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CONVENTION CONCERNING THE PROTECTION OF THE WORLD
CULTURAL AND NATURAL HERITAGE

WORLD HERITAGE COMMITTEE

Third extraordinary session
Paris, UNESCO Headquarters, Room XI
12 July 1999

Information Document: Extracts from Draft Report of the Rapporteur of the twenty-third session of the Bureau of the World Heritage Committee (UNESCO Headquarters, 5-10 July 1999) of relevance to the discussions of the third extraordinary session of the World Heritage Committee

SUMMARY

This information document contains extracts from the Report of the Rapporteur of the twenty-third Session of the Bureau of the World Heritage Committee (**WHC-99/CONF.204/15**) of relevance to the discussion of the third extraordinary session of the World Heritage Committee.

IV.47 Kakadu National Park (Australia)

The Secretariat introduced the discussion by referring to the summary of recent deliberations by the Committee and its Bureau concerning Kakadu National Park contained in WHC-99/CONF.204/5 that also provided information concerning the implementation of the decisions of the twenty-second session of the Committee up until the date of finalization of the document at the end of May.

The subsequent decisions of the World Heritage Committee at its twenty-second session in Kyoto in December 1998 are included in their entirety in the same working document.

In accordance with the reporting process outlined in the decisions of the twenty-second session of the Committee, a detailed report was provided to the World Heritage Centre by the Australian Government on 15 April 1999. The report is entitled “Australia’s Kakadu – Protecting World Heritage. Response by the Government of Australia to the UNESCO World Heritage Committee regarding Kakadu National Park (April 1999)” (see WHC-99/CONF.204/INF.9B). The report responds to the concerns and recommendations identified in the World Heritage mission report (see WHC-99/CONF.204/INF.9A). The Secretariat thanked the Australian authorities for having arranged for the translation and production of this report in sufficient numbers for this Bureau session and the third extraordinary session of the Committee.

A review of the scientific issues was performed by the Australian Supervising Scientist and a report entitled “Assessment of the Jabiluka Project: Report of the Supervising Scientist to the World Heritage Committee (April 1999)” was provided to the UNESCO World Heritage Centre on 15 April 1999 (see WHC-99/CONF.204/INF.9C). The Secretariat thanked the Australian authorities for having arranged for the translation of the executive summary and production of sufficient copies of this report.

The World Heritage Centre provided copies of the report included in WHC-99/CONF.204/INF.9B to ICOMOS, IUCN and ICCROM for their review. The joint and separate statements of IUCN and ICOMOS and a report provided by ICCROM are made available to the Bureau as WHC-99/CONF.204/INF.9D.

The World Heritage Centre provided copies of the report included in WHC-99/CONF.204/INF.9C to ICSU (the International Council for Science) for review by an independent scientific panel. The panel’s written review was provided to the World Heritage Centre on 14 May 1999 (see WHC-99/CONF.204/INF.9E). The Secretariat informed the Bureau of the presence of a representative of ICSU and the leader of ICSU’s independent scientific panel (ISP), Professor Brian Wilkinson.

The Chairperson thanked the Australian Government and the Australian Supervising Scientist, together with the advisory bodies, ICSU and members of the Independent Scientific panel for having provided their reports according to the very tight timeframe set by the Committee in Kyoto.

Since the preparation of the working document at the end of May, the World Heritage Centre has continued to receive further information and comments concerning the state of conservation of Kakadu National Park. The Secretariat then proceeded to briefly summarize these for the benefit of Bureau members. In doing so, the Secretariat again noted that all correspondence and reports received by the Centre concerning Kakadu National Park were transmitted to the Permanent Delegation of Australia to UNESCO for their comment. Copies were also sent to the advisory bodies and to the Chairperson for their information. In addition, many letters calling on the Committee to inscribe Kakadu National Park on the List of World Heritage in Danger have been received from individuals and organisations from around the world.

From the end of May the Centre has been informed of contacts made between the Australian Supervising Scientist, the Environmental Research Institute (ERISS) and the independent scientific panel established by ICSU. Records of phone conversations between these parties were forwarded to the Centre.

On 2 June 1999 the Chairperson of the Committee received a letter from the Chief Executive of ERA in which the Chief Executive sought to provide his perspectives on claims made by the Gundjehmi Aboriginal Corporation concerning both the physical and the cultural environment, including sites claimed by the Mirrar Aboriginal people as sacred.

On 9 June a revised submission was received from scientists from the Australian National University who responded to the Report of the Supervising Scientist.

The report presents eight detailed conclusions some of which concede that some of the scientists' concerns were met in the report of the Australian Supervising Scientist. Other conclusions made by the scientists include reference to continuing concerns.

The Chairperson of the Committee wrote to the Minister for the Environment and Heritage in Australia on a number of occasions, each time urging the voluntary suspension of the construction of the mine decline at Jabiluka as had been requested by the Committee at its twenty-second session in Kyoto. On 16 June 1999 the Chairperson provided copies of the exchange of correspondence between himself and the Minister to all members of the Committee. A summary of that exchange of correspondence is included in WHC-99/CONF.204/5.

On 25 June the Secretary of Environment Australia wrote to the Director of the Centre with reference to a letter from the Colong Foundation for Wilderness that had been received by the Centre on 22 June and which referred to some 29 mineral leases over which the Colong Foundation claimed that Kakadu's Plan of Management does not operate. The Secretary's detailed letter of response referred to a High Court of Australia decision in 1997 stating that Australia continues to exercise its responsibilities under the Convention and domestic World Heritage legislation in relation to these mineral lease areas and "the Minister for Environment and Heritage has stated very clearly that there will not be mining in these leases".

Also on 25 June, the Secretary of Environment Australia provided details concerning applications for protection lodged by the Gundjehmi Aboriginal Corporation under the provisions of the *Commonwealth Aboriginal and Torres Strait Islander Heritage*

Protection Act 1984 over an area at Jabiluka. The letter refers to Senator Hill as having been “unable to make a Section 9 emergency declaration for the specified area, on the basis of available evidence”. The letter goes on to state that “The Minister is now giving consideration to the application under Section 10 of the Act. This part of the Act provides for long term protection of an area”. The letter also provides details of the processes required for consideration of the Section 10 application.

