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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**35th meeting
Strasbourg, 6-7 March 2008**

**EUROPEAN OBSERVATORY OF RESERVATIONS TO INTERNATIONAL TREATIES:
LIST OF OUTSTANDING RESERVATIONS AND DECLARATIONS
TO INTERNATIONAL TREATIES**

Document submitted by the delegation of Australia



AMBASSADOR

AUSTRALIAN EMBASSY
AUSTRALIAN MISSION TO THE
EUROPEAN UNION
BRUSSELS

4 March 2008

Mr Rafael A. Benitez
Secretary of the CAHDI
Council of Europe

Dear Mr Benitez

I refer to your letter dated 17 January 2008 inviting Australia to participate as an observer state in the forthcoming meeting of the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) to be held in Strasbourg on 6 and 7 March 2008. Australia is grateful for the opportunity to participate in this meeting but regrets that attendance on this occasion is not possible. I also refer to your email to the Australian Embassy and Mission to the European Union in Brussels dated 21 February 2008 in which you provided Australia with an opportunity to submit its preliminary observations on a number of reservations and interpretative declarations which are to be considered by CAHDI at this meeting.

Australia's preliminary observations on the relevant reservations and interpretative declarations are outlined below. A decision on whether Australia will object to any of the reservations or interpretative declarations under consideration will require the approval of the relevant Ministers. We would be grateful for advice from the CAHDI Secretariat on the outcomes of CAHDI's consideration of these treaty reservations and interpretative declarations, including the views of CAHDI members and observer states.

Convention on the Rights of Persons with Disabilities (Disabilities Convention)

Reservation lodged by El Salvador on 30 March 2007

Australia's preliminary view is that El Salvador's reservation is of some concern as it contributes to precedents which may be used by States Parties to cite compliance with an internal constitution as a reason for lodging a reservation or interpretative declaration to a treaty, thus resulting in potential non-compliance with the relevant treaty on the basis of internal law (Article 27 of the Vienna Convention on the Law of Treaties (VCLT)).

In this case, however, Australia notes that El Salvador's constitution already protects many human rights and it is not clear which principles of this constitution might be prejudiced or violated by the Disabilities Convention. There does not appear to be anything in the constitution which obviously conflicts with the objects and purpose of the Disabilities Convention. Accordingly, an objection may not be warranted.

Reservation lodged by Mauritius on 25 September 2007

Australia's preliminary view is that an objection to Mauritius' reservation may be warranted on the basis that it undermines Article 27 of the VCLT, which provides that internal laws cannot excuse non-compliance with international obligations.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Australia's preliminary view is that Bahrain's declaration, lodged on 27 September 2007, is redundant as Article 8(1)(d) of ICESCR provides for the right to strike, provided this right is exercised in conformity with the laws of the country in question. However, an objection does not appear to be warranted in this case.

United Nations Convention Against Corruption (UNCAC)

Australia's preliminary view is that it is not necessary to object to the reservation lodged by Bahrain on 10 January 2008 or the reservations and interpretative declaration lodged by the United States of America on 30 October 2007 to UNCAC.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem

The object of this Additional Protocol is to establish a third universal and distinctive emblem for the Red Cross/Red Crescent Movement which has no religious, ethnic or political connotations so that national societies which do not use the red cross or crescent can join the Movement. Australia proposes to examine Israel's declaration, lodged on 22 November 2007, in light of this purpose.

International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention)

Reservation lodged by Egypt on 20 September 2005

In its current formulation, the meaning of the first part of Egypt's reservation to Article 4 of the Nuclear Terrorism Convention is unclear. It appears to address the second clause of Article 4.2 which excludes the application of the Nuclear Terrorism Convention from "the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law". It seeks to provide that where there is a violation of the rules and principles of international law by armed forces in the exercise of their duties, such violation may be covered by the Convention. That is, Egypt's reservation could extend the application of the Nuclear Terrorism Convention to include the activities of armed forces when they "violate the rules and principles of international law in the exercise of their duties".

If this interpretation is correct, it follows that the first part of Egypt's reservation on Article 4 would be incompatible with Article 4.2 and an objection may be warranted. A violation of the rules and principles of international law by armed forces in the exercise of their duties is governed by those rules and principles of international law. Accordingly, we consider that it is immaterial whether the armed forces violate the rules and principles of international law as Article 4.2 would apply to exclude the application

of the Nuclear Terrorism Convention in such a situation that is governed by those other rules of international law.

The second part of Egypt's reservation on Article 4 of the Nuclear Terrorism Convention appears to address the first clause of Article 4.2 which excludes the application of the Nuclear Terrorism Convention from the "activities of armed forces during an armed conflict" to the extent that such activities are governed by international humanitarian law. Again, as it is currently worded, the second part of Egypt's reservation is not clear and an objection may be warranted.

Egypt's reservation to Article 23 of the Nuclear Terrorism Convention would be acceptable to Australia as Article 23.2 allows States Parties to declare that it does not consider itself bound by the dispute settlement mechanism under Article 23.1.

Declaration and reservation lodged by Turkey on 14 September 2005

Turkey's declaration to Article 4 of the Nuclear Terrorism Convention seeks to limit "international humanitarian law" as that term is used in the Nuclear Terrorism Convention to the legal instruments to which Turkey is already party to. In Australia's view, the body of international humanitarian law includes treaties as well as customary international law. Accordingly, Australia considers that the current formulation of Turkey's declaration would modify Turkey's obligations under Article 4 and an objection may be warranted.

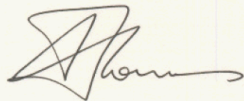
Turkey's reservation on Article 23 of the Nuclear Terrorism Convention would be acceptable to Australia as Article 23.2 allows States Parties to declare that it does not consider itself bound by the dispute settlement mechanism under Article 23.1.

Reservation lodged by the United Arab Emirates on 10 January 2008

The United Arab Emirates' reservation to Article 23 of the Nuclear Terrorism Convention would be acceptable to Australia as Article 23.2 allows States Parties to declare that it does not consider itself bound by the dispute settlement mechanism under Article 23.1.

Thank you for the opportunity to present Australia's preliminary views on these reservations and interpretative declarations. Australia does not object to the CAHDI Secretariat circulating this document to CAHDI members and observer states.

Yours sincerely



(Dr) Alan Thomas