed attacks on the UN and its credibility by promoting a better understanding of what the UN can and cannot do.

Protecting humanitarian relief operations. Notwithstanding these difficulties, there are situations in which an enforcement mandate will be required. The most complex area is probably the protection of humanitarian relief. While the circumstances of each case have required markedly different responses from the UN, it is helpful here to draw a distinction between operations which are established chiefly for the purpose of humanitarian relief (with the attendant debate about legitimate grounds for "humanitarian intervention") and operations which are established for some other purpose, onto which is subsequently added a humanitarian relief function as, for example, the case of UNPROFOR.

Humanitarian intervention is essentially a Chapter VII action because it presupposes a lack of consent by some or all parties to the UN's presence. It is evident that, despite much debate following SCR 688 and Operation Provide Comfort in Northern Iraq, no international consensus has yet emerged about its legitimacy, and it is still by no means a commonplace or widely accepted response. The experience of Somalia, again, has prompted reconsideration about the basis for humanitarian intervention operations. Somalia showed how the ability of the United Nations and NGOs to deliver humanitarian assistance can be severely damaged once UN forces have in effect become a party to the dispute. It demonstrated the extent of the resources needed (and the time to deploy them) in order to provide guarantees of safety for aid-deliverers in a conflict situation, and the unwillingness of governments to expose their troops to this level of risk. It raised, also, questions of selectivity—why was it that UN forces were used in this way in Somalia but not in comparable countries with comparable levels of human suffering, such as Rwanda, Liberia, or the Sudan? Protection of humanitarian relief as part of a broader operation is a typical feature of mixed mandate or "mission creep" situations. If there is only a Chapter VI mandate in existence, or if there is a formal Chapter VII mandate but insufficient resources to effectively implement it, the force commander's job becomes almost impossible. The experience in Bosnia of actions such as convoy protection and the protection of airlifts into Sarajevo highlights the need to find ways of preserving both the substance and the appearance of neutrality, so that the legitimacy of the operation is not called into question and other key objectives of the mission are not jeopardised.

The protection must be carried out in ways which are acceptable to the warring parties, such as patient negotiation over roadblocks. This may mean enduring persistent harassment and obstruction. It must also be carried out in a way that does not erode the capacity of the deliverers of humanitarian assistance to continue doing their job, and ensures that aid will reach the needy. The reality on the ground is often that the parties will blackmail humanitarian agencies into delivering assistance to their own people or forces, who are not necessarily the intended recipients.

Protecting peace keepers under threat. Bosnia provides a number of examples of mandates under Chapter VII intended to protect peace keepers from the threat of armed attack. One of the lessons of Bosnia is the need for prompt action by the Security Council to authorise protective action: responsibility should not be placed on field commanders to interpret inadequate mandates to allow for the use of force when this was not the original intention. Once a mandate authorising use of force has been established, with a clear indication of when force may be used, the decision must be left to the commander on the ground so that there can be effective response in urgent situations. Rules of Engagement guidelines can readily be written to protect peace keepers under general threat. But ROEs are a basis for intelligent judgment, not a substitute for it: it is important that decisions in the field not threaten the basic purposes of the mission, for example by disrupting political negotiations through precipitate or excessive reactions to threats.

Even when there is political authority for commanders to use force, their latitude to do so in practice can still be narrow. Sometimes they are effectively limited in their ability to respond to threats to safety because they cannot risk escalation beyond the capacity of their forces to deal with. Decisions to provide reinforcements will often be political rather than tactical. And the level of resources made available by the Security Council is frequently more a function of political or financial considerations than military planning. It is instructive to recall that in Bosnia, when the Council was determining the additional force necessary to protect safe havens, a total force of 30,000 was recommended by the force commander. This was reduced to 15,000 on the Secretariat's advice to the Security Council, after much pressure from the P3 to keep costs down. The Security Council's final approval was for a force of 7,500.

The greatest protection for peace keepers is to retain consent and the willing cooperation of the parties. Complex, multi-sided operations characterised by ethnic or religious conflict and the breakdown of the state are all likely to make PKOs more vulnerable. In some cases, the most effective form of protection for peace keepers is probably deployment in sufficient numbers to deter any attacks. A credible threat of punitive reaction to deliberate attacks on Blue Helmets is desirable, although it certainly does not guarantee security. The threat of air strikes against Serb positions was effective for a time after the adoption of SCR 816, but the failure to use it in any practical way soon diminished that effectiveness.

The simple truth here is that there are no easy or risk free answers to ensuring the safety of UN peace keepers when they are deployed in an active conflict. The common thread of situations like Mogadishu and Bihac, where Blue Helmets have become highly vulnerable to attack or are being deliberately targeted, is that consent to their presence has broken down. When the authority for that presence is so undermined we should ask ourselves whether Chapter VI peace keeping is, in any traditional understanding of what that means, still feasible. Of course, the problems of maintaining an image of impartiality and continued consent are multiplied once enforcement action has been taken, and this is a consideration which must be weighed carefully in judgments about enforcement action to protect peace keepers.

A recurrent theme in the use of force in peace operations is that its consequences for the political goals of the operation must be a key consideration. Options that may be viable if, for example, simple military victory were the chief

consideration, will often be dismissed for this reason. For this reason it is important to develop viable alternatives to the use of force, such as the negotiated extraction of peace keepers from difficult situations. We have observed successful examples of this in Bosnia on a number of occasions. Again, at the end of 1992, there was a spate of hostage taking of UNTAC personnel by the Khmer Rouge: in each case release of the hostages was secured through negotiation, at the local level, including through the Khmer Rouge liaison officers and diplomatic channels in Phnom Penh. Embargoes, sanctions and blockades might also be considered as alternatives to the use of force.

Protecting human rights. It is coming to be increasingly accepted that, even in the absence of any formal Chapter VII mandate, peace keepers who are present when a serious, especially life threatening, violation of human rights is occurring or about to occur, have a duty, if they can realistically do something to stop it, not to stand idly by. We would not expect our national forces to do nothing to help in such cases, and we should expect no less when they are serving under the UN flag. This is not to say that individual peace keepers will not sometimes be caught out by events and be unable to act effectively. But to the extent that they can act to prevent an atrocity, they should.

Actions to prevent atrocities should be distinguished from the appropriate reaction after such incidents have occurred. This is often more difficult for commanders in the field and those framing political instructions in New York, as punitive actions will almost always be seen as taking sides, with consequences for the underlying acceptance of the UN operation and the parties' faith in the UN's impartiality. In the absence of a Chapter VII mandate, peace keepers have no general right of arrest, no method of detention, no court of law to which to refer violators. It is important in the context of proposed punitive action that commanders, and those setting their mandate, keep their eyes firmly on the basic purpose of their mission. Lt General Sanderson may well recount to you the difficulties he faced in Cambodia in resisting pressure to go after the Khmer Rouge following some of their more vicious atrocities, being profoundly tempted to do so, but knowing that such action would have derailed UNTAC's mission.

A further dimension of this problem is the role that Blue Helmets should play to assist war crimes tribunals, as have been established for Rwanda and the former Yugoslavia. A host of problems arise, ranging from the practical, such as providing security for witnesses, to questions of principle such as the system of law under which accused persons are to be tried. Perceptions that such tribunals are being imposed from outside may raise questions of sovereignty, even where those questioned have not been a major objection to UN intervention. The involvement of peace keeping operations in such activities immediately raises questions about the impact on their rationale and legitimacy.

