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UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL
ORGANIZATION

CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL
AND NATURAL HERITAGE

WORLD HERITAGE COMMITTEE

Twenty-third session
Marrakesh, Morocco
29 November – 4 December 1999

Item 4 of the Provisional Agenda : Report of the Rapporteur on the Third extraordinary session of the World Heritage Committee (Paris, 12 July 1999).

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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**

REPORT OF THE RAPPORTEUR

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I. OPENING SESSION

I.1 The third extraordinary session of the World Heritage Committee was held at UNESCO Headquarters in Paris, France, on 12 July 1999 at the request of the twenty-second session of the Committee (Kyoto, Japan 30 November – 5 December 1998) “to decide whether to immediately inscribe Kakadu National Park [Australia] on the List of World Heritage in Danger” (see Paragraph VII.28 WHC-98/CONF.203/18).

I.2 The Committee session was attended by all twenty-one members of the Committee: Australia, Benin, Brazil, Canada, Cuba, Ecuador, Finland, France, Greece, Hungary, Italy, Japan, Lebanon, Malta, Mexico, Morocco, Niger, Republic of Korea, Thailand, United States of America and Zimbabwe. H.E. Ambassador J. Jelen (Hungary) attended in his capacity as Rapporteur of the Committee.

I.3 The following States Parties to the Convention, who are not members of the Committee, were represented as observers: Argentina, Austria, Belgium, Brazil, China, Colombia, Costa Rica, Democratic Republic of Congo, Czech Republic, Dominican Republic, El Salvador, Germany, Honduras, Iran, Iraq, Jordan, Kazakhstan, Nepal, Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Romania, Switzerland, Tunisia, United Republic of Tanzania, United Kingdom and Venezuela.

I.4 Representatives of the three Advisory Bodies to the Committee: the International Centre for the Study of the Preservation and the Restoration of Cultural Property (ICCROM), the International Council on Monuments and Sites (ICOMOS) and the World Conservation Union (IUCN) attended. A representative of the International Council for Science (ICSU) and the Leader of ICSU’s Independent Scientific Panel (Professor Brian Wilkinson) were also present.

I.5 The meeting was also attended by representatives of the following non-governmental organizations: Australian Conservation Foundation, Friends of the Earth, Gundjehmi Aboriginal Corporation, Sierra Club, Wilderness Society Australia and the World Archaeological Congress. The meeting was also attended by staff members of the Australian Parliament and the United States House of Representatives. The full list of participants is given in Annex I.

I.6 The Chairperson of the World Heritage Committee, H.E.Ambassador K. Matsuura (Japan) declared the third extraordinary session of the World Heritage Committee open and extended his welcome to the members of the Committee, observing States Parties, the Advisory Bodies and observers. He recalled the very interesting, heated and useful discussions on the state of conservation of Kakadu National Park, Australia that took place during the twenty-second session of the Committee, held in Kyoto, Japan, from 30 November to 5 December 1998. The Chairperson then invited the representative of the Director-General of UNESCO to deliver his opening remarks.

I.7 The Assistant Director-General of Culture for UNESCO, Mr. Crespo-Toral addressed the session on behalf of the Director-General of UNESCO and expressed his pleasure in welcoming the members of the Committee and observing States Parties. His speech is included as Annex II of this report.

I.8 The Chairperson thanked the Assistant Director-General of Culture for UNESCO. He then informed the Committee that he had received written requests from eight non-governmental organisations and three non-profit making institutions to attend the third

extraordinary session of the Committee as observers. The Chairperson informed the Committee that he would authorise the participation of these organisations and institutions on the condition that their representatives attending the session would be allowed to speak only upon the request of the Chairperson. The eight non-governmental organisations whose participation was authorised were: Friends of the Earth, World Archaeological Congress, Australian Conservation Foundation, Gundjehmi Aboriginal Corporation, International Fund for Animal Welfare (IFAW), The Wilderness Society of Australia, Sierra Club and Survival International. The three non-profit making institutions authorised by the Chairperson to participate in the session were: Australian Democrats, US House of Representatives and the Women's International Media Group. The last of the three non-profit making institutions was authorised to participate only at the opening of the third extraordinary session of the Committee.

I.9 The Chairperson informed the Committee that he had also received a written request from Energy Resources of Australia Incorporated (ERA) to attend the session as an observer. However, since ERA is a profit-making institution the Chairperson did not authorise ERA's participation at the Committee session. Nevertheless, the Chairman called the attention of the members of the Committee to the fact that ERA (the mining company constructing the uranium mine on the Jabiluka Mineral Lease) is a key stakeholder in matters concerning the state of conservation of Kakadu National Park, Australia. He informed the Committee that he had therefore decided that he would circulate to members of the Committee, a copy of a letter and statement he had just received from the Chief Executive of ERA dated 12 July 1999. The Chairperson stated that he thought it would be useful for the Committee to be aware of the points of view of ERA. The letter and statement of ERA were distributed to Committee members and are presented as Annex III of this report.

II. ADOPTION OF THE AGENDA, ANNOTATED AGENDA AND THE TIMETABLE

II.1 The Chairperson drew the attention of the members of the Committee to the following working and information documents: WHC-99/CONF.205/1Rev. (Provisional Agenda), WHC-99/CONF.205/2Rev.1 (Provisional Annotated Agenda), WHC-99/CONF.205/3Rev. (Provisional Timetable) and WHC-99/CONF.205/INF.1 Rev.1 (Provisional List of Documents). All documents were adopted without change.

III. INTRODUCTION TO THE EXTRAORDINARY SESSION

III.1 The Chairperson drew the attention of the Committee to the two main documents of relevance to their deliberations. WHC-99/CONF.205/5 entitled "Report on the state of conservation of Kakadu National Park, Australia" provided a summary of information and deliberations concerning Kakadu up until the date of finalization of the document at the end of May. WHC-99/CONF.205/INF.4 included the record of the deliberations of the twenty-third session of the Bureau of the World Heritage Committee (5-10 July 1999).

III.2 The Chairperson reminded Committee members that a mission was sent to Kakadu National Park in late 1998, at the request of the twenty-second session of the Bureau in June 1998. The mission was led by the former Chairperson of the World Heritage Committee, Professor Francioni of Italy. Professor Francioni reported on the mission at the twenty-second session of the Committee in Kyoto in 1998.

III.3 The mission report (WHC-99/CONF.205/INF.3A) focused primarily on ascertained and potential dangers to the World Heritage values of Kakadu National Park posed by the Jabiluka mining proposal, and presented a total of 16 recommendations.

III.4 The Chairperson quoted the mission conclusion that there are “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” (WHC-99/CONF.205/INF.3A).

III.5 The Chairperson noted that, on the basis of the mission report (WHC-99/CONF.205/INF.3A), the Committee had an interesting discussion on Kakadu at its the twenty-second session in Kyoto. The lengthy decision adopted by the Committee is included in WHC-99/CONF.205/4. The Chairperson then quoted from a key passage of the decision of the Committee. The Committee “expressed grave concern at the ascertained and potential dangers to the World Heritage cultural and natural values of Kakadu National Park which, as noted in the mission report, are posed primarily by the proposal for uranium mining and milling at Jabiluka”. The Committee requested a total of four reports to be examined by the twenty-third session of the Bureau in July 1999.

III.6 The Committee also decided that an extraordinary session of the Committee be convened to decide whether to immediately inscribe Kakadu National Park on the List of World Heritage in Danger.

III.7 The twenty-second session of the Committee in Kyoto also urged the Australian authorities and Energy Resources of Australia Incorporated to immediately undertake, in the context of their examination of the mission report, the voluntary suspension of construction of the mine decline until the twenty-third session of the Bureau in July 1999. The decisions of the Committee were transmitted to the Australian Government by the Director of the World Heritage Centre in mid December 1998.

III.8 The Chairperson then drew the attention of the Committee to WHC-99/CONF.205/INF.4 containing the text of the recommendation of the twenty-third session of the Bureau (5-10 July) concerning the state of conservation of Kakadu National Park. The Bureau recommendation was initially prepared by a drafting group under the chairmanship of our Rapporteur, Mr Jelen. The recommendation was adopted by consensus by the Bureau on Friday 9 July 1999 and forms the basis for the discussion of the extraordinary session of the Committee.

III.9 The Chairperson recalled that in Kyoto the Committee requested four reports concerning the state of conservation of Kakadu National Park and informed the Committee that all four reports had been received. A detailed report was provided by the Australian Government on 15 April 1999 (WHC-99/CONF.205/INF.3B). A review of the scientific issues relating to the Jabiluka mine was performed by the Australian Supervising Scientist and a report was provided on 15 April 1999 (WHC-99/CONF.205/INF.3C). The third report was provided by the three Advisory Bodies to the Committee (IUCN, ICOMOS and ICCROM) (WHC-99/CONF.205/INF.3D). The fourth report is a review by an independent scientific panel constituted by ICSU (International Council for Science) (WHC-99/CONF.205/INF.3E). A representative of ICSU and the leader of ICSU’s independent scientific panel, Professor Brian Wilkinson, attended the Committee session.

III.10 The Chairperson then gave the floor to the Secretariat. The Secretariat drew the attention of the Committee to the receipt, by the World Heritage Centre, of a number of additional documents, primarily from the Australian Government, during the week preceding the extraordinary session of the Committee.

III.11 A further report from the Australian Supervising Scientist entitled “Response to the ICSU Review of the Supervising Scientists report to the World Heritage Committee” was received on 30 June (WHC-99/CONF.205/INF.3F).

III.12 Three additional reports were provided to the Centre and distributed to Committee members at the request of the Australian Delegation:

Report on Dust and the development of standards and monitoring Methods to determine potential impacts from uranium mining at Jabiluka on the rock art of the surrounding area, by Dr Alan Watchman, June 1999 (received on 8 July 1999).

Report on Potential Impacts of Vibration on Rock Art and Archaeological Sites near Jabiluka, by the Australian Geological Survey Organisation (received on 8 July 1999).

Draft report of The ERA Interim Cultural Heritage Management Plan for the Jabiluka Mining Lease (received on 9 July).

III.13 The Chairperson then drew the attention of the Committee to WHC-99/CONF.205/INF.3G containing the latest information submitted by the Australian Government during the twenty-third session of the Bureau (5-10 July 1999). The document contains new information and new measures taken, or to be taken, by the Australian Government and was referred to by the Bureau during the preparation of its recommendations to the Committee.

III.14 As there were no comments or questions following this introduction, the Chairperson then moved on to the next agenda item.

IV. PRESENTATION BY THE AUSTRALIAN AUTHORITIES OF THEIR REPORTS CONCERNING KAKADU NATIONAL PARK, AUSTRALIA - REPORT ON EFFORTS TO PREVENT FURTHER DAMAGE AND TO MITIGATE ALL THE THREATS IDENTIFIED IN THE WORLD HERITAGE MISSION REPORT

IV.1 The Chairperson invited Mr Beale, Secretary of the Department of the Environment and Heritage in Australia to provide a succinct presentation on *Australia’s Kakadu Protecting World Heritage* (WHC-99/CONF.205/INF.3B).

IV.2 Mr Beale’s presentation focussed on providing background, a brief response to the mission report (WHC-99/CONF.205/INF.3A) and a summary of the actions the Australian Government has taken since the twenty-second session of the Committee in Kyoto. Mr Beale introduced his presentation by informing the Committee that the Australian Government has provided a large volume of information and has made a major effort to respond to the concerns expressed at the Committee session in Kyoto stating that the Australian Government takes World Heritage very seriously. A complete copy of the text of Mr Beale’s Powerpoint presentation is included as Annex IV of this report.

IV.3 The Chairperson then invited Senator the Honourable Robert Hill, Minister for the Environment and Heritage, Australia to make a brief presentation. Senator Hill expressed the concern of the Australian Government to the proposal, at this stage, to object to the uranium mine at Jabiluka. He said that on three separate occasions dating back to 1981 the Park has been inscribed and extended subject to the existence of the Jabiluka mining lease. He expressed his wish to go forward and noted his acceptance of most of the recommendations of the mission report (WHC-99/CONF.205/INF.3A) as set out in the Australian Government submission entitled *Australia's Kakadu* (WHC-99/CONF.205/INF.3B), particularly as many were fully consistent with existing Australian government policy. He expressed the Australian Government's acceptance of all of the recommendations that have been made by the independent scientific panel of ICSU (WHC-99/CONF.205/INF.3E).

IV.4 Senator Hill informed the Committee that in recognition of what the Committee had said in Kyoto, his Government had brought to this meeting, a positive and constructive response in the form of a package of further initiatives (WHC-99/CONF.205/INF.3G). Senator Hill expressed his Government's appreciation that some Committee members had commented during the last Committee session in Kyoto that, although three mining leases were always accepted, when the Park was originally listed there was only one uranium mine in operation. He acknowledged that this raised the issue as to whether there was any contemplation of more than one uranium mine being in operation at any one time. Senator Hill responded to this issue of concern by noting that his Government had not been able to find anything in the record that substantiated debate on this subject in the early 1980s. However, in response to the expressed concern and after discussions with the mining company, Senator Hill stated that the mining company has agreed to a proposal that would see the Ranger mine being succeeded by the Jabiluka mine. Senator Hill said there would be some small overlap but there would not be a situation where two uranium mines would be in full commercial operation at the one time.

IV.5 Senator Hill referred to the first of the issues contained in the package of initiatives (WHC-99/CONF.205/INF.3G) that provides further detail of how the process of providing for sequential mines, rather than simultaneous mines, would take place. Referring in particular to the Ranger Mill Alternative, he said there wouldn't be mining at least before 2001, and then it would only proceed at a very small level of about 1,000 tonnes. Senator Hill noted that at the moment Ranger processes about 3 million tonnes of ore. He stated that later in the decade Ranger would be phased out and Jabiluka would phase in. He referred to his Government's hopes that Ranger could be finished by 2006. He expressed his Government's commitment that by 2009 Ranger would be finished. He referred to a slow phasing in up until the later stage before Jabiluka would come fully on stream. He informed the Committee that because the ore body was much richer at Jabiluka the throughput in the mill would be much lower than under the existing Ranger mine. He commented on his Government's difficulty in understanding how a small, much less intrusive mine could suddenly be said to be a threat when for 18 years a much larger open cut mine with a much larger throughput was not suggested to be a threat. Senator Hill expressed his Government's hope that the sequential mining of Ranger then Jabiluka would be received positively by Committee members.

IV.6 Senator Hill then proceeded to confirm that the Australian Government would accept all the recommendations of the Independent Scientific Panel (ISP) of ICSU (WHC-99/CONF.205/INF.3E). He said there would be no quarrelling on scientific details or differences but that the additional suggestions of the ISP of ICSU would be met. He expressed the hope that any scientific concerns would therefore be overcome.

IV.7 Senator Hill informed the Committee that the Australian Government was working with the Northern Territory to change the law so that the environmental requirements attached to the Jabiluka mine can be better and more effectively enforced.

IV.8 Senator Hill referred to other legal changes that have taken place in Australia since the Committee meeting in Kyoto which enhance the place of indigenous peoples in the management of environmental issues such as those at Kakadu National Park. He reported that additional efforts are being made to restrain the expansion of *mimosa pigra* and of the cane toad. The Australian Government has agreed to restrain growth of Jabiru to a maximum of 1,700 people over the next 10 years, approximately half of what was originally intended for the town. A\$3 million has been provided to upgrade infrastructure of the Park (for example to further develop roads) to better protect the World Heritage values of the Park. In summary, Senator Hill submitted that, on the environmental side, his Government had brought substantive and new initiatives to the meeting. All of these initiatives are referred to in WHC-99/CONF.205/INF.3G.

IV.9 Senator Hill then referred to the Australian Government's commitment to provide a package to bring social and economic advancement to the Aboriginal people who live in Kakadu National Park. WHC-99/CONF.205/INF.3G provides details of further investments in housing, in infrastructure (water and sewerage) and further investment in health and further opportunities in employment.

IV.10 Senator Hill then referred to the vital area of the cultural issues which were of concern. He again stated that although Traditional Owners consented to the mine (in accordance with Australian law), and that consent was reaffirmed on subsequent occasions, there is obviously concern by Traditional Owners today. He mentioned processes within Australian law and administration to address this particular issue. Senator Hill expressed his Government's wish to work through this issue in a sensitive and responsible way.

IV.11 Senator Hill made reference to the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act* of 1984 that enables Traditional Owners to have an assessment of threat made if they believe that an asset of cultural significance is being threatened. The Minister said he has the responsibility to take actions dependent upon the findings of an inquiry which would be presented in the form of a report. In the case of Jabiluka, the Traditional Owners have asked for such an assessment to take place. Senator Hill said that the inquiry will take place under the terms of the legislation and the issue of cultural significance and protection of the site under Commonwealth law in Australia was to be pursued further over the next few months.

IV.12 Senator Hill informed the Committee that in the Northern Territory, Traditional Owners have an additional protection in terms of the *Aboriginal Areas Protection Act* and an Aboriginal Areas Protection Authority identifying and assessing on particular sites. The Authority has a majority membership of indigenous people. The Minister said that it was open to the Traditional Owners to make a case as to the significance of a particular site to that Authority.

IV.13 Senator Hill went on to describe the development of the Cultural Management Plan pursuant to the mine proposal. He referred to the Australian Government's wish, expressed in their package of initiatives (WHC-99/CONF.205/INF.3G), to enhance the Traditional Owners control of that process particularly by the establishment of a Reference Group and the

appointment of an indigenous facilitator to progress the Plan by negotiating between the Traditional Owners and the mining company.

IV.14 In conclusion, Senator Hill commented that these processes were comprehensive in terms of international comparisons and were at the higher level of protection for indigenous peoples. Nevertheless, he acknowledged that whilst all of these various applications were taking place and while the pressure of mining continued, it would remain difficult for the indigenous peoples to engage. He stated that his Government had therefore managed to negotiate, in addition to the sequencing of the mines, a pause that would allow the building of a better environment in which to carry out the cultural assessments. As soon as the current testing was finished in about six weeks, he said there would be no mining, until at least the year 2001, then with the Ranger processing alternative only about 1000 tonnes per year for some years to come before the Jabiluka mine would be finally implemented. He stated that no mining before 2001 should allow for the conduct of both the report under the *Aboriginal and Torres Strait Islander Heritage Protection Act* and the Cultural Management Plan without there being pressure of mining on the indigenous people. Senator Hill expressed the Australian Government's commitment to progressing these matters sensitively according to the strict rules that exist under Australian law that are there to protect significant sites. He commented that the Australian Government trusts that with the package of initiatives presented to the Committee (WHC-99/CONF.205/INF.3G) that his Delegation could return to Australia to make progress with these matters.

IV.15 In thanking the Committee for their patience, Senator Hill stated that the Australian Government remained strongly opposed to an endangered listing for Kakadu. He said that the Government does recognise, however, the complexity of uranium mining in an area such as Jabiluka, even if it is outside of the World Heritage area in strict terms. He expressed his Government's understanding of the complexity and importance of the cultural issues and referred to their commitment to make progress with these issues sensitively and in a way in which the indigenous people could be assured that their rights would be properly protected.

IV.16 The Chairperson thanked Senator Hill for his presentation and then invited Ms Yvonne Margarula to briefly address the Committee. The Chairperson recalled that Ms Margarula was attending the Committee session as an observer from the Gundjehmi Aboriginal Corporation from the Northern Territory of Australia. The Chairperson informed the Committee that Ms Margarula was recognized under Australian law as the Senior Traditional Owner of the Jabiluka area. Ms Margarula is from the Mirrar clan and is Chairperson of the Gundjehmi Aboriginal Corporation. The Chairperson noted that Ms Margarula's brief address to the Committee in her own language, Gundjehmi Aboriginal language, would be interpreted by her interpreter, Mr Murray Garde. Ms Margarula explained the fundamental importance to her clan of sacred sites situated on their traditional lands noting that others were raising doubts as to the values and precise location of these sites. She acknowledged that she had been having discussions with Senator Hill, the Minister for the Environment and Heritage in Australia and expressed her hope that the proposed two-year pause in the development of the mine at Jabiluka would be beneficial. She concluded by commenting that she considered the designation of in-Danger listing as appropriate in the circumstances. Ms Margarula's statement to the Committee is included as Annex V to this report.

IV.17 The Chairperson thanked Ms Margarula for her statement. The Chairperson stated that he was very happy to hear the concerns of Aboriginal people directly from Ms Margarula and thought that the whole Committee would share his view.

V. PRESENTATION BY THE ADVISORY BODIES ON THE REPORT OF THE AUSTRALIAN AUTHORITIES ON EFFORTS TO PREVENT FURTHER DAMAGE AND TO MITIGATE ALL THE THREATS IDENTIFIED IN THE WORLD HERITAGE MISSION REPORT

V.1 The Chairperson then called on the Advisory Bodies to the World Heritage Committee, IUCN, ICOMOS and ICCROM, to make brief presentations to the Committee on the basis of their reports presented in WHC-99/CONF.205/INF.3D. All three Advisory Bodies called for Kakadu National Park to be inscribed on the List of World Heritage in Danger. They reiterated the final conclusion of the UNESCO mission that had visited Kakadu in 1998 noting "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 Advisory Bodies recalled that the mission had recommended "that the proposal to mine and mill uranium at Jabiluka should not proceed". The statements made by the Advisory Bodies, included as Annexes VI, VII and VIII to this report, include reference to continuing scientific uncertainties relating to the water management and retention system and disposal of tailings at the Jabiluka mine, visual encroachment on the integrity of Kakadu and threats to the tangible and associative cultural values of the Park.

V.2 Before moving on to the next item on the Agenda, the Chairperson thanked all three Advisory Bodies and assured them that their statements would be included in the record of the meeting.

VI. PRESENTATION BY THE AUSTRALIAN AUTHORITIES OF THEIR REPORTS CONCERNING KAKADU NATIONAL PARK, AUSTRALIA - REVIEW OF SCIENTIFIC ISSUES BY THE AUSTRALIAN SUPERVISING SCIENTIST

VI.1 The Chairperson invited the Supervising Scientist of Australia, Dr Arthur Johnston, to provide the Committee with a succinct presentation focussing on the main findings of the *Report of the Supervising Scientist* (WHC-99/CONF.205/INF.3C). The text of Dr Johnston's Powerpoint presentation is included as Annex IX of this report. Before moving on to the next Agenda item, the Chairperson thanked Dr Johnston for his presentation.

VII. PRESENTATION OF THE REPORT OF THE INDEPENDENT SCIENTIFIC PANEL ON THE REVIEW OF SCIENTIFIC ISSUES BY THE AUSTRALIAN SUPERVISING SCIENTIST

VII.1 The Chairperson invited Professor Brian Wilkinson, the leader of the Independent Scientific Panel (ISP) established by ICSU (the International Council for Science) to provide the Committee with a succinct presentation focussing on their review (WHC-99/CONF.205/INF.3E) of the *Report of the Supervising Scientist* review (WHC-99/CONF.205/INF.3C). The text of Professor Wilkinson's presentation is included as Annex X of this report.

VII.2 In thanking Professor Wilkinson for his presentation, the Chairperson noted his appreciation of the concrete points that had been made and which he noted would definitely help the Committee in its deliberations. The Chairperson made reference to the specific comments made by Professor Wilkinson on the text of the recommendation of the twenty-third session of the Bureau which had erroneously referred to a dialogue with the Australian

Supervising Scientist and the Independent Scientific Panel of ICSU. The Chairperson apologised for the error. He stated that whilst this error could not now be corrected in the Bureau report, the error would not be repeated in the decision of the Committee.

VIII. RESPONSE BY THE AUSTRALIAN SUPERVISING SCIENTIST TO THE REPORT OF THE INDEPENDENT SCIENTIFIC PANEL OF ICSU

VIII.1 The Chairperson then reminded the Committee that the Australian Supervising Scientist had already prepared a response (WHC-99/CONF.205/INF.3F) to the report of the ISP of ICSU. The Chairperson invited the Supervising Scientist to respond to the concrete points raised by Professor Wilkinson.

VIII.2 An outline of the presentation made by the Australian Supervising Scientist, Dr Arthur Johnston, is presented as Annex XI of this report. Dr Johnston prefaced his presentation by acknowledging that the response of the Supervising Scientist to the ISP report (WHC-99/CONF.205/INF.3F) has only recently been sent to the ISP who would now need time to assess the response.

IX. RESPONSE BY THE LEADER OF THE INDEPENDENT SCIENTIFIC PANEL OF ICSU

IX.1 The Chairperson then invited the leader of the ISP of ICSU, Professor Brian Wilkinson, to respond to Dr Johnston's presentation.

IX.2 Professor Wilkinson thanked Dr Johnston for his carefully considered response but noted that it was clearly not possible for him to reply on behalf of the ISP. He expressed his wish to find a way forward and proposed a three phased approach. In the first phase the ISP would need time to prepare a considered response to the report of the Supervising Scientist and to look at other relevant scientific information. The outcome of the first phase could be that the concerns of the ISP have not been fully addressed and therefore the ISP would report back accordingly to UNESCO. Or, if not all recommendations were addressed or more information was required, there may need to be an international meeting for a dialogue between the Supervising Scientist, the ISP of ICSU and other relevant scientists to have a transparent review of the science. There could be two outcomes of this process. If no way forward was found, the ISP would report accordingly to UNESCO. Alternatively, Professor Wilkinson concluded that if the scientific issues could be resolved this could lead into a much longer term monitoring program.

IX.3 The Chairperson thanked Professor Wilkinson and Dr Johnston for their presentations to the Committee.

X. SUMMARY OF DEBATE

X.1 The Chairperson recalled that the recommendation of the twenty-third session of the Bureau (5-10 July 1999) was included in WHC-99/CONF.205/INF.4. He invited members of the Committee to ask any questions or provide comments on the presentations heard during the morning.