On 29 June the Chairperson received a letter from Professor Nicholas Robinson, from the Center for Environmental Legal Studies at the School of Law at Pace University in New York. The letter refers to legal issues and concerns relating to the state of conservation of Kakadu National Park.

On 30 June an extract of the Report of the Australian Senate Inquiry into the Jabiluka Uranium Mine Project entitled *Jabiluka: The Undermining of Process* was received. The Report was prepared by the Senate Environment, Communications, Information Technology and the Arts References Committee.

Also on 30 June, the Centre received a further report from the Australian authorities entitled “Response to the ICSU Review of the Supervising Scientists report to the World Heritage Committee”. Following the receipt of a written request from the Permanent Delegation of Australia to UNESCO this report was provided to members of the Bureau as WHC-99/CONF.204/INF.9F.

Finally, on 6 July, a complete copy of the Australian Senate Committee report was provided to the Centre by the observer from the Australian Democrats attending this session of the Bureau. The report of the Australian Senate Committee inquiry into the Jabiluka Uranium Mine Project contains separate majority and minority reports. Also on 6 July, Senator Hill wrote to the Director of the Centre drawing his particular attention to the conclusion of the minority report, issued by government members.

On 7 July, the Bureau heard presentations from the Australian Minister for the Environment and Heritage, Senator the Hon. Robert Hill, (included in its entirety as Annex VI.1), the representatives of IUCN, ICOMOS and ICCROM (included in their entirety in Annexes VI.2, VI.3 and VI.4) and the leader of the Independent Scientific Panel (ISP) of ICSU (included in its entirety in Annex VI.5).

Following the above statements, the Delegate of Japan began by stating that the Bureau first needed to distinguish between two aspects of this very difficult issue, namely the scientific review aspect and the cultural aspect. Regarding the issue of scientific review, he expressed profound gratitude for the dedicated work of Professor Wilkinson and his colleagues who worked with limited time and without access to all necessary data and information. He also noted the very sincere work of the Australian Supervising Scientist. He recognized the fact that the ICSU experts’ report did not affirm the existence of any ascertained danger despite frequent reference to uncertainties or insufficiency of data and information. He also took note that the Australian Supervising Scientist accepted and agreed with a number of the recommendations contained in the ISP report, as reflected in his response to the ISP report (WHC-99/CONF.204/INF.9F).

Turning to the cultural aspect, the Delegate of Japan commented that there existed a real problem at Kakadu. He stated that he believed that the shared concerns among the Bureau members are the difficulties to assess such cultural elements as the spiritual linkages between people and nature, the impact upon living cultures as well as the impact upon the cultural landscape. He commented that it seemed that the cultural assessment is, in a sense, much more difficult than scientific assessment and stressed that such cultural factors as living culture and cultural landscapes have gained more and more weight in the work of the Committee and Bureau through the history of the World Heritage regime. In this regard, the Delegate of Japan said that he shared the serious concern presented by ICOMOS about possible serious impacts of the Jabiluka mining project upon the living culture of Mirrar traditional owners.

The Delegate of Japan noted that he had listened with great care to the presentation made by Senator Hill from the Observer Delegation of Australia. He commented that his Delegation was very interested in several points in the statement from Australia. In particular, Japan considers it to be very important that ERA have suggested to defer commercial mining at Jabiluka. He commented that if his interpretation was correct, this indicated that there would be one mine instead of the original proposal for two mines in operation at the same time. He noted that ERA was ready to postpone commercial mining at Jabiluka until such time as mining at Ranger would be terminated. The Delegate of Japan said that the new proposal from the Australian Delegation deserved, in his view, the serious scrutiny of the Bureau as its implications had relevance to various aspects of the Kakadu issue.

Finally, the Delegate of Japan underlined the need to build trust between the Aboriginal Traditional Owners and the Commonwealth Government of Australia. He commented that everyone in the Committee is seriously concerned with the break of mutual trust between the two. In this regard he wished to support the statement of ICCROM that the work of the World Heritage Committee should be to produce a positive and constructive basis according to the aim of the Convention on a longer term perspective. He concluded by stating that he believed that the real work of the Committee and the Bureau is to create good basis for the building of trust between the Aboriginal traditional owners and the Government of Australia through dialogue.

The Delegate of Italy commented on the complexity of the issues before the Bureau. He referred to the difficulties that would be faced by the Bureau and Committee as this was a new case to which other precedents did not relate. He commented that courage and imagination would need to be used without jeopardising the Convention or the image of the State Party concerned. He said that there should be no interest in finding a cosmetic solution. What was required was a real, long-term solution soundly conceived and well balanced. He noted that two of the reports submitted to the Bureau confirmed and endorsed the alarm expressed in the mission report. He said that further verification was needed. He noted that there are facts that need to be reconciled, especially from the report of the Independent Scientific Panel (ISP) established by ICSU. He referred to new concerns relating to the cultural heritage that would need to be addressed with attention to local sensitivity and international response to social and cultural change.

The Delegate of Italy said that the system for listing properties on both the World Heritage List and the List of World Heritage in Danger required the consent of the

State Party except in urgent cases. He commented that in Danger listing is not a sanction and that the Committee is not a ruling court but had standards that must be set and updated. He said that there was a need to act with respect to the Convention.

The Delegate of Cuba referred to the report of the Australian Supervising Scientist as an honest statement but noted that there are things that need to be taken into account and things to be implemented. She noted that with continuing scientific uncertainties and the need for further analysis of the scientific information the situation remained the same as it was at the last session of the Committee in Kyoto, 1998.