This is not to question the importance of such tribunals or, more broadly of strengthening the local system of justice and the rule of law, as critical elements of many peace operations. In operations which are not premised on consent and non use of force, there may in fact be more scope for multinational forces to become directly involved. For example, the Australian contingent based in Baidoa in Somalia as part of UNITAF was quite effective in reviving local systems of justice.

More generally, however, and particularly in Chapter VI operations, solutions lie in creating or strengthening local judicial processes so that an

effective criminal justice system is in place to deal with human rights offenders, including after UN forces have departed. In many cases, civilian police contingents can assist. I have previously suggested that, for "expanded" peace keeping missions in states where the breakdown of law and order is one of the features of the conflict, "justice packages" be developed with the aim of ensuring viable local legal systems. This would involve assistance with some or all of the following: creating a body of criminal law and procedure; establishing police forces; training judges, prosecutors and defenders; and developing adequate correctional facilities.

Using mandated force more effectively. There are some commentators who have concluded, given the difficulties and constraints on use of force in UN operations, that these should be confined to conventional, non hostile situations or at least, to the extent that the UN does undertake more ambitious, multi-functional operations such as UNTAC or ONUMOZ, that any question of enforcement, even at the margins of the mission, be ruled out. I do not think that this is realistic. The demands on the international community to play a role in bringing peace to complex situations of conflicts is not, and will not, decline. The UN may well become more selective about the circumstances in which its peace keeping operations stand to succeed, but it will not, and in my view should not, vacate the field. The more realistic challenge is to be clear headed about the political and legal authority, the precision and feasibility of mandates and the level of resources and organisation needed for operations to stand a good chance of success.

In his recent Supplement to *An Agenda for Peace,* the Secretary General concludes that enforcement action is beyond the current capacity of the UN except on a limited scale. For the immediate future, it is likely that many Chapter VII operations will be delegated to regional arrangements or agencies, as Article 53 of the Charter contemplates, including to international coalitions. This is clearly the sensible option for outright war fighting, as in the Gulf War. The practical reality of limited capacity means it will also make sense in a range of other situations such as in Operation Turquoise in Rwanda, where France undertook a forceful intervention under Chapter VII which was followed by the deployment of the expanded UNAMIR operation under Chapter VI, or with respect to the conflicts in Georgia and Tajikistan, where the UN's role is essentially limited to monitoring activities which are well within the conventionally accepted parameters of Chapter VI.

When the UN does undertake enforcement in the type of circumstances I have listed, it must do so judiciously, in a way that does not damage the political aims of the overall UN mission. To do so effectively, it must address its current weaknesses in command and control arrangements, in planning and organisation of operations and in providing adequate resources to these operations. The workshop will address some of these issues tomorrow. One particular area where the implications of the UN playing such a role need to be thought through: its lack of rapid response capacity.

There has been a flurry of recent proposals and studies to consider how the UN could do better to deploy forces to crises more rapidly. Several Foreign Ministers, including myself, have commented that the UN's tardiness in mounting an effective operation in Rwanda in time to halt the genocidal killings there twelve months ago has confronted us squarely with the need to reconsider

the options, including the idea of a standing force—which I, for one, had previously rejected as impractical. The proposals range from Dutch Foreign Minister Van Mierlo's idea of a "UN fire brigade" to suggestions for enhanced stand-by arrangements put forward by the Secretary General and the Danish Government. Canada is conducting an intensive study on how the UN's rapid deployment capacity could be improved which will cover early warning, integrated planning, logistics, command and control systems, doctrine and interoperability.

Without embarking on a detailed discussion of these options, it is clear that a number of issues squarely relevant to this seminar are thrown up by them. One question, for example, is the extent to which an actual peace enforcement, as distinct from preventive deployment, role can reasonably be contemplated. It may be that a force arriving in sufficient numbers at an earlier stage will dampen the escalation of violence and create a less dangerous environment; on the other hand, the quicker forces are to arrive, the more likely it is that they will arrive in situations of hot conflict, and the better prepared they will need to be accordingly. Then there is the question of what impact rapid deployment will have in practice on the role of subsequent, more conventional peace keeping operations deployed to replace the initial UN force: if forces are deployed quickly with an enforcement role, will that make it more or less easy to deploy Blue Helmets to a follow up mission based on consent and impartiality?

III Using Force Without a Mandate

There remain some questions to be addressed about just how far a Chapter VI mandate should be taken to reach so far as the use of force is concerned. The "self defence" issue has to be addressed here, as does the more general question of how far a Chapter VI operation can and should go in "defending the mission".

Self defence. There is no doubt that self defence is accepted as a permissible justification for the use of force in operations based on consent. But there is no absolute guideline as to what constitutes "minimum force and proportionate response" in self defence. The experience of Cambodia provided numerous instances when commanders and troops came under direct threat, including from bombardment by Khmer Rouge artillery. At the end of December 1992, Bangladeshi peace keepers in Svey Leu were subjected to repeated shelling attacks. They sat tight in their bunker for several days not returning fire while their withdrawal was negotiated. They were eventually withdrawn, given that their work assisting electoral registrations was largely complete. But when three months later, in Angkor Chun, also in the North, another group of Bangladeshis was shelled, the peace keepers were protecting a major road near a main town and their presence was considered essential to UNTAC's mandate. Therefore they returned fire when attacked in accordance with the mission's ROE.

To what extent do Rules of Engagement provide guidance to commanders and to peace keepers in the field on the use of force in self defence? ROEs have to provide effective guidance to all levels within a peace keeping force. They therefore need to be as precise as possible. In Cambodia for instance, in the case of crimes against humanity, the ROEs specified that "there are also other criminal acts which, because of their gravity, warrant the use of all available means to halt them. In the context of the UNTAC mission, these could include executions, attacks on refugee columns, attacks on cantonment areas and attacks on soldiers who have laid down their arms and/or POWS under UNTAC care".

Thankfully these provisions were not required during UNTAC's conduct but their existence assisted the force commander in planning for contingencies. But even well conceived ROEs are only a necessary, and not a sufficient, element of guidance; the quality of training and leadership will always be critical.

Another consideration here is what arms are appropriate for peace keepers to bear. Decisions as to what should constitute defensive weapons will vary from case to case, according to the nature of the mission and the particular threats likely to eventuate. One approach might be to have heavier weapons available in theatre, should they be require, but not necessarily deployed.

Defence of the mission. The concept of the use of force to defend the mission is very difficult, and even dangerous, to apply if there is a lack of clarity between different goals—such as, for example, humanitarian assistance delivery and monitoring a ceasefire—because the use of force may have varying and contradictory consequences for different aspects of the operation. The importance of this element of certainty about a mission's objectives was demonstrated in Cambodia where the force commander had a relatively clear brief, through the Security Council resolutions and that the ROE I have already mentioned, about the mission's purpose—assistance in establishing a recognisable legitimate authority capable of exercising sovereign jurisdiction. This allowed him, quite properly, to resist strong pressure to pursue the Khmer Rouge when they reneged on the Paris Agreement and began to attack UNTAC positions.

Although by no means simple, it is important to find agreement about the area (that is, beyond self defence and the defence of property) to which the use of force in defence of the mission should apply. We need to be able to define what "mission" itself means. Is it essentially a physical concept? Does it include all personnel? Does it extend to all associated personnel, such as staff of other parts of the UN system and NGO relief staff, perhaps along the lines of the concept debated in negotiations of the newly adopted Protection of UN Personnel Convention? Similarly, we need to agree about whether force is justified to defend only the basic goals of the mission, or whether it is to be used to protect something wider; as an illustrative example, would use of force to protect electoral centres in Cambodia, which were manned largely by International Polling Station Officers who were not part of UNTAC, have been regarded as legitimate given that UNTAC's basic mission was to make possible the holding of free and fair elections? And, if force is justified in either case, what measure of force should be used? Is a demonstration of force justified whenever the credibility, and hence the authority and potential vulnerability, of a peace keeping operation are at stake?