X.2 In summary, the delegates stressed the importance of the Convention as a tool of international co-operation for the purposes of heritage conservation, and commented that they did not want to see the prospect of in Danger listing for a World Heritage property interpreted

as a threat or punishment. Several delegates concluded that they did not think it was appropriate to include Kakadu on the List of World Heritage in Danger at this time. Instead, they emphasised the need for the development of a program of corrective measures in co-operation with the State Party and referred to Paragraph 86 of the *Operational Guidelines*. Delegates welcomed the new information concerning the revised timetable for development of the Jabiluka mine provided to the Committee during its session by the Australian Delegation. A number of delegates noted the need however, for more specific details concerning, for example, the amount of uranium ore extraction at the Jabiluka and Ranger mines over time. Delegates expressed their continuing concern that there remained a number of scientific uncertainties concerning the operation of the mine at Jabiluka as highlighted by the leader of the Independent Scientific Panel of ICSU. Delegates stressed the fundamental importance for the Australian Government to maintain a dialogue with the Aboriginal traditional owners.

X.3 The statements made by the delegates of Thailand, Japan, France, Canada, the United States of America, Zimbabwe, Mexico, Cuba, Niger, Finland, Italy and Morocco are included as Annexes XII to XXIII of this report.

X.4 Following the statements of the Committee members mentioned above, the Chairperson invited the Delegate of Australia to reply to specific questions. Senator Hill, the Minister for the Environment and Heritage, thanked States Parties for their willingness to look for a consensus solution that would enable the Australian Government to progress with the challenge of meeting these very difficult issues in a constructive way that would enhance and give greater confidence to the Convention.

X.5 In answer to the question of the Delegate of France in relation to the timetable for mining, the Minister referred to a graph shown earlier in the day by the Secretary of the Department of the Environment and Heritage, Mr Beale (see Annex IV). Whilst accepting that the proposal for the Ranger Mill Alternative was entirely up to the decision of the Mirrar people, it was proposed that there be no mining up until the year 2001 and then only a very small quantity (1000 tonnes for some years) and then a phase-in of Jabiluka with Ranger being phased out so that the two mines would not be operating at full commercial capacity at the same time. Senator Hill informed the Committee that the reason why the company wants to operate at a very small tonnage in that intervening period was partly for testing purposes and partly for commercial purposes in order that the company could demonstrate to potential long term customers their capacity to provide the resource in the future.

X.6 Senator Hill informed the Committee that the period of pause up until the year 2001 should enable both the report process under Australia's heritage protection laws to be completed and also for the cultural plan to be completed in an atmosphere of less perceived pressure on the traditional owners. He commented that this would be a positive development.

X.7 The Chairperson then quickly summarized the debate. He referred to the large majority of members of the Committee who did not want to immediately inscribe Kakadu National Park on the List of World Heritage in Danger. However, he noted that there were some members of the Committee who favoured such immediate inscription. Secondly, he proposed further work on the basis of the Bureau's recommendations with three particular points being added – (i) the importance of maintaining the spirit of the Convention referred to by many delegates, (ii) the importance of reinforced cultural heritage protection measures as part of the corrective measures and (iii) future actions of the Committee. The Chairperson

stated that the Committee should be vigilant and that the decision should set out how the Committee could maintain their vigilance.

X.8 The Chairperson decided that he and the Rapporteur with the participation of the Australian Delegation and the assistance of the Secretariat would work to draft a decision to propose to the Committee in plenary. The Chairperson recalled that, in accordance with Paragraph 86 of the *Operational Guidelines*, it is necessary to develop corrective measures in consultation with the State Party concerned. The Chairperson expressed his hope that the draft decision would be adopted by consensus and adjourned the meeting.

X.9 At the resumption of the session, the Chairperson gave a brief overview of the content and structure of the proposed Committee decision. The Chairperson commented that the drafting of the decision had not been an easy task as it related to a very delicate issue and he thanked the Rapporteur and the Secretariat for all their help and co-operation. He then invited members of the Committee to examine, and make specific comments on, the proposed Committee decision, paragraph by paragraph.

X.10 The Delegates of Finland and Japan requested that the word "possible" be deleted from paragraph 1(e) of the draft decision – "Is gravely concerned about the serious possible impacts to the living cultural values of Kakadu National Park ..." The Delegate of Mexico commented that it would be preferable to use alternative words than "serious threats" and suggested that alternative words such as those used in the *Operational Guidelines*, would be suitable.

X.11 The Delegate of Australia, Senator Hill, again expressed his concern that the concept of living culture was one that was evolving. He recommended that there needs to be substantial debate on the issue before the Committee starts to make findings against particular States. For this reason he commented that the word "possible" was helpful in paragraph 1(e). He noted that there may well be possible serious impacts but to have found serious impacts was really a finding of guilt in circumstances where the terminology was, to date, vague. He suggested that the words "gravely concerned" gave sufficient emphasis to the message of the Committee which is that it regards the whole issue of detrimental consequences to living culture as a vitally important one and that it was gravely concerned about possible serious impacts. In conclusion, he commented that to make a finding of "serious impacts", in the circumstances of what had been put before the Committee, was unreasonable.

X.12 The Delegate of the United States of America agreed with the Delegate of Japan that it was not appropriate to have the word "possible" in paragraph 1(e). She suggested that it could be replaced with "potential" to accurately reflect the language for the criteria for in Danger listing. Alternatively the reference should be deleted because the Bureau had found that there were impacts and the Committee had been informed of these impacts. She then questioned whether impacts to living cultural value would be in the mind of those experiencing those values. She asked that if it was the traditional land owners and those that have the property rights that felt that those values have been seriously impacted, was it for the Committee to question?

X.13 The Delegate of Malta requested that the drafting of paragraph 1(e) of the proposed decision remain unchanged. The Delegate of Zimbabwe agreed that the word "potential" replace "possible" in paragraph 1(e). The Delegate of ICOMOS noted that two points were being discussed - a possibility or a potentiality and an impact. He suggested that the word "possible" be omitted and the word "impact" be replaced by "threat". The Delegate of Finland

agreed with the proposal by ICOMOS. The Delegate of the United States of America referred to her earlier comments and suggested that the language used in the Committee's decision be consistent with that of the *Operational Guidelines*. She referred to Paragraph 82 (ii) which uses the words "potential danger" or "deleterious effects". The Delegate of Thailand commented that he found the wording of paragraph 1(e) of the proposed decision – "possible serious impacts" - to be acceptable.

X.14 The Chairperson thanked the Delegates for their various comments. He expressed his wish to avoid the language used in the *Operational Guidelines*, in particular in Paragraph 82 – "ascertained danger" and "potential danger". He commented that if the Committee was to recognize the existence of a "potential danger" that would mean putting the site in question on the List of World Heritage in Danger. He recalled that this was not the consensus view of the Committee. He therefore asked that the expressions used in the *Operational Guidelines* be avoided, particularly the use of the words "potential danger". Based on the majority view of the Committee, he then proposed to use the words "serious impacts" and delete the word "possible" in paragraph 1(e) of the proposed decision. The Chairperson asked that the Rapporteur and the Secretariat ensure that the remarks of the Australian Delegation were included in the record of the discussion in a clearcut manner. Finally, the Chairperson asked for the agreement of the Committee to adopt the change to paragraph 1(e) he had just suggested (i.e. the deletion of the word "possible").

X.15 The Delegate of Mexico remarked that the deletion of the word "possible" clearly changed the sense of the idea expressed in paragraph 1(e) of the proposed decision. He said that this had not been the intention of the several Delegates who had proposed alternative language. He commented that the Chairperson's interpretation of the language proposed by the Delegate of the United States of America was only for those properties included in the List of World Heritage in Danger, was not the case. He referred to the fact that reference to "potential" also exists in other paragraphs of the *Operational Guidelines*. He concluded that the proposal made by the Delegate of the United States of America is the best solution. The Chairperson asked that the views of the Delegate of Mexico be included in the record of the discussion.

X.16 The Delegate of the United States of America stated, in the name of consensus, that her delegation was amenable to the suggestion from the Chairperson. However, on behalf of her delegation, she respectfully disagreed that a finding by the Committee of potential dangers implied or meant that the Committee would then have to inscribe the property on the List of World Heritage in Danger. Her interpretation of Paragraphs 86 and 89, which state specifically that "the Committee shall examine the information available and take a decision concerning the inscription of the property on the List of World Heritage in Danger", was that the Committee can take any decision that it likes. The decision does not simply have to be limited to inscribing or not inscribing. She commented that the Committee appeared to be willing to take a decision that was neither of those (to inscribe or not to inscribe) but that which reflects the options in Paragraph 86 of the *Operational Guidelines* to develop a "programme for corrective measures" instead.

X.17 The Delegate of Niger expressed his preference for the words "potential threat". He also commented that the word "demand" included in Paragraph 1(c) should be replaced by more diplomatic language.

X.18 The Chairperson expressed his view that the majority of the Committee agreed to delete the word "possible". He stated that the differing views of delegations, including those

of the Australian Delegation, would be included in the record of discussion. He then asked the Delegate of Niger to suggest another word than “demand” (exiger in French) to be used in Paragraph 1(c).

X.19 The Delegate of Niger suggested the alternative wording should be “demander avec insistance”. The Delegate of France suggested that the existing use of the word “demand” be maintained. The Chairperson concluded that the verb “exiger” (demand) would not be replaced.

X.20 The Delegate of Thailand then proceeded to comment on Paragraph 1(c) and its reference to Paragraph 86 contained in Section III(C) of the *Operational Guidelines* concerning “Procedure for the inclusion of properties in the List of World Heritage in Danger”. He reflected that the debate held earlier in the day had not been referring to the inclusion of Kakadu on the List of World Heritage in Danger. He considered that whilst the Committee may wish to keep the first part of the text of Paragraph 1(c), the text stating “in accordance with ... Paragraph 86 ...”, which relates to inclusion in the List of World Heritage in Danger, could be seen as if the Committee was holding a stick, and that at any time the Committee would punish the States Party concerned. The Chairperson responded by referring to his discussion with the Secretariat on the application of Paragraph 86 of the *Operational Guidelines*. He also referred to an intervention made by a Committee members earlier in the session in which they stated that Paragraph 86 applied to properties already on the List of World Heritage in Danger. The Chairperson commented that Paragraph 86 is a very flexible one that applies to properties already on the List of World Heritage in Danger as well as those being considered for inclusion. The Chairperson concluded that he would like to mention the paragraph in the decision of the Committee.

X.21 The Delegate of Morocco referred to the pertinence of the remarks by the Delegate of Thailand and suggested that, given the Chairperson’s remarks concerning the flexible interpretation of Paragraph 86, it would be appropriate to replace “in accordance with” with “with reference to”. The Chairperson commented that he thought the words “with reference to” would respond to the difficulties raised by the Delegate of Thailand. The Chairperson noted a slight difference in the interpretation of Paragraph 86 of the *Operational Guidelines* in the French and English versions.

X.22 The Delegate of Thailand requested that the words “in accordance with Section III, in particular Paragraph 86 of the *Operational Guidelines for the Implementation of the World Heritage*” be deleted.

X.23 The Delegate of Morocco expressed his view that it was important to make reference to Paragraph 86 as it referred to the Committee working with the State Party to develop a programme for corrective measures at the site. The Delegate of Italy agreed with the remarks made by the Delegate of Morocco.

X.24 The Chairperson noted that the Committee had before it two suggestions for changes to Paragraph 1(c) – firstly, to replace “in accordance with” with “with reference to” as suggested by the Delegate of Morocco and secondly, to delete all the text “in accordance with Section III, in particular Paragraph 86 of the *Operational Guidelines for the Implementation of the World Heritage*” as suggested by the Delegate of Thailand. The Delegates of Finland, Japan, France agreed with the proposition made by the Delegate of Morocco. The words “in reference to” to in Paragraph 1(c) were replaced by “in accordance with”. The Committee then proceeded to adopt Paragraph 1 of the proposed decision with two changes – the replacement

of "in accordance with" with "with reference to" in Paragraph 1(c) and the deletion of the word "possible" in Paragraph 1(e).

X.25 The Chairperson then invited the Committee to comment on the wording of Paragraph 2 of the proposed decision. The Delegate of Benin suggested that given the fundamental importance of the dialogue between the Mirrar Aboriginal clan and the Government of Australia, that Paragraph 2(b) encourage the Australian Government to intensify the important dialogue that has begun. The Chairperson commented that he thought this was a good suggestion that would reflect the sentiments of the Committee. The Chairperson requested the Director of the Centre to make a suggestion for change to Paragraph 2(b) of the proposed decision. The Director of the Centre suggested that the text be amended to read "The Committee encourages the Australian Government to intensify the dialogue ...". The Delegate of Benin accepted this amendment but also suggested using the word "approfondi" (to pursue with vigor).

X.26 The Delegate of France commented on paragraph 2(c) suggesting that it would be very useful to refer to the document provided by the Australian Government (WHC-99/CONF.209/INF.3G which includes precise reference to the sequence of activities at the Ranger and Jabiluka mines. He noted that this information was essential as it was at the heart of the proposals being made by the State Party. The Delegate of France further suggested that the words "that there shall be no parallel commercial scale operation of the Ranger and Jabiluka uranium mines ..." be replaced with the exact words from the document submitted by the Australian Government – that " full scale commercial mining at Jabiluka would only be reached about 2009 following the scaling down of production at the Ranger mine so that two mines would not be in full production simultaneously". The Chairperson thanked the Delegate of France for his pertinent remarks.

X.27 The Rapporteur referred back to the important remarks of the Delegate of Benin concerning Paragraph 2(b). He noted the difficulty in finding the right place to include them in the proposed decision to ensure their importance was properly reflected. His understanding was that the Committee was first acknowledging that something had happened and then in the second sentence, evaluating and assessing it, and saying this was a good step in the right direction, and then giving the Committee's encouragement which might be linked with the word "hence" or "thus". He therefore suggested "thus / hence encourages to pursue with vigour and deepen their dialogue with the Mirrar" but questioned where this important element of paragraph 2(b) should be inserted. The Chairperson asked that the Rapporteur reflect on this point.

X.28 The Chairperson invited the Director of the World Heritage Centre to propose a new text reflecting the two remarks made by the Delegate of France. The Director of the Centre instead suggested a revised text for the second sentence of paragraph 2(b) to read "The Committee encourages the Australian Government to intensify the dialogue ..."

X.29 The Delegate of Morocco suggested that the first part of the sentence remain the same with the addition of the words "first essential step" to be followed by reference to encouraging the Australian Government to intensify its dialogue with the Mirrar. The Chairperson commented on the logic of this suggestion.

X.30 The Chairperson then invited the Director of the World Heritage Centre to read the proposed revised text of the second sentence of paragraph 2(b). The Director of the Centre proposed, with reference to the proposals by the Delegate of Morocco, that the text read "Le

Comité considère que c'est une étape essentielle et encourage le gouvernement australien à poursuivre et approfondi ce dialogue pour trouver une solution constructive aux questions soulevées par la mission UNESCO au Parc national du Kakadu." The Chairperson requested that the Director continue to reflect on a revised wording of this sentence.

X.31 With reference to the intervention by the Delegate of France, the Rapporteur suggested that Paragraph 2(c) be amended to read "**Notes** that the Australian Government has stated (in document WHC-99/CONF.205/INF.3G entitled "Protecting Kakadu National Park" submitted by the Australian Government) that ...".

X.32 The Chairperson then requested that the Rapporteur provide new wording to Paragraph 2(c), as had been requested by the Delegate of France, to have a more direct explanation of the commencement of the Jabiluka mine only after the Ranger mine has come to an end.

X.33 The Rapporteur responded by suggesting that the exact wording from the Australian statement (WHC-99/CONF.205/INF.3G) could be quoted in the decision. The Director of the Centre then quoted the exact phrase from WHC-99/CONF.205/INF.3G to be included in paragraph 2(c) of the decision - that "full scale commercial mining at Jabiluka would only be reached about 2009 following the scaling down of production at the Ranger mine so that two mines would not be in full production simultaneously". The Delegate of Australia, Senator Hill, agreed with this insertion.

X.34 The Chairperson then asked for the Committee to adopt the changes to Paragraph 2 noted above. The Rapporteur noted the difference between the quotation from WHC-99/CONF.205/INF.3G ("full scale commercial ... would not be in full production simultaneously") and the statement "no parallel commercial scale operation". The Rapporteur questioned whether what was meant was that there would be "no parallel full scale commercial production".

X.35 The Delegate of Australia, Senator Hill, again read the exact text from WHC-99/CONF.205/INF.3G - that "full scale commercial mining at Jabiluka would only be reached about 2009 following the scaling down of production at the Ranger mine so that two mines would not be in full production simultaneously".

X.36 The Chairperson again called for the revised text of paragraph 2(c) of the proposed decision to be adopted. The Delegate of Morocco questioned the concordance between the proposed revised text in English and French. The Chairperson said that he could see no difference between the English and French texts.

X.37 The Delegate of Hungary referred to the morning session where he heard from the Delegate of Australia that there would be a delay of the commencement of mining at Jabiluka until 2001 and changes to the level of production of uranium at Jabiluka and Ranger. He commented that he could not see these statements in WHC-99/CONF.205/INF.3G.

X.38 The Delegate of United States of America expressed similar concerns to those raised by the Delegate of Hungary. She referred to uncertainties about the need for certain tests to more reliably assess the risks, particularly relating to groundwater contamination, that need to be performed prior to operation of the mine. She noted that these concerns were not included in the proposed decision and that text that would have further allowed the Australian Government to respond to unforeseen environmental degradation had also been taken out.

This text referred to provisions for rehabilitation and for funding in the event of unforeseen environmental damage during operation of the mine, also agreed upon by the Australian Delegation, had been provided to the Secretariat earlier in the day. She asked whether this was still acceptable to the Australian Delegation.

X.39 The Delegate of Australia, Senator Hill, commented that there were a lot of points that were included as commitments in WHC-99/CONF.205/INF.3G, as well as some extra points he had raised earlier in the day, that were not all detailed in the draft decision of the Committee. He stated that he had no objection for any commitment that had been made by the Government of Australia to be included in the Committee decision but cautioned against creating a very lengthy decision. In relation to rehabilitation he referred to the mining company's obligation to hold in a government trust fund some A\$30 million to pay for the cost of rehabilitation. Senator Hill stated that the company is also obliged under Northern Territory law to make good any damage that might be caused by the mine. He noted that the whole purpose of the thorough Environmental Impact Statement process was to avoid any damage. Senator Hill also informed the Committee that the company holds an insurance policy of some A\$100 million to cover itself in the case of that obligation having to be met. He stated that if all else failed the Australian Government would meet its commitments under the *World Heritage Convention* to properly protect the asset. He therefore concluded that the Australian Government is the ultimate insurer. Finally, he stated that he was happy for these points to be recorded in an extra clause of the decision of the Committee if that was their wish.

X.40 The Chairperson asked the Delegate of Australia whether all of these points were contained in WHC-99/CONF.205/INF.3G. Senator Hill replied that they were not all included. Some additional points had been made during the day. He said that the issue raised by the United States of America was not set out in detail. Furthermore he noted that the document provides for best practice rehabilitation but does not specifically deal with the issue of reparation of any damage that might be caused. At the request of the Delegate of the United States of America a text was developed by the Australian Delegation in the morning but he was not sure whether it had been circulated.

X.41 The Delegate of the United States of America affirmed that she had been referring to that text and noted that, in this instance, her delegation was willing to defer to the text proposed by the Australian Delegation. The Delegate of the United States provided the following text to the Secretariat to be inserted into the record of the discussion. "The United States brought up the issues of indemnification of the costs of dealing with the effects of unforeseen environmental contamination resulting from the mining operations or in the future after rehabilitation has been completed and on into the future. Senator Hill assured the Committee that either the mining company or the Government of Australia would be responsible for the costs of protection of the values of the World Heritage Site in the future."

X.42 The Chairperson referred to the dilemma of preparing a precise decision which would be very long, or a short decision that would risk being vague. He noted that the presentations made by the Australian Delegation in the morning session would appear in the record of the discussion. He cautioned against the adoption of an ambiguous decision that could be subject to erroneous interpretation.

X.43 The Delegate of Australia, Senator Hill, commented that he thought that the point made by the Delegate of Hungary, was covered by his presentation during the morning session and commitments he made on the record on that occasion. Senator Hill said that he

had also just put on the record that the Australian Government is, in effect, the ultimate insurer, the guarantor that the World Heritage obligations would be met in the case, for example, of total failure of the company. He said that this would never be in dispute as otherwise the Australian Government would never have signed the *Convention* or nominated Kakadu National Park for inscription in the World Heritage List.

X.44 After having considered the remarks made by the Delegate of Australia, the Chairperson proposed that paragraph 2(c) be rephrased in accordance with the proposal from the Delegate of France and that the other changes to paragraph 2(c) as quoted by the Director of the Centre and the Rapporteur be adopted. He stated that when it comes to details (such as those made by the Delegates of Hungary and the United States of America) the Committee would depend on the record of discussion. On the subject of the record of discussion, the Chairperson then informed the Committee that, understandably, it was totally impossible for the Secretariat to prepare a draft record of discussion to be scrutinised by the Committee before it adjourned. He therefore proposed that the Secretariat prepare a draft report in collaboration with the Rapporteur and the Chairperson and submit it to all members of the Committee. The Chairperson did not assume that he would have the authority to approve such an important document. The Chairperson therefore asked the Centre to send the draft report to members of the Committee for comments that will be incorporated prior to finalisation of the report. The Chairperson then asked for any further comments. With no further comments being made, the Committee adopted paragraph 2 of the decision with the amendments to paragraph 2(b) and 2(c) noted above.

X.45 The Chairperson then invited comments on paragraph 3. The Delegate of Mexico proposed that the words "remain vigilant in monitoring" be replaced by "review and assess". The text would therefore read "With consideration of 1 and 2 above the Committee will review and assess the progress made by the Australian Government".

X.46 The Delegate of Morocco commented that paragraph 3(c) was not comprehensible and he suggested that it be redrafted. He also suggested that the date of 15 April 2000 indicated for Australia to provide a response should be revised to ensure a rapid response to the Committee for its next session.

X.47 The Delegate of Benin reminded the Committee that the Australian Delegation had referred in its interventions to a number of legal instruments. He suggested that paragraph 3(b) be revised to include a request that the Australian Government provide further explanation on issues relating to legal protection.

X.48 The Delegate of France agreed that the meaning of paragraph 3(c) was not sufficiently clear. He also noted that the requests made in paragraph 3(a) and 3(b) were not of the same nature as that presented in paragraph 3(c). He therefore suggested that the information requested in paragraph 3(c) should be provided by the Australian Government to the next session of the Committee.

X.49 The Delegate of Japan supported the comments made by the Delegates of Morocco and France comments on paragraph 3(c). He commented that paragraph 3(a) and 3(b) refer to a progress report to be submitted by the Australian Government. However as paragraph 3(c) requests further clarification from the Australian Government it needs to be more precise. He also referred to the suggestion made by the Delegate of Mexico to replace the words "remain vigilant in monitoring" in the first line of paragraph 3. The Delegate of Japan expressed his

delegation's preference to keep the wording as it was because it properly reflected the Committee's deliberations and its serious concerns on the Kakadu issue.

X.50 The Delegate of Mexico informed the Committee that his intention in suggesting a substitution to the language in the first line of paragraph 3 had not been to soften the intention of the paragraph but rather to keep the Committee's language as close as possible to the language used in the *Operational Guidelines*. He commented that he could not see any reference to vigilance. Instead he noted several cases where the words "review and assess" are utilized in the *Operational Guidelines*.

X.51 The Delegate of Hungary wished to refer back to paragraph 2(b) and to the Committee's reference to the present state of the mining process at Jabiluka and Ranger. He commented that the situation being referred to in paragraph 3(c) was a little different because the mining process at Jabiluka will not start before 2001. He noted that this means that up until 15 April 2000 there is no question about the mining process at Jabiluka, only at the mine at Ranger. However, if the Committee wishes to remain vigilant in monitoring the progress, it will be important for the Australian Government to submit a report on the circumstances of the mining process up to 15 April 2000. Therefore the mining process at Ranger and the situation at the Jabiluka mine, was according to the Delegate of Hungary, of importance.

X.52 The Delegate of Australia, Senator Hill, asked to explain how he thought the wording contained in the draft decision would probably serve the purposes of the Committee. Following on from the remarks from the Delegate of Hungary, he expressed his concern that the Australian Government will concentrate in the next eighteen months on the reporting process under the *Aboriginal and Torres Strait Islander Heritage Protection Act* and the development of a Cultural Management Plan. He said that he thought the Mirrar people would like these tasks to be carried out in sequence rather than simultaneously. He therefore noted that in a situation of no mining and with these cultural assessments processes taking place there will not be much further to report for some time. He stated that by 15 April 2000 the Australian Government should be able to provide a reasonable update on progress with the Cultural Management Plan, implementation of the Kakadu Region Social Impact Study and might have some further information in relation to the mining intentions. He said that these intentions would not be inconsistent with the commitments made to the Committee during its extraordinary session. He suggested that a better timeframe for reporting would have been at the end of eighteen months following the eighteen months of pause and the completion of the various cultural assessment processes. However, Senator Hill expressed his understanding as to why the Committee would find eighteen months to be too far away and agreed to provide a report by 15 April 2000. He regarded this as a reasonable compromise that could be met by the Australian Government who could hopefully provide the Bureau with some further significant information upon which to continue its monitoring role. On that basis, Senator Hill commented that he understood what was required by paragraph 3(c) and regarded the wording in the proposed decision as adequate.