The Delegate of Morocco thanked the advisory bodies and the ISP panel established by ICSU for their work saying that new light had been provided on an issue of paramount importance. He stated that Morocco was of the opinion that the deliberations concerning Kakadu could be considered to be a major task for the Committee. He agreed with the Delegate of Japan that the major issue was one of confidence and trust. He asked the Bureau to instill a climate of confidence and noted Morocco's confidence in the work of the advisory bodies and the ISP panel established by ICSU. He referred to the international responsibility to find a solution that would be appropriate given that the decision will become legal case law. He concluded by commenting that the Bureau knows of other sites under more threat than that posed by the Jabiluka mine and therefore again restated the need to proceed with a real climate of trust and communication.

The Delegate of Korea referred to the heavy burden and pressure relating to the case of Kakadu National Park. He commented that this case will be precedent-setting for the future of the World Heritage Committee and will determine whether the Committee will be politically and scientifically viable in the future. He shared the view of Japan that the case referred to the relationship between people and nature and raised the question of which one comes first and noted that both are important. He noted that because of the gravity of the issue he did not want to make a hasty decision. He commented that there are still uncertainties and the need for future study. He also stated that this can be a good opportunity to build trust between experts and the State Party. The duty and responsibility of the Bureau is to urge all parties concerned to use creative ways to find a solution that would be scientifically and politically viable.

The Delegate of Benin remarked that the international community should thank Australia for having provided them with the opportunity to closely examine this new kind of situation. He indicated that, faced with this situation, Australia as a State Party, had conducted itself in a responsible manner. He said that in the future, the Committee should not have its hands tied, and it should take the necessary time before coming to a decision. He indicated that the complexity of the problems, both cultural and scientific, that were being faced, did not have a black and white attitude or solution. He recognized the spiritual importance of the land for the Aboriginal people and was of the opinion that it would be preferable to reach a consensual solution. He requested that a closer dialogue is established in Australia with the Aboriginal people and emphasized that this step could not be restricted to a timetable set by UNESCO. He also said that the Committee should determine the extent to which the dialogue between the Australian Government and the Aboriginal people be conducted, in order for a responsible opinion of the situation be obtained.

The Delegate of Hungary stated that, on the basis of present knowledge, written reports and discussions, the position of the Hungarian Government was that it cannot support the opening of the mine at Jabiluka at present. He agreed with other Bureau members that this case is new and a precedent of the greatest importance to the Bureau and Committee. He noted that the scientific review pointed to some remaining uncertainties and commented that some additional scientific investigation would need to be done before a final decision concerning the site could be made. He agreed with the statement by other Bureau members that there needs to be caution and a consensus by the Bureau. He noted that the issue has become political, both in and outside Australia.

The Delegate of Hungary noted that the Jabiluka project is proceeding in two stages and that the first stage of the project is complete. The question is whether the mining process can now begin or not. He further questioned whether archaeological investigations had been properly performed.

The Delegate of Hungary noted the importance of the Bureau's deliberations to the Convention. He suggested that some rethinking might be required as to whether in Danger listing is the responsibility of the Bureau and Committee with or without the consent of the State Party. He gave great importance to the statement from the Australian Minister for the Environment and Heritage concerning the possible delay of mining at Jabiluka and the need to find a solution to solve the problem. He also sought a solution between the Mirrar Aboriginal people and the Australian Government.

The Minister for Environment and Heritage from Australia thanked the Bureau for their thoughtful comments. He stated that he too was looking for a constructive way to move forward. He stated that his Government is proud of World Heritage in Australia and does not shy away from its responsibilities. He noted that the case is historical and that new issues are being addressed.

The Minister questioned IUCN's comments concerning visual encroachment to the World Heritage property. He commented that the mineral leases were deliberately left out of the World Heritage property for this reason and questioned how issues relating to visual encroachment could have a higher value now than 18 years ago. He asked how it made sense for the open-cut mine at Ranger to have been acceptable over the last 18 years and now for an underground mine to not be acceptable. He asked how such a small underground mine could be said to be a visual encroachment to a World Heritage property of 20,000 square kilometres.

In noting the Bureau's comments concerning the now evolving concepts relating to living cultural traditions he suggested that a debate on the subject could take place but questioned where the limits of such new interpretations might lie. He questioned whether such re-interpretations can be applied retrospectively to Kakadu. He reported that the challenging issues relating to living cultures were being addressed through the assessment of potential sacred sites and the safeguarding of all identified sites at Jabiluka.

On the scientific issues, the Minister welcomed the dialogue between the Australian Supervising Scientist and the Independent Scientific Panel (ISP) established by ICSU. He said that he wanted, if possible, for all of the questions of the ISP to be answered.

In response to the comments from Japan, the Minister reported that ERA have made a commitment that mining at Ranger will be completed prior to full commercial mining at Jabiluka. This pause would give the opportunity for good faith to be established and for suspicion and distrust to be overcome. The Minister concluded by asking that a record of his statement be included in the report of the Bureau.

The Chairperson then decided to constitute an informal drafting group to be chaired by the Rapporteur, with one representative from each of the Bureau members, the Observer Delegation of Australia and a member of the Secretariat. The Chairperson asked the group to prepare draft recommendations to be discussed by the Bureau on Friday 9 July. The informal group after three sessions suspended its work. The Chairperson asked the Australian Government to provide its various oral communications to the group in a written form and make it available to all members of the Bureau meeting.

The Chairperson thanked the members of the Bureau, the Observer Delegation of Australia, the leader of the independent scientific panel (ISP) established by ICSU and the representatives of the advisory bodies for their careful consideration concerning Kakadu National Park.

On 9 July, the Australian Minister for Environment and Heritage provided the document, as requested by the Chairperson to the Bureau, with a series of additional measures that the Australian Government has developed to 'enhance the existing environmental protection regime governing Jabiluka and Kakadu; address the social and economic conditions of the Aboriginal communities living in Kakadu; and provide additional assurance that the cultural values of the Park – including those of the Mirrar – are protected'. (The document was provided to the Bureau as WHC-99/CONF.204/INF.9G).

The Chairperson asked the informal drafting group to resume its work with the participation of one representative of each Bureau member.