Taking all this together, this seminar might usefully consider whether the only general rule in the use of force in Chapter VI operations is that each situation has its own logic and requires its own reaction, or whether there are in fact some principles or guidelines—such as avoiding escalation, applying the minimum force necessary and acting within the parameters of the consent of the parties—which have universal usefulness. Areas for the seminar to examine here could be:

The importance of a strong political underpinning for a peace keeping presence, because peace keepers are more vulnerable without this and more likely to have their impartiality compromised. The political nature of peace keeping (peace keepers, as Lt General Sanderson has said, are "instruments of

diplomacy, not war") demands responses on the lower end of the scale of options for the use of force, otherwise options for graduated response are limited. There is a need to maintain consent and acceptance of the peace making process, which is the rationale for peace keeping operations.

The importance of an unambiguous legal basis for peace operations including the authority to use force. Consent should be made concrete wherever possible through specific host agreements and, in the case of intra state conflicts, by the maximum express commitment of all sides to the UN's presence. When parties manipulate the presence of a peace keeping operation, UN and member states should be prepared to exert what pressure they can so that the legitimacy of the operation is not questioned.

The basic conclusion which I believe should be drawn from all of this is that the principle of the non use of force in peace keeping remains valid. It requires of peace keepers great qualities of restraint and the use by them of the minimum amount of force in those instances of self-defence (or slightly more widely defined "defence of mission" situations) when force is unavoidable. But there is consequently a vital need to distinguish clearly between those responses that are appropriate to Chapter VI operations on the one hand, and those which are appropriate under Chapter VII enforcement on the other. There should be no such thing as a "Chapter VI½" mandate: if a Chapter VII mandate is necessary in whole or part for some operations it should be clearly given.

The virtues of clarity for all peace operations, in the form of a clear conceptual and legal framework, should be evident not only to the tidy minded but to all those who have to wrestle with command and control arrangements and resource questions. And one can hardly overstate the importance for troop contributing nations (and hence for their continued willingness to contribute), of predictability in areas such as the level of risk of peace keeping operations, with all that implies for preparation and training, and level of support...

International Security Involvement — Responses to Conflict

On 24 October 1995, the Minister for Foreign Affairs, Senator Evans, accepted the Grawemeyer Award for Ideas Improving World Order. The following are extracts from the speech entitled *Cooperating for Peace* given by Senator Evans at the Grawemeyer Award Lecture, University of Louisville, USA:

We did not really foresee when we ended the Cold War that we would have to confront a hot peace. But such has been the case. Saddam Hussein showed us that the habits of millennia had not changed when he launched his massive cross-border assault against Kuwait for the crudest of economic and territorial-expansion motives. And even though elsewhere conflict between states has been remarkably limited since the end of the Cold War, the phenomenon of conflict within states—driven by previously long suppressed ethnic, religious and political hatreds—has exploded almost exponentially. On the most recent available analysis, every one of the 34 major armed conflicts waged in 1993 was intra-state in character, and that pattern seems to be continuing.

Are we fated, in the international community, to forever face the recurrence of deadly conflict with all its appalling costs in human life, human suffering and economic disadvantage? Or ... can we come up with ways of reducing that disorder, finding peace somehow amid this chaos? People in my profession are not normally optimists: reality intrudes too immediately, and too often, to allow

foreign ministers to nurture too many illusions for too long. But I genuinely believe that it is possible, if we think clearly and consistently about the issues, and if we are prepared to get out of our arm chairs and our studies to translate ideas into action, that we can, over time, change the way in which we respond to the prospect of conflict and make the world a more secure and better place...

Despite being much more conscious of the need to define mandates with precision, and to match tasks with the resources necessary to accomplish them, we still find the UN in recent times being willing to send peace keepers to Bosnia at a time when there was manifestly no peace to keep, and making commitments to peace enforcement—in the protection of safe-havens—without providing the military resources on the ground to make this achievable. We still see the UN lacking the capability and apparent will to react rapidly to situations crying out for urgent intervention—as in Rwanda, where it is widely believed that the insertion at the right time of just 5,000 troops or so, properly armed and mandated to use necessary force, could have prevented some 500,000 deaths. There is still resistance to the idea of the UN—or anyone else—having any responsibility at all to deal with situations within state borders if there is no other obvious international dimension to the crisis in question. And there is still a resistance in the United States and elsewhere to anything which doesn't immediately seem to serve "national interests" narrowly defined.

Let me try to explain, then, in a little more detail, the kind of rethinking I have been trying to achieve. I am under no illusions that the task will be an easy one. Major change always requires three stages: achieving a degree of consensus among decision makers as to applicable principles; articulating a clearly defined set of practical proposals for action based on those principles; and securing enough commitment from the governments and individuals who have to make it all happen. But however long and difficult the task may be to make real progress on each of these levels, we have to start somewhere.

To begin at the beginning, there are four kinds of problems that are prima facie appropriate for UN or other international security involvement: emerging threats; disputes, which are disagreements falling short of armed conflict; conflicts, which involve disagreements or disputes that have actually crossed the threshold into armed hostilities of one kind or another; and a residual category of "other major security crises", life-threatening crises of the kind that have been seen by the international community as justifying some security-related response.

Just as the problems themselves range on a continuum from (more manageable) emerging threats, through (more and more worrying) disputes and conflicts, so too is there a graduated progression of appropriate responses which the international community should think about deploying when facing those different kinds of problems. The four categories of response, that I shall now talk about in turn, are peace building, peace maintaining, peace restoring and peace enforcing.

Peace Building

Peace building is a concept which hitherto has been used (for example by the Secretary-General of the UN) only in a very limited kind of way, to refer to rehabilitation and reconstruction after a major conflict has occurred. Cambodia is a clear example of such post-conflict peace building, with resources put into, for example, mine clearance, economic development activity and government-institution building. But I think that the concept of peace building can and

should be employed in a much more broad-ranging way to describe a whole series of strategies—both within countries and internationally—which are appropriate to deploy preventively to ensure that, in a whole number of different ways, disputes and conflicts do not even get started.

In-country peace building means action—involving both the international community and individual states themselves—to achieve economic and social development, democratisation, the elimination of gender and racial discrimination, respect for minorities, and systematic improvement in the effectiveness of institutions of government. Peace building strategies lie at the point where the peace and security, development and human rights agendas of the UN system intercept and overlap: policies which enhance economic development and distributive justice, encourage the rule of law and protect fundamental human rights—including the right to participate through the ballot box in the making of the government decisions which fundamentally affect people's lives—are all in their own way security policies as well, addressing many of the problems which lie at the heart of violent conflict. Peace is a necessary precondition for development, and equitable development eradicates many of the socio-political conditions which threaten peace. It comes as no surprise to find that those countries whose economies are declining, whose political institutions are failing and where human rights are abused, should also be the ones experiencing the greatest amounts of violence and turmoil.

The relationship between democracy and security is certainly a very direct one. It is a striking fact that there is no clearly recorded instance, ever, of established democracies going to war with each other. There is also a strong relationship between democracy and the question of violence within states. From the beginning of this century to 1987, according to one estimate, nearly 150 million people have been killed by their own governments, over and above the death toll from war and civil war (which accounted for an additional 39 million). Totalitarian states are responsible for 84 per cent of the deaths, and authoritarian states for the most of the rest. Established democratic states (I say "established" because there is some recent analysis suggesting that the period of transition to democracy can be rather risky) are not only less war-like than non-democratic states; they are also, as one might expect, less prone to violence against their own citizens.