X.53 The Delegate of Italy returned to the words "remain vigilant in monitoring" in the first line of paragraph 3. He suggested an alternative wording to read "remain vigilant in reviewing and assessing". He commented that there was nothing wrong with the idea of staying vigilant as this was precisely what the Committee had been trying to do and this was the kind of message the Committee had been trying to convey to the Australian Government that this will, and should, go on. He stated that this is also the reason that the Italian Delegation agrees that there should be a deadline of 15 April 2000 for the Australian Government to submit a progress report. On paragraph 3(c) the Delegate of Italy commented

that the text at the beginning of paragraph 3(c) was not clear and that the Committee required more precise details concerning the pause in work at Jabiluka and the phase-out of Ranger.

X.54 The Delegate of the United States of America stated that her delegation agreed with the delegates of Japan and Morocco, and proposed that for the sake of clarity, it may be useful to move paragraph 3(c) to the bottom of paragraph 2(c). She also commented that the dates proposed by the Delegate of Australia sounded entirely reasonable.

X.55 The Delegate of Morocco also suggested moving paragraph 3(c) as had been proposed by the Delegate of the United States of America.

X.56 The Chairperson provided a quick summary of the debate. Firstly, on the Mexican proposal slightly amended by the Delegate of Italy, the Chairperson expressed his wish that the word "vigilant" be retained. He suggested the following wording – "With consideration of 1 and 2 above, the Committee will remain vigilant in monitoring, reviewing and assessing the progress ...". He expressed his hope that this change in wording would meet the approval of the Committee. On paragraph 3(c) he noted that the Committee wanted a separate paragraph perhaps to be added to the end of paragraph 2.

X.57 The Delegate of Australia respectfully commented that the problem was that the scheme that he had presented to the extraordinary session of the Committee was that the mine would be put on hold whilst the various social and cultural studies were conducted. He said that in the near future he would not expect to be able to provide further information in relation to mining. He stated again that this was why he had suggested the date of 15 April 2000 as by then he may have further information available on mining intentions. He said that if this information was available he would be more than happy to bring it to the attention of the Committee. He said that he could not see the benefit to the Committee of imposing an obligation on Australia when he thought it was unlikely that he could provide further information. He said that whilst he did not object to the proposed clause, he respectfully submitted that again linking it to the date of 15 April 2000 is more likely to produce something of use to the Committee.

X.58 The Delegate of Canada expressed her agreement with the proposal from the Delegate of Australia and commented that she thought that this had been the intent in the debate. The Delegate of Morocco suggested that the text proposed by the Director of the Centre be used and that the date for submission by the Australian Government be given as 15 April 2000. The Delegate of the United States of America repeated the point made by the Delegate of Australia that it would not be a worthwhile exercise for them or for the Committee to report if there is nothing to report on. She therefore suggested deferring to the Delegate of Australia on this point.

X.59 The Chairperson expressed his agreement that if the Australian Delegation considers that they are not in a position to supply new information before the next Committee meeting, the Committee should not create false expectations. He called for the Committee's agreement on the initial proposal. The Delegate of Thailand expressed his support for this proposal.

X.60 The Delegate of Mexico made two suggestions, either to agree with the proposal of Italy or to withdraw his own proposal in order to reduce confusion with the wording proposed. He expressed his own preference as being to adopt the Italian proposal. At the request of the Chairperson, the Delegate of Italy repeated his proposal that "the Committee would remain vigilant in reviewing and assessing the progress made ...". The Delegate of

Morocco again suggested that the text should include the date for submission by the Australian Government as 15 April 2000.

X.61 The Delegates of France and Lebanon supported the position of Morocco. The Rapporteur informed the Chairperson that if the Committee kept the same date for the Moroccan proposal, it was keeping the original text proposed as there was already a heading to paragraph 3 which clearly establishes the date for submission of the progress report as 15 April 2000. He stated that the proposed text includes reference to cultural mapping and the Cultural Heritage Management Plan with more precise details being requested. He commented that the only new point in paragraph 3(c) relates to the legal explanation originally suggested by the Delegate of Benin. He therefore concluded that the proposals to create a new paragraph would be repeating text already included in the proposed decision.

X.62 In discussing the final wording of paragraph 3(c), the Delegate of Hungary expressed his agreement but asked whether it was possible to clarify the exact wording of paragraph 3(c). He suggested deleting "output and scale of any parallel activities" and replacing it with the meaning the management of any activities at both mines.

X.63 The Delegate of France suggested keeping the original wording of the proposed decision as it was precise and complete.

X.64 The Rapporteur noted that lying behind the ambiguities in the wording of the proposed decision are serious issues. He commented that when the debate is closed, and the Committee members walk from the room, they will be faced with a lot of questions. He asked whether the Committee wished to have something in written form which clarifies what the Delegate of Australia had said orally after his written statement on 9 July 1999. The Rapporteur commented that the Committee had heard and seen a lot of important points including the chart explaining the proposed transition from mining uranium at Ranger to Jabiluka. He expressed his view that the term "by 15 April 2000" should be understood to give the Australian Government the opportunity to provide as early as they wish elements that would clarify the intentions that lie behind the details of the oral presentations made by the Delegate of Australia. Without actually changing anything, but adding (d) on legal matters as suggested by the Delegate of Benin, the Rapporteur said that the Committee was generously giving the Australian Government the opportunity to increase the positive atmosphere by giving those orally stated elements of his presentations in a written form by the time of next session of the Committee in December 1999 in Marrakesh. He said that the Committee was not insisting, threatening or punishing, it was only saying "by 15 April 2000". He concluded by saying that it was for the Australian Government to decide what elements would increase the positive atmosphere in Marrakesh by sending some elements of clarification earlier than 15 April 2000.

X.65 The Chairperson concluded the debate on the drafting of paragraph 3 by noting that the reference to the continuing vigilance of the Committee in "reviewing and assessing the progress made by the Australian Government" would remain. He affirmed that the progress report from the State Party, to include information on cultural mapping, the cultural heritage management plan and social and welfare issues should be submitted by 15 April 2000 for examination by the twenty-fourth session of the Bureau of the World Heritage Committee. Finally he asked the Rapporteur and the Secretariat to find an appropriate final wording for paragraph 3(c) to reflect the Committee's request that more precise details on legal provisions and the exact output and scale of any parallel activities at the Ranger and Jabiluka uranium mines be included in the progress report.

X.66 The Chairperson then invited comments on paragraph 4 of the proposed decision. The Observer from ICSU respectfully requested a change in the second line. She requested that "the Committee asks ICSU to continue the work of the ISP" replace "the Committee asks the ISP of ICSU to continue the work of the ISP". She said that this change would more properly reflect the way in which the World Heritage Committee works with ICSU and its scientific panels. The Chairperson agreed with this change on behalf of the Committee. The Committee then adopted paragraph 4 with the small amendment made by ICSU.

XI. DECISION OF THE THIRD EXTRAORDINARY SESSION OF THE WORLD HERITAGE COMMITTEE CONCERNING KAKADU NATIONAL PARK, AUSTRALIA

1. The Committee,

- (a) **Emphasizes** the importance of Articles 4, 5, 6, 7 and 11 of the 1972 UNESCO *World Heritage Convention*. In particular the Committee emphasizes Article 6 (1) which states that:

Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage (...) is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.

- (b) **Recalls** that the twenty-second session of the World Heritage Committee in Kyoto (1998) expressed "grave concern" over the ascertained and potential dangers to the World Heritage cultural and natural values of Kakadu National Park posed by the proposal for uranium mining and milling at Jabiluka;
- (c) **Notes** that the deliberations of the twenty-third session of the Bureau and of the third extraordinary session of the Committee demand the continuous serious consideration of the conditions at Kakadu National Park by the Committee with reference to Section III, in particular Paragraph 86 of the *Operational Guidelines for the Implementation of the World Heritage*;
- (d) **Expresses its deep regret** that the voluntary suspension of construction of the mine decline at Jabiluka until the twenty-third session of the Committee (requested by the twenty-second session of the Committee) has not taken place;
- (e) **Is gravely concerned** about the serious impacts to the living cultural values of Kakadu National Park posed by the proposal to mine and mill uranium at Jabiluka. The Committee is 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, a more substantial and continuous dialogue needs to be established between the Australian Government and the traditional owners of the Jabiluka Mineral Lease, the Mirrar Aboriginal people;
- (f) **Is concerned** about the lack of progress with the preparation of a cultural heritage management plan for Jabiluka;

- (g) **Continues to have significant reservations** concerning the scientific uncertainties relating to mining and milling at Jabiluka.
2. The Committee,
- (a) **Recognizes**, 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) have provided the reports requested by the twenty-second session of the Committee (Kyoto, 1998);
- (b) **Acknowledges** that 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 Committee considers this to be an essential step in finding a constructive solution to the issues raised by the UNESCO mission to Kakadu National Park and encourages the Australian Government to intensify their efforts in this regard and pursue with vigor the deepening of its dialogue with the Mirrar Aboriginal people;
- (c) **Notes** that the Australian Government has stated (in document WHC-99/CONF.205/INF.3G entitled “Protecting Kakadu National Park” submitted by the Australian Government) that “full scale commercial mining at Jabiluka would only be reached about 2009 following the scaling down of production at the Ranger mine so that two mines would not be in full production simultaneously”. The Committee further notes that the Minister for Environment and Heritage 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. The Committee considers 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 to ensure the protection of the World Heritage values of Kakadu National Park;
- (d) **Notes** that the Australian Supervising Scientist (ASS) has assessed the report of the independent scientific panel (ISP) established by the International Council of Science (ICSU) and seeks a dialogue with the ISP to resolve outstanding questions relating to scientific issues concerning mining and milling at Jabiluka.
3. With consideration of 1 and 2 above, the Committee will remain vigilant in reviewing and assessing the progress made by the Australian Government. To this end the Committee requests that the Australian Government submit a progress report on the following issues by **15 April 2000** for examination by the twenty-fourth session of the Bureau of the World Heritage Committee:
- (a) progress made with cultural mapping of the Jabiluka Mineral Lease and the Boyweg-Almudj site and its boundaries and the completion of the cultural heritage management plan with the necessary co-operation of the Mirrar, and appropriate involvement of other stakeholders and ICOMOS and ICCROM;
- (b) progress in the implementation, in response to the Kakadu Region Social Impact Study (KRSIS), of 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);

(c) more precise details of the output and scale of any parallel activities at the Ranger and Jabiluka uranium mines as well as on any legal provisions taken in that respect.

4. To resolve the remaining scientific issues, such as those raised in the ISP report, the Committee asks ICSU to continue the work of the ISP (with the addition of any additional members) to assess, in co-operation with the Supervising Scientist and IUCN, the Supervising Scientist's response to the ISP report. The report of the ISP's assessment should be submitted to the World Heritage Centre by **15 April 2000** for examination by the twenty-fourth session of the Bureau of the World Heritage Committee in 2000.

XII OTHER BUSINESS

XII.1 Following the adoption of the decision by the Committee, the Delegate of Ecuador made a statement to the Committee (see Annex XXIV).

XIII. ADOPTION OF THE REPORT OF THE SESSION

XIII.1 The Chairperson recalled that the Committee would not be asked to adopt the report of the extraordinary session but would receive a copy of the draft report for comment (see section X.44 above).

XIV. CLOSURE OF THE SESSION

XIV.1 The Director of the World Heritage Centre, Mr Mounir Bouchenaki, made a concluding statement to the Committee (see Annex XXV).

XIV.2 The Chairperson thanked the Committee for their patient collaboration and friendly co-operation. He expressed his view that the Committee should be proud of the decision that it had made. The Chairperson gave his special and profound thanks to the Rapporteur and the Secretariat who worked constantly, not only during the Committee session, but also during the twenty-third session of the Bureau held during the previous week. In addition he thanked the interpreters for their conscientious work. He thanked the advisory bodies to the Committee (IUCN, ICOMOS and ICCROM) and ICSU for their work. Finally, the Chairperson thanked the Australian Delegation for their useful contributions to the meeting.

XIV.3 The Chairperson then declared the meeting closed.

ANNEX I

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

I. MEMBERS OF THE WORLD HERITAGE COMMITTEE / ETATS MEMBRES DU COMITE DU PATRIMOINE MONDIAL

AUSTRALIA / AUSTRALIE

Senator the Honourable Robert HILL
Minister for the Environment and Heritage
Parliament House
CANBERRA ACT 2600

Mr Roger BEALE
Secretary, Department of the Environment and Heritage
John Gorton House,
PARKES ACT 2600

Mr Matthew PEEK
Permanent Delegate of Australia to UNESCO
4 rue Jean Rey, 75724 Paris Cedex 15
PARIS Cedex 15

Mr Howard BAMSEY
Deputy Secretary, Department of the Environment and Heritage
P.O. Box 787 CANBERRA, ACT 2603

Ms Gillian BIRD
First Assistant Secretary, International Organisations Branch
Department of Foreign Affairs and Trade
CANBERRA, ACT 2601

Dr Arthur JOHNSTON
Supervising Scientist
Department of the Environment and Heritage
PMB 2 JABIRU, NT 0886

Mr Peter VAUGHAN
First Assistant Secretary
Office of Indigenous Affairs
Department of the Prime Minister and Cabinet
3-5 National Circuit
BARTON ACT 2600

Mr Robin BRYANT
Assistant Secretary
Department of Industry, Science and Resources
Assistant Secretary, Australian Government
CANBERRA ACT 2601

Mr Kevin KEEFFE
Assistant Secretary
Department of the Environment and Heritage
GPO Box 1567
CANBERRA ACT 2600

Mr Jon DAY
Director, Conservation, Biodiversity and World Heritage
Great Barrier Reef Marine Park Authority
P.O. Box 1379 TOWNSVILLE QLD 4812

Mr Michael REED
Deputy Chief Minister, Northern Territory Government
P.O. Box 3146, DARWIN N.T.

Mr David Charles WALKER
Deputy Permanent Delegate of Australia to UNESCO
4 rue Jean Rey, 75724 PARIS Cedex 15

Ms Anne SIWICKI
Attaché
Australian Permanent Delegation to UNESCO
4 rue Jean Rey, 75724 PARIS Cedex 15

BENIN

M. Alioune Sylla ALADJI BONI
Directeur des Forêts et des Ressources naturelles
B.P. 393, COTONOU

M. Eric TOTAH
Directeur du patrimoine culturel
B.P. 120, COTONOU

Mme Edith LISSAN
Deuxième Conseiller à la Délégation permanente du Bénin
1 rue Miollis, 75732 PARIS Cedex 15

BRAZIL / BRESIL

M. José Pedro de OLIVEIRA COSTA
 Secrétaire National pour la Biodiversité et Forêts
 Ministère de l'Environnement
 BRASILIA, Esplanada dos Ministerios Bloco B –
 70000

M. Armando Vitor BOISSON CARDOSO
 Ministre Conseiller
 Délégué permanent adjoint du Brésil auprès de
 l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

M. Carmelito DE MELO
 Conseiller, Délégation permanente du Brésil auprès
 de l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

CANADA

Dr. Christina CAMERON
 Director General
 National Historic Sites, Parks Canada
 25 Eddy Street, 5th Floor
 Hull, QUEBEC, K1A 0M5

Mme Gisèle CANTIN
 Chef, Affaires internationales
 Parcs Canada
 25 Eddy Street, 5^e étage
 Hull, QUEBEC, K1A 0M5

Mr John PINKERTON
 Analyst, National Parks Directorate
 Parcs Canada
 25 Eddy Street, 4th Floor
 Hull, QUEBEC, K1A 0M5

CUBA

Ms Marta ARJONA PEREZ
 Presidenta, Consejo Nacional de Patrimonio
 Cultural
 Ministerio de Cultura
 Calle 4 esquina a 13, Vedado
 LA HABANA

Mr Antonio PERERA PUGA
 Director, Centro de Areas Protegidas
 Ministerio de Ciencia Tecnología y Medio
 Ambiente
 Calle 18A No 4114 e/ 41 y 47
 11300 Miramar, Playa, C. HABANA,

ECUADOR / EQUATEUR

H. Exc. Mr Juan CUEVA
 Ambassador, Permanent Delegate of Ecuador to
 UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Mr Mauricio MONTALVO
 Deputy Permanent Delegate of Ecuador to
 UNESCO ,1 rue Miollis, 75732 PARIS Cedex 15

Mr Teodoro PENTA
 Ministro de Desarrollo Urbano y Vivienda
 Calle Cordero y du 10 Agosto
 QUITO

Mr Fernando CORDERO
 Alcalde
 Municipalidad de Cuenca 01-05-1940
 CUENCA

FINLAND / FINLANDE

Ms Taina KIEKKO
 Ambassador, Permanent Delegate of Finland to
 UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Mr Henrik LILIUS
 State Archaeologist
 Director-General of the National Board of
 Antiquities
 Nervandersnk 13, 00100 HELSINKI

Mr Jukka-Pekka FLANDER
 Chief Inspector
 Ministry of the Environment, Land Use Department
 Kasarminkatu 25, P.B. 380,
 00131 HELSINKI

Ms Anne LAMMILA
 Deputy Permanent Delegate of Finland to
 UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Ms Anne HARMAALA
 Assistant
 Permanent Delegation of Finland to UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

FRANCE

S.Exc. M. Jean MUSITELLI
 Ambassadeur, Délégué permanent
 Délégation permanente de la France auprès de
 l'UNESCO
 1, rue Miollis 75732 PARIS Cedex 15

M. Alain MEGRET
 Directeur adjoint de la nature et des paysages
 Ministère de l'Aménagement du Territoire et de
 l'Environnement
 20 Avenue de Ségur, 75302 PARIS 07 SP

Ms Catherine CARO
 Administrateur civil, Adjoint au sous-Directeur des
 sites et paysages
 Ministère de l'Environnement
 20 Avenue de Ségur, 75302 PARIS 07 SP

Mlle Eva CAILLART
 Chargée de Mission
 Ministère de la Culture et de la Communication
 DAPA, 8 rue Vivienne, 75002 PARIS

Mme Catherine DUMESNIL
 Conseillère technique
 Commission nationale française pour l'UNESCO
 57 Bd des Invalides, 75700 PARIS SP

GREECE / GRECE

Mme Hélène METHODIOU
 Conseiller pour la Culture
 Délégation permanente de la Grèce auprès de
 l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Mr Nicholas SALAMANIS
 Christos
 Délégué permanent adjoint de la Grèce auprès de
 l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

HUNGARY / HONGRIE

M. Zsolt VISY
 Secrétaire d'Etat adjoint
 Ministère du Patrimoine Culturel National de
 Hongrie
 Président du Comité National Hongrois du
 Patrimoine
 H-1055 BUDAPEST, Sialay u. 10-14

M. János TARDY
 Secrétaire d'Etat adjoint
 Ministère de l'Environnement
 Office de Protection de la Nature
 H-1121, BUDAPEST, Költő u. 21

M. János JELEN
 Ambassador
 Department of Cultural and Scientific
 Cooperation
 Ministry for Foreign Affairs
 1027 BUDAPEST Nagy Imre tér 4.

M. Peter KARIKAS
 Délégué permanent adjoint
 Délégation permanente de Hongrie auprès de
 l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

ITALY / ITALIE

S. Exc. M. Gabriele SARDO
 Délégué permanent de l'Italie auprès de l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Prof. Umberto LEANZA
 Chef du Service du Contentieux Diplomatique
 Ministère des Affaires Etrangères
 Piazzale della Farnesina 1, 00194, ROME

Mme Gabriella IAVICOLI
 Direction Générale des Relations Culturelles
 Ministère des Affaires Etrangères
 Piazzale della Farnesina 1, 00194, ROME

M. Stefano DE CARO
 Surintendant archéologue des villes de Naples et
 Caserta
 Ministère pour les Biens et les Activités Culturelles
 Piazza Museo 19, Naples

M. Luciano MARCHETTI
 Surintendance pour les Biens Culturels de Florence
 Ministère pour les Biens et les Activités Culturelles
 Piazza Pitti, FLORENCE

Ms Giuliana FASANO

JAPAN / JAPON

H. E. Mr Koichiro MATSUURA
 Chairperson of the World Heritage Committee
 Ambassador Extraordinary and Plenipotentiary of
 Japan to France
 7 avenue Hoche, 75008 PARIS

Mr Yasukuni ENOKI
 Director-General of Cultural Affairs Department
 Ministry of Foreign Affairs
 2-2-1, Kasumigaseki, Chiyoda-ku 100-8919,
 TOKYO

M. Kensuke TSUZUKI
 Minister, Deputy Permanent Delegate of Japan to
 UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Mr Akira YOSHIKAWA
 Minister-Councillor
 Permanent Delegation of Japan to UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Mr Yuichi ISHII
 Director
 Multilateral Cultural Cooperation Division
 Cultural Affairs Department, Ministry of Foreign
 Affairs, 2-2-1, Kasumigaseki, Chiyoda-ku,
 TOKYO 100-8919

Mr Takahiro OKAMOTO
 Official, Multilateral Cultural Cooperation Division
 Cultural Affairs Department, Ministry of Foreign
 Affairs
 2-2-1, Kasumigaseki, Chiyoda-ku, TOKYO 100-
 8919

Mr Tomoyuki ONO
 Troisième Secrétaire
 Délégation permanente du Japon auprès de
 l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Mr Akihiro TAKAZAWA
 Troisième Secrétaire
 Délégation permanente du Japon auprès de
 l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Mr Kanenori MIURA
 World Natural Heritage Ecosystem Conservation
 Officer
 Nature Conservation Bureau, Environment Agency
 2-1-1 Kasumigaseki, Chiyoda-ku, TOKYO, 100-
 8975

Dr Nobuko INABA
 Senior Specialist for Cultural Properties
 Architecture Division
 Cultural Properties Protection Department
 Agency for Cultural Affairs
 3-2-2 Kasumigaseki, Chiyoda-ku, TOKYO 100-
 0013

Ms Kumiko YONEDA
 Senior Research Scientist
 Japan Wildlife Research Centre
 2-29-3 Yushima, Bunkyo-ku, TOKYO 113-0034

LEBANON / LIBAN

Mme Carla JAZZAR
 Délégué permanent adjoint
 Délégation permanente du Liban auprès de
 l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

M. Assaad SEIF
 Archéologue
 Direction Générale des Antiquités du Liban
 Musée National, rue de Damas, BEYROUTH

MALTA / MALTE

S. Exc. M. Joseph LICARI
 Ambassadeur, Délégué permanent de Malte auprès
 de l'UNESCO
 46 rue de Longchamp, 75116 PARIS

MEXICO / MEXIQUE

Lic. Dámaso LUNA CORONA
 Director General de Recursos Naturales y Medio
 Ambiente
 Secretaría de Relaciones Exteriores
 Av. Veracruz 101, MEXICO

Ministro José SANCHEZ GUTIERREZ
 Representante Permanente Alterno de México ante
 la UNESCO
 Permanent Delegation of Mexico to UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

M. Oscar RAMIREZ
 Director General de Investigación de los Procesos
 de Desarrollo Sustentable
 Instituto Nacional de Pesca
 Ministry of Environment (SEMARNAP)
 Pitagoras # 1320
 Col. Sta Cruz Atoyac, MEXICO 03310 D.F.