After having reached a consensus, the informal drafting group proposed findings and recommendations for consideration and adoption by the Bureau. The Chairperson first invited general observations on the proposal. The Minister for Environment and Heritage of Australia acknowledged and thanked the Rapporteur and the Secretariat for their work commenting that it was evident that the drafting group had made an attempt to look for consensus. He said that such an approach would strengthen the Convention and good will. He noted that the recommendation included reference to some of the initiatives in the package provided to the Bureau that morning (see WHC-99/CONF.204/INF.9G). He commented that the recommendation provided a positive way forward but that he believed that some of the findings of the Bureau are not well founded. He referred to the recommendation as a reasonable document to be used as a basis for discussion at the third extraordinary session of the Committee and stated that he would like to take the opportunity at that meeting to debate the content of the recommendation in detail.

On point 1 summarizing the principal concerns and reservations of the Bureau, the Minister said that he had difficulty accepting some of the findings. On point 1(d) he was of the view that the Bureau's findings referring to the mine's impact on the living cultural and cultural landscape values could be questioned. On point 2 (c) of the recommendation, the Minister said that all of the recommendations of the ISP of ICSU will be accepted. He said the leader of the ISP and the Supervising Scientist have already started a dialogue in order to implement their recommendations. On point 4 of the recommendation the Minister commented that it was rather prescriptive and did not take into account that in the new information provided to the Bureau a reference group will propose and guide the process of developing the cultural heritage management plan (see WHC-99/CONF.204/INF.9G).

Following this discussion, the Bureau considered and adopted the following :

1. The Bureau,
 - (a) Recognized, with appreciation, that the Australian Government, Australian Supervising Scientist, advisory bodies (IUCN, ICOMOS and ICCROM) and independent scientific panel (ISP) established by the International Council of Science (ICSU) had provided the reports requested by the twenty-second session of the Committee (Kyoto, 1998),
 - (b) Expressed its regret that the voluntary suspension of construction of the mine decline at Jabiluka until the twenty-third session of the Bureau (requested by the twenty-second session of the Committee) had not taken place,
 - (c) Continued to have reservations concerning the scientific uncertainties relating to mining and milling at Jabiluka,
 - (d) Was concerned about the serious impacts to the living cultural values and cultural landscape values of Kakadu National Park posed by the proposal to mine and mill uranium at Jabiluka,
 - (e) Was concerned about the lack of progress with the preparation of a cultural heritage management plan for Jabiluka.
2. The Bureau wished to acknowledge the following developments in relation to the state of conservation of Kakadu National Park:
 - (a) The Australian Government has stated that there shall be no parallel commercial scale operation of the Ranger and Jabiluka uranium mines located in enclaves surrounded by, but not included, in Kakadu National Park (see WHC-99/CONF.204/INF.9G). The Bureau regarded the announcement of the Australian Government as a positive change to addressing the issue concerning the conservation of Kakadu National Park, although the precise meaning of the output and scale of any parallel activities at the Ranger and Jabiluka uranium mines, in particular in terms of the relative difference from the present level of production at Ranger, should be clarified by the Australian Government.

(b) There are indications that a new dialogue between the Mirrar Aboriginal people and the Australian Government has begun in relation to issues concerning the Jabiluka uranium mine and mill. The Bureau considered this to be the first essential step in finding a constructive solution to the issues raised by the UNESCO mission to Kakadu National Park.

(c) A dialogue between the Australian Supervising Scientist (ASS) and the independent scientific panel (ISP) established by the International Council of Science (ICSU) has begun to show some progress in relation to resolving some of the outstanding questions relating to scientific issues concerning mining and milling at Jabiluka.

3. The Bureau was of the opinion that confidence and trust building through dialogue are crucial for there to be any resolution of issues relating to the proposal to mine and mill uranium at Jabiluka. In particular, better dialogue needs to be established between the Australian Government and the traditional owners of the Jabiluka Mineral Lease, the Mirrar Aboriginal people.

4. The Bureau recommended that the Committee request the Australian Government, with the necessary co-operation of the Mirrar and appropriate involvement of other stakeholders, to complete the cultural heritage management plan of Jabiluka and proceed with exhaustive cultural mapping of the Jabiluka Mineral Lease and the Boyweg-Almudj site and its boundaries to ensure protection of these integral elements of the outstanding cultural landscape of Kakadu. The plan and cultural mapping work should be undertaken by senior archaeologists and anthropologists working with Aboriginal custodians within a stipulated timeframe. The archaeologists and anthropologists should report to a committee with representation from the Northern Territory's Aboriginal Areas Protection Authority (AAPA), the Australian Heritage Commission, ICOMOS, ICCROM and the Gundjehmi Aboriginal Corporation. Their work should be submitted to independent expert scrutiny via objective and impartial review.

5. The Bureau considered that it is the clear responsibility of the Australian Government to regulate the activities of a private company, such as Energy Resources of Australia, Inc, in relation to the proposed mining and milling activities at Jabiluka and notes the commitment of the Federal and Northern Territory Governments to strengthen the regulatory basis for mining.

6. The Bureau recommended that the Committee establish a mechanism for cooperation between the International Council of Science's (ICSU) Independent Scientific Panel (ISP), the Advisory Bodies and the Australian Government (in particular, the Supervising Scientist) in relation to resolving all of the remaining scientific issues raised by the ISP in its report (WHC-99/CONF.204/INF.9E).

7. The Bureau recommended to the Committee that the Australian Government be asked, in response to the Kakadu Region Social Impact Study (KRSIS), to facilitate a comprehensive package of social and welfare benefits, together with the Northern Territory Government, for the benefit of the Aboriginal communities of Kakadu (including the Mirrar). The Bureau also recommended that the Committee request the Australian Government to provide an update on the implementation of the Kakadu

Region Social Impact Study to its twenty-third session in Marrakesh, Morocco in December 1999.

8. The Bureau recommended that the third extraordinary session of the World Heritage Committee on 12 July 1999 take full account of the information before it, including new information provided during the Bureau session and the considerations of the Bureau, in particular taking into consideration Paragraph 86 of the *Operational Guidelines*, in order to fulfill its mandate described in Kyoto (see Paragraph 5, page 18, WHC-98/CONF.203/18).