At the international level, peace building centres on creating or strengthening international structures or regimes aimed at minimising threats to security, building confidence and trust and operating as forums for dialogue and cooperation. Examples of what I mean here are treaties governing traditionally volatile issues like the law of the sea; dispute resolution forums like the International Court of Justice; multilateral security dialogue and cooperation forums like the OSCE in Europe and the ASEAN Regional Forum in the Asia Pacific; and above all multilateral arms control and disarmament regimes.

There is no better preventive contribution the international community could be making to peace and security than achieving once and for all the elimination from the face of the globe of all weapons of mass destruction. We have taken a big step forward in this respect with the negotiation of the Chemical Weapons Convention, and have taken partial steps, which need to be strengthened, with the Biological Weapons Convention. The biggest challenge of all is, of course, nuclear weapons. The Nuclear Non-Proliferation Treaty, even when supported by the Comprehensive Test Ban Treaty which we all hope will be negotiated

next year and by the START arms reduction treaties between the United States and the former Soviet Union, will not get us to a nuclear free world unless and until the existing declared nuclear weapons states start to get absolutely serious about elimination: not just in the never-never, but in accordance with a clearly-defined time frame.

Maintaining Peace

Whereas peace building is about preventive strategies designed to address the underlying causes of insecurity, peace maintenance is about strategies designed to address actual disputes which may, if not resolved or contained, deteriorate into armed conflict. The basic focus here is on *preventive diplomacy* (although there is another form of peace maintenance gaining increasing currency also under this heading, "preventive deployment"—which is the sort of thing that has been done in the Former Yugoslav Republic of Macedonia, with American troops going in as a deterrent presence against the possibility of a spillover of the conflict elsewhere in the Balkans). Preventive diplomacy embraces a variety of ways of resolving, or at least containing, disputes by relying on diplomatic or similar methods rather than military ones. These are the classic "peaceful means" described in Article 33 of the UN Charter—negotiation, inquiry, mediation, conciliation, arbitration and judicial settlement.

The ongoing efforts by various different actors in various ways to stop conflict erupting in Burundi, the Korean Peninsula and the South China Sea are some current examples of preventive diplomacy at work. But such preventive diplomacy is a low-profile business, lacking the obvious media impact of Blue Helmet peace keeping, let alone full scale, war-waging, peace enforcement. Preventive diplomacy succeeds when things do not happen. Therein lies the political problem with any preventive activity: if it works nobody notices. It is an iron law of government, national or international, that everyone likes to be seen to be doing something: the notion that something might be inherently worth doing, or worth doing as an insurance premium to avoid a larger payout later, tends to be foreign to the political psyche. We are just going to have to put more effort into getting more people to see the point of that splendid observation attributed to Jean-Marie Lehn, who won the Nobel Prize for Chemistry in 1986: "Only those who can see the invisible can do the impossible".

Preventive diplomacy is most successful when it is applied early, well before armed conflict is likely. But it has unfortunately been the case too often in the UN system that preventive diplomacy efforts have been attempted too late, when escalation is so advanced that a slide into hostilities is almost inevitable. Despite the importance and cost-effectiveness of preventive diplomacy, the UN devotes relatively few resources to it. There are presently only some fifty UN officials assigned to tasks immediately relevant to such diplomacy, compared with around 60,000 UN peace keepers in place at the moment—and approximately 30 million armed service personnel world-wide. The UN must upgrade its capacity to the point where it can offer an effective dispute resolution service to its members, providing low profile, skilled, third party assistance through good offices, mediation and the like...

Restoring Peace

What can the international community do, short of taking enforcement action of its own, when it actually faces a conflict situation? There are two basic peace

restoring strategies available: one is peace making, the other is peace keeping. *Peace making* is essentially diplomatic and related activity, exactly the same sort of things you do when you engage in preventive diplomacy, but after a conflict has broken out. One kind of peace making is encouraging parties to embrace a ceasefire after they have been shooting at each other. More complex peace making activity is when you are trying to get the parties not merely to stop shooting, but to reach agreement about the whole strategy for transition back to peaceful, secure, stable government. Cambodia is a very good example of a peace making exercise, one in which I was very closely involved, that went on over a number of years, culminating in the 1991 Paris Conference when a whole group of countries, as well as the internal players, got together and agreed upon a very complex peace blueprint. Sometimes the expression "peace making" is used as a synonym for actual military enforcement activity, on the same principle, I suppose, as in old western movies—Colt .45s, this audience will know better than me, were called "peace makers". But I regard that as a most unhappy analogy from a whole variety of terminological points of view, and I think it ought to be avoided...

The other side of the peace restoring coin is *peace keeping*. When you have your blueprint in place, when you have your agreement—whether it is about something relatively straightforward, like a ceasefire, or whether it is about something much more complex, like a whole transition-back-to-normality strategy—you need someone to monitor, to supervise, to oversee that process, to conduct elections perhaps, to operate the rudiments of a transitional government process, to fill the vacuums that might otherwise exist. All that is peace keeping activity. It may take a very simple and traditional form, as in Cyprus where you have just a thin blue line separating, for many years now, the Turkish Cypriots from the Greek Cypriots, but nothing much else happening; or it may involve an extremely complicated "expanded peace keeping" operation of the kind we had in Namibia and Cambodia.

Looking at the difficulties experienced, for example Somalia, Bosnia and Rwanda, it is easy to be pessimistic about the prospects for peace keeping, and these days many people are. But for everything that has gone wrong over the last few years there is something else that has gone right, such as the UN operations in Namibia, Cambodia, El Salvador and Mozambique. We must remember to balance the setbacks with the successes, and maintain realistic expectations of what it is possible for the international community to achieve.

The most crucial consideration in embarking on any peace operation—whether it be peace keeping or peace enforcement (which I shall come to shortly) is that there be a clear-minded focus on the objectives of the exercise, and the likely effectiveness of the operation in achieving them. No operation of this kind should ever be embarked upon for the sake of "being seen to be doing something". Although it is not always possible to analyse or predict with certainty, it should always be possible to avoid embarking on operations which are manifestly likely to be ineffective—which, as such, put at risk the most crucial UN resource of all, its credibility. In the specific case of peace keeping, I have suggested that there are seven basic conditions for ensuring an effective operation: clear and achievable goals; adequate resources; close coordination of peace keeping with any ongoing peace making activity; a capacity to be, and be seen to be, absolutely impartial as between the parties who have been in conflict; a significant degree of local support for the peace keepers; evident support for

the operation from external powers who may have been involved previously in supporting one side or the other; and a "signposted exit", i.e. a clearly designated termination point, or set of termination criteria.

Enforcing Peace

Situations do arise when peace cannot be restored by diplomatic and peace keeping means, and the international community is consequently obliged to consider more drastic enforcement measures.

Non-military enforcement in the form of *sanctions* designed to compel or bring to an end a course of action has been applied on a number of occasions by the UN—the best known cases being the web of sanctions against the apartheid regime in South Africa, and those applied against Iraq in the context of its assault on Kuwait, and against the Former Yugoslav Republic in the context of the war in the Balkans. The aim of sanctions is to deny the government or party involved continued access to the goods or services which it needs to maintain its economic, social or political infrastructure or well-being. Typically, this has involved actions such as the cessation of military supplies; the complete or partial interruption of economic relations; the severing of communications links such as postal, telephone, radio, rail, sea and land links; and the severance of diplomatic links. Actions to freeze reserves or disrupt financial transactions may also be applied. Such actions achieve their objective by depriving the state concerned of the military and economic means to maintain the offending behaviour; by precipitating domestic pressure on its government; or by bringing moral pressure to bear on it internationally. The trouble is that sanctions can take an awfully long time to bite, as we have seen all too clearly in the case of both Baghdad and Belgrade.