Mr German GONZALEZ-DAVILA
 Permanent Representative of the Minister of
 Environment
 Natural Resources and Fisheries to the OECD
 SEMARNAP
 4 rue Galliéra, 75116 PARIS

Mr Alejandro MONTEAGUDO CUEVAS
 Deputy Director for Environmental Affairs
 Secretariat of Commerce and Industrial
 Development
 Alfonsoreyes 30, 1st Floor, Hipódromo CONDESA

MOROCCO / MAROC

M. Abdelaziz TOURI
 Directeur du Patrimoine Culturel
 Ministère des Affaires Culturelles
 17 rue Michlifèn, Agdal, RABAT

M. Salah Salomé ELHONSALI
 Délégué permanent adjoint
 Délégation permanente du Maroc auprès de
 l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

M. Ahmed SKOUNTI
Chargé de recherche
Ministère des Affaires Culturelles
Direction du Patrimoine Culturel
17 rue Michlifen, Agdal, RABAT 10000

NIGER

M. Amadou TCHEKO
Délégué permanent adjoint du Niger auprès de
l'UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

M. Seyni SEYDOU
Directeur, Parc national du W du Niger
Direction de la Faune, Pêche et Pisciculture
Ministère de l'Hydraulique et de l'Environnement
B.P. 721 NIAMEY

M. Mahamane SALEY
Directeur Institut de Museologie de Niamey
Ministère de la Communication et de la Culture
B.P. 10457 NIAMEY

REPUBLIC OF KOREA / REPUBLIQUE DE COREE

Mr Il CHUNG
First Secretary, Korean Representative
Embassy of Republic of Korea
125 rue de Grenelle, 75007 PARIS

THAILAND / THAILANDE

Prof. Dr. Adul WICHENCHAROEN
Chairman, National Committee for Protection of
World Cultural and Natural Heritage
Office of Environmental Policy and Planning
60/1 Pibunwattana, Rama 6 Road, BANGKOK
10400

Mr Manit SIRIWAN
Secretary, National Commission on the Protection
of the World Heritage
Office of Environmental Policy and Planning
60/1 Pibunwattana, Rama 6 Road, BANGKOK
10400

Mrs Siriporn NANTA
Assistant Secretary, National Committee for
Protection of World Cultural and Natural Heritage
Office of Environmental Policy and Planning
60/1 Pibunwattana, Rama 6 Road,
BANGKOK 10400

**UNITED STATES OF AMERICA/ ETATS-UNIS
D'AMERIQUE**

Mr John J. REYNOLDS
Regional Director
Pacific West Region
National Park Service
Department of the Interior
SAN FRANCISCO
Mr William W. McILHENNY
United States Observer to UNESCO
United States Embassy
2 Avenue Gabriel, PARIS

Mr James H. CHARLETON
International Cooperation Specialist
Office of the International Affairs
National Park Service
Department of the Interior
1849 C. Str., N.W. WASHINGTON, D.C. 20240

Ms Stéphanie MULOT
Program Specialist
US Observer Mission
2 Avenue Gabriel, 75008 PARIS

ZIMBABWE

Mr D. DABENGWA
Minister of Home Affairs
Ministry of Home Affairs, HARARE

Mr Joey BIMHA
Ambassador
Permanent Delegation of Zimbabwe to UNESCO
12 rue Lord Byron, 75008 PARIS

Mr Dawson MUNJERI
Executive Director
National Museums and Monuments
Box CY 1485 Causeway, HARARE

Mr Albert KUMIRAI
Director, Natural History Museum
National Museums of Monuments of Zimbabwe
P.O. Box 240, BULAWAYO

Mr E. KARODZA
Consellor
Embassy of Zimbabwe
12 rue Lord Byron, 75008 PARIS

II. ORGANIZATIONS ATTENDING IN ADVISORY CAPACITY /
ORGANISATIONS PARTICIPANT A TITRE CONSULTATIF

INTERNATIONAL CENTRE FOR THE STUDY OF THE PRESERVATION AND THE RESTORATION OF
CULTURAL PROPERTY (ICCROM) / CENTRE INTERNATIONAL D'ETUDES POUR LA CONSERVATION
ET LA RESTAURATION DES BIENS CULTURELS (ICCROM)

Mr Herb STOVEL
Coordinator
World Heritage Convention
Via di San Michele, 13
00153 ROME, Italy

Ms Joan DOMICELJ
Director
Domicelj Consultants Pty Ltd
49 Olympian Parade
LEURA, N.S.W. 2780, Australia

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES (ICOMOS) /
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES (ICOMOS)

M. Jean-Louis LUXEN
Secrétaire général
49-51 rue de la Fédération
75015 PARIS
France

Mlle Regina DURIGHELLO
Assistante du Coordinateur
49-51 rue de la Fédération, 75015 PARIS

Prof. Henry CLEERE
Coordinateur du patrimoine mondial
49-51 rue de la Fédération
75015 PARIS
France

Mme Carmen AÑON FELIU
Member, Executive Committee
PUERTO SANTA MARIA 49, Spain

THE WORLD CONSERVATION UNION (IUCN) / UNION MONDIALE POUR LA NATURE (UICN)

Dr Patrick DUGAN
Global Programme Director
IUCN
CH-1196 GLAND, Switzerland

Mr P.H.C. (Bing) LUCAS
Vice-Chair World Heritage
World Commission for Protected Areas (WCPA)
1/268 Main Road, Tawa
WELLINGTON 6006, New Zealand

Dr David SHEPPARD
Head, Programme on Protected Areas
IUCN Headquarters
rue Mauverney, 28
CH-1196 GLAND, Switzerland

WORLD CONSERVATION MONITORING CENTRE

Mr Jerry Harrison
World Conservation Monitoring Centre (WCMC)
219 Huntingdon Road
CAMBRIDGE CB3 0DL

OBSERVERS / OBSERVATEURS

- (i) STATES PARTIES TO THE WORLD HERITAGE CONVENTION /ETATS PARTIES A LA CONVENTION DU PATRIMOINE MONDIAL

ARGENTINA / ARGENTINE

Ing. Francisco ERIZE
 Assesseur, Secrétariat des Ressources Naturelles
 Rodriguez Peña 1882, 1023 BUENOS AIRES

AUSTRIA / AUTRICHE

M. Hans HORCICKA
 Director
 Federal Ministry for Education and Cultural Affairs
 VIENNA, A-1014 Minoritenplatz 5

BELGIUM / BELGIQUE

Mme Bénédicte SELFSLAGH
 Relations avec les Organisations Internationales
 Division du Patrimoine
 Ministère de la Région Wallonne de Belgique
 14 rue d'Aumale, 75009 PARIS

Mme Gislaine DEVILLERS
 Première attachée
 Région Wallonne – Division du Patrimoine
 Rue Brigade d'Irlande – 51000 JAMBES

M. Christian SPAPENS
 Architecte-Directeur
 Chaussée d'Alsembery 647, B-1180, BRUXELLES

S. Exc. le Baron Hubert VAN HOUTTE
 Ambassadeur, Délégué permanent de la Belgique
 auprès de l'UNESCO
 4 Villa de Saxe, 75007 PARIS

BOLIVIA / BOLIVIE

Mr Eduardo LORINI
 Délégué permanent adjoint de la Bolivie auprès de
 l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

COSTA RICA

Mme Gabriela CASTILLO
 Ministre Conseiller
 Délégation permanente du Costa Rica auprès de
 l'UNESCO, 1 rue Miollis, 75732 PARIS Cedex 15

DENMARK / DANEMARK

Mr Emil PAVISEN
 Deputy Permanent Delegate of Denmark to
 UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

GERMANY / ALLEMAGNE

Mr Michael WORBS
 Deputy Permanent Delegate
 Permanent Delegation of Germany to UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

GUATEMALA

Mme Fanny BENOIT D'ENTREVAUX
 Délégation permanente du Guatemala auprès de
 l'UNESCO
 c/o Ambassade du Guatemala
 73 rue de Courcelles, 75008 PARIS

Mlle Claire GAVELLE
 Délégation permanente du Guatemala auprès de
 l'UNESCO
 c/o Ambassade du Guatemala
 73 rue de Courcelles, 75008 PARIS

HONDURAS

S. Exc. Mme Sonia MENDIETA DE BADAROUX
 Ambassadeur, Délégué permanent de Honduras
 auprès de l'UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

Mr J.C. BENDANA-PINEL
 Délégué permanent adjoint de Honduras auprès de
 l'UNESCO, 1 rue Miollis, 75732 PARIS Cedex 15

INDIA / INDE

Mr Gauri Shankar GUPTA
 Consellor, Deputy Permanent Delegate of India to
 UNESCO
 1 rue Miollis, 75732 PARIS Cedex 15

INDONESIA / INDONESIE

Mr Imam SANTOSO
Permanent Delegation of Indonesia to UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

I.G.N. Anom
Dept. of Education and Culture
JAKARTA

IRAK

M. Iyad AFLAK
Conseiller
Délégation permanente de l'Irak auprès de
l'UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

IRAN

Reza Bagegan
Permanent Delegation of Iran to UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

KINGDOM OF CAMBODIA / ROYAUME DU
CAMBODGE

S. Altesse Royale le Prince NORODOM
SIHAMONI
Ministre d'Etat
Ambassadeur extraordinaire et plénipotentiaire
Délégué permanent du Royaume du Cambodge
auprès de l'UNESCO
2 Place de Barcelone, 75016 PARIS

Mlle Dara MANG
Troisième Secrétaire
Délégation permanente du Royaume du Cambodge
auprès de l'UNESCO
2 Place de Barcelone, 75016 PARIS

MAURITIUS / ILE MAURICE

Mr Philippe LA HAUSSE DE LALOUVIERE
Chairman, National Heritage Trust
Government of Mauritius
c/o Ministry of Arts and Culture
Seeneevassen Building, PORT LOUIS

NEPAL

Mr Indra Bahadur SINGH
Ambassador, Permanent Delegate of Nepal to
UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

NORWAY / NORVEGE

Ms Ingunn KVISTEROY
Nordic World Heritage Office
Postbox 8196 Dep., N-0034 OSLO

PALESTINE

Mr Abdalrahim AL FARRA
Délégation permanente palestinienne auprès de
l'UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

PHILIPPINES

Ms Deanna ONGPIN-RECTO
First Secretary/Senior Foreign Affairs Adviser for
UNESCO
Permanent Delegation of Philippines to UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

POLAND / POLOGNE

Prof. Andrzej TOMASZEWSKI
Ministère de la Culture
VARSOVIE, Krakowskie Przedmiescie, 26

PORTUGAL

Mr Paulo PEREIRA
Vice-President
IPPAR, Palacino da Ajuda

SYRIAN ARAB REPUBLIC / REPUBLIQUE ARAB
SYRIENNE

Mme Nabila CHAALAN
Délégué permanent de la Syrie auprès de
l'UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

ROMANIA / ROUMANIE

M. Aurelian TRISCU
Architecte, Vice-président de la Commission
nationale des Monuments Historiques
Ministère de la Culture, Piafa Presei Libere,
BUCAREST

Mr Ion MACOVEI
Délégué permanent adjoint de la Roumanie auprès
de l'UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

SAUDI ARABIA / ARABIE SAOUDITE

Mr Abdulaziz BIN SALAMAH
Permanent Delegate of Saudi Arabia to UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

Mr Abdullah AL-SAUD
Ministry of Education
P.O. Box 3734 RIYADH 11481

Mr Mohammed AL-HAMDAN
Ministry of Education
P.O. Box 3734 RIYADH 11481

SOUTH AFRICA / AFRIQUE DU SUD

Mr Karl NAUDE
Assistant Director, Biodiversity Management
Dept. of Environmental Affairs and Tourism
P/Bag 441 PRETORIA

Mr Devandhran MOODLEY
Permanent Delegation of South Africa to UNESCO
Embassy of South Africa
59 Quai d'Orsay, 75007 PARIS

Mr MAKGOLO
Acting Deputy Director, Cultural Resources
Management
Dept. of Environmental Affairs and Tourism
P.O. Box 447, PRETORIA 0001

SPAIN / ESPAGNE

H.E. D. Jesús EZQUERRA
Ambassador, Permanent Delegate
Permanent Delegation of Spain to UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

SWEDEN / SUEDE

Mr Jan TURTINEN
Expert, University of Stockholm
Score SE-10691 STOCKHOLM

SWITZERLAND / SUISSE

Mme Nicole WYRSCH
Conseiller (Education, Science et Culture)
Délégation permanente de la Suisse auprès de
l'UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

TOGO

M. Cosme Adebayo d'ALMEIDA
Conseiller Technique chargé de la Coopération
Culturelle
Ministère Culture-Jeunesse et Sports
Administrateur du Centre Régional d'Action
Culturelle (CRAC)
B.P. 4396 LOME

TUNISIA / TUNISIE

M. Jamel THLIBI
Directeur
Agence nationale de Protection Environnement
B.P. 52 TUNIS-Belvédère

TURKEY / TURQUIE

Mr Ozgür ULUDÜR
Third Secretary
Permanent Delegation of Turkey to UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

UNITED KINGDOM / ROYAUME-UNI

Mr Nigel PITTMAN
Dept. for Culture, Media and Sport
2-4 Cocurpur St. LONDON SW1Y 5DH

Mr Christopher YOUNG
Director for Hadrian's Wall
English Heritage, Abbey Gate House, Market St.
HEWHAM, Northumberland, England NEU6 3LJ

UNITED REPUBLIC OF TANZANIA /
REPUBLIQUE-UNIE DE TANZANIE

Mr Mohammed S. SHEYA
Deputy Permanent Delegate of the United Republic
of Tanzania to UNESCO
13 Avenue Raymond Poincaré, 75116 PARIS

VENEZUELA / VENEZUELA

Ms Clarelina AGOSTINI
Second Secretary
Permanent Delegation of Venezuela to UNESCO
1 rue Miollis, 75732 PARIS Cedex 15

(ii) NON-GOVERNMENTAL ORGANIZATIONS /
ORGANISATIONS NON-GOUVERNEMENTALES

FRIENDS OF THE EARTH (FOE)

Mr Lincoln SILIAKUS
Friends of the Earth
121 rue de Rennes, 75006 PARIS

Ms Rosie NABINARDI
Secretary
Gundjehmi Aboriginal Corporation
P.O. Box 245, JABIRU NT, 0886

Mr Stuart GARDELL
Member
Gundjehmi Aboriginal Corporation
P.O. Box 245, JABIRU NT, 0886

WORLD ARCHAEOLOGICAL CONGRESS

Mr Lyndon Charles ORMOND-PARKER
Executive Committee Member
The World Archaeological Congress
C/o Dept. of Archaeology, University of Newcastle
NEWCASTLE upon Tyne

THE WILDERNESS SOCIETY, AUSTRALIA

Mr Alec MARR
National Campaign Director
The Wilderness Society
130 Davey St. Hobart TASMANIA, 7000

AUSTRALIAN CONSERVATION FOUNDATION

Mr Richard LEDGAR
Australian Conservation Foundation
308 Gore Street, Fitzroy, VICTORIA

Ms Christine MILNE
The Wilderness Society
130 Davey St. Hobart TASMANIA, 7000

GUNDJEHMI ABORIGINAL CORPORATION
AUSTRALIA

Ms Yvonne MARGARULA
Chairperson
Gundjehmi Aboriginal Corporation
P.O. Box 245, JABIRU NT 0886

SIERRA CLUB

Mr Stephen MILLS
Director, International Program
Sierra Club
408 C Street, NE WASHINGTON, D.C. 20002
United States of America

Ms Jacqueline KATONA
Executive Officer
Gundjehmi Aboriginal Corporation
PO Box 245 JABIRU NT 0886

INTERNATIONAL COUNCIL FOR SCIENCE /
CONSEIL INTERNATIONAL POUR LA SCIENCE

Professor Brian WILKINSON
Leader of Independent Scientific Panel
C/o International Council for Science
Conseil International pour la Science
51 Bd de Montmorency, 75016 PARIS

Mr Mathew FAGAN
Legal Policy Officer
Gundjehmi Aboriginal Corporation
PO Box 245 JABIRU NT 0886

Mr Hammer ROY
Chairperson
Aboriginal Areas Protection Authority
P.O. Box BOOROGOLA NT

Ms Anne LARIGAUDERIE
International Council for Science
Conseil International pour la Science
51 Bd de Montmorency
75016 PARIS

Mr Murray GARDE
Interpreter
Gundjehmi Aboriginal Corporation
P.O. Box 245, JABIRU NT, 0886

iii) NON PROFIT-MAKING INSTITUTIONS

AUSTRALIAN PARLIAMENT

Mr Justin O'BRIEN
 Australian Democrats
 Level 1, Wellington Parade, EAST MELBOURNE
 3002

Mr Marc DEYER
 Etudiant en Architecture
 Representative of the Australian Democrats
 Level 1, Wellington Parade, EAST MELBOURNE
 3002

U.S. HOUSE OF REPRESENTATIVES

Mr John RISHEL
 Congressional Staff
 U.S. House of Representatives
 1413 A Longworth Hob, WASHINGTON, D.C
 20515 U.S.A.

Mr Kurt CHRISTENSEN
 Professional Staff
 U.S. House of RepresentativesLhob,
 WASHINGTON D.C., 20515, U.S.A.

UNESCO SECRETARIAT / SECRETARIAT DE L'UNESCO

Mr Crespo Torral
 Assistant Director-General, Sector for Culture

World Heritage Centre / Centre du patrimoine mondial

Mr Mounir BOUCHENAKI
 Director

Mr Georges ZOUAIN
 Deputy Director

Ms Minja YANG
 Director, Asia/Pacific Region

Ms Galia SAOUMA-FORERO

Mr Natarajan ISHWARAN

Mr Herman van HOOFF

Ms Elizabeth WANGARI

Ms Mechtild ROSSLER

Ms Sarah TITCHEN

Ms Josette ERFAN

Mr Peter STRASSER

Ms Junko TANIGUCHI

Mr Peter STRASSER

Ms Vesna VUJICIC-
 LUGASSY

Mr Feng JING

M. Stéphane DUCLOT

Mr Peter STOTT

Ms Johanna SULLIVAN

Ms Jane DEGEORGES

Ms Jocelyne POUTEAU

Ms Marianne RAABE

Mr David MARTEL

Ms Claire SERVOZ

Ms Marie-Christine BOTTE

Ms Réjane HERVE

Ms Laetitia MAUCOURANT

Ms Vittoria FRESCO

Mr Bernd von DROSTE

Special Advisor to the Director-General of UNESCO for World Heritage

Secretariat of the Director-General / Secretariat du Directeur Général

Ms Rachelle ROCA-HACHEM
Attaché adjoint de Cabinet

Bureau for Coordination of Environmental Programme / Bureau de Coordination du Programme d'Environnement

M. Thomas SCHAAF

Division of Ecological Sciences / Division des Sciences Ecologiques

Ms M. JARDIN
M. Sami MANKOTO

Division of Cultural Heritage/Division du Patrimoine culturel
M L. LEVI-STRAUSS

Ms N.AIKAWA

UNESCO Courier
Mlle Sophie BOUKHARI
Rédactrice

Statement by the representative of the Director-General of UNESCO

Mr H. Crespo-Toral, Assistant Director-General for Culture of UNESCO

(Paris, 12 July 1999)

Your Excellency, Ambassador Matsuura, Chairperson of the World Heritage Committee,
Honourable Members of the Committee and Observers,
Ladies and Gentlemen,
Dear Colleagues,

It is an honour and a pleasure for me to represent the Director-General of UNESCO to welcome the Members and Observers of the extraordinary session of the Committee.

The necessity felt by the Committee at its twenty-second session to hold an extraordinary session, devoted exclusively to examine the case of Kakadu National Park in Australia, demonstrates the increasing complexity of the issues that the Committee is called upon to study.

The responsibilities vested in you are indeed enormous. This case, far from being a matter of importance only to Australia, is an issue of global concern. The World Heritage status of Kakadu National Park makes its protection not only a responsibility for Australia but also for the international community as a whole. The issue also challenges the fundamental tenets of the *World Heritage Convention* and more...

Heritage and development, sustainable use of natural resources, the role of tradition in modern society, cultural identity as a source of social cohesion, minority and majority cultural, social and economic values and rights, employment and economic opportunities. The case of Kakadu National Park represents the complexity and the multitude of factors that we must consider in the building of our future.

The Director-General has specifically asked me to convey to you his pleasure in learning of the professional and collegial manner in which the case was deliberated at the Bureau session last week. The process based on transparency and consultations in the fulfilment of the collective responsibility enunciated in the *Convention* is exemplary. It has established an important precedent for the future implementation of the *Convention*, and on behalf of the Director-General, I thank the Government of Australia and the other members of the Committee for your commitment to the *Convention*.

Allow me also, to express appreciation for my colleagues of the World Heritage Centre who have willingly and enthusiastically devoted their time and energy, far beyond the call of duty, in servicing the Committee for the noble cause of the World Heritage.

On behalf of the Director-General, I wish you the very best and the successful deliberation of your work.

**Letter from Mr Phillip Shirvington, Chief Executive of
Energy Resources of Australia Ltd, 12 July 1999**

**ERA****Energy Resources of Australia Ltd**

ACN 008 550 865

12 July 1999

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HE Mr Matsuura
Ambassador of Japan
Chairman of the World Heritage Committee

Dear Mr Matsuura,

Energy Resources of Australia Ltd (ERA) is the company that has a primary involvement in the issue of the Jabiluka Mine and both the cultural heritage and physical environmental issues relating to the Kakadu World Heritage.

We understand your reasoning for declining ERA's request for observer status and an opportunity to address the Special Committee Meeting on Monday 12 July. ERA is a key stakeholder in this issue and as such we believe it is important for the Committee to understand the Company's perspective in particular with respect to recent undertakings to the Australian Government.

We respectfully request that the attached Statement be circulated for the information of Committee members.

Yours sincerely

Mr Phillip Shirvington
Chief Executive

Sydney Office Level 18, Gateway, 1 Macquarie Place, Sydney NSW 2000 Australia Tel: (02) 9256 8900 Fax: (02) 9251 1817
Ranger Mine Locked Bag 1, Jabiru NT 0886 Australia Tel: (08) 8938 1211 Fax: (08) 8938 1203

A Member of the  Group

**ERA****Energy Resources of Australia Ltd**

ACN 008 550 865

**STATEMENT TO MEMBERS OF THE WORLD HERITAGE COMMITTEE
BY
PHILLIP SHIRVINGTON, CHIEF EXECUTIVE
ENERGY RESOURCES OF AUSTRALIA LTD**

Chairman and Members of the World Heritage Committee

Energy Resources of Australia first wishes to acknowledge the role and eminent status of the Committee in the matter of protecting the natural and cultural values of the Kakadu National Park World Heritage Area. We also wish to reconfirm our acknowledgment of the status of Ms Yvonne Margarula as Senior Traditional Owner of the Mirrar Gundjehmi lands.

Commitment to no two full scale commercial mines

The past week has been witness to a watershed moment for Energy Resources of Australia. This week the Company took the uncertain but honest step of placing cultural and environmental impacts as lead criteria in how it achieves its commercial objectives, a move that is beyond the Company's business obligations and legal rights and duties.

In a significant step for the Company, ERA will forgo the opportunity to maximise commercial outcomes in the event of future strong market conditions. It will ensure that full scale commercial mining at Jabiluka will only occur following the scaling down of production at Ranger. There will be a transition from Ranger to Jabiluka such that two mines will not be in full production simultaneously. This will replace the previous plan to operate the two mines together until 2014.

On the basis that the Ranger Mill Alternative proceeds the Company will need only to take a small feed of ore from Jabiluka from 2001. There would then be a phase in of the Jabiluka mine commencing some years later and a phase out of Ranger ore (to be completed when Jabiluka reaches full commercial scale production in about 2009 and as outlined in documents before the Committee).

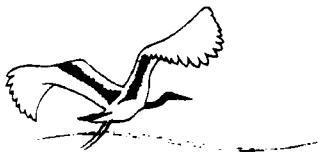
It has taken this step to reduce the concerns raised by its operations. The social and environmental impacts of future operations will be no greater than they stand today and must in fact reduce over time until the day ERA leaves the Kakadu region.

Sydney Office Level 18, Gateway, 1 Macquarie Place, Sydney NSW 2000 Australia Tel: (02) 9256 8900 Fax: (02) 9251 1817
Ranger Mine Locked Bag 1, Jabiru NT 0886 Australia Tel: (08) 8938 1211 Fax: (08) 8938 1203

A Member of the



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Commitment to a Cultural Heritage Management Plan

The future under a "transitional development" scenario requires much of the Company. In particular ERA recognises that it will need to strive to understand and address the expectations of Aboriginal groups in the region. This is certainly true for the views of the Mirrar Gundjehmi people.

ERA regrets that, perhaps as a result of our inability to build the necessary trust and respect with the Mirrar Gundjehmi, we have not been able to complete a comprehensive Cultural Heritage Management Plan. ERA is committed to developing such a plan. On this particular issue we will work with the Australian Government, and the facilitator they plan to appoint, to complete a Plan that aims to set a new international benchmark for managing such issues.

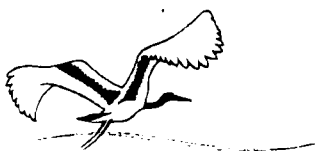
Commitment to improved communications and relationships with Aboriginal People

The Cultural Heritage Management Plan is in fact one of a multitude of issues that are before the Committee on Jabiluka. Some of these issues are based on fact, others based on perceptions of risks and impacts, others yet on ideology and sovereignty. Distilling the essence of the Jabiluka debate is a lengthy task. However for ERA, and in the lead up to the deliberations of this Committee, it has come down to the requirement of gaining a better understanding of the underlining values in relation to expectations of our presence in Kakadu National Park.

ERA has initiated discussions with the Northern Land Council in Australia on developing a protocol on how we should begin afresh the process of communication with all Aboriginal groups in the region. It is ERA's intention to have the protocol discussed by all Aboriginal groups, but in particular with the Mirrar Gundjehmi.

The protocol will be the template on how we will talk to resolve outstanding issues associated with our proposals. Once in place however the protocol will not first be used to talk about approval for our preferred development concept of using the existing mill at Ranger - it will first be used to identify with all affected parties the requirements from the Company's operations in Kakadu which will lead to better outcomes for Aboriginal people.

The questions that will be asked will focus on the relative merits of straight royalty payments over participation in operations and ownership of assets such as the township of Jabiru and infrastructure. It will be asked where should we be heading with welfare and education issues in a practical sense. It will be identifying better arrangements for the future of the



region based, where relevant, on the recommendations of the Kakadu Region Social Impact Study.

This is a discussion ERA needs to have to ensure a new level of attention to the desires of all in the region.

Only after these initial discussions and with a new set of mutual proposals on the table will we consider seeking the approval for our preferred development option for Jabiluka.

Commitment to plan our exit from Kakadu

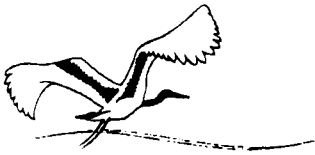
The discussions with Aboriginal groups will take place during a period in which I hope the Committee will see a significant change in the Company's approach. To cement ERA's commitments made in this statement I would like to highlight one final commitment which will come to represent our approach to mining in Kakadu.

In the next twelve months ERA will initiate the preparation of a new plan which will have a small beginning but which will grow with the input of the Australian Government, our supervising authorities, Traditional Owners, their associations and other stakeholders. This is the plan which will ensure that we start examining now how we will eventually move out of Kakadu leaving a sustainable outcome for Aboriginal landowners and the environment. In the near future all our operations and decisions will be assessed as to how they ultimately affect our ability to leave the Kakadu region. Only by focussing now on the ultimate objective, which is to look beyond the end of uranium mining at Ranger and Jabiluka, can we achieve the ultimate result, that is a sustainable outcome for Aboriginal people and the environment.

Conclusion

Chairman and Members of the Committee, Energy Resources of Australia sincerely thanks you for the opportunity to inform you through this statement. We do not consider it as our place to put a position on the resolutions before you but rather list our commitments in an endeavour to make our intentions on the Jabiluka project clear.