Statement by the
Australian Minister for the Environment and Heritage,
Senator the Hon Robert Hill
to the World Heritage Bureau,
UNESCO. Paris
July 7, 1999

Mr Chairman

Thank you for the opportunity to address the Bureau on an issue, which is important not only for Australia, but also for the further development of the World Heritage Convention.

I take the opportunity to reaffirm Australia's support for the principles espoused in the World Heritage Convention.

Australia remains, however, resolutely opposed to the listing of the Kakadu World Heritage Area on the "in danger" list.

We do so on two grounds.

Firstly, the facts, when presented free of the emotion which has surrounded this issue to date, simply do not support such a listing.

They indicate, in fact, that Australia has set in place a system of management and protective measures for Kakadu which represents world's best practice.

Secondly, Australia has said consistently that the Committee cannot list a property against the objections of a Member State. This has been confirmed by independent legal advice.

KAKADU HISTORY

Kakadu is an issue which the Committee has addressed on three separate occasions dating back to 1981

The original inscription of Kakadu in 1981 was made with the knowledge that there were three separate, clearly defined uranium mining leases, one of which was Jabiluka.

The Committee revisited the issue in 1987 and 1992 as Stages II and III of the Kakadu National Park were assessed and accorded world heritage status.

These additional inscriptions were made at a time when the Committee had had several years to assess any impact of the Ranger uranium mine which had been operational since 1981.

Ranger, a large open cut uranium mine, has now been operational for more than 18 years. It is the most intensively monitored uranium mine in the world.

The independent office of the Supervising Scientist has advised that the Ranger Mine has had no adverse environmental impact on Kakadu National Park.

It would be directly inconsistent with the Committee's previous decisions to now rule that an underground mine with a significantly smaller physical impact than Ranger could be considered a threat to world heritage values.

Under the preferred Jabiluka option, the mine would cover less than one square kilometre while the Park itself stretches over almost 20,000 square kilometres.

It has undergone a rigorous and transparent environmental assessment process lasting almost three years.

The monitoring systems and regulatory measures put in place for the operation of Jabiluka have drawn on the 18 years experience at Ranger.

The volumes of evidence from the operation of Ranger along with the additional information provided by Australia in response to the Committee's concerns about Jabiluka should give the Committee every confidence that the world heritage values of Kakadu will be managed and protected in a manner consistent with the Convention and consistent with world's best practice.

For the Committee to hold otherwise would be, in effect, to change the rules after nearly 20 years in a manner which is grossly unfair to the State party - Australia.

CULTURAL ISSUES

Australia has also been a sensitive manager of the cultural values of Kakadu.

All recognised indigenous sacred sites on the Jabiluka lease will be protected under Australian law.

Australia recognises there is some disagreement, including disagreement between relevant indigenous communities, over the extent and significance of certain sites. These sites are not in the world heritage area.

Even so, Australia is committed to developing a comprehensive cultural management plan for the Jabiluka lease and is seeking the cooperation of the traditional owners.

Under Australian law, mining on indigenous land in the Northern Territory is prohibited without the consent of the traditional owners. This right is not available to non-indigenous Australians, reflecting a recognition of the special link between indigenous Australians and their land.

In this instance, the Mirrar, along with other affected Aboriginals, gave their informed consent to mining on the Jabiluka lease in 1982. This was reiterated in 1991. The current senior traditional owner does not support mining. However the regional Aboriginal body upholds the legitimacy of the agreement.

Australia is also conscious that there is a wide range of views among traditional owners of Kakadu on the issue of mining. The Mirrar are the traditional owners of less than five per cent of Kakadu National Park in addition to the Jabiluka lease. The traditional owners of the other 95% of Kakadu have not indicated support for the in danger" listing, and many of them support mining for the economic, cultural and social benefits it can deliver.

Australia, and the Committee, must consider the hopes and aspirations of all traditional owners living within Kakadu National Park.

AUSTRALIA'S RECORD

Against this background, Australia has demonstrated a level of commitment to the World Heritage Convention that is second to none.

For example

- Australia was one of the first nations to ratify the Convention.
- Australia is the only nation in the world with domestic legislation that specifically implements the Convention.
- No country in the world has more natural sites on the World Heritage List than Australia.
- We have management plans in place or under preparation for all our World Heritage properties
- Australia spends more than \$50 million each year on our World Heritage properties (in addition to the amount spent by provincial governments).

We are particularly proud of our record in protecting Kakadu National Park

We have established and maintained an innovative joint management arrangement with the traditional owners of the Park.

We are successfully protecting an area of 20, 000 square kilometres - an area nearly twice the size of Lebanon.

Notwithstanding the fact that the Jabiluka lease is outside of Kakadu National Park and was specifically excluded for the purposes of uranium mining, Australia would never have approved the new mine without being absolutely satisfied that it would not threaten a park we regard as a national treasure.

In order to be certain that Kakadu will not be damaged, we have imposed the world's most stringent and rigorous regulatory and monitoring regime. The regime is enforced by two levels of government - the national government and the government of the Northern Territory.

The Northern Territory Deputy Chief Minister is here today to reinforce the commitment from both levels of government to strictly enforce that regime.

ADDITIONAL MEASURES

Australian governments at both national and provincial levels have the greatest confidence in our environment protection measures. We have, nevertheless, sought to respond in good faith to the issues raised by the Mission to Kakadu and subsequently by the ICSU and advisory bodies to the Committee.

Australia prepared a detailed response to the Mission report and through the Supervising Scientist we have undertaken further scientific analysis to refine environmental requirements and provide an even greater degree of certainty that Kakadu National Park is under no threat.

Having listened carefully to the comments from other state parties. Australia has also developed further assurances on the environmental, social and cultural issues which we will put to the Committee for its consideration.