So there may be conflicts or major crises when, in the absence of agreement by the parties concerned—and with sanctions manifestly unlikely to succeed, at least within any kind of reasonable time frame—the international community is faced with its last resort option: to intervene to enforce peace with the threat or use of military force. Such *peace enforcement* may be required in response to aggression across international borders such as, for example, the Korean War and the 1991 Gulf War; in support of peace keeping operations, for example in situations where one or more parties to an agreement have subsequently withdrawn and there is a need to enforce a ceasefire or, as in Bosnia, protect safe havens and enforce "no fly" zones; or in the difficult area of supporting humanitarian operations, such as the operation in Somalia.

Although the distinction between peace keeping and peace enforcement has become rather blurred at the margins in recent years, I believe it is crucially important to mark a clear line of separation between the two. In UN Charter terms that means drawing a clear line between military operations where the mandate is derived from Chapter VI (which deals with the "pacific settlement of disputes") and those military operations whose mandate is based upon Chapter VII (certain provisions of which expressly authorise the use of force). Real problems can arise—and we have seen this especially in Bosnia and Somalia—when Chapter VI peace keeping operations, which are premised upon the consent of the parties to the UN's presence and should be inherently peaceful, get mixed up with Chapter VII peace enforcement missions, which presume resistance by one or more of the parties and are mandated to apply whatever force is needed to meet the operation objectives. As the Australian military commander of the Cambodian peace keeping mission, Lt General John

Sanderson, has put it, peace keepers—as distinct from peace enforcers—are "instruments of diplomacy, not war".

UN Secretary-General Boutros-Ghali commented in the supplement of January this year to his report, *An Agenda for Peace,* that the experiences of the last few years have confirmed the importance of some basic principles of peace keeping as they originally evolved under Dag Hammarskjöld: consent of the parties, impartiality of the peace keepers and the non use of force except in self-defence. Use of force other than in self-defence runs the risk of forfeiting the consent of the parties and compromising the neutrality of the peace keepers. Of course situations can arise where operations which start out with the consent of all the parties lose it along the way through no fault of the peace keepers. This happened in Cambodia, when the Khmer Rouge, who had originally agreed to demobilise their troops and participate along with the other parties to the conflict in the planned election, reneged on that promise after the UNTAC peace keeping mission had arrived. A critical problem would have arisen had they taken the next step and resorted to violence to try to disrupt the UN supervised election: could and should the peace keepers, who were neither equipped nor trained to act otherwise than in self defence, have responded in kind in order to "defend the mission's mandate"? Mercifully everyone's nerve held, the Khmer Rouge's bluff was called, and the situation never reached that decision point. But it is very doubtful that the Cambodian peace keepers could have become peace enforcers, with the basis of their mandate changed from Chapter VI to Chapter VII, without a significant period of transition in which forces could be retained or substituted.

The question of just when the international community should become involved in peace enforcement operations is a very difficult one. Questions of consistency will inevitably rise, but resource constraints will always demand in practice some selectivity. But the impossibility of intervening everywhere should not bar the UN from acting anywhere: the international community must accept the inevitability of what might be called opportunistic idealism. What is most crucial is that decisions only be made after the most careful consideration of a whole range of criteria, and not rushed into simply because of that recurring political urge to be seen to be doing something. Sometimes, painful as it may be, it is better to do nothing at all than to embark upon a mission with a high probability of failure.

When it comes to peace enforcement operations, the criteria that I and others have suggested for determining involvement are quite complex, and vary according to whether the operation is one in response to cross-border aggression (as with Iraq and Kuwait), or in support of peace keeping operations (the basic rationale for the involvement in Bosnia-Herzegovina) or in support of humanitarian objectives (as in Somalia). But the basic considerations come down to these: widespread international support; clear and achievable goals; adequate total resources to meet those goals; and clearly defined termination or review points.

Intra-State Conflicts and Humanitarian Intervention

The most difficult single area in which to make a judgment as to whether a forcible intervention should be contemplated is unquestionably the humanitarian one: where (as was the case in Somalia) there is a conflict occurring within a state and people are suffering on a conscience-shocking scale. Even before one gets to the question as to whether military resources are going to be actually

available, there are a tangle of conceptual and practical difficulties which one meets at the threshold. I have suggested that the check list that decision-makers should work through should include at least all of these elements: that there is a consensus that the right to life, the most basic human right is under threat; that there is no prospect of alleviation of the situation by the government—if there is one—of the state in question; that all non-military options have been considered, tried where appropriate and have failed; that there is a report from an impartial and neutral source (such as the Red Cross) that the humanitarian crisis can no longer be satisfactorily managed; that there has been consultation reflecting not only a wide spectrum of advice, but, so far as possible, the views of external and internal parties involved; that there is a high degree of consensus on the issue between developed and developing countries; and that hard-headed assessments have been made about the international community's capacity to follow through from addressing the immediate crisis to helping the affected state regain its viability as a functioning sovereign state able to take care of its own citizens.

But even before one gets to these questions there is—at least when it is United Nations action that is being contemplated—an even more basic conceptual question that has to be addressed, and that is whether it is ever right to intervene, without the agreement of all concerned, in intra-state conflicts.

In the past, enforcing peace, whether by sanctions or by the use of military force, presented few conceptual problems, particularly when it was applied to fairly clear-cut cases of cross-border aggression. For intra-state conflict, however, the conceptual basis for such actions—in particular military force—is considerably more problematic. On a traditional view, the UN's security role is essentially limited to protecting the physical and political integrity of states. As the pressures grew, following the end of the Cold War, for recognition of a "right of humanitarian intervention" in response to various crises, developing countries began to express concerns that this might presage a new area of imperialism, with an American-led Security Council using humanitarian crises as a vehicle for forcing its will on states which it disliked. In practice, however, and in the light of actual peace operations experience in recent times, these concerns seem to have abated. Less attention is being these days paid to formal jurisdictional limits on intervention, as may or may not be expressed or implied in the UN Charter, and more to questions of the effectiveness of that intervention—and the political will to undertake it given domestic hostility or indifference. The main difficulties which arise now are to do with defining what are appropriate cases for intervention, and with delivering effective responses.

All that said, I still do think there is a case for taking a fresh look at possible doctrinal foundations, within the UN Charter itself, for a more wide-ranging security role for UN organs than traditional, state-centered doctrine would allow. It is not merely a matter of having theory catch up with practice. The more compelling reason is that the international will to intervene decisively and helpfully in intra-state conflicts—even when on the nightmarish scale of Rwanda—has been flagging, and needs some reinjected momentum. Two approaches seem particularly worthy of further exploration ... The first is to develop the notion that "security", as it appears in the Charter, is as much about the protection of individuals as it is about the defence of the territorial integrity of states. "*Human security*", thus understood, is at least as much prejudiced by major intra-state conflict as it is by inter-state conflict. The second approach, which could either stand alone or be seen as reinforcing the "human security"

approach, would pursue to its logical limits the international community's basic *human rights*, bearing in mind that the most basic human right of all, that of life, is violated on a very large scale in intra-state conflicts.