To conclude, as agreed with the Australian Government, ERA is committed to a transition of development from Ranger to Jabiluka so that two mines will not be in full production simultaneously. This is in recognition that the future level of social impact in the region must not be any greater than it is today, and in fact it must reduce.



We are committed to a new era of dialogue with Aboriginal groups which we have already initiated through the representative organisation the Northern Land Council.

We are committed to a Cultural Heritage Management Plan of professional standard that would be accepted internationally.

Finally we are committed to commence planning now on how we should stage our eventual exit from Kakadu such that sustainable outcomes are in place for Aboriginal people and the environment.

Thank you.

Mr Phillip Shirvington
Chief Executive

**Presentation by Mr Roger Beale, Secretary, Department of Environment and Heritage,
Australia**

SLIDE 1: Australia's World Heritage Record

- Party since 1974
- 13 properties (9 natural, 4 natural and cultural) - \$50m+ pa
- An international and regional leader- Einstein Award, Picasso Gold Medal

We have been a strong supporter of the Convention for a quarter of a century. That is why we were particularly angered by some claims from NGO's that Australia has threatened to pull out of the Convention over this issue and by some advisers to the Convention that Australia true is "letting the side down". That is just not so. We make a major effort to protect our properties. We have special legislation, which we have just strengthened, and spend over \$50m each year to protect and present these properties - we are spending more now than ever before on management and protection. We have been proud recipients of the Einstein Award for our management of the Great Barrier Reef and the Picasso Gold Medal for our program at Uluru.

SLIDE 2: Kakadu National Park

- Huge - 1 9,804 sq kms, but fewer than 2000 residents
- Three stages-1981,1987 & 1992
- Mining leases pre-date Park and World Heritage listing

Kakadu National Park is one of the jewels in our World Heritage crown. It is very big - it is bigger than quite a number of member countries and for that matter States of the USA. And it is sparsely populated. It is ironic, but it was the pre-existing mining leases, and the proposal to develop further uranium mining in the late 1970's that led to it being made a National Park and then listed for its World Heritage values. Its values are broad ranging - it has rock art sites and archaeological sites that date back perhaps 50,000 years, a high and intact level of biodiversity and a living culture that is unique. We are very, very proud of this property.

SLIDE 3

This shows a map of Kakadu superimposed on a map of Europe at the same scale It is roughly of the size of Wales, or Belgium or New Jersey. I will ask you to bear this in mind later, when we are talking about the threats to the Park It is important that we keep in mind the relative scale of the Park, the distribution of its values and the scale of the potential threats

SLIDE 4

After an extensive inquiry under Judge Fox, the go ahead was given for the commencement of uranium mining in the late 1970's. But this was on the basis of the creation of a National Park to protect the natural and cultural values of the area, and the establishment of a special body to monitor and research the effects of uranium mining in the area - the Supervising Scientist. The pre-existing mineral leases which are shown in this map in green in red were not included in the Park which is the blue shaded area.

SLIDE 5

The Park has been created in three stages - these are the first two - and progressively accepted for World Heritage listing, starting in 1981. Mining is not allowed in the Park itself. The leases were never included in the Park. The mining leases were always, and clearly, excluded from those world heritage nominations, and existing and possible future mining was clear.

SLIDE 6

This shows us the third stage of the Park. Stage 2 was listed under the Convention in 1987. By that stage the Park had encircled the pre-existing mining leases. In 1992 the whole Park was listed again. I repeat that the mining leases were not included in the listing and the Committee was advised of the prospect of mining at Jabiluka.

SLIDE 7

This shows the mining leases in more details. It also shows the Ranger Mine site which has operated since before the first inscription. It shows that it is more than twice the size of the village, the small town, the town of 1,400 people, the town of Jabiru.

SLIDE 8: Strong Science

- Uranium mining (Ranger Mine since 1979) pre-dated World Heritage listing
- Intense environmental and health regulation Independent Supervising Scientist
- 20 year research program - results published for international scrutiny

I explained to you that uranium mining pre-dated the listing of this property. In fact there had been mining in the area since the late 19th Century. Because the Australian government was well aware of the natural values of the area, and intensely sensitive of the difficult issues that mining raised for the local indigenous population (then around 70-140 people), it insisted on close environmental and health regulation and an extraordinarily stringent rehabilitation requirement. We now have over 20 years of expert, longitudinal research by the Supervising Scientist, using a broad variety of techniques to monitor the effects of uranium mining on ecology and the people. This research has always been open to public scrutiny, and local communities have been involved in it through advisory bodies. It has shown no ill effects from the mine.

SLIDE 9: Strong Science

- Biodiversity and ecological values protected by National Park Service
- Major programs for removing feral weeds and animals
- Land management mimics traditional Aboriginal practices

But our management of the Park hasn't simply been about ensuring there is no pollution. The ecological values are also very important. And they were under threat. When our portfolio became responsible for managing the Park, it was under extreme pressure from feral Asian water buffalo that had been introduced in the last century, from *sylvannia molesta* and *mimosa pigra* as well as other invasive species. The Park Service set about tackling these threats and

reintroduced a fire regime which mimicked the traditional Aboriginal practices. Both these actions were critical to giving the ecosystems an opportunity to recover.

SLIDE 10: Scientific Results

- Park is in better shape than 20 years ago - buffalo, invasive weeds eradicated or controlled
- Supervising Scientist has found no impact on world heritage values by Ranger Uranium Mine
- Committee accepted integrity of world heritage values and approved listing in 1982, 1987 and 1991

We are proud of the Park. There is no doubt that it is in better shape than it was 20 years ago, and better shape than when it was first listed by the Committee. There has been no evidence of damage to its natural values, or health effects, from tightly supervised uranium mining on its borders. Indeed the Committee has commended Australia on its management in re-listing the Park in 1991 with that mine in operation.

SLIDE 11: Strong Cultural Protection

- Strict protection for archaeological and sacred sites
- Aboriginal owners control the Management Board for the Park
- But there are social problems -Kakadu Regional Social Impact Study

If we had only focussed on the natural values we would have missed the critical feature of this Park. It links a history of ecological development with one of human development over 50,000 years. Not only is there a treasure house of art and archaeology, but there are ongoing living traditions. Protecting physical sites is demanding - protecting culture could only be done through empowering the indigenous people of Kakadu. This was done through the grant of land rights and more particularly through joint management of the Park. The Aboriginal traditional owners have a two-thirds majority on the governing Board. But social conditions are not markedly better than for other remote Aboriginal communities – this is a matter we acknowledge and regret. In part it is due to population growth. To examine and propose solutions for these problems the Australian Government set up the Kakadu Region Social Impact Study in 1996.

SLIDE 12: Mining, tourism, and culture

- Mining outside the Park and tourism in the Park have brought money for Aboriginal communities
- Payments of \$150m from mining alone

The return of Aboriginal people to the region reflects the sense of empowerment they now had. But it is supported by the income that mining and tourism have brought. We can't avoid the fact that, as elsewhere in Australia and in other countries, money has enabled higher consumption of alcohol and western foods. This has taken its toll on health along with the pressure that population has put on housing and infrastructure. But the Australian experience is that these problems can only be tackled through genuine empowerment, with the choices and obligations that brings.

SLIDE 13: Jabiluka: a managed mine

- Initially agreed by traditional owners in 1982
- Traditional owners lobbied for go ahead in 1991
- Project revived in 1996
- Subject to 3 year public Environmental Impact Statement process

Because they owned the land, the approval of the traditional owners was necessary before any mining activity could take place on the Jabiluka lease. That approval was given in 1982 through a legally binding Agreement involving a stream of payments to the Traditional Owners with royalties to be paid when the mine started operations. The mine was then expected to start in 1984. When it failed to do so the national Government was requested to pay compensation to the owner. In 1991 traditional owners asked their Parliamentary representatives to secure a go ahead for the project. It was revived in 1996 and a 3 year EIS process commenced. The legal agreement is still in place. The senior traditional owner now opposes the mine and contends the legitimacy of the Agreement.

SLIDE 14: Jabiluka: a managed mine

- Approved subject to meeting 90+ strict conditions
- Rigorous, ongoing monitoring by independent Supervising Scientist
- Supervision by Territory and National governments under legislation
- Area of disturbance approximately 1.3 sq kms and 0.007% of size of Park

The Mine received key environmental clearances last year, but it has to meet over 90 plus strict conditions before it can proceed to the point of export of uranium. The mine proposal is far less environmentally intrusive one than the one that which was initially agreed in the 1980's. Rather than being open cut, ore will be extracted through a narrow shaft or decline. The total surface area of the mine is 1.3 sq km, or about .007% of the Park's area. It will be subject to the same expert and rigorous monitoring process as the Ranger mine which has operated successfully for 20 years. It is also worth bearing in mind that this mine has a much smaller footprint than the Ranger mine it will replace, the mine that has been acceptable to this Committee since 1981.

SLIDE 15

Both of these photos were taken from the same height. The existing mine - the one that was in operation on each of the occasions that the property was listed is on the left. Jabiluka is on the right. Jabiluka, the total area, is very significantly less, it is about perhaps a quarter of the area of the major retention pond tailings dam at Ranger. The huge pit at Ranger will be filled and re-profiled. The company is required to rehabilitate to a standard that will enable this whole area to be included in the Park.

SLIDE 16: Australian Government's Position

- UNESCO Mission raises four sets of issues:
 - pollution from mine
 - effect on landscape of mine and town
 - impact on cultural heritage
 - social stresses
- Supervising Scientist has reported on pollution concerns

While the Mission made 16 recommendations, its principal conclusions can be grouped under these four headings. I won't talk about pollution from the mine. Dr Johnston, the Supervising Scientist, will do so. I would simply note that he and his team have scrutinised all the issues raised by the Mission and ICSU and concluded with a high degree of scientific certainty that there will be no damage to the World Heritage values of Kakadu if the mine proceeds. Let us first talk about the effect of the mine on landscape values.

SLIDE 17

We have all seen close up aerial photos of the mine and I am sure that we will see more today. I thought that the Committee might like to see a more typical view that a tourist would see from a helicopter. This is the mine site from the, above the, publicly accessible part of the park. The photo is taken from above the boundary with a standard lens. As you can see, the mine is not visible from ground level as it is behind a range of hills.

SLIDE 18

This photo is taken from the eastern tourist helicopter route. The mine is in the distance, top right. The next photograph is taken above the Oenpelli Road near the northern boundary of the lease/World Heritage boundary. Only about 10 percent of tourists take a helicopter ride. I was surprised that IUCN expressed, emphasized, such concern at the impact on aerial views when it has commented adversely in other parks on the use of helicopters in World Heritage Areas.

SLIDE 19: Australian Government's Position

- Impact on World Heritage landscape:
 - mine cannot be seen from publicly accessible World Heritage property
 - can only be seen from the air at over 200m above Park boundary
 - tiny footprint compared to huge property
- Jabiru township only 1400 people and mine's impact on town will be minimal
- More residents when last listed by Committee

We found the Mission's suggestion that the mine would put the landscape values of the Park at risk extraordinary. The mine simply cannot be seen from the publicly accessible parts of the Park as it lies behind significant sandstone bluffs. What precedent will it establish for assessing World Heritage properties if we accept that visual impact can be established by

flying an aircraft near the boundaries of the property. A property in this case of 20,000 square kilometres. We found it very surprising that the small town of Jabiru, which had more residents the last time the property was listed by the Committee, is now seen as a threat to the Park's landscape values. Consider the size of this village, 1400 people, consider the size of the Park and think of other exemplary properties like the Canadian Rockies, and other major parks, which are listed for their landscape values but have residential populations and infrastructure far more significant than Jabiru

SLIDE 20: Australian Government's Position

- Impact on cultural heritage
 - archaeological sites on mining lease will be protected
 - dust and vibration studies complete
 - sacred sites identified in 1982 mining agreement and through the EIS process will be protected
- Current Traditional Owner is arguing that sacred sites are much larger
 - not accepted by Northern Territory's independent Aboriginal sacred sites authority
 - sacred sites application being considered under national legislation
- These sites are not on the World Heritage property

We have implemented the Mission report recommendations on dust and vibration studies. These show no significant risks from the mine. We have prepared and have had independently reviewed an interim Cultural Heritage Management Plan based on the extensive existing archaeological and anthropological data available. Sadly, and we regret this deeply, we have not been able to secure the co-operation of the Traditional Owners in developing the plan as recommended by the Mission Report but we hope, we hope that that soon can be remedied. The Traditional Owners sacred site application under the National legislation will receive a fair and open assessment. These sites however, are not on the World Heritage property. For this mine to cause the Park to be listed as in danger, it would have to be demonstrated that they would have a significant impact on the cultural values of the Park itself.

SLIDE 21: Australian Government's Position

- Social stresses:
 - real but being tackled
 - new dialogue with Traditional Owners about park management concerns
- Problems are important but not unusual in indigenous communities
- Will not be helped by reducing income and employment through stopping mine or listing as in danger

I have already pointed to the undoubted social stresses of the community about which we are distressed. We have accelerated the implementation of the recommendations of the Kakadu Region Social Impact Study. The Minister will deal with this at length. The problems of alcohol, health and overcrowding of housing and infrastructure are not unusual in indigenous centres - regrettably they are all something we must all commit to addressing. But it is not a problem we can promise to fix overnight. It is not a problem strictly relevant to this Convention.

SLIDE 22: Australian Government's Position

- Key points for Committee to note:
 - actions under way on social and cultural issues
 - sacred site application being assessed under domestic law
 - comprehensive and expert review by Supervising Scientist and ICSU

These matters will be dealt with by the Minister and Dr Johnston I want simply to emphasise that the actions set out in Australia's Kakadu and in the package announced by the Minister on Friday are extraordinarily responsive to the Mission report and the views put to us by State Parties in consultations over the last several months. We have come a long way since Kyoto and even more in this last week with the announcement of the sequencing of mining operations.

SLIDE 23

Some members have expressed concern that the Australian proposal could imply that both mines could operate at less than full commercial scale but in combination produce more ore than current operations. This is not so. This graph shows Ranger ore production in red [dotted line] and Jabiluka in blue [solid line]. You will see that there is only a minor overlap in the mining of ore and during any brief period of overlap the total volume of ore mined will be dramatically lower than the current levels of production. Of course until Jabiluka reaches full production, the mill at Ranger will operate by exhausting the existing ore stockpile at Ranger.

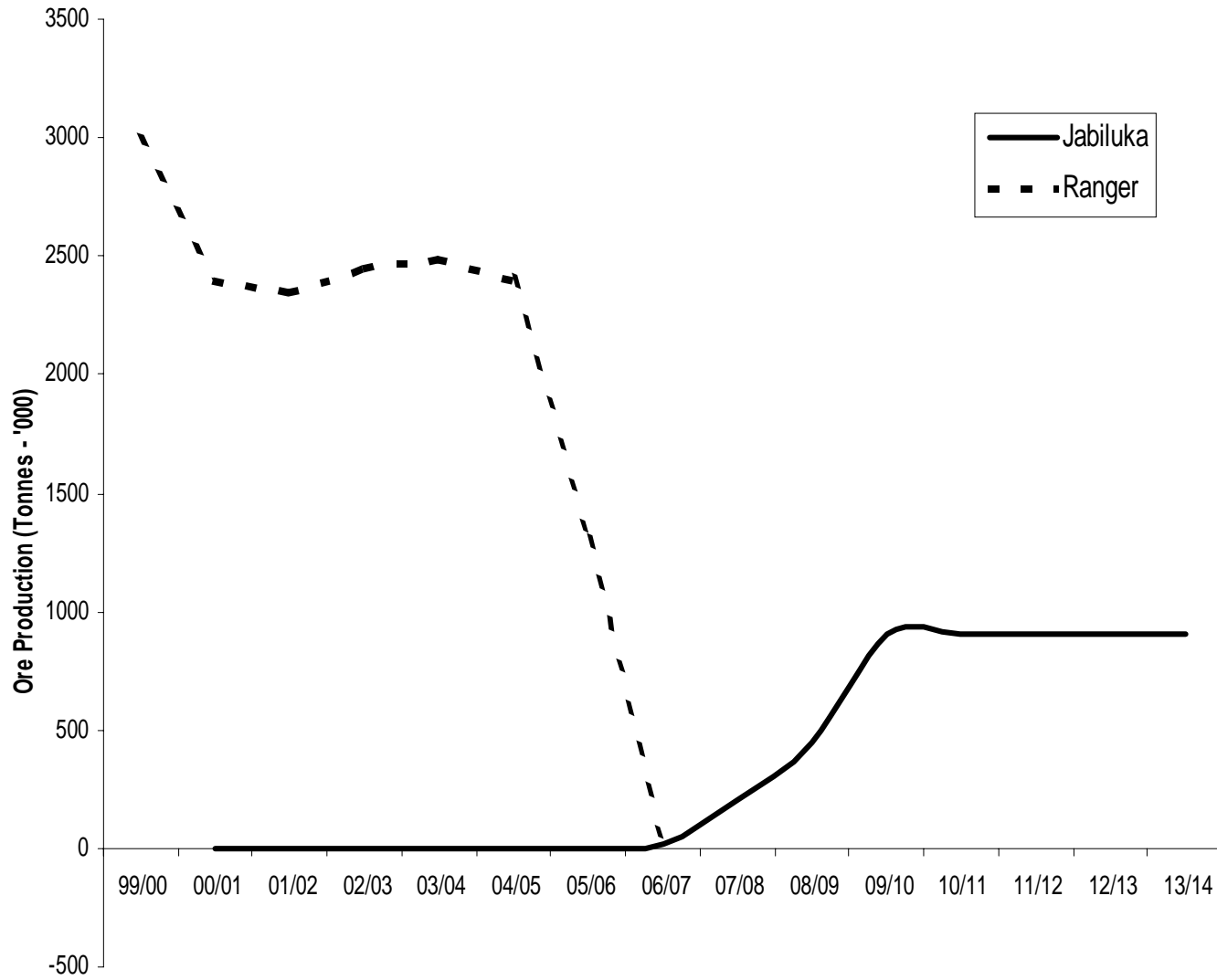
SLIDE 24

Some Australian NGO's have been telling you that there is nothing new in the Australian proposal, that it is what the company had always proposed to do. This graph is taken from the Jabiluka Project main EIS report of 1997. The company's intention was to commence production at Jabiluka and rapidly build it up to blend with the Ranger ore and extend the life of that mine to 2020. The original proposal for Jabiluka is in blue [dotted line] and the revised proposal in red [solid line]. This is what it has changed to.

SLIDE 25: Australian Government's Position

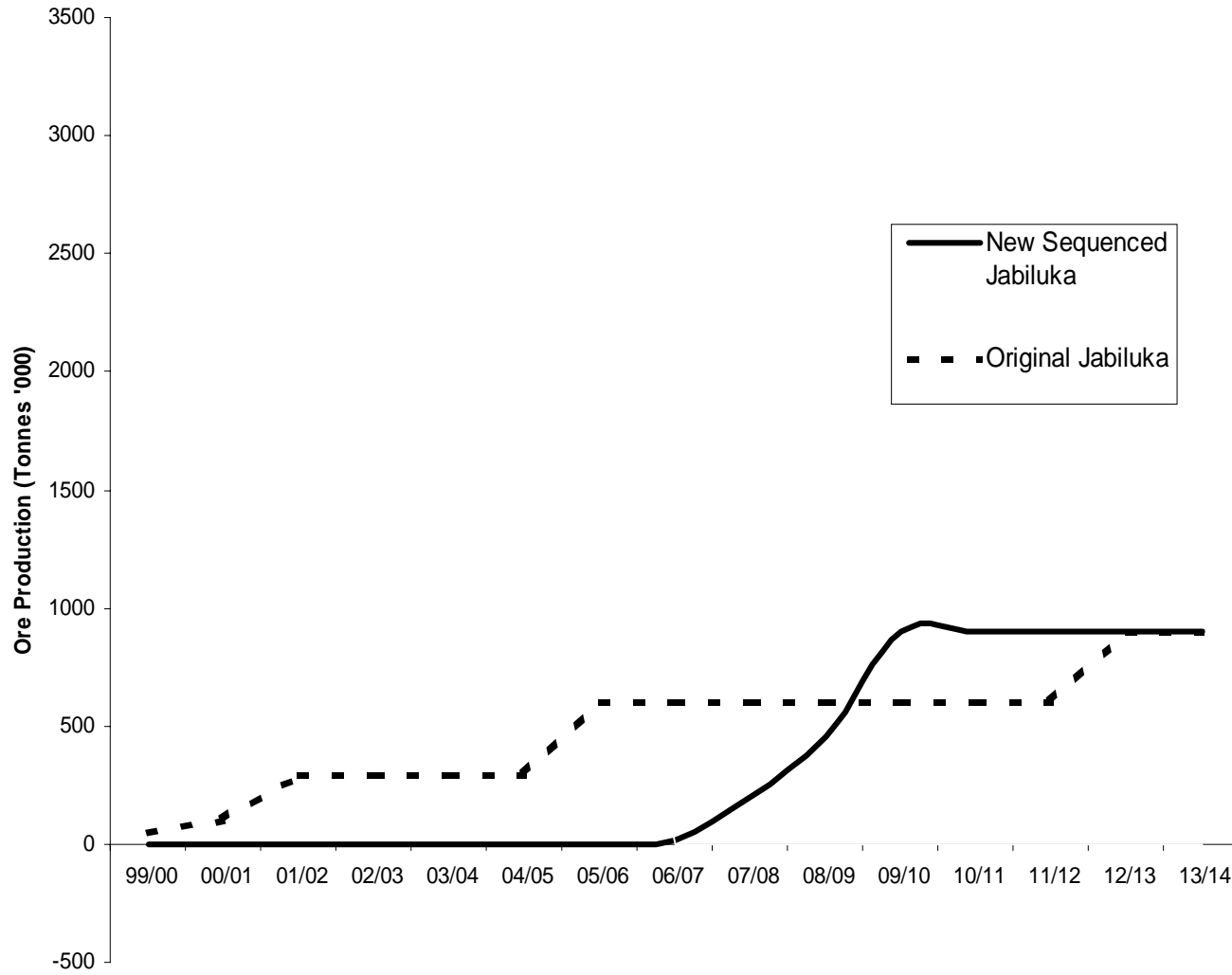
- Key issues for Committee:
 - focus on mandate focus on World Heritage property
 - maintain consistency consider scale of any threats
 - consider State Party opposes listing in danger

As you listen to the Minister and then discuss this thorny problem we would ask that you consider these issues. That you focus on the World Heritage mandate, that you focus on the property. That you focus on consistency through time and across different properties in decisions by this body. That you consider the scale of any threats to values against the scale of the property. And finally that you bear in mind that this State Party has provided you with much information, a proposed plan for managing any threats, that it has the legal, financial and technical capacity to carry out its proposals and that it opposes any suggestion that the Park should be placed on the World Heritage In Danger List.



New Sequenced Proposal and Original Jabiluka Proposal

SLIDE 24



**Statement by Ms Yvonne Margarula, Chairperson, Gundjehmi Aboriginal Corporation,
Northern Territory, Australia**

I would like to thank you Mr Chairperson for giving me this opportunity to speak to you all today.

The main thing that I can tell you about is the sacred sites in my country.

We Aboriginal people do not invent stories about our culture and our sacred sites. Our law is true.

Very often non-Aboriginal people, or European people, they doubt the truth of our culture.

Some of the sacred sites in our country are safe to approach and enter, others are extremely dangerous.

The sacred site in question today belongs to the Mirrar clan, my clan. There are many of us but we are not the only Aboriginal people who understand and recognize that sacred site. Every Aboriginal group and clan have their own sacred sites.

And so when we talk about our sacred sites it is a very intense and important topic and so we must speak with the truth when we talk about these things.

There were people from this organisation who came to my country and we showed them details about our culture and we were thankful for that.

We have had discussions with Senator Hill and maybe he will listen to our concerns.

We however, have no assurances that we can trust what we are told. We still don't know what to believe and we have heard about his two year pause. We really don't know what difference this will make to us.

Some of the information presented today casts aspersions on our traditional beliefs about the location of sacred sites. We feel that still we are not believed and trusted about these issues.

The label in-Danger is an appropriate way to describe the situation we find ourselves in. This is a dangerous issue for us.

And, so that is what I would wish to see placed is this description.

That is all I have to say. I thank you all very much.

Joint ICCROM, ICOMOS and IUCN statement read by Dr Patrick Dugan, IUCN

Mr Chairman,

ICCROM, ICOMOS AND IUCN all thank you and the members of the Committee for the opportunity to summarise our concerns over ascertained and potential dangers posed to Kakadu National Park by the Jabiluka mine. I might add that we do so in all humility having listened to the Traditional Owner.

Mr Chairman, we are of course aware of the political dimensions of this issue. However, these factors lie outside of our mandate and competence. They do underline, however, that when issues have such a sharp political dimension, it is tremendously important to be objective and to ensure that the provisions and the standards of the Convention are closely adhered to, in order Mr Chairman that procedural fairness and the expectations of the Contracting Parties, and the peoples they represent, may be achieved. As Advisory Bodies we see our role as being one of providing objective advice, and to continue to do so even in the face of the pressures that surround this and other high profile cases. We offer this advice to you, the Committee for you to use as you see appropriate.

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, guidelines that we have followed in providing our advice to the Committee. Specifically Mr Chairman:

- 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 also 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.

Mr Chairman, 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."

Again Mr Chairman, at its 22nd Session in Kyoto in November 1998, this 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 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 be focusing 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. We also welcome the independent review by ICSU, the ongoing dialogue with the Supervising Scientist Group, and the commitment of the Australian Government to implement fully the ICSU recommendations and incorporate these into the design of the Jabiluka mine.