These measures will:

- Enhance the existing environmental protection regime governing Jabiluka and Kakadu;
- Address the social and economic conditions of the Aboriginal communities living in Kakadu; and
- Provide additional assurance that the cultural values of the Park - including those of the Mirrar - are protected.

In addition, in consultation with ERA, the company which holds the Jabiluka lease, we will be responding to the expressed concerns of some Committee members about the potential impact on the natural values of the Park if both the existing mine at Ranger and the new mine at Jabiluka were in full commercial production at the same time. I can say now that this will not occur.

We would be prepared to respond constructively to any further reasonable requests that the Committee may put forward in discharging its duty.

CONCLUSION

In summary, Australia has always been and remains firmly committed to the World Heritage Convention. We have addressed the issues raised in relation to Kakadu National Park in good faith.

We believe that Kakadu is securely protected and that there is no basis for listing it as "in danger". We urge the Bureau and the Committee to recognise the efforts Australia has made to protect Kakadu and to respect the provisions of the Convention which would prevent an "in danger" listing in the absence of Australia's consent.

We look forward to concluding this issue next Monday in a way which promotes the cooperation amongst parties on which the Convention is based.

Annex IV.2

JOINT ICCROM, ICOMOS AND IUCN STATEMENT KAKADU NATIONAL PARK, AUSTRALIA

BUREAU OF THE WORLD HERITAGE COMMITTEE
Twenty-third session

Mr Chairman

ICCROM, ICOMOS and IUCN thank you and the members of the Bureau for the opportunity to highlight a number of key issues concerning ascertained and potential dangers posed to Kakadu National Park by the Jabiluka mine.

We are of course aware of the political dimensions of this issue. However these factors lie outside of our mandate and competence. They underline however that when issues have a sharp political dimension, it is especially important to be objective and to ensure that the provisions and standards of the Convention are closely adhered to, so that procedural fairness and the expectations of the Contracting Parties, and the peoples they represent, may be achieved.

In light of this mandate the three advisory bodies believe it is also important to highlight the Committee's own guidelines for inclusion of cultural and natural properties in the list of World Heritage in Danger. Specifically:

- Cultural properties are held to face an Ascertained Danger when the property is faced with specific and proven imminent danger, such as Important loss of cultural significance.
- Cultural properties are held to face potential danger when the property is faced with threats which could have deleterious effect on its inherent characteristics.
- Natural properties are held to face an ascertained danger when the property is faced with specific and proven imminent danger, such as ... severe deterioration of the natural beauty or scientific value of the property, as by human settlement, Industrial and agricultural development major public works, mining etc.
- Natural properties are held to face potential danger when the property is faced with major threats which could have deleterious effects on its inherent characteristics. Such threats include ... planned development projects within the property or so situated that the impacts threaten the property.

We reiterate that the World Heritage Mission to Kakadu believed these guidelines to have been met and noted "severe ascertained and potential dangers to the cultural and natural values of Kakadu National Park posed primarily by the proposal for uranium

mining and milling at Jabiluka”. The Mission therefore recommended: “that the proposal to mine and mill uranium at Jabiluka should not proceed.”

At its 22nd Session in Kyoto in November 1998, the World Heritage Committee “recognised the report of the mission to Kakadu National Park as being both thorough and credible ».

In reviewing the response of the Australian Government concerning the mitigation of threats posing ascertained and potential dangers to Kakadu National Park by the Jabiluka mine, we have sought to assess whether this response removes the concerns identified by the Mission and confirmed by the Committee relating to the ascertained and potential dangers to the site.

The concerns expressed by the Mission and recognised by the Committee at its 22nd Session focused upon three principal issues. These can be summarised as concerns over:

- (i) scientific uncertainties and the application of the Precautionary Principle (Recommendation 2);
- (ii) visual encroachment on the integrity of Kakadu National Park (Recommendation 3);
- (iii) a series of threats to the cultural values of the Park (Recommendations 4,5,6,7 and 8).

ICOMOS and ICCROM will focus on the threats to the cultural values. IUCN will therefore address the concerns for the natural values.

1. Scientific Uncertainties and the Precautionary Principle.

IUCN welcomes the report of the Australian Supervising Scientist Group which we believe responds to a number of the concerns identified by the World Heritage Mission. However we are concerned that this report confirms the existence of uncertainties despite the extensive process of EIA including the Environmental Impact Statement (EIS) and the Public Environmental Review (PER), that has been pursued in approving the Jabiluka mine project and allowing excavation of the mine decline to proceed over the course of the past year. Specifically the review of areas of scientific uncertainty by the Supervising Scientist has both identified “areas for improvement in the hydrological model” and highlighted issues that need to be addressed in the “detailed design” of the water management system for Jabiluka. In other words, weaknesses in the mine design were recognised only following international review by the World Heritage Mission. Further the final design of the mine is not yet available, including for issues of major concern, notably the water retention system and disposal of tailings. While it may be argued that this level of uncertainty is normal in mine design, it is IUCN’s view that it is of serious concern for a mine physically located within the boundaries of a World Heritage site. We therefore believe that the potential threat to the natural values of Kakadu as identified by the World Heritage Mission remains.

2. Visual Encroachment.

In its response to the World Heritage Mission the Government of Australia expressed its view that the evidence did not substantiate the “case for visual encroachment as a significant issue or as a threat”. Having considered the arguments given for this response IUCN has reaffirmed its support for the view of the World Heritage Mission that the Jabiluka mine site “is readily visible from the air from where visitors making overflights are especially well able to appreciate the sweeping landscapes for which Kakadu was inscribed on the World Heritage List and is famous”. The Mission Report also argued that “the visual impact of Jabiluka, 22km north of Ranger and Jabiru, is a distinct and significant additional impact” and concluded that the visual impact of the Jabiluka mine constitutes “an ascertained danger for the natural World Heritage values of Kakadu in that it constitutes a deterioration of the natural beauty or scientific value of the property”.

Indeed these concerns have been strengthened by the report of the Supervising Scientist that recommends increasing the capacity of the retention pond at Jabiluka, an increase that has been estimated as being of the order of 50%. Similarly the 20km road has not yet been constructed, but will if the project proceeds. Both would aggravate the visual encroachment which we consider to already be severe.