The Will and Capacity to Intervene

Overcoming all these various doctrinal and threshold practical issues, however, is not enough. Intervention also involves the question of capacity. Being a suitable case for treatment will never be sufficient grounds in itself, given resource constraints, to guarantee it. Who is going to supply the troops? As the initial response to the Rwanda crisis demonstrated, it is becoming difficult—even with CNN playing its part in bringing the crisis to public attention—to get the UN's member states to intervene forcibly anywhere. The underlying reality is that, if vital national interests, narrowly defined, are not immediately and directly threatened, it has become extremely difficult for democratic states to sustain domestic support for distant and risky military operations overseas—even when governments may wish to do so. Public education programs about the importance of international peace efforts may help, but probably not much. In other cases—Bosnia until very recently has been a clear example—governments have not even shown much inclination to put public opinion to the test, adhering, as someone recently put it, to the perverse doctrine that a great military machine must be reserved for the kind of war fighting where there are no casualties.

Ideas for meeting the problem of resistance to involvement in dangerous UN operations by creating a United Nations military force have been around for some time, going back to the 1950s. Sir Brian Urquhart, a former UN Under Secretary-General, has been the most persistent public advocate of a professional volunteer UN standing force as a means of solving the commitment problem. Such a force, which he put at 5000 personnel, would also provide the attraction of rapid deployment capability, able to get to conflict sites—and hopefully defuse them—much faster than is possible at the moment, when each new UN operation has to be laboriously assembled from scratch. There has been a flurry of recent proposals and studies on this issue, ranging from Dutch Foreign Minister Mierlo's idea of a "UN fire brigade"—a variation on the Urquhart proposal—to suggestions for enhanced stand-by arrangements put forward by the Secretary-General and the Danish Government.

I have to confess that my own views have moved backwards and forwards on this question—I have no choice but to confess, since my inconsistent statements are all on the public record! But after devoting many hours of discussion to the subject around Europe and in New York and Washington in recent months and making a practical judgment as to what is realistically achievable in the short to medium term, I now firmly believe that our priority efforts should be devoted to building the UN's headquarters capacity—to enable it to better conceptualise operations, construct their mandates, plan and organise them, and rapidly set them in train. The way forward in this respect has now been shown by the excellent Canadian study, *Towards a Rapid Reaction Capability for the United Nations,* just presented to the General Assembly. If there can be a really major enhancement of the UN's strategic and operational planning capacity, in a way that generates a confidence in that capability now largely lacking, then member states are likely to be much more willing to earmark and deliver military units for rapid reaction purposes. The idea of a standing volunteer UN force is one that

should continue to be quietly explored, but it is not an idea whose time has yet come.

Cooperative Security

There are three particular themes, or emphases, that have emerged from all my experience of and thinking and writing about international peace and security problems that I would like to leave you with. The first is that, as with so much else in life, *preventive strategies*, if you can possibly make them work, are infinitely more cost effective and attractive than responses after the event. Preventing disputes from becoming conflicts, and threats becoming crises, just makes so much more sense than having to try to mobilise the will and the resources to deal with conflicts and crises in full flight.

The second is the need for a particular preventive strategy, *peace building*, as a particular preventive strategy, to have a much higher priority in peace and security policy. Linking as it does so directly to the UN's and the international community's economic and social and human rights agendas, peace building (in the way I have tried to define it) has the capacity to become the conceptual rallying point for a massive new effort to address the underlying causes of world disorder.

My very last theme is the virtue of using the idea of *cooperative security* as the central sustaining idea in the future for our efforts in the international community to secure and maintain peace. The idea of cooperative security embraces, in a way that very much emphasises prevention rather than cure, three separate ideas—collective security, common security and comprehensive security—which in fact have been evident in thinking about international security cooperation for some time. The first of these, *collective security*, has a long tradition in the United Nations and other groupings of states. It involves the notion of member states agreeing to renounce the use of force among themselves and collectively coming to the aid of any member attacked by an outside state or a renegade member: its power to prevent conflict is based on the idea of deterrence against aggression. Then in the 1980s recognition of the need to act at an early stage to prevent conflicts occurring gave currency to the idea of *common security*, of states finding their security by working with, rather than against, others. Then attention came to be given to the idea of *comprehensive security*, with widespread acceptance of the notion that economic and social co-operation need to be combined with purely military security in a multifaceted, multi-dimensional approach.

The idea of cooperative security brings all these other approaches together in a way which is readily communicable and easily understood. It is an approach to security which is multi-dimensional in scope and gradualist in temperament; emphasises reassurance rather than deterrence; is inclusive rather than exclusive; favours multilateralism over bilateralism; does not privilege military solutions over non-military ones; assumes that states are the principal actors in the security system, but accepts that non-state actors may have an important role to play; does not require the creation of formal security institutions, but does not reject them either; and which above all, stresses the value of creating "habits of dialogue" on a multilateral basis.

The world we live in at the moment is very far from ideal, and very far from being governed by these kind of principles. But I continue to nurture the hope that if men and women of good will around the globe continue to aspire for a

better world, and are willing to work together cooperatively by every available means—especially through the organs and agencies of the United Nations, the only sufficiently empowered global organisation we have or are ever likely to have—then that better world, one in which the needs of every individual for peace and security, a decent standard of living and personal dignity and liberty are better met than they are today, is within our reach.

United Nations — Peace Keeping — Australian Participation — Convention on the Safety of United Nations and Associated Personnel — Decision to Deploy Australian Troops

On 13 November 1995, the Government Response to the Joint Standing Committee on Foreign Affairs, Defence and Trade Report entitled *Australia's Participation In Peace Keeping* was tabled in the Senate (Senate, *Debates*, vol 176, p 2760). The following are extracts from the Response:

Recommendation 7

The Committee recommends that the Australian Government support current efforts to increase the safety of United Nations peace keeping personnel, including through developing an effective international legal regime (para 2.45).

Response

Agreed

Comment

The Government fully supported the negotiations of the "Convention on the Safety of United Nations and Associated Personnel", and co-sponsored the United Nations Resolution which adopted the Convention by consensus. Australia has been active in supporting the draft Convention of Safety of United Nations Personnel. This Convention addresses the question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice.

Adoption of the Convention is an important achievement which will promote the basis for action against deliberate acts of violence which strike United Nations personnel. The Convention is open for signature until 31 December 1995. The Attorney-General's Department is now working with the Department of Foreign Affairs and Trade, and the Department of Defence towards early adherence to the Convention through signature and ratification as a clear indication that Australia supports it and that attacks upon United Nations associated personnel will not be tolerated...

Recommendation 25

The Committee recommends that any decision for Australian troops to operate under Chapter VII provisions of the United Nations Charter be endorsed by the Australian Parliament (para 4.83).

Response

Not Agreed.

Comment

Decisions on the involvement of Australia in peace operations in both warlike and non-warlike circumstances are made by the Executive Government. Decisions to deploy the Australia Defence Force overseas in support of Chapter VII enforcement operations, such as in the recent cases of Somalia and the Australian Defence Force commitment in the Gulf in 1990–91 in response to Iraq's invasion of Kuwait, were the subject of Cabinet consideration, after which Ministerial Statements were made in the Parliament...

The following was also included as part of the response:

ANNEX A: CURRENT AUSTRALIAN INITIATIVES WITHIN THE UNITED NATIONS

(a) Promoting Australia's concept of co-operative security, with an emphasis on preventive approaches and the United Nations' capacity for peace building and the peaceful settlement of disputes, not least because these are more cost-effective than the current emphasis on reactive measures.