We regret however to note that we remain concerned that the report of the Supervising Scientist Group and the ICSU review, both confirm 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, and the final design of the mine and the detailed chronology of its development, is not yet available, including details for issues of major concern, notably the water retention system and the disposal of tailings. Mr Chairman, while it may be argued that his level of uncertainty is normal in mine design, it is IUCN's view that it is of serious concern for a mine that is 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. We do not believe that the recently proposed sequential development of Ranger and Jabiluka removes this threat.

2. Visual Encroachment.

In its response to the World Heritage Mission, the Government of Australia has 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 constitutes an ascertained threat to the natural values of Kakadu. We do so while recognising that the Jabiluka lease is equivalent to less than 1% of the Park, and that it is not legally part of the Park. However the lease does lie within the boundaries of the Park. We also do not believe that this is an issue of percentages. To take an analogy, the human heart represents only a few percent of our total body weight, but where would we be without one. Jabiluka lies in a uniquely important part of Kakadu’s landscape, in the middle of the small part of the Park that lies between the escarpment and the floodplain of the Magela River. We believe this to be a place of special visual value, whose significance far outweighs its size. We recognise however that it is the Committee who will have to assess whether locating an industrial development within a critical part of Kakadu represents an acceptable visual intrusion within the boundaries of a World Heritage site that is justly recognised internationally for its landscape values.

Mr Chairman, 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 be if the project proceeds. Both would aggravate the visual encroachment which we consider to already be severe.

Mr Chairman, we would like to close by noting the concern that the Jabiluka lease existed when Stage III of Kakadu was listed as a World Heritage property. At that time however, existing Government policy, what is known as the three mines policy, precluded mining at Jabiluka. The current situation has arisen through a change in Government policy, a situation that we believe argues in favour of robust long-term solution to the threats Kakadu is facing. Mr Chairman thank you for the opportunity to make this presentation and I now hand over to ICOMOS.

Statement read by Mr Jean-Louis Luxen, Secretary-General, ICOMOS

Monsieur le Président.

Lors de la réunion du Bureau en solidarité avec les deux autres organismes consultatifs j'ai eu l'occasion de présenter la position de l'ICOMOS. Ce texte est repris en ANNEX III CONF205/INF 4.

Je souhaiterais, Monsieur le Président faire une intervention en deux parties. Tout d'abord résumer dans les grandes lignes l'intervention que nous avons faites au Bureau. Et je souhaiterais dans une seconde partie, pouvoir formuler un certain nombre de propositions qui tiennent compte de l'intervention que nous venons d'entendre et des initiatives dont ont fait état les autorités de l'Australie.

Nous avons reçu le rapport *Australia Kakadu* établi par les autorités australiennes, dans un remarquable effort d'information et de complément d'indication comme il leur avait été demandé. Ce rapport a été soumis à un certain nombre d'experts ou de collègues, a fait l'objet d'appréciations parfois nuancées tenant compte des différences dans la connaissance et d'appréciation concrète de la situation. Et je dois vous dire Monsieur le Président avec une convergence dans les conclusions pour dire que pour l'essentiel, les graves préoccupations qui avaient été exprimées à Kyoto sur base du rapport de mission *in UNESCO* de 1998, que ces préoccupations nous paraissent rester tout à fait pertinentes, qui correspondent d'ailleurs aux prises de position que nous avons eues à Kyoto.

Nous nous rallions par conséquent avec la proposition de nos collègues des deux autres organes consultatifs, pour considérer que le site devrait être mis sur la liste du patrimoine en Danger pour trois raisons principales :

La première consiste dans l'impact physique et symbolique de l'exploitation minière, tenant compte du fait que le site du patrimoine mondial renferme des lieux sacrés et que nul ne conteste l'importance spirituelle par exemple du site du Boiwek-Almudj et des pistes du Dreaming.

La seconde raison est que même s'il s'agit d'une enclave minière, nous croyons que les valeurs culturelles du site inscrit débordent les frontières du site et font partie d'un réseau beaucoup plus étendu, en particulier si l'on tient compte de la signification des sentiers du Dreaming.

Et enfin troisièmement nous avons pris en compte les droits des propriétaires traditionnels, pour considérer que la légitimité de leur relation particulière avec leur terre devait être mieux reconnue. Je crois d'ailleurs que pour le fond de ces matières je n'ai pas entendu d'opinion contraire de la part des autorités de l'Australie.

Il nous est apparu, c'est le dernier point dont nous faisons état dans la communication devant le Bureau, qu'un des problèmes majeur qui avait déjà été souligné par le rapport de la mission UNESCO, était le rétablissement d'un dialogue et d'une communication par les parties concernées. Et à ce sujet comme le rapport du Bureau, on ne peut que regretter que les travaux n'aient pas été interrompus après la réunion de Kyoto, malgré l'appel par consensus

dans l'ensemble du Comité du patrimoine mondial. Il nous paraît que la poursuite des travaux assurément n'a pas permis le rétablissement de ce dialogue et de cette relation de confiance.

Où en sommes-nous aujourd'hui Monsieur le Président ?

Je voudrais dire tout d'abord qu'il faut tenir compte de l'intervention des autorités australiennes, notamment parce que nous reconnaissons tous, et en particulier l'ICOMOS, l'implication exemplaire de l'Australie dans la mise en oeuvre de la Convention du patrimoine mondial depuis ses tous débuts. Il y a là une attitude à bien des égards exemplaires de la part d'un Etat partie, mais précisément aussi Monsieur le Président, quand un Etat prend une telle avancée et prend tant d'initiatives il doit comprendre qu'aux yeux de la Communauté internationale, il se donne aussi une responsabilité singulière dans la manière dont il répond aux interpellations du Comité du patrimoine mondial. Il nous semble si nous voyons les choses en terme positif et très largement dans les perspectives proposées par le rapport du Bureau, qu'il y ait d'abord un geste de la part des autorités australiennes qui permette de rétablir le dialogue, la confiance et la communication. Peut-être surtout au niveau local, mais peut-être aussi au plan international.

Ce dialogue est essentiel si nous voulons comme le proposait déjà le rapport de l'UNESCO, et comme le propose le Bureau procéder à un exercice qui nous paraît fondamental qui est l'établissement d'une carte culturelle des sites sacrés et des sites d'importance en terme de valeur intangible, dans le site du patrimoine mondial, ou dans l'enclave ou dans l'environnement. C'est un exercice difficile auquel on ne peut procéder qu'en dialogue avec les personnes concernées, puisqu'il s'agit de trouver une formule pour que soient identifiés en quelque sorte les supports matériels à des traditions culturelles vivantes. C'était d'ailleurs la recommandation 8 du rapport de l'UNESCO. Il nous paraît que cette carte culturelle est essentielle, et il nous semble aussi qu'elle ne peut être établie que si un dialogue s'instaure avec les propriétaires traditionnels.

Autre point important, qui est indiqué déjà dans le rapport du Bureau, c'est la nécessité d'établir un plan de gestion aussi complet que possible. C'est la responsabilité de l'Etat-partie, clairement. Mais, je crois qu'un consensus est là pour dire que un tel plan de gestion ne peut être établi que s'il est conçu et mis en oeuvre en relation avec les populations locales, les populations indigènes. Il y a un certain nombre d'études d'incidence auquel il faut procéder, pour que l'on cerne beaucoup mieux les concepts, et les valeurs intangibles dont il est fait état. A cet égard avec modestie Monsieur le Président, nous pouvons faire offre de service, si d'une manière ou d'une autre les autorités australiennes croient qu'à travers le comité national australien, à travers des experts que l'on désigne, ou par une instance de l'ICOMOS international, nous pouvons contribuer à l'établissement de ce plan de gestion.

Nous sommes en présence Monsieur le Président, et c'est notre conviction, de valeurs intangibles très fragiles. Et à cet égard il y a deux nécessités, tout d'abord pour tous, pour la communauté scientifique aussi, nécessité d'approfondir et d'examiner la situation dans une approche scientifique transparente :

Il n'apparaît pas toujours clairement aux yeux de tous comment se traduit concrètement l'expérience des sites sacrés, dont nous a fait état tout à l'heure avec beaucoup d'éloquence la représentante du peuple Mirrar.

Et il y a une seconde nécessité me semble-t-il aussi, qui est d'affiner en terme juridique et en terme opérationnel ces notions de sites sacrés de manière à pouvoir les prendre

en compte réellement dans la mise en oeuvre d'une convention, sachant qu'il s'agit là de valeurs intangibles.

A cet égard, Monsieur le Président lorsqu'on écoute attentivement l'intervention des honorables représentant du gouvernement australien, il semble qu'une perspective se dessine dans l'engagement de ne pas procéder de manière concomitante à l'exploitation commerciale des deux sites miniers. Peut-être faudrait-il encore une plus grande clarté puisque dans le document que ERA, qui est l'*Energy Resource Australia* vient de nous distribuer en début de séance, on nous signale quand même que certaines opérations de prélèvement de minerais doivent pouvoir se faire à partir de 2001. Il nous semble un peu qu'en matière d'exploitation minière c'est un peu tout ou rien qui se présente si l'on veut rétablir le climat de confiance. Et je me demande s'il n'y a pas là dans la démarche déjà largement entamée par les autorités australiennes un pas supplémentaire qui pourrait consister dans l'établissement d'un moratoire permettant précisément de renouer le dialogue.

Enfin, Monsieur le Président, nous croyons que d'une crise peut sortir une avancée, et que dans les travaux dans l'histoire du Comité du patrimoine mondial, peut-être que la possibilité s'offre à l'Australie qui a déjà beaucoup contribué à cette convention, qu'elle s'offre à l'Australie de mettre mieux en lumière des préoccupations très actuelles dans nos travaux. Je veux dire d'une part la reconnaissance des droits culturels des communautés indigènes, et d'autre part le respect des valeurs intangibles du patrimoine culturel et naturel. Car ce sont nos convictions Monsieur le Président, maintenant nous sommes un organe consultatif et nous avons dit notre conviction, il appartient nous le savons au Comité de prendre les mesures qui à ses yeux sont les plus efficaces pour dépasser le blocage actuel, et assurer la crédibilité de la Convention. Je vous remercie.

Statement read by Mr Herb Stovel, ICCROM

Mr Chairman, as we noted last week in our presentation to the Bureau, ICCROM has thus far focussed its attention, in reviewing the various claims made in relation to Kakadu, on the integrity of process and the necessary elements for objective analysis of the issues involved. ICCROM recognises that objectivity in assessing cultural values and the impact of proposed actions on these values involves close attention to those for whom the values hold most meaning. In this context, the Preamble to the World Heritage Committee's 1998 mission report emphasised 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, the Mirrar share with the Australian Government the weight of responsibility for the conservation of the cultural values in this part of Kakadu, and we acknowledge their efforts to be present today to assist the Committee in its deliberations.

Australia 's Kakadu, the Australian Government report of April 15, 1999, does not attempt to claim that the Government has fulfilled the World Heritage Committee mission's above request for ensuring thorough and continuing dialogue with the traditional owners. Yet, as we have heard this morning, 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, as the Australian continent is home to the longest continuing human cultures on this planet, we believe that the Committee holds a special responsibility to protect the vulnerable link between the Mirrar people and the land which has nourished them physically and spiritually for so long. ICCROM would like to emphasise the fragility of these links; where cultural values are transmitted orally, the survival of language is perhaps the key indicator of cultural health. 64% of the indigenous languages spoken at the time of European contact are now extinct, and only 8% - for the most part in Northern Australia - can be described as "strong". The claim of the Mirrar people, 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 this Committee.

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

Concerning the material evidence of impacts of the mining operations on tangible forms of cultural expression - on the rock art and archaeological sites on the Mirrar lands - the dust and vibration studies made available to ICCROM last Thursday do not discount the impact of these threats. Accordingly, in the terms of the Convention, ICCROM must state that

the existence of these potential threats provides additional justification for inscription of Kakadu on the World Heritage List in Danger.

During its presentation to the Bureau last week, ICCROM concluded by noting its discomfort with the heavily polarised nature of this debate. ICCROM stated that should this debate end without reconciliation, the real loser would be the World Heritage Convention and its moral power, as a unifying force for humanity. ICCROM further noted that 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 could meet their respective interests. ICCROM therefore welcomes the dialogue which was began last week by the Australian government with the Mirrar people and would be pleased to offer our support to all efforts to ensure these negotiations continue in good faith, and to ensure implementation of negotiated outcomes. ICCROM further believes that appropriate solutions must be based on clear technical information on matters such as the true nature of the sequential mining proposed by the Government of Australia, the location of milling for ore from Jabiluka. and the provision of detailed site development and rehabilitation plans.

In conclusion Mr. Chairman - and speaking now on behalf of the three Advisory bodies together (ICOMOS, ICCROM, IUCN) - we would like to signal together our pleasure that a dialogue between the Australian Government and the Mirrar People has began. The Advisory Bodies would like to further note that we would be pleased to continue to assist the Committee in its work to ensure that the threats facing Kakadu are addressed both now as negotiations continue, and in the long term.

However, in the light of our opinion that the response of the Australian Government to the issues raised by the Committee last December has not removed the threats posing ascertained and potential dangers to Kakadu National Park, and in view of the recognition by the Bureau in its report of last Friday that the threats and uncertainties we have identified remain present, we believe that the conditions continue to exist for inscribing Kakadu on the World Heritage List in Danger and that the Committee, if it is to be consistent with its use of the criteria for such inscription in the past, should inscribe Kakadu on the World Heritage List in Danger immediately.

We further believe that failure to do so after such an extensive process of analysis and review may undermine the high standards of integrity and accountability for which the World Heritage Convention has until now enjoyed such high international respect and support.

We ask, Mr. Chairman, that our comments be included in the record of this meeting.

Presentation by Dr Arthur Johnston, Australian Supervising Scientist

SLIDE 1 INTRODUCTION

Thank you Mr Chairman for the opportunity to address the Committee on the Supervising Scientist's report to the World Heritage Committee on the Jabiluka Project. The report itself is a substantial document and I will only be able to summarise the main points in the short time available to me. In addition, I will be addressing the Committee again on our response to the review of the Report that was carried out by the ICSU independent scientific panel and it is my judgement that members of the Committee will wish to be fully briefed on that response. I will, therefore, try and be particularly brief in my summary of the original report.

SLIDE 2 THE REPORT

The Report is in fact made up of six separate reports. Five of these relate to the future Jabiluka project. These are the Main Report of the Supervising Scientist which addresses all of the issues raised by the World Heritage Committee and draws upon information contained within the four consultancy reports on:

- Hydrometeorology
- Climate change
- Hydrological modelling, and
- Groundwater dispersion.

These four reports were provided by experts in these respective fields within Australia. The sixth report, while not specifically on Jabiluka, is very important. It provides an assessment by the Supervising Scientist of the extent to which the environment near the Ranger mine has been protected throughout the past 18 years. This assessment is based upon the research of the Supervising Scientist over the past 21 years and upon the monitoring programs carried out by the mining company. No adverse impact on the environment has occurred during the operation of the Ranger mine.

SLIDE 3 THE ISSUES

The principal issues addressed in the report are those identified by the World Heritage Committee. These are:

- Hydrological modelling
- Severe weather events
- Storage of uranium ore on the surface
- Long-term storage of the mine tailings

I will briefly summarise the conclusions on each of these issues

SLIDE 4 HYDROLOGICAL MODELLING

It was found that, while there were reservations about the methods used by ERA, the value derived for the I in 10,000 annual rainfall was correct. Our conclusions on evaporation from open ponds were that all of the proposals made by the Australian scientists who criticised the EIS had already been taken into account by ERA in the design of the water management system for Jabiluka. However it was also concluded that the so called "inverse relationship" between rainfall and evaporation should be included in future water management modelling. For evaporation in the ventilation shafts' our conclusion was that the ERA design engineers intended to provide the necessary energy by the use of humidifiers but, in our view, this would prove to be very expensive and that an increase in the pond area from 9ha to about 13ha would be required. Given our experience at Ranger, this increase is not expected to give rise to adverse environmental effects.

SLIDE 5 PREDICTION AND IMPACT OF SEVERE WEATHER EVENTS

We agreed with Professor Wasson and his colleagues that climate in the region has been very different in the past 10,000 years from that at present and that it would very probably be very different in the next 10,000 years. However, we concluded that their concerns were unjustified because there will not be any tailings repositories or retention ponds on the surface following rehabilitation in about 30 years time. Our analysis of Probable Maximum Precipitation events indicates that bounds around the perimeter of the mine site would need to be increased slightly but this is a fairly trivial exercise. The detailed analysis of possible climate change in the region of Jabiluka indicates that, while some change is likely, it is not necessary to alter the water management system design at this stage to take climate change into account. Rather, the situation will need to be kept under assessment and changes made at some future stage if required.

SLIDE 6 STORAGE OF URANIUM ON THE SURFACE

A very extensive analysis is presented in the report on the design of the water storage pond at Jabiluka to ensure that, except under very extreme circumstances, all water that runs off the mine site or seeps into the mine throughout the life of the mine, is collected in and is retained by the pond. That is, the Jabiluka mine is designed to ensure that there is total containment of all water and none is released to the wetlands of Kakadu National Park. I will not present the details of this design. Rather, I will concentrate here on evaluation of the risks involved for the wetlands if an extreme event occurs and some water is released into the Park. The results presented refer to the actual design proposed by ERA. Such a release could take place if a very unusual wet season occurred, or a sequence of wet seasons, such as one would only expect once in 1000 years. Other possibilities include events, such as a severe earthquake, which lead to the failure of the pond embankment and the subsequent flow of water from the pond to the wetlands.

SLIDE 7 EXCEEDING POND CAPACITY

This graph shows the probability of radiation exposure of people living downstream from the mine, and consuming foods collected from the wetlands, if the capacity of the pond is exceeded. The highest radiation exposure estimated, with a probability of occurrence of about I in 100,000, is about 25 microSievert. This dose, which would only occur once in 30 years, is a factor of 40 lower than the dose permitted for members of the public every year from the operation of a mine or any other radiation related utility. It is about a factor of 100

lower than each of us receives every year of our lives from natural radiation exposure. The conclusion reached is that the risk to people is extremely small. Similar analyses show that the risk to the animals and plants of the wetlands of Kakadu National Park is very small.

SLIDE 8 EARTHQUAKE - PROTECTION OF PEOPLE

This graph shows the probability of radiation exposure of people living downstream from the mine in the event of an extreme earthquake. The highest radiation exposure calculated is less than one tenth of the public dose limit but its probability of occurrence is extremely small, around 1 in 100 MILLION. Once again, there is no significant risk that people would be adversely affected even if an earthquake destroyed the retention pond.

SLIDE 9 EARTHQUAKE - PROTECTION OF ECOSYSTEMS

This graph shows the probability that aquatic animals living in the waters of the Magela floodplain could be adversely affected if an earthquake occurred and destroyed the pond embankment. Two sets of data are presented. The outer curve is the area of the floodplain beyond which no adverse effects would be expected to occur. The inner curve is the area of the floodplain inside of which the toxicology data imply that adverse effects would occur. Between the curves, there are likely to be some effects on some species, for example invertebrates. In interpreting these data, it should be remembered that the area of the floodplain is greater than 150 square kilometres. Thus, there is an extremely small probability about 1 in 100 MILLION, that a small area of the floodplain, about 1%, would exhibit definite effects on some species of invertebrates. At this level of probability, effects could even persist out to 10% of the floodplain. At more realistic probabilities, say 1 in 10,000, definite effects would only be expected within a very small area, about 0.5 square kilometres and some effects could persist out to several square kilometres. It is important to note, however, that these effects, if they occur, would be transitory. The uranium in the water would be diluted by the next years wet season and would be washed out to sea. The ecosystem would then fully recover and there would not be any permanent damage.

SLIDE 10 LONG TERM STORAGE OF MILL TAILINGS

Many of the concerns that people have about uranium mining at Jabiluka relate to the long-term storage of tailings and the possible dispersal of the tailings or their constituents from the mine site.

The issues can be divided into :

- Effects arising from the physical dispersal of the solid tailings, and
- Effects arising from dispersal of the chemical constituents, particularly the radionuclides, in groundwater.

The project approved by the Government at Jabiluka was one in which 100% of the tailings will be returned underground to the mine void or to specially excavated silos. Because of this requirement, the tailings will be covered by at least 100 metres of sandstone or schist and sandstone. It would take about 200 Million years to erode this rock cover so there is no risk to the wetlands of Kakadu from the physical dispersion of the tailings. In our report, we presented a detailed analysis of dispersal of contaminants to groundwater and I can briefly show the principal results obtained.

SLIDE 11 DISPERSAL OF CONTAMINANTS EAST OF THE REPOSITORIES

The principal constituents of concern are Sulphate, Uranium and Radium. This graph shows the probable movement of these chemicals in groundwater in an easterly direction from the mine. For sulphate, the time scale is 200 years while for the radionuclides the time is 1000 years. It can be seen that sulphate would be expected to move out from the mine deep underground by less than 100 metres. Uranium would move only 30 metres and radium about 10 metres. Beyond these distances, concentrations would be below naturally occurring concentrations.

SLIDE 12 DISPERSAL OF CONTAMINANTS WEST OF THE REPOSITORIES

West of the mine towards the Magela floodplain, the permeability of the aquifer is higher and the contaminants would move more rapidly. Sulphate is estimated to move up to 500 metres, while for uranium and radium the distance is about 150 metres and 50 metres. It must be emphasised, however, that only a very small fraction of the groundwater is expected to move towards the surface. Most of the movement will be far below the floodplain and the contaminants will move out to sea in the very long-term. In addition, the concentrations of these constituents in the acid sulphate soils of the floodplain are naturally high and the effect on these natural concentrations will be very low. We have concluded, therefore, that dispersal of contaminants in groundwater does not pose a long-term threat to the wetlands of Kakadu.

SLIDE 13 CONCLUSIONS

We concluded that

- The natural values of Kakadu National Park are not threatened by the Jabiluka development.
- The degree of scientific certainty that applies to this assessment is very high.
- There is no justification for a decision of the World Heritage Committee that the natural World Heritage values of Kakadu National Park are in Danger.

**Presentation by Professor Brian Wilkinson, leader of the
Independent Scientific Panel of ICSU**

Some parts of today's presentation were made last Wednesday, but I understand that there are some members present today who were not here on Wednesday. So it may be helpful to them if I repeat the background to the Independent Scientific Panel. I think that it is important that the meeting understands the structure of the panel and our brief.

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, with the agreement of the Panel, to act as Team Leader.

The Panel's work began on 22 April 1999 as soon as the first documentation became available, and our report was submitted on 14 May 1999 against a deadline of 15 May 1999. Our brief was to make a scientific review of the report – “Assessment of the Jabiluka Project” (WHC-99/CONF.205/INF.3C) from The Australian Supervising Scientist. We have just had a presentation from Dr Johnston, The Supervising Scientist. We also saw a number of other supporting documents - but in the time available there was a limitation on the information that was readily available. I regret that our insights may have been restricted by not having visited Jabiluka or the Kakadu World Heritage Site.

Panel members' comments were consolidated into the first draft. All Panel members approved our Final Report prior to its transmission to ICSU and UNESCO. Other than the presentation of its report to the Bureau, which I make today, the Panel has discharged its remit to ICSU on the delivery of its report on 14 May 1999.

However, during June Dr Arthur Johnston, the Supervising Scientist, contacted me to say he would like some clarification on the Recommendations in the Independent Science 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 1999 with a subsequent approved conversation on 11 June 1999. There are agreed notes of these conversations available.

Towards the end of June I received a 62 page 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 and that Dr Johnston will perhaps speak to it later this morning and I look forward to that.

I intervened earlier this morning to say that I was very surprised to see reference in the Rapporteur's note of the twenty-third session of the Bureau WHC-99/CONF.205/INF.4.

There was reference in three places where it states that a dialogue had started between the Australian Supervising Scientist and the Independent Science Panel to resolve some of the outstanding issues and that this has begun to show some progress on questions relating to the scientific issues. May I say Sir that ICSU protests strongly against this. This simply is not the case.

The telephone conversations were concerned with the Supervising Scientist seeking insights into our Recommendations. A full scientific dialogue has not started. That is not to say that a dialogue is not necessary. It may be but it simply has not taken place. ICSU would wish to see the record amended and as you suggest Sir, we will provide an appropriate set of words.

Turning to the Independent Science Panel's Report - we considered that we could conveniently divide the work into four activity areas as follows:

1. Hydrological modelling and the assessment of the retention pond design capacity
2. Risk assessment for the ERA proposal
3. Long-term storage of the mine tailings
4. General environmental protection issues

However, there is strong interaction between these various areas and the Panel took these interactions into account in making its 17 Recommendations, which are given at the end of the Panel's Report. If I can now take each of these areas in turn and give a very brief overview of what the Panel considered to be the important scientific issues:

1. Hydrological modelling and Assessment of Retention Pond Design Capacity

The design of the retention ponds at Jabiluka is crucially dependent on the records of rainfall and evaporation. It is fortunate that such a good 88 year rainfall record exists at Oenpelli and that there is good correlation with the shorter Jabiru record. However, it is recognized that rain gauges often under record and the Panel considered it would be prudent to increase rainfall data by 5% and to rerun the water balance calculations.

The rainfall records have been extended using synthetic data generation techniques. A study of evaporation based on evaporation pan records was also made and we consider that suitable rainfall and evaporation sequences have now been established for use in retention pond and water balance design. The rainfall and evaporation data were used in a run-off model and using a Monte Carlo approach, an acceptable method has been developed for determining the design pond capacity against extreme weather events. It would, however, have been valuable to have seen such calculations undertaken for Ranger and compared with Ranger's operational performance.