In conclusion IUCN believes that Jabiluka does indeed constitute a significant additional impact on the visual integrity of the sweeping landscapes for which the Park is rightly recognised as being of universal natural value.

Annex IV.3

Statement read by the representative of ICOMOS

L'ICOMOS a étudié avec attention les réponses circonstanciées du Gouvernement du Commonwealth d'Australie aux graves préoccupations exprimées à Kyoto, en particulier quant au respect des valeurs culturelles du Parc national du Kakadu. En dépit des importantes précisions apportées, l'ICOMOS considère que restent pertinentes la plupart des recommandations formulées par le Rapport de la mission UNESCO de 1998 et ses propres prises de position quant aux dangers réels et potentiels d'une exploitation minière sur le site de Jabiluka justifiant l'inscription du Parc national de Kakadu sur la Liste du patrimoine mondial en danger.

Trois considérations majeures fondent, entre autres, cette conviction :

1. L'impact physique et symbolique de l'exploitation minière sur le patrimoine culturel.

Nul ne conteste le fait que l'enclave minière dans le site du patrimoine mondial renferme des lieux sacrés pour la population aborigène de la région ni l'importance spirituelle du site du Boiwek-Almudj et des pistes du "Dreaming" qui y sont associées. L'ICOMOS est persuadé que les opérations minières dans le sous-sol de cette zone de grande signification spirituelle pour le peuple Mirrar entraîneraient des dommages irréparables, à la fois tangibles et non tangibles, en violation des principes généraux de la conservation du patrimoine et, en particulier, du prescrit de la Convention du patrimoine mondial.

2. La relation de l'enclave minière avec les valeurs culturelles du site inscrit sur la Liste.

Les lieux sacrés situés dans l'enclave font partie d'un réseau bien plus étendu de sites d'importance spirituelle et de sentiers de "Dreaming" qui couvrent toute la région en une seule et même entité culturelle. Depuis la dernière extension du site, le cadre conceptuel de la Convention s'est enrichi du concept de paysage culturel qui, au titre de "paysage évolutif", caractérise le Parc national de Kakadu en tant que témoignage exceptionnel d'une tradition culturelle et d'une civilisation vivante. Aux yeux de L'ICOMOS, toutes dégradations importantes de ces sites sacrés, qu'elles soient physiques ou symboliques, à l'intérieur comme à l'extérieur du site inscrit, doivent être considérées comme une atteinte à l'intégrité du paysage culturel du Parc national de Kakadu dans son ensemble.

3. Les droits des propriétaires traditionnels.

Une occupation traditionnelle du site par la population aborigène depuis plus de 50.000 ans fonde la légitimité des relations particulières des Mirrar avec leurs terres, relations que reconnaît d'ailleurs le droit australien. Au-delà de droits fonciers ou coutumiers, une forme de droits culturels fondamentaux requiert leur participation aux décisions qui les concernent. L'ICOMOS considère qu'une reconnaissance effective des droits des propriétaires traditionnels est nécessaire pour que soient prises en compte les valeurs singulières dont ils assument l'héritage et qui sont inhérentes aux qualités culturelles du site. Comme le recommandait déjà le rapport de la mission UNESCO de 1998, il est impératif de restaurer la confiance et la communication et d'inviter instamment tous les partenaires concernés, autochtones ou non autochtones,

à s'engager dans un dialogue interculturel pour assurer la conservation des valeurs patrimoniales exceptionnelles de Kakadu pour les générations futures.

Annex IV.4

Statement read by the representative of ICCROM

ICCROM has thus far focussed its attention on process and the necessary elements for objective analysis of the issues involved. ICCROM recognizes that objectivity in assessing cultural values and the impact of proposed actions on cultural values involves close attention to those for whom the values hold most meaning. In this context, the Preamble to the WHC's 1998 mission report emphasized the fundamental importance of "ensuring thorough and continuing participation, negotiation and communication with Aboriginal traditional owners.....in the conservation of the outstanding universal values of Kakadu for future generations."

The Mirrar people are legally the undisputed traditional owners and custodians of the Jabiluka area and hence are the undisputed spokespeople for the outstanding universal cultural associations cited under criterion (vi) of the Operational Guidelines. In this, they share with the Australian government the weight of responsibility for the conservation of the cultural values in this part of Kakadu.

Australia's Kakadu, the Australian Government's report of April 15, 1999, does not claim that the Government has fulfilled the WHC mission's above request for ensuring thorough and continuing dialogue with the traditional owners. The Mirrar, as traditional owners, continue to voice their strong belief that the cultural values of Kakadu are threatened by site works at Jabiluka.

We cannot dismiss these voices as coming from a negligibly small group of indigenous owners. The Mirrar, through the oral transmission of their traditions, beliefs and values, bear witness to a rare strand of human memory, unbroken for some 50,000 years. Indeed we believe that the Committee holds a responsibility to protect the vulnerable link between the Mirrar people and the land which has nourished them physically and spiritually for so long. Their claim, that the current site operations, particularly in the sacred Boyweg-Almudj area, are destroying the very fabric of their culture, deserves the most serious attention of the Committee.

ICCROM is of the opinion accordingly, that the outstanding cultural values of Kakadu National Park are, at this moment of time, in danger from ascertained and potential threats and that the site should be inscribed on the World Heritage List in Danger.

In addition the results of the studies of the impact of dust and vibration from site works on significant rock art and archaeological sites are not yet available. With respect to these potential threats, ICCROM is therefore not in possession of evidence to discount the impact of these threats. Accordingly, in the terms of the Convention, ICCROM must state that the existence of these potential threats also serves to warrant inscription of Kakadu on the World Heritage List in Danger.

The justification for inscription stated, ICCROM remains uncomfortable with the heavily polarized nature of this debate. In such a debate, which ends without reconciliation, the real loser is the World Heritage Convention and its moral power, as

a unifying force for humanity. For that reason, inscription of the property on the World Heritage List in Danger should be accompanied by strenuous efforts to support dialogue between the Government of Australia, the Mirrar people and other key stakeholders, in order to foster approaches to site use which can meet their respective interests.