Priority goals for 1995 have been the promotion of Australia's preventive diplomacy draft resolution and progress towards establishing a more representative Security Council. Australia worked in the annual session in April of the UN Special Committee on Peace Keeping Operations to bring greater clarity in defining the objectives and mandates of United Nations' operations, and to strengthen the United Nations' capacity to plan operations. Australia also circulated amongst Special Committee members the conclusions of the April Stockholm International Peace Research Institute (SIPRI) seminar on the use of force in peace operations and contributed to the debate on improving the United Nations' rapid deployment capacity. The Department of Foreign Affairs and Trade presented a paper on the division of labour between the United Nations and regional organisations for a major international conference at La Trobe University in July and is also working on a joint paper with the Dutch on improving the effectiveness of sanctions regimes.

(b) Identifying means of "re-integrating" United Nations activities and enhancing system-wide coordination, including by developing proposals in the Agenda for Development Working Group to further enhance the Economic and Social Council's role in system-wide coordination as well as through suggesting better arrangements for humanitarian relief operations.

The Department of Foreign Affairs and Trade has been identifying concrete ways of promoting a more coordinated and integrated approach to the work of United Nations bodies including program effectiveness and limiting duplication, including at the Economic and Social Council and in major United Nations meetings. The Department's specific proposals in the economic and social areas include implementing measures to monitor the performance of the machinery for United Nations humanitarian relief coordination, promoting the Beijing Women's Conference as a "conference of commitments", efforts to strengthen the human rights treaty system, pressing for the collocation of secretariats of various environment conventions in Geneva and our efforts to streamline the Economic and Social Commission for Asia and the Pacific's annual sessions.

(c) Pursuing increased administrative efficiency and program focus in the specialised agencies and greater responsiveness to member states' needs, by continuing to pursue improved budget, financial and program management and

to promote the extension of worthwhile reforms across the United Nations system such as the management reforms introduced in the Secretariat in New York.

Australia will continue to participate in multi-donor agency evaluations such as that for the United Nations Children's Fund and Rwanda and maintain Australia's leading role in the World Health Organisation and reforms of the United Nations Educational, Scientific and Cultural Organization.

(d) Addressing the United Nations' financial problems and working to match allocation of resources to evolving priorities, in the United Nations itself and across the United Nations system.

Australia is assessing how to pursue its proposals for improving peace keeping financing procedures, which were partly adopted by the United Nations' Fifth Committee in December 1994, although the greater focus this year is likely to be on reviewing the scale of assessments for peace keeping payments. Australia will remain a leading advocate of introducing incentives to promote prompt payment of regular budget and peace keeping payments, and will be participating in efforts through the Geneva Group to identify areas for savings in the United Nations' programs that can be redeployed into priority areas. The United Nations' mission in New York plans to develop proposals for the review of the major United Nations' financial oversight bodies as a Canada, Australia and New Zealand (CANZ) group exercise.

(e) Creating more competent United Nations' secretariats, including support for the introduction of modern management practices and greater accountability.

Australia will develop further the case for top-level restructuring to introduce four Deputy Secretaries-General and build on the work of our United Nations General Assembly 49 delegation which coordinated the key resolution giving Member States' backing to personnel reforms. Australia will continue to promote gender equity as a tenet of United Nations personnel policy.

United Nations — Peace Keeping — Stand-by Force

On 19 September 1995, in the House of Representatives, the Minister representing the Minister for Foreign Affairs, Mr Bilney, answered a question upon notice from Mr Thomson (Wentworth, Liberal Party), concerning the situation in Rwanda and Burundi, and the response of the United Nations. The following are extracts from the text of the question and answer (House of Representatives, *Debates*, vol 203, p 1263):

Mr Thomson asked the Minister representing the Minister for Foreign Affairs, upon notice, on 29 May 1995: ...

(2) Did the UN Secretary-General recommend that Australia and other countries maintain a trained stand-by force which could be deployed rapidly to protect civilians and aid workers; if so, what (a) is the Government's response and (b) are the precise circumstances under which the Government would approve the deployment of the force.

(3) Does the Government support a stronger mandate for peace keeping troops to protect civilians.

(4) What specific action is the Government taking to support the international tribunal established by the UN Security Council.

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

(2) (a) The Prime Minister advised the UN Secretary-General, Dr Boutros Boutros-Ghali, during his visit to Australia from 26–30 April, that Australia would be willing to negotiate a Stand-by forces agreement with the UN. Under the UN's Stand-by arrangements, countries provide the UN with a list of resources which might, subject to a case-by-case consideration by Governments be made available to a particular UN peace keeping operation. Forty-two countries, including the United States, the United Kingdom, Canada and New Zealand, are now participating in the arrangements. The Stand-by system applies to the full range of functions of UN peace keeping operations and is intended to enhance the UN's planning capacity for these operations. The Stand-by arrangements could be used to protect civilian and aid workers, if this function were included in the mandate of a specific peace keeping operation.

(b) If Australia participates in the UN's Stand-by arrangements, the Government will consider requests to contribute personnel to UN peace keeping operations using the same case by case approach it currently employs. The criteria considered are still being refined but include consideration of whether the operation has clear and achievable goals and clearly defined termination or review points; what other resources are likely to be available for the operation; how much Australian interests are engaged, including regional, alliance and humanitarian interests and community attitudes; what costs the contribution might incur, including the effect on the Australian Defence Force's capacity to undertake other tasks including national defence; what Australia's level of commitment to other operations is at the time, having regard among other things to our reputation as a supporter of the United Nations; what training and other benefits will accrue to the Australian Defence Force; and what risk to personnel is involved.

(3) The specific mandated responsibility of peace keepers for the civilian population will vary between operations. It is, however, being increasingly accepted by the international community that, even in the absence of a formal mandate authorising the use of force under Chapter VII of the UN Charter, peace keepers who are present when a serious, life threatening violation of human rights is occurring or about to occur, have a duty, if they realistically can do something to stop it, not to stand idly by. There will, however, be cases where individual peace keepers will be caught out by events and will be unable to act effectively. To the extent to which peace keepers can act to prevent an atrocity they should do so. There may be cases where a peace enforcement operation could be considered necessary to protect civilians. In such cases, peace enforcement should be undertaken with clear, achievable objectives, an appropriate mandate authorised under Chapter VII of the UN Charter and by an adequately resourced and equipped force. Difficulties have arisen in operations where forces mandated and resourced for peace keeping have been required to undertake peace enforcement actions. In these cases, the "peace keepers" have not always had the capacity or the authority to provide adequate protection to the civilian populations they have been mandated to protect.

(4) Following the adoption of Security Council Resolution 955, which established the International Criminal Tribunal for Rwanda, the Government decided to amend the Bill before Parliament relating to the International War Crimes Tribunal for the former Yugoslavia, so it would also incorporate

Australia's obligations in relation to the war crimes tribunal for Rwanda. The International War Crimes Tribunals Act (1995) was passed by the Parliament in February, making Australia one of the first countries to have implemented SCR 955 in domestic legislation. In addition, Sir Ninian Stephen is a judge of the Appeals Chamber of the tribunal (which it shares with the International War Crimes Tribunal for the former Yugoslavia); the Government supported Sir Ninian's election to the Tribunal.

United Nations — Peace Keeping — Justice Packages

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

Chapter Five – Peacekeeping

Recommendation 24

The Committee recommends that the Government:

[i] support and fund the development of a justice package, as defined in paragraphs 5.49 and 5.50, as a basic component of any peacekeeping operation; and

[ii] promote the idea of a justice package as a basic component of peacekeeping operations at the United Nations.

[i] Response

Accept in principle.

Comment

Restoring law and order, and the infrastructure needed to support it, is vital to the success of peace keeping operations and "justice packages" can be developed to ensure viable local legal systems. Such "justice packages" must draw upon universal principles and local personnel should be trained to take over their own systems. However the reasons the rule of law and infrastructure break down are invariably complex and, while "justice packages" are an important component in the restoration of law and order and the rehabilitation of government institutions, they are only one of a number of issues that must be addressed in developing sustainable solutions to complex emergencies. The Government supports the United Nations' efforts aimed at comprehensive responses to international emergencies and, through cooperation between agencies, the development of strategies to facilitate the transition from relief to rehabilitation and development.