The Supervising Scientist's Report did not give a clear picture of the water balance between the various flows on the proposed Jabiluka Mine. We considered that this information is needed if a proper assessment is to be made. So while we considered that a suitable design approach has been developed, we have not seen a final design for the water management system and this is a cause for concern to the panel and has of course restricted our assessment.

The assumption in the rainfall analysis is one of stationarity i.e. the climate over the next 30 years will be the same as that represented by the past 88 years of record. However, I think that all of us in this room are conscious of climate change issues. The appendix by Jones *et al* in the Supervising Scientist's Report analyses the climate change issue in what we considered to be a very comprehensive way, nevertheless this is an area of considerable uncertainty among the international scientific community. We believe that it was somewhat dismissed in the Supervising Scientist's Report but the Panel considers that it must be kept under constant review, and if the mine proceeds new works may need to be introduced and operational methods may need to be modified as new information becomes available. We would ask, is there an appropriate mechanism to enable such modifications, if required, to be made during the life of the mine can be instituted?

2. Risk Assessment for the ERA Proposal.

To protect the environment against pollutants a policy of containment of mill and ore stockpile water in retention ponds is proposed. The Panel are in full agreement with this approach but there could be an impact on the aquatic ecosystem due to changes in the water balance which would result. This Section of the Supervising Scientist's Report also focussed on the concentration of contaminants in the ponds and the prospect of pond failure which would release water into the environment.

We noted that the principle source of contaminants entering the ponds would be from the ore stockpile. We were uncertain as to whether any allowance had been made for the effects that evaporation may have in concentrating the contaminants in the ponds. We saw no reference to this potential issue. On occasion the ponds may go dry but there was little reference to dust blow from the ponds from rock piles or elsewhere on the mine site.

The Ranger model for radiation exposure to members of the public had been applied to Jabiluka. We seek evidence that this transfer from one site to the other is appropriate. It is also important to include chemical toxicity in such models.

In the event of the water in the ponds escaping, an assessment was made in the Supervising Scientist's Report of the impact on the aquatic ecosystem. This appeared to be based on the use of "surrogate species " for the whole aquatic ecosystem. We would seek justification that single species act as adequate indicators in this way.

3. Long Term Storage of Tailings.

The proposal to return the tailings to the mine void or into silos 100 metres below surface will remove a major source of potential environmental contamination in the short to medium term.

The question is - how far will the contaminants move in the longer term as a result of groundwater transport? A number of mathematical models to predict the spread of uranium, radium and sulphate were described in the Supervising Scientist's Report.

This modelling approach was welcomed by the Panel and is appropriate providing the relevant hydrological and geochemical parameters are used. However, we had reservations in that:

- the modelling, as described, was not set within the overall groundwater flow pattern;
- no isotope measurements were quoted which may have enabled the age of the sub-surface water to be established;
- there is some uncertainty as to the permeability parameters used in the models;
- there is some uncertainty on the stability of the tailing/cement mix and the geochemical interactions between the potential pollutants and the rock.

And there are other concerns. We understand that additional testing is being undertaken and new information is being obtained and this must be used in additional three dimensional groundwater models involving rock/contaminant interaction and set in an overall groundwater flow context. Until such work is complete it is difficult to assess whether there is a long term problem arising from the sub-surface storage of tailings or not.

4. General Environmental Protection Issues

We noted the prospect of the mine life being extended from 30 years to 40, 50 or even 60 years. No consideration appeared to have been given as to how an extended mine life would change the impacts on the environment.

The Panel considers that such assessments should be made now and should not be delayed. For example if the life of the mine is extended will future tailings be disposed of sub-surface or not?

The mining and the silo work will lead to sandstone rock piles. Sediment from these could have a major impact on the aquatic ecosystem but there was little or no information on this. There are a series of related questions - Where will this rock be placed, what land form will it have; how will it be rehabilitated?

In relation to the total landscape or catchment analysis for Jabiluka mine - this appeared to have been somewhat dismissed in the Supervising Scientist's Report. The Panel considered that such an analysis to be critical and necessary.

The Panel considered it also necessary that a firm and binding commitment to long term possibly 100 year monitoring of surface, groundwater and the ecosystem on the Jabiluka site in relation to Kakadu National Park was necessary. It was also necessary to establish this binding commitment to reparation in the event of unforeseen impacts from mining activity.

The conclusions in our Report and the 17 Recommendations can be placed in four broad categories as follows:

First category - some of the analyses in the Supervising Scientist's Report do lead to the assessment of impacts of the proposed Jabiluka mining operation being made with a higher degree of certainty than formerly (e.g. method for hydrological analysis);

Secondly - there are some recommendations that we suggest should be followed out of prudence (e.g. 5% increase in rainfall data and others);

Thirdly - there are some areas in the Supervising Scientist Report where we were unable to make a judgement on ascertainable or potential impacts due to the lack of information or data;

Fourthly - there were some elements dealt with in what we considered to be an unsatisfactory way in the Supervising Scientist's Report, and there were some important issues that were missing. Nine of our Recommendations fall in this latter category. It may well be that some of

our concerns are addressed, by the Supervising Scientist's response to the Independent Science Panel Report - but this response of course would require detailed consideration by the Panel and as such it lies outside our brief at the present time.

Overall, our assessment of the ascertainable or potential risks were made more difficult by the fact that the design of the mine is still evolving. There are still, therefore, uncertainties e.g. how large will the footprint of the retention ponds and other works be? etc.

Because of these uncertainties with respect to the final design there is a theme running through the Supervising Scientist's Report of "trust us" and we will ensure that the final works fully meet the environmental requirements. It has been suggested this morning that perhaps this approach is based on the Supervising Scientist's 18 years of operational experience at Ranger.

However, Kakadu is such a rich and important site in terms of World Heritage values that we believe that such assurances should be accompanied by 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. The Panel considers that there remain many areas of scientific uncertainty in relation to quantifying potential impacts.

If I may Sir, finally have the overhead. The overhead shows that the Panel identified 17 scientific factors that still need to be resolved. 13 out of these 17 recommendations are fundamental to resolving the scientific issues and therefore require discussion and a proper response from the Supervising Scientist.

Thank you very much Sir.

**Response by Dr Arthur Johnston, the Australian Supervising Scientist, to the ICSU
review of scientific issues**

THE JABILUKA PROJECT

KEY ISSUES

- · HYDROLOGICAL MODELLING
- · RISK ASSESSMENT OF THE ERA PROPOSAL
- · LONG-TERM STORAGE OF TAILINGS
- · GENERAL ENVIRONMENTAL PROTECTION ISSUES

HYDROLOGICAL MODELLING

RECOMMENDATION 1

Increase rainfall by 5%

- · Bureau of Meteorology advises this is not standard practice in Australia
- · Note the conservatism in other areas of hydrological modelling
- · Accept the recommendation

HYDROLOGICAL MODELLING

RECOMMENDATION 2

Rainfall and evaporation measurements should commence at JABILUKA

- · ERA commenced these measurements in 1996 (rainfall) and 1998 (evaporation)

HYDROLOGICAL MODELLING

RECOMMENDATION 3

Climate change to be reviewed throughout the project

- · The Mine Site Technical Committee will review all water management issues throughout the life of the project
- ERA will be required to provide additional storage if necessary
- · This occurred at Ranger in 1986

HYDROLOGICAL MODELLING

RECOMMENDATION 4

Runoff coefficients to be validated at Ranger

- Extensive hydrological modelling has been carried out at Ranger
- The runoff coefficients used were derived from the Ranger modelling

HYDROLOGICAL MODELLING

RECOMMENDATION 5

Assurances should be given on mill water requirements etc

Information should be supplied

- All information has been supplied
- Water consumption estimates are all based on experience at Ranger
- Estimates of groundwater ingress being revised based on decline observations

RISK ASSESSMENT

RECOMMENDATION 6

Radiation exposure to be specific to Jabiluka

- Model specific to Jabiluka now developed
- Results are similar to those in the Report
- Effects of chemical toxicity are negligible

RISK ASSESSMENT

RECOMMENDATION 7

Biological recycling to be investigated

- Biotic and abiotic recycling was investigated for Ranger; chemical toxicity dominant risk
- For Jabiluka, total Uranium released in an extreme event would be small compared to the uranium recycled naturally in the vegetation on the Magela floodplain
- Uranium in sediment will be 1000 times lower than toxic concentrations

RISK ASSESSMENT

RECOMMENDATION 8

Retention pond to be partitioned

- This repeats a recommendation of the Supervising Scientist
- The pond will be partitioned

STORAGE OF TAILINGS

RECOMMENDATION 9

Flow rates and permeabilities to be confirmed by dating etc

- Groundwater near Jabiluka is very old; dated at 4000 - 5000 years by ^{14}C

- Water flow into the decline low compared to predictions; applies to both sandstone and schist
- Bores above the decline show no response to construction of the decline
- The unconformity between the schist and sandstone is dry

These observations confirm that the permeabilities used were reasonable and conservative

STORAGE OF TAILINGS

RECOMMENDATION 10

Present results as cumulative probability plots

- Cumulative probability plots have been included in the Supervising Scientist's response

STORAGE OF TAILINGS

RECOMMENDATION 11

Geochemical research results to be included in three dimensional groundwater modelling

- ERA is currently conducting the recommended geochemical research
- 3-D modelling, including the results of the geochemical research, is a requirement on ERA prior to final approval

STORAGE OF TAILINGS

RECOMMENDATION 12

Extend groundwater modelling to 10,000 years

- 10,000 year results presented in Supervising Scientist's response
- Under worst case assumptions,
 - uranium into floodplain each year is a very small fraction of that recycled naturally
 - sulphate remains below natural concentrations

GENERAL ISSUES

RECOMMENDATION 13

Waste rock erosion to be assessed

- Previously assessed by the Supervising Scientist
- With no controls, sediment load in Swift Creek would increase by 40%
- Progressive revegetation will reduce erosion by more than a factor of ten. The impact on Swift Creek will be negligible

GENERAL ISSUES

RECOMMENDATION 14

Extend risk assessment to 60 years

- · Assessed in the Supervising Scientist's response
- · No significant change in risk estimates for the ERA proposal

GENERAL ISSUES**RECOMMENDATION 15****Landscape scale ecological risk assessment to be carried out**

- · Landscape scale ecological hazard analysis carried out in response
- · Concluded that only significant hazard is erosion of the waste rock dump
- · This issue already assessed by Supervising Scientist; the risk is small

GENERAL ISSUES**RECOMMENDATION 16****Assurance sought on adequate rehabilitation fund**

- · Approval of the Jabiluka Project requires a Bank Guarantee to cover government estimated cost of rehabilitation
- · This ensures that the full cost of rehabilitation will be covered even if ERA becomes bankrupt at any time

GENERAL ISSUES**RECOMMENDATION 17****Commitment to long-term monitoring needed**

- · Government approval contains a provision for long-term monitoring
- · Monitoring program will be reviewed regularly

SUPERVISING SCIENTIST'S CONCLUSIONS

- · All ICSU recommendations have been or are being implemented
- · The natural values of Kakadu National Park are not threatened by the Jabiluka project

Statement by Thailand

Mr Chairman,

Permit me to refer to my intervention at the Kyoto Committee meeting last December. Although I raised a number of points, the thrust of intervention was to seek the opportunity for the Government of Australia to provide their side of information so that the Committee is in a position to make an informed decision. I did this in conformity with the legal maxim, *audi alteram partem*, that no one shall be condemned unheard, which is one of the principles of natural justice.

Now at this extraordinary session of the Committee, we have at our disposal relevant documents from both sides as well as the Review of an Independent Scientific Panel of the scientific issues associated with the proposed mining of uranium at Jabiluka. We are at this session in a position to understand the overall situations and address this issue objectively, provided that we distance ourselves from the emotional aspects surrounding the issue.

I shall recapitulate the following points:

1. Jabiluka, Ranger, and Koongarra are not and have never been part of Kakadu World Heritage area, although they are enclosed within the World Heritage site. For the reason of the predated three mining leases, these three enclaves are not included in the three-stage nomination and inscription of Kakadu as World Heritage property. Nevertheless, if mining in any of these enclaves affects the integrity of the World Heritage property, relevant provisions of the World Heritage Convention and roles of the Operational Guidelines must be applied for the protection and conservation of the World Heritage property.
2. Mining at Ranger has been in continuous operation for two decades with no reported adverse effects causing deterioration of the values of the surrounding World Heritage site. Presumably, the protection regime put in place at Ranger works effectively.
3. In comparison with the Ranger open-cut mine, the Jabiluka project entails an underground mine and ten times smaller and the Ranger mine. The Report of the Supervising Scientist examined all technical and scientific aspects of the Jabiluka mine proposal and concluded that the natural values of Kakadu are not under threat from the Jabiluka mine development. The review of this Report by an Independent Science Panel established by the International Council of Science (ICSU) did not affirm the existence of severe ascertained dangers to the Kakadu World Heritage values, although the panel considered that there remained additional measurements and analytical activities that should be undertaken. The Australian Minister of Environment and Heritage, has accepted in full all of the recommendations made by the Australian and Supervising Scientist as well as those of ICSU for implementation and incorporation into the design of the Jabiluka mine project. Thus the enhanced environmental protection regime governing Jabiluka mine and the Kakadu World Heritage property is ensured.
4. Concerning the socio-cultural and economic conditions of the Aboriginal communities living in Kakadu as well as the cultural values of the World Heritage site, the Australian Minister of Environment and Heritage has indicated in his letter of 8 July 1999 to the Chair

that his Government has developed a series of additional measures to deal with the issues of concern. The initiatives include the implementation of the Kakadu Regional Impact Study; Cultural Heritage Management Plan; cultural landscape nomination; economic benefits flowing from sequential mining development; and transfer of management responsibilities to traditional owners. It should be noted that some of these issues are domestic matters and some are matters under other international instruments, and are therefore outside the scope of the World Heritage Convention.

In consideration of the points as stated in 3 and 4, and in terms of impartiality and objectivity, there seems to be no valid ground for including Kakadu in the List of World Heritage in Danger.

Be that as it may, it is conceivable that one may still argue for inscribing Kakadu on the List of World Heritage in Danger except on the condition that Australia discontinues the Jabiluka mine project. Such an attitude and conditionality amount to taking it for granted that the measure of entering a World Heritage property on the List of World Heritage in Danger is a punishment. This is contrary to the spirit and the provisions of the Convention and the Operational Guidelines requiring a programme of corrective measures to be implemented for the conservation and rehabilitation of World Heritage property entered on the List of World Heritage in Danger.

Mr Chairman, I shall conclude by clarifying one crucial legal point involved in the context of what I have stated. I hold the view, as also stated in the Committee session in Kyoto, that the World Heritage Committee has the authority under the Convention (Article 11, paragraph 4, the last provision) to make a new entry in the List of World Heritage in Danger at any time, *in case of urgent need*, without the consent of the State Party concerned. The focal point of significance of this provision lies in the phrase "in case of urgent need". This means that even if the World Heritage values of Kakadu are not in danger at this moment of time from ascertained or potential threats and thus not on the List of World Heritage in Danger, but at any time in the future if the mining activities at Jabiluka happen to cause damage to the values of Kakadu, this constitutes the case of urgent need. Thus the World Heritage Committee has the authority to inscribe Kakadu on the World Heritage List in Danger without the consent of Australia. However, if the Jabiluka mine project is considered a potential danger but has not yet actually caused a damage to the value of Kakadu, this is not a case of urgent need. For this reason Kakadu can not be included in the World Heritage List without the consent of Australia.

Thank you, Mr Chairman.

Statement by Japan

1. The Delegation of Japan has listened with extremely good care and interest to the interventions by the various consultative bodies as well as the scientists both from Australia and ICSU. Certainly the points made by these previous speakers included reference to uncertainties still remaining, about scientific aspects. As well they included very serious concern about the negative impact upon the living culture of Aboriginal traditional owners or Aboriginal community that are quite relevant.
2. I recall that the general atmosphere in Kyoto was very much, more or less, a consensus atmosphere, very much inclined to take immediate action to inscribe this property upon the Danger List in the light of concerns that I just mentioned a few minutes ago. Although these concerns are still remaining I agree. However the Delegation of Japan is very much interested in the developments made during the last six months, particularly during last week. These developments are quoted in the decision by the Bureau. Maybe some part of the scientific part of the Bureau decision needs to be reconsidered on the basis of the intervention by Professor Wilkinson. Nevertheless there are a number of developments as stated in the Bureau decision:
 - a) The first one is the announcement by the Australian Government to cancel the planned parallel commercial scale mining by postponing the commercial full scale mining at Jabiluka to year 2009. I think that this avoidance of parallel commercial mining may deserve some of important issues even not if satisfactory but that gives answer to this. Of course this is not a perfect and 100% satisfactory answer. Nevertheless the Japanese Delegation note with great interest that this is a good step for correcting the negative impact;
 - b) Secondly, the Japanese Delegation note with pleasure that some even preliminary, but some start of dialogue has just started last week. To my knowledge around three rounds of talks between the Australian Delegation, particularly Senator Hill, and Aboriginal traditional owners took place. This was also referred to by Madame Yvonne at the outset of this morning's session. The Japanese Delegation attaches particular importance to this process of trust and confidence building process which lacked to this date in dealing with this important subject.
 - c) Thirdly about scientific aspects. I understand very well from the intervention by Professor Wilkinson a genuine dialogue between the Australian Supervising Scientist and ICSU's Independent Scientific Panel did not yet start. He is proposing such a dialogue in the second phase in the year 2000. But nevertheless over six months I noticed that tremendous work was made by the Australian Supervising Scientist in the form of certain preparations. Also very good work even under the time constraint by ICSU's independent panel. Under the current circumstances, as stated repeated by Professor Wilkinson there is still not sufficient availability of data, and the exchange of comments or proposals or recommendations are in a preliminary stage. But such an international exercise in scientific deliberations over the last six months has resulted in many outputs and observations presented to this Committee.

3. The view of the Japanese Delegation is that:
- a) it is the time for this Committee to encourage this development (see a) to c) above) to be pursued with sincerity from parties concerned.
 - b) We need some time more to watch closely the further developments to be made in the coming months before taking any decision.
 - c) As a reminder, the World Heritage Committee has the prerogative to inscribe a property on the Danger list at any moment. And if as the Thai Delegate mentioned, if further developments are not satisfactory ones or if pursuit of such development were not implemented then this Committee can recourse to the exercise of this prerogative.
 - d) The work of the World Heritage Committee is not to hunt properties one by one for mechanical inscription of a property upon the in Danger List. Instead our task is to seek with full sincerity and with full efforts corrective measures. Listing on the in Danger List and deletion from the World Heritage List are to the end and will be the last resort for this Committee. Again for our work in the coming months, or coming years, the distinguished observer of ICOMOS made quite useful recommendations and suggestions - such as for this Committee to announce a more clear message to respect the value of living culture or to recommend the Australian Government to have a better established framework of a dialogue with Aboriginal traditional owners.

In conclusion, the Japanese Delegation is of the view that it is not the time for this Committee to take immediate action to inscribe this property on the Danger List. Instead the task before this Committee is to recommend various actions to be pursued by the Australian Government and recommend other organisations such as ISP of ICSU as well as the Australian Supervising Scientist to pursue their work. In this respect the proposal made by Professor Wilkinson on behalf of the ICSU experts is quite a useful and interesting one in pursuing this scientific work on the basis of three phases in the years coming.

Statement by France

Je vous remercie Monsieur le Président.

Je crois que notre Comité avait pris une bonne décision à Kyoto en repoussant de six mois le moment où nous devions décider définitivement sur cette affaire. A la fois parce qu'il me semble que ces six mois ont été mis à profit pour recueillir une masse d'information considérable qui éclaire très utilement le Comité, et d'autre part parce je crois que l'esprit un peu trop conflictuel qui régnait à Kyoto a fait place ici à une volonté manifeste de trouver un terrain de dialogue beaucoup plus constructif.

Alors, je crois que nous devons tous, tout le monde du Comité remercier très vivement tous ceux qui ont travaillé pendant ces quelques mois et pendant des délais assez brefs, précisément pour mieux informer le Comité. Je voudrais saluer tout particulièrement le travail de grande qualité fournis par les organes consultatifs. Parce que même si je ne partage pas intégralement leurs conclusions, je considère qu'ils ont soulevé toute une série de points de première importance, et souvent des points doctrinaux, qui mérite une réflexion approfondie, et j'y reviendrai tout à l'heure. Bien entendu, je remercie aussi l'Etat-partie pour s'être engagé dans cette forme de dialogue constructif avec le Comité, conformément à l'esprit de confiance qui doit régner entre nous. Je regretterais simplement qu'il n'ait pas été répondu à l'appel que notre Comité avait lancé à Kyoto à suspendre les travaux jusqu'à la présente session.

Néanmoins, je crois que c'est ainsi que nous devons procéder avec sérieux, sérénité, sans nous laisser influencer par des pressions extérieures, en évitant tout risque de politisation abusive. Il nous appartient de prendre aujourd'hui une décision, une vraie décision, une décision qui ne soit ni cosmétique, ni dilatoire. Il faut qu'elle soit claire et basée sur des engagements contraignants.

Qu'est-ce que c'est qu'une bonne décision ? C'est simple; c'est évidemment celle qui renforce le plus efficacement la protection de Kakadu. La France souhaite que le Comité parvienne à cette décision par la voie du consensus. Bien sûr il n'y a de consensus possible que si la crédibilité, l'autorité de notre Comité, et les principes de la Convention sont intégralement préservés. Tout ce qui tendrait à les affaiblir n'aurait pas notre consentement. Mais d'un autre côté nous devons également prendre en compte, les explications, les initiatives, les propositions qui ont été formulées par l'Etat-partie, et prendre en compte aussi les difficultés qu'il rencontre dans la gestion du bien, car nous ne sommes pas un tribunal ou une cour de justice.

Notre objectif c'est d'aider l'Etat-partie à faire face aux problèmes qu'il rencontre dans le stricte respect de ses obligations. Evidemment, en contrepartie le Comité attend des autorités australiennes qu'elles fassent tout ce qui relève de leur compétence pour favoriser cette solution. J'ai l'impression que nous avons bien progresser et que les discussions qui ont eu lieu au Bureau la semaine dernière et encore aujourd'hui dessinent les bases d'un consensus conforme aux principes que je viens de rappeler. Les autorités australiennes ont incontestablement fait un mouvement en direction des recommandations émises à Kyoto, et manifestées par plusieurs gestes, leur bonne volonté.

Si je comprends bien le sens de leur proposition, l'Australie s'engage à différer l'exploitation de la mine de Jabiluka et à mettre à profit la pause ainsi ménagée, pour d'une part, résoudre les questions scientifiques en suspend, et nous avons vu qu'elles sont nombreuses et complexes, et d'autre part, régler le contentieux actuel avec les communautés aborigènes. Et de ce point de vue j'ai entendu dire que le dialogue avait été repris avec la communauté Mirrar, et je m'en réjoui et je suis heureux que le Comité ait entendu Madame la représentante de cette communauté. Ce qui est tout à fait d'ailleurs dans ses attributions, parce que je crois qu'il doit veiller lorsque le dialogue est interrompu à essayer de le renouer entre les parties. Je crois que l'économie générale d'une solution de ce type pourrait convenir à la France dès lors bien entendu qu'elle est assise sur, encore une fois, des engagements fermes, précis, vérifiables, assortis le cas échéant d'un calendrier.

Il y a quelques questions qui méritent à mon avis encore d'être éclairées pour être bien sûr de quoi l'on parle. En particulier, le Sénateur Hill a dit tout à l'heure qu'il y aurait une petite phase de chevauchement mais pas d'exploitation commerciale pleine et entière entre Jabiluka et Ranger. J'aimerais en savoir un petit peu plus sur ce qu'est cette phase de chevauchement, et en particulier à quoi répond l'exploitation de mille tonnes annuelle qui est prévue à partir de 2001 :

- Est-ce que c'est une exploitation de caractère commerciale ?
- Est-ce que c'est une exploitation destinée à faire des tests ?
- Je ne suis pas spécialiste évidemment, mais je crois qu'il est bon que l'on ait les idées très claires sur ce à quoi l'on veut aboutir. Je voudrais également être sûr d'avoir bien compris qu'il s'agit de renoncer à toute forme d'exploitation avant 2001, c'est à dire de ne passer à une forme d'exploitation que lorsque les principaux problèmes de nature à la fois scientifique et culturelle auront été résolus.
- Est-ce que ça signifie qu'avant le passage de cette phase de 2001, le Comité sera chargé de vérifier que ces conditions ont bien été remplies ?

Je crois qu'il s'agit là de précisions qui visent encore une fois à faire en sorte qu'il n'y ait pas de malentendu, pas d'ambiguïté, et qu'on ne se retrouve pas comme nous l'avons été depuis quelques temps dans des débats inextricables. Je pense d'ailleurs qu'un certain nombre de propositions qui ont été faites de façon très opportune par ICOMOS sur la mise en place d'un plan de management, sur la nécessité de faire une cartographie des sites culturels, sont également un élément très important pour aller dans le sens de la confiance retrouvée, je dirais que la confiance n'a jamais manqué, mais il est vrai qu'il est bon à certains moments de la renforcer. Je voudrais également que nous méditations la leçon de Kakadu. Au-delà de Kakadu il me semble que nous devrions prendre un peu de recul pour éviter la répétition de semblables affaires.