In conclusion Mr Chairman, and speaking now on behalf of the 3 advisory bodies (ICOMOS, ICCROM, IUCN), having reviewed the response of the Australian Government concerning the mitigation of threats posing ascertained and potential dangers to Kakadu National Park, we agree unanimously that the concerns identified by the World Heritage Mission and confirmed by the Committee remain. We therefore believe that the conditions exist for inscribing Kakadu on the List of World Heritage in Danger immediately.

We further believe that failure to do so after such an extensive process of analysis and review would risk diminishing the standards for which the World Heritage Convention enjoys such high international prestige.

Annex IV.5

Report from the leader of the independent scientific panel established by ICSU, Professor Brian Wilkinson

WORLD HERITAGE SITE - KAKADU

1. Chairman - Good morning. Thank you for the opportunity to make this presentation relating to the Independent Science Panel Report. This report is available in your Information Document WHC-99/CONF-204/INF.9E. At the outset it is important that the Bureau understands the Scientific Panel's structure and method of analysis. There were four members of the Independent Scientific Panel, which was established by ICSU:

Dr. John Rodda - President of the International Association of Hydrological Sciences and formerly Director of Water Resources at the World Meteorological Organisation;

Professor Gene Likens - Director of the Institute of Ecosystem Studies in New York;

Professor Jane Plant - Assistant Director, British Geological Survey; and

myself Professor Brian Wilkinson - Professor at the University of Reading and formerly Director of the Centre for Ecology and Hydrology.

The panel members were selected by ICSU and I was asked by ICSU, and the Panel agreed, that I should act as Team Leader.

2. The Panel's work began on 22 April as soon as the first documentation became available and our Report was submitted on 14 May against a deadline of May 15. Our brief was to make a scientific review of the report - "Assessment of the Jabiluka Project" (WHC-99/CONF.204/9C) from the Supervising Scientist Environment Australia which had been called for by this Bureau. We also saw a number of other supporting documents, but in time available there was a limitation on the information that was readily accessible; Our insights may have been restricted by not having visited Jabiluka or the Kakadu World Heritage Site.

The Panel's method of operation was based on a work plan which identified a Panel member to make a first response to a specific section of the Supervising Scientific Report particularly relevant to his or her expertise. These responses were then circulated by e-mail to all members for their comments which were then consolidated into the first Draft.

All Panel members approved the Final Report prior to its transmission to ICSU and UNESCO. Other than the presentation of its Report to the Bureau which the Panel made today, the Panel has discharged its remit to ICSU and the delivery of its report on 14 May.

3. However, during June Dr Arthur Johnston the Supervising Scientist contacted me to say he would like some clarification on the Recommendations in the Independent Scientific Panel Report. I obtained agreement from the Panel members and from ICSU and UNESCO to hold a telephone conversation and this

took place on 3 June with a subsequent approved conversation on 11 June. There are agreed notes of these conversations available.

4. Towards the end of June I received a 62 pages report giving the response of the Supervising Scientist to the Independent Scientific Panel Review. I forwarded this document to my fellow Panel members but they have had no time to make a formal assessment of this and furthermore believe such a consideration is outside their original brief from ICSU. I understand that this response document has been made available to the Bureau.
5. Turning to the Independent Scientific Panel Report, we considered that we could conveniently divide the work into four activity areas as follows:
 - a. Hydrological modelling and the assessment of the retention ponds design capacity
 - b. Risk assessment for the ERA proposal
 - c. Long term storage of the mine tailings
 - d. General environmental protection issues

However, there is strong interaction between these areas and the panel took these interactions into account in making its 17 Recommendations, which are given at the end of our Report. I don't intend going through our findings for each of these activity areas now. I understand there is to be an extended debate on Monday 12 July and I will take the opportunity to expand the Panel's views on that occasion. The conclusions in our Report and the Recommendations can, however, be placed in four broad categories as follows:

First Category, some of the analyses in the Supervising Scientists Report do lead to the assessment of impacts of the proposed Jabiluka mining operation being made with a higher degree of certainty than formerly. For example, the hydrological method of analysis using a stochastically generated data set, linked into a multiple run-off model using a Monte Carlo approach follows good international scientific practice. It gives greater confidence in the design method to be used for determining the pond capacity against extreme rainfall events.

Second Category, there are some recommendations that we suggest should be followed out of prudence e.g. the data for rainfall should be increased by 5% because it is recognised that raingauges often under record and the retention pond design capacity is crucially dependent on this rainfall data.

Third Category, there are some areas in the Supervising Scientist Report where we were unable to make a judgement on ascertainable or potential impacts due to lack of information or data. For example, the applicability of the Ranger radiation model to the Jabiluka Site.

Finally, there were some elements dealt with an unsatisfactory way in the Supervising Scientist Report, and some important issues that were missing for example, the failure to recognise the need for a full landscape/ catchment assessment extending outside of the mine lease area. There was also the lack of any impact analysis in the event of the mine life being extended from 30 to 50 or 60 years. In the later case we consider that such analysis should be undertaken now.

It may well be that some of our concerns are addressed by the Supervising Scientist's response to the Independent Scientific Panel Report – but this response would require detailed consideration by the Panel and as such it lies outside our brief. We are therefore unable to make appropriate comment on this document at this time.

Overall, the Panel felt there was a theme running through some part of the Supervising Scientist Report of 'Trust us' and we will ensure that it will be well even though there are uncertainties for example in the final ERA design. Perhaps this is based on the 18 years of satisfactory operational experience at the Ranger mine. The scientific community must clearly take note of this. However, Kakadu is such a rich and important site interns of World Heritage values that we believe that such a assurances should be accompanied with firm and binding commitments, not just on the present administration but also on those in the future. These are particularly important for both short and long term monitoring and reparation in the event of this monitoring exposing some presently unforeseen event or threat.