[ii] Response

Accept.

Comment

The intra-state nature of much modern conflict poses a whole range of new complications, especially the disintegration of law and order as the government in the zone of conflict loses control. The multi-dimensional nature of the United Nations' response can include cantonment and demobilisation of troops, election monitoring or organisation, the repatriation of refugees, human rights protection, the monitoring of police activities and police training, and exercising some control over civil administration functions. Australia has and will continue to promote, the importance of restoring and maintaining law and order and of protecting the human rights of the local population. The Government recognises that local judicial processes need to be created or strengthened so that an effective criminal system is in place to deal with human rights offenders, including after the UN peace keeping force has departed. Where there has been a breakdown in law and order, "justice packages" should be developed with the aim of ensuring viable local legal systems. This could include assistance such as: creating a body of criminal law and procedure; establishing police forces; training judges, prosecutors and defenders; and developing adequate correctional institutions.

International Humanitarian Law — Armed Conflict — War Victims — Development of Legal Norms

The Twenty-Sixth International Conference of the Red Cross and Red Crescent was held in Geneva from 3 to 7 December 1995. On 4 December 1995, Ms Penny Wensley, Australia's Permanent Representative to the United Nations at Geneva and the leader of the Australian Government Delegation, made the following statement concerning war victims and respect for international humanitarian law (see Chapter I for further comments on this topic):

> The Australian Government approaches this Conference with a number of special concerns. Some stem from the humanitarian crisis facing the world today, but we also see this Conference as giving the opportunity to all governments to recommit themselves to the ideals of the Red Cross Movement and to begin to rebuild respect for fundamental principles of international humanitarian law.
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> It is time for all governments to condemn the violence, horror and brutality of armed conflict, particularly as it affects innocent civilians, and to work together without restraint to protect victims, wherever they are and from whatever kind of conflict they are threatened.
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> This is particularly important in the modern post-cold war world. No longer is armed conflict purely a function of state action. Nearly all the conflicts which have brought devastation to tens of millions of people in recent years are waged on a non-international basis. The norms which evolved to place law around the behaviour of regular armed forces now must be extended to control the participants in all other conflicts. We must ensure that the law of the future recognises that civilian populations, and especially children and women, require full protection and that those who commit crimes against humanity do not go unpunished.
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> Australia welcomed the International Conference for the Protection of War Victims, convened by the Government of Switzerland in August 1993, as a particularly important step towards the development of the necessary new legal norms. My delegation is pleased that the Group of Experts has produced a

number of useful recommendations for action. We do, however, believe that much more needs to be done, and we look to this Conference to provide the necessary motivation to Governments, the multilateral community, the Red Cross Movement and non-governmental organisations throughout the world to undertake this work.

I shall enumerate briefly the matters which Australia believes must receive priority attention in the Conference's outcomes and in the years ahead.

- The Conference must oblige all States to reaffirm their commitment to the law which has stood since the completion of the Geneva Conventions of 1949. All States must take effective action to disseminate the law within their armed forces and, because of the growth of irregular conflict, to their general populations. States and relevant international organisations must work together to ensure that dissemination programs are given the highest priority in terms of funding and materials.
- The Red Cross Movement must devote particular attention to the need for new standards of legal protection for innocent civilians, particularly children and women. If it is judged that new instruments are required, they ... must identify crimes against innocent civilians as crimes meriting prosecution in an appropriate international criminal tribunal.
- This Conference must give renewed impetus to the work now being undertaken within the United Nations to draft a new instrument concerning land mines. Australia is disappointed that if has so far not proved possible [to] obtain a consensus on this question which would lead to the removal of the lasting threat that these weapons pose to innocent civilians populations in so many parts of the world.
- On the other hand, Australia was pleased to see that agreement could be reached on a new Protocol to the Convention on Certain Conventional Weapons dealing with Blinding Weapons. It is our hope that one of the outcomes of this Conference will be encouragement to all States which have not yet done so, to become a party to the Convention and its protocols, including this new one on Blinding Weapons.
- The Conference should begin a process of active consideration of the best ways of achieving a continual oversight of the evolution and implementation of international humanitarian law. The need for such action was clear from debate during the 1993 War Victims Conference and its Expert Group meetings, and also during the processes of the Review Conference for the Convention on Certain Conventional Weapons. From these debates, we conclude that there is now a critical need for regular opportunities for States and concerned organisations to debate the way humanitarian law of armed conflict is evolving and being implemented.

In short, it is Australia's hope that the international community will be inspired by this Conference to condemn comprehensively and to reject absolutely the crimes and gross abuses which have come to seem so commonplace in recent years. We would hope that work towards the development of an international criminal court, now being considered by the UN General Assembly, will also be invigorated by our debate here, and that by the time the Movement has its next Conference the Court will be functioning. The events of recent years have shown

that the Conventions, for all their value, are not enough—enforcement is now a stark necessity.

Convention for the Protection of Cultural Property in the Event of Armed Conflict — Question of Australian Ratification

On 31 January 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 following is an extract from the text of the question and answer (House of Representatives, *Debates*, vol 199, p 98):

> Mr Barry Jones asked the Minister representing the Minister for Foreign Affairs, upon notice, on 23 August 1994:
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> (1) Following the Minister's answer to question No. 916 (*Debates*, 24 March 1994, page 2221), (a) have (i) China, (ii) the UK and (iii) the USA ratified the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954) and (b) have (i) Australia, (ii) Canada, (iii) Denmark, (iv) Iceland, (v) Portugal, (vi) the UK and (vii) the USA ratified the Protocol for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954)...
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> Mr Bilney—The Minister for Foreign Affairs has provided the following answer to the honourable member's question:
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> (1) (a); (b) No.

On 28 March 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 200, p 2330):

> Mr Jones asked the Minister representing the Minister for Foreign Affairs, upon notice, on 8 February 1995:
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> (1) Is the Director-General of UNESCO convening a meeting of the High Contracting Parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954) in accordance with the provisions of Article 27 of the Convention; if so, is the meeting to be held at the time of the 28th General Conference of UNESCO in 1995.
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> (2) Did the US State Department in July 1994 inquire why Australia has not become a party to the protocol.
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> (3) Has a Commonwealth department or departments considered ratification of the protocol since the answer to question No. 916 (*Debates*, 24 March 1994, page 2221); if so, (a) which department or departments, (b) when was ratification considered and (c) what was the outcome...
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> Mr Bilney—The Minister for Foreign Affairs has provided the following answer to the honourable member's question:
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> (1) A one day meeting of the Contracting Parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954) in accordance with the provisions of Article 27 of the Convention, will be convened during the 28th session of the UNESCO General Conference which will be held in October-November 1995...

(2) Yes. Australia responded to the US State Department as follows:

Australia is still considering whether to become a party to the 1954 Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict. Any ratification of the Convention should be preceded by a consultation of all the States in Australia, in order to insure the compatibility of the Protocol with the various States laws. The matter is currently being reviewed by relevant Commonwealth and State Departments. There is no time-table for ratification at this stage as deliberations are expected to be protracted with the provision dealing with compensation proving to be a difficult one to resolve.

(3) Consideration of the ratification of the Protocol for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954) is proceeding between the Department of Communications and the Arts, Attorney-General's Department, Department of Foreign Affairs and Trade and Department of Defence. However, the decision to ratify has not yet been taken...