Premièrement, certains l'ont dit avant moi, il ne faut pas que la décision que nous prendrons donne l'impression, ou soit interprétée comme une forme de renoncement de la part de notre Comité à sa prérogative d'inscrire un site sur la Liste en péril. Et je crois qu'il faut dire à ceux qui invoquent l'inscription comme une sanction, ou à ceux qui la redoutent comme une marque d'infamie qu'ils commettent une erreur d'appréciation, ce n'est pas ça l'esprit du patrimoine en péril.

Il serait important que notre Comité le rappelle assez fortement. Je crois que nous devons être désormais très vigilants lorsque nous inscrivons un bien pour définir les règles que nous établissons et les obligations que souscrit l'Etat intéressé, afin d'assurer dans la durée la

cohérence juridique de nos décisions. Et sur ce point, je me réfère à ce qu'à dit excellemment le distingué délégué de la Thaïlande, qui en ces matières est orfèvre. Je crois en effet que lors des sessions qui ont conduit à l'inscription du site, un certain nombre de choses n'ont pas été suffisamment clarifiées, sans doute. Et c'est pourquoi, on a à discuter aujourd'hui de problèmes relatifs au statut, au régime juridique des enclaves ou à la possibilité ou non d'exercer une activité minière.

Troisièmement, nous devons également réfléchir à ce qui est une contradiction croissante entre la stabilité des normes juridiques de la Convention, et l'évolution des sensibilités ou de la conception même du patrimoine. L'affaire de Kakadu en est une illustration exemplaire, on soulève aujourd'hui toute une série de questions qui sont certainement pertinentes, relatives par exemple à la localisation des sites sacrés, ou à la validité du consentement donné par les propriétaires traditionnels, mais qui avait été passées sous silence en 1981, 1987, et 1992. D'ailleurs, et je le dis sans esprit polémique dans cette affaire, tout le monde a changé de position depuis le moment de l'inscription : l'Etat-partie, les organes consultatifs, et peut-être pas notre Comité, je l'espère en tout cas.

Donc, il ne faut pas que la mise en oeuvre de la Convention soit tributaire des changements de politique, de doctrine ou d'intérêt des uns et des autres. Parce qu'on risquerait par ce biais de rentrer dans une logique de rétroactivité qui selon moi risquerait d'altérer la sécurité juridique que les dispositions de la Convention confèrent aux Etats détenteurs de biens inscrits. Mais chers collègues je vous fais parts de ces remarques qui sont un peu extérieurs à la décision que nous allons prendre, mais je crois que c'est aussi une façon de faire un bon usage du problème compliqué qui nous est posé aujourd'hui. En tout cas et en conclusion, je rappelle que la France considère que les bases pour arriver à un consensus nous paraissent largement établies sous réserve encore une fois que soient précisés un certain nombre d'engagements, et en tout cas la France, pour sa part, soutiendra toute solution allant dans ce sens. Je vous remercie.

Statement by Canada

The issues of Kakadu National Park are very complex, involving a broad array of natural and cultural heritage matters. They have really presented, I think a challenge to States Parties as individual members, because we each have in our own countries different but similar situations, and to the Committee as a whole, to the Advisory Bodies and ultimately to the effectiveness of the Convention itself. Canada wishes to express its appreciation to all those who have contributed to improving our understanding of these complex matters. I would particularly like to signal the tremendous amount of work done by the Government of Australia to meet the requests of the Committee from its Kyoto meeting, the World Heritage Centre, the scientific advisory bodies, the Independent Scientific Panel, the Bureau discussions last week, today's intervention from the Mirrar people and a letter that we have received today from the mining company itself.

Canada wanted to recall that in 1972, the World Heritage Convention was negotiated among State Parties as an instrument of international co-operation, to protect heritage sites of outstanding universal value. It is a carefully crafted document that strikes a balance between the sovereignty of State Parties (art. 6) and their duty to co-operate internationally, and I draw your attention particularly to Article 6 which I regard to be a key article of the Convention. The Convention focuses not on sanctions, as other Delegates have pointed out, but on means to share expertise, to offer technical support and encourage constructive dialogue. As some have said, the Convention is not a tribunal, but an instrument of co-operation. It works through encouraging dialogue and identifying measures to improve the protection of World Heritage sites as the delegate of France just mentioned.

In that context, Canada appreciates the serious efforts that Australia has made to respond to the issues raised by the Committee about Kakadu National Park at Kyoto. As many here know, Australia has a track record of strong participation in the work of the Convention. And in addition to the presentation of this morning, I would note the strong participation of the head of Delegation over a number of years on the work of the Consultative Body, to improve the Operational Guidelines, ensure financial probity through the financial audit and to improve the management of the World Heritage Centre through the Management Audit.

In the case of Kakadu I think Australia has listened to the concerns raised by the World Heritage Committee and has responded with many measures that they have proposed in document CONF 205/INF. 3G, called "Protecting Kakadu National Park". I have also noted the positive commitments of the mining company in their letter of this morning and the Ministers additional remarks that he made today.

In reviewing the Bureau recommendation of last week, which clearly offers a basis for moving forward in this matter, Canada wishes to make the following two specific suggestions:

1. On the matter of science, we agree that there were scientific uncertainties before this session in Paris and probably continue to be some but we are very satisfied with the Australian Governments commitment, contained in WHC-99/CONF.205/INF 3G, to

implement fully all the recommendations made by the Supervising Scientist and the international Independent Scientific Panel. Therefore, like Thailand, Canada considers that articles 1(c), 2 (c) and 6 of the Bureau recommendation require some reworking and possible deletion of parts of them.

2. Our second specific comment about the Bureau recommendation is with regard to the Cultural Heritage Management Plan. We believe, and we agree with the Government of Australia, that article 4 of the Bureau recommendation should be simplified. Australia has a clear legal framework and well established processes to develop a Cultural Heritage Plan. In addition, we do take note and welcome the Australian Government's recognition of the primordial participation of the Aboriginal people in general, and the Mirrar people in particular, in the development of this plan and also to establish a Reference Group to include key stakeholders and ICOMOS. The Government might wish to add ICCROM to that list, as the other advisory body in the cultural area, to this Reference Group.

Additional matters that the Committee might wish to follow over time are found in WHC-99/CONF.205/3G. I would think that the ones the Committee would particularly want to follow would be the Government's offer to reduce by half the size of the Jabiru town site, also some of the initiatives that have been set forth to address social and cultural concerns of the Mirrar people and the offer to produce a monitoring report for 31 October 1999 and thereafter annual monitoring reports. These are key indicators that the Committee may wish to be informed about as the situation progresses.

Finally, and most importantly, we come to the needs and concerns of the traditional owners, the Mirrar people as expressed by Yvonne Margarula the Senior traditional owner, and her representatives over the last week. Like Japan we support the Bureau observation (2b) as Japan, and appreciate the efforts of the Mirrar and the Government to have taken the opportunity of this Paris meeting to open a new dialogue. Particularly important is the commitment of the Australian and Northern Territory governments to ensure that a significant pause is provided, so that there is an opportunity for building trust and confidence. From our experience in Canada, discussions between governments and aboriginal peoples require a lot of time, if they are to be meaningful. The commitment of the Government and ERA to work with the Mirrar people to establish a full dialogue and to involve them in seeking solutions to significant cultural and social matters offers a constructive way forward. The Committee will want to follow, with diligence, the developments of this dialogue.

Canada is reminded of the manner in which serious threats to the Galapagos Islands have been addressed through dialogue and discussion between that State Party and the World Heritage Committee over the last few years. Indeed, the Minister of Environment for Ecuador gave it such priority that he personally came to the World Heritage Committee meeting in Merida, Mexico (as the Minister has come here today and this week) and undertook measures to address threats to the site. We have since seen a dramatic turnaround at the Galapagos World Heritage site. This was a clear demonstration of the strength and effectiveness of the Convention.

As for Kakadu World Heritage site, Canada respects the views of the Mirrar people and like France, Canada appreciates the rigor of the advice of the Advisory Bodies and the Independent Scientific Panel. Nonetheless, Canada believes that the commitment of the Government of Australia and the mining company are such that an appropriate response, already expressed by Japan, Thailand and France at this meeting of the World Heritage

Committee, is to support constructive steps towards protection of Kakadu World Heritage site. Australia has clearly indicated that it will report on the situation at the December meeting in Morocco and in subsequent years.

In closing, I would like to share my delegations view that, despite the difficulties and challenges we are encountering here, the constructive dialogue and progress made at this meeting are proof of the strength and viability of the World Heritage Convention.

Statement by the United States of America

Thank you Mr Chairman,

The United States agrees with the eloquent statements made by our distinguished delegates from Japan, France and Canada.

The United States has listened very carefully, reviewed all of the material and we acknowledge that while inscription on the List in Danger may be appropriate under paragraphs 82 and 83 of section III of the Operational Guidelines, the United States feels that in recognizing the importance of maintaining the credibility and spirit of the Convention, and out of respect for Australia's sovereignty, that the concerns raised here today can be addressed adequately without placing Kakadu on the List in Danger.

Rather, paragraph 86 provides a mechanism for the development of consensus program for corrective measures established by working with Australia. After all, the purpose of this Convention is to protect World Heritage Sites in the most effective way possible.

The United States would also like to thank the Australian Delegation - not just for their hard work in the past six months since Kyoto, but for their outstanding efforts this week. They have conducted themselves in a manner that should be respected, admired and appreciated by all of us Committee members.

I also must give credit to the Bureau and other Committee members for the thoughtful manner in which they have approached this difficult task.

Lastly, I'd like to strongly echo the distinguished Delegate of Canada's excellent characterisation and recognition of the importance of the Government Australia and the Mirrar taking the opportunity to open what we all hope will be a fruitful and continuing dialogue.

Thank you.

Statement by Zimbabwe

Mr Chairman,

Zimbabwe wants to add its voice to the call for an amicable resolution of the Kakadu issue as indicated by Japan. It was with great pain that Zimbabwe decided to back the decision to put Kakadu on the World Heritage Properties in Danger. It would even be more painful today to see that wonderful site inscribed on that List. We subscribe to the view that it may not be necessary to arrive at that conclusion and therefore we strongly advocate for a way that will avoid such a scenario while at the same time satisfying the legitimate concerns expressed by the World Heritage Committee in Kyoto.

Zimbabwe, and this has been underlined already, sees this as a test case. The World Heritage Convention stands on two feet: one political because States Parties are political organs and the other professional because the natural and cultural heritage at stake requires an incisive and calculated approach. All along, Zimbabwe has underplayed the political foot, and thereby entrusting its fate in the hands of experts who are in the natural and cultural heritage field. We strongly believe that this should be the case. I wish to give credit to the Advisory Bodies on their well done and convincing evaluation.

The Kakadu issue poses for us great challenges as has been alluded to by the Mirrar representative this morning. To what extent is it political and to what extent a purely cultural heritage issue?

We face in our case the Victoria Falls problem which was on the agenda in Kyoto and which was also discussed by the Bureau a few days ago. Kakadu will provide points on how best we should be able to resolve our issue.

We also have the Khami Ruins, which the World Heritage Committee generously provided funding for because it was deteriorating and the World Heritage Committee warned us of the dangers it was facing. Was it an act of bad faith we now ask when we accepted that listing? In essence, Mr Chairman we are now asking ourselves, is it humiliating to have a property on the Danger list or is it an honour so that one can be able to correct what needs to be corrected? We believe Kakadu has the ingredients for a possible answer. We are here not to look at Kakadu *per se* but we are looking at ourselves for solutions not just for but for the future. Let us not set a wrong precedent. As an African coming from a country which went through similar violations of its cultural values by European settlers I wish to appeal to the Australians to respect the values, the sacred values of the Mirrar people and to increase its dialogue with those people. We, Mr Chairman, also think that a possible solution lies in the ICSU three phase approach and we wish to emphasise that there should be a moratorium on the mining activities until the uncertainties that have been shown today are cleared and the Aboriginal concerns are also addressed in a more serious manner. I thank you.

Statement by Mexico

Thank you Mr Chairman.

Twenty-seven years ago the UNESCO Member States agreed to apply a co-operation scheme for the conservation of the World Cultural and Natural Heritage.

Co-operation remains and must continue to be the main tool for the conservation of the World Heritage.

It is therefore a matter of concern for my Delegation to note that for some sectors the co-operation approach implies that the in Danger List should be changed for a system to judge national policies and measures. We cannot agree on that intention.

Without going in to the specifics of the Kakadu case on behalf of my Delegation I would like to make the following remarks:

- a) We express our appreciation for the intensive work that has been done by the Centre and its Advisory Bodies and for the efforts of the Australian Government to fulfil its obligations under the Convention.
- b) Each case should be considered on its own merit, therefore, the Kakadu case must not establish a precedent for the consideration of future cases.
- c) In the absence of explicit changes in the objectives of the World Heritage Convention and appropriate amendments in its Operational Guidelines, there is not room for converting the List of sites in Danger as a political tool to punish States Parties for their actions.
- d) The adoption and implementation of a programme of corrective actions as provided in Operational Guideline Paragraph 85 must remain as a responsibility of the State Party concerned. The actual Operational Guidelines of the Convention do not provide for the adoption of a prescriptive approach. Here again I would like to reiterate the Kakadu case cannot and must not imply a *de facto* change in the principles and criteria that we have agreed to co-operate in the conservation of World Heritage.
- e) A programme of corrective actions can only be put in place in cases in which a property is inscribed in the List of World Heritage in Danger as stated in Paragraph 85 of the Operational Guidelines. In the absence of such a decision there is not room for a detailed and long term follow-up process.
- f) Finally, for any case under consideration of this Committee it is essential that the full agreement and consent of the State concerned with the decision adopted by the Committee. This is essential to maintain the spirit of co-operation of the World Heritage Convention. Thank you.

Statement by Cuba

Merci Monsieur le Président, je serai très brève. La ratification de notre critère avec la réunion du Bureau est aujourd'hui la même. Parce que je lis attentivement le document de l'évaluation scientifique supérieur. Quand on lit ce document, on est sûr qu'il y a des problèmes, qu'il y a des dangers à Kakadu. C'est pour ça que je suis d'accord avec les organismes scientifiques, comme ICOMOS , IUCN, et ICCROM que c'est notre organisation consultative, que nous devons appuyer dans ce critère, car ils sont l'organisation qui a fait que la Convention s'est exprimée. C'est pour ça que je considère que nous, en tout cas, voterons pour le critère des organisations consultatives.

Statement by Niger

Merci Monsieur le Président.

Je vais essayer d'être très bref. Les orateurs qui m'ont précédé ont déjà dit l'essentiel de mes idées je voudrais insister sur quelques points tout simplement. Monsieur le Président, donc ma délégation a lu avec le plus grand intérêt les documents qui ont été soumis à notre appréciation, elle a également suivi les débats qui se sont tenus au sein du Bureau, mais également les débats qui se sont tenus ce matin ici même. De la lecture de ces documents et du suivi de ces discussions nous avons retenu un certain nombre de points, deux essentiellement.

Nous avons retenu que sur Kakadu, certaines inquiétudes sont prouvées, d'autres sont potentielles, existent sur l'environnement, d'autres aussi existent sur les valeurs culturelles auxquelles sont attachées les populations locales. Mais nous avons aussi retenu Monsieur le Président que le gouvernement australien a fourni beaucoup d'efforts pour remédier, en tout cas à certaines de ces incertitudes qui sont prouvées, et que le gouvernement australien est également disposé à aller de l'avant pour chercher une solution équitable à tous les problèmes qui se posent.

Donc cela dit Monsieur le Président, je voudrais insister sur deux petits points D'abord demander à ce que notre Comité fasse très attention, qu'il fasse attention pour servir la Convention. Il ne faudrait donc pas qu'on prenne des décisions précipitées, nous ne devons pas transformer, certains l'ont déjà dit avant moi, le Comité en tribunal. Nous ne devons pas juger les parties, surtout nous ne devons pas nous immiscer dans des relations intérieures, nous devons faire extrêmement attention, parce que le cas qui nous est soumis est très délicat.

Délicat pourquoi ? Pour plusieurs raisons, mais j'évoquerai un seul. C'est que, nous parlons aujourd'hui d'exploitation d'uranium sur un site du patrimoine mondial, nous devons faire attention parce qu'il y a beaucoup de pays qui nous observent là où nous sommes, des pays en voie de développement notamment qui comptent essentiellement sur leurs ressources naturelles pour assurer leur développement. Or malheureusement, comme vous le savez Monsieur le Président, les membres du Comité, beaucoup de ces ressources se trouvent sur des sites du patrimoine mondial, des ressources vont être découvertes sur des potentiels sites du patrimoine mondial, donc nous devons faire attention sur la décision que nous devons prendre, parce que de cette décision dépendra la réaction future de ces pays qui nous observent.

Nous devons également faire attention, parce qu'il ne faudrait pas que la décision que nous allons prendre constitue une sanction ou paraîtrait comme une sanction, certains ont dit que ça peut paraître comme une sanction, d'autres ont dit non. Mais c'est vrai, nous au Niger nous avons un site qui est inscrit sur la Liste du patrimoine mondial qui est en péril actuellement le site de la réserve de l'Air et du Ténére. Ça n'a pas été considéré comme une humiliation pour nous, nous avons accepté, nous savons pourquoi le site est inscrit. Mais, les cas ne sont pas les mêmes, nous devons faire extrêmement attention et examiner les cas, cas par cas. Parce que quand un pays se sent humilié, quand il pense qu'on s'immisce un peu dans ses affaires intérieures, ce pays peut se sentir sanctionné.

Donc, en résumé ce que nous devons faire c'est d'aider les Etats membres, parce que c'est à eux qu'il revient en dernier ressort de protéger leur environnement, de protéger les valeurs culturelles auxquelles sont attachées leurs populations. Nous devons les aider. Quand un pays est prêt à aller dans ce sens, je pense que nous devons l'aider. Et pour conclure, je voudrais dire que les propositions du Bureau constituent pour ma délégation une base de travail, une base de consensus, parce que ces propositions me paraissent empreintes de prudence, mais également de sagesse. Elles font un peu la part des choses, instaurent une certaine équité entre les différents intérêts en jeu. Nous devons travailler un peu, faire le toilettage de ces propositions, dans le sens du dialogue qui est demandé ici. Je me félicite de la demande de dialogue que les scientifiques eux-mêmes ont demandé ici. Donc pour conclure, faisons attention, prenons une décision pour l'avenir, une décision durable. Je vous remercie.

Statement by Finland

Thank you Mr President.

The Delegation of Finland has naturally followed with great attention and interest the discussion during this morning. The Delegation of Finland also recognises and welcomes very much the information and all the actions made by the Australian Government to facilitate in resolving the many big problems of Kakadu.

Still this morning the Delegation of Finland was very concerned about the cultural values of Kakadu, not so much for the archaeological ones but even more for the intangible values of the Mirrar people. Now a draft concerning the Cultural Heritage Management Plan and it seems to give some hope that the concerns for the intangible values may be taken into consideration. The Finnish Delegation wishes that the work concerning Kakadu will be continued in confidence of all parties especially with the Mirrar people and the Government of Australia. The Delegation of Finland agrees with the recommendations of the Bureau but to be amended with the point of views of the different delegations here.

Statement by Italy

Merci Monsieur le Président, l'Italie se reconnaît surtout dans l'esprit et dans les suggestions présentées par la France et par le Japon.

Statement by Morocco

Merci Monsieur le Président.

Je vais essayer de ne pas être long aussi, comme l'ont fait certains de mes collègues délégués d'un certain nombre de pays. Mais je voudrais que vous me permettiez d'abord de saluer l'intervention de Madame la représentante du peuple Mirrar, qui a fait le déplacement pour nous parler officiellement au nom de ce peuple, et je crois que c'est là un point qu'il ne faut pas oublier. Je voudrais aussi adresser les remerciements du Maroc aux excellentes interventions, et aux dialogues engagés devant nous par les professeurs Wilkinson et Johnston, et en disant cela je ne voudrais pas revenir à tout ce qui s'est dit, car le Maroc s'inscrit tout à fait dans la ligne tracée à la fois par la Thaïlande, surtout le Japon et la France, et le Canada.

Il me semble Monsieur le Président, que le terme qui paraît avoir retenu l'attention de nous tous dans cette session, est celui de dialogue. Tous les intervenants l'ont employé pour illustrer ou expliciter la position de leur pays. Et nous le rappelons qu'au cours de la réunion du Bureau la semaine dernière, c'était le mot de confiance qui avait émergé dans nos discussions.

Pour être pratique Monsieur le Président, il me semble que le Comité doit maintenant adresser à l'Etat-partie, qui nous a d'ailleurs donné l'impression très claire d'encourager toute initiative visant à faire évoluer la question dans le sens positif, lui adresser une invitation explicite à prendre des mesures concrètes et démonstratives pour mettre en confiance le peuple Mirrar, et je me dis ici que les propositions de l'ICOMOS me paraissent tout à fait entrer dans le cadre de cet appel que nous devons adresser à l'Etat-partie, et je veux dire par là la mise en place d'une carte culturelle, la mise en place d'un plan de gestion le plus précis possible, conçu et mis en oeuvre avec les populations autochtones, ceci me paraît important. Il appartient aussi à notre Comité de faire sien, s'il était possible les propositions du professeur Wilkinson, qui appelle à la continuation du travail et du dialogue scientifique en trois phases comme il les a bien explicitées.

En conclusion Monsieur le Président, le Maroc appuie l'idée que le temps n'est pas encore à l'inscription de Kakadu sur la Liste du patrimoine en péril, car il y a manifestement, comme beaucoup de mes collègues ont tenu à le souligner, l'apparition de signes encourageants de prise en compte positive de différentes remarques soulevées par le cas de Kakadu. Et donc, nous appuyons tous les délégués qui nous ont précédés et qui ont insisté sur ce point.

Statement by Ecuador following the adoption of the decision by the Committee

Thank you Mr Chairman.

On the instructions of my Government I have a declaration to make after the decision.

The Government of Ecuador joins the consensus reached by the Committee with a positive but critical attitude, with the hope to co-operate and contribute to the better conservation of Kakadu National Park.

Nevertheless, the Government of Ecuador would like to support and underline the importance of the several technical and scientific opinions, including those of the consulting bodies of this Committee, which assert the danger and risk of Kakadu National Park due to the mining activity. The Government of Ecuador would also like to express its concern and solidarity with the situation that is facing the indigenous population at the site.

The Government of Ecuador considers it very important to take careful consideration of the qualified opinion of the advisory bodies of the Committee as well as the willingness of the States Party to follow and accept the recommendations of the World Heritage Committee.

In that sense, the Government of Ecuador considers, following the very clear and solid opinion of the distinguished delegate from Thailand this morning, that if a case of urgent need exists, a site could be, and should be, inscribed in the World Heritage List in Danger, according to Article 11 (4) (the final sentence) of the Convention.

This position, however, doesn't mean at all that the Government of Ecuador is not recognising the efforts of Australia in order to reduce the impact of the mining activity and, on the contrary, it encourages it to continue to do so.

**Statement by Mr Mounir Bouchenaki,
Director of the UNESCO World Heritage Centre**

Merci Monsieur le Président. Honorables délégués, à l'issue de cette session extraordinaire du Comité, je voudrais faire très rapidement parce que le temps est déjà très largement dépassé, au nom de tous mes collègues du Centre du patrimoine mondial, au nom du Directeur général de l'UNESCO, je voudrais remercier en premier lieu le Président Matsuura, qui depuis plus de six mois a travaillé sans relâche avec moi et avec l'ensemble de mes collègues particulièrement sur cette question.

Je voudrais également exprimer ma gratitude et celle de mes collègues pour M.Janos Jelen, Rapporteur, qui je dois l'avouer n'est pas un rapporteur habituel travaillant avec nous sans relâche il nous a apporté son concours précieux tout au long de la semaine qui vient de s'écouler.

Mes nouvelles responsabilités au Centre ont coïncidé avec l'organisation d'une session extraordinaire, immédiatement consécutive à la 23ème session du Bureau de notre Comité. Cela a été certainement pour le Centre et pour moi-même une expérience unique et en tout cas fort enrichissante.

Avec les représentants des autorités australiennes il n'y a pas eu de semaine depuis janvier de cette année sans échange de lettre, de fax, de E-mail et bien entendu de rencontres qui ont permis au Centre de jouer pleinement son rôle du Secrétariat de la Convention.

Avec nos organes consultatifs, avec l'ICSU, avec les représentants des ONG, nous n'avons cessé de faire en sorte que le Centre serve de relais et de point de contact dans une transparence totale pour l'ensemble de ce dossier.

Pour finir je voudrais, dire tout l'intérêt que le Directeur général a accordé à cette question relative à la protection du Parc national du Kakadu. Puis-je rappeler qu'il y a deux ans, l'UNESCO a organisé, pour la première fois, en coopération avec le Museum d'Histoire Naturelle de Paris, une exposition sur l'art rupestre australien et nous avons reçu, dans une salle similaire, une délégation d'aborigènes d'Australie qui - pour la première fois - ont accepté de présenter leur vision et leur interprétation de l'art rupestre dans les sites où ils continuent à vivre. Et je peux vous assurer que nous avons beaucoup appris, lors de ce séminaire et de cette exposition au Museum d'Histoire Naturelle. Cela montre, s'il en était besoin, combien il est important de prendre en considération la protection et la diffusion des cultures traditionnelles. Les débats de la semaine dernière et d'aujourd'hui constituent certainement pour la Convention de 1972 une avancée réelle. La Convention de 1972 est entre les mains des Etats. La protection du patrimoine est entre les mains des Etats, et le Secrétariat de l'UNESCO, le Centre du patrimoine mondial continuera de faire tout ce qui est en son pouvoir, et pour vous servir, et pour faire en sorte que cette Convention puisse aider à la protection, à la préservation et à la mise en valeur de notre patrimoine commun. Je vous remercie Monsieur le Président.