

SUBMISSION NO 5



The University of Sydney

Faculty of Law



Dr Ben Saul BA (Hons) LLB (Hons) *Sydney* DPhil *Oxford*, Barrister

Director, Sydney Centre for International and Global Law
Co-ordinator, Master of International Law Program

173-175 Phillip Street
Sydney NSW 2000
Australia

DX 983, Sydney
Tel: +61 2 9351 0354
Facsimile: + 61 2 9351 0200
Email: bsaul@usyd.edu.au

Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
Parliament House, Canberra ACT 2600

By email: jsct@aph.gov.au

16 July 2007

Dear Committee Secretary

Please accept this brief submission to your review of the **Treaty between Australia and the Kingdom of Thailand on Mutual Assistance in Criminal Matters [2006] ATNIF 18**.

I make two short points. First, it would be more appropriate for Australia to mandatorily (under article 2(1), rather than discretionarily (as at present under article 2(2)), refuse assistance where a request is made with regard to an offence punishable by the death penalty.

In my view, in light of Australia's opposition to the death penalty, and the international movement over time towards the prohibition of the death penalty under international law, Australian officials should not enjoy the discretion whether to expose someone to execution.

Second, a further mandatory ground of refusal under article 2(1) should be added as follows:

- (#) there are substantial grounds for the Requested State to believe that executing a request may expose a person to a risk of torture or cruel, inhuman or degrading treatment or punishment.

Australia is a party to the 1984 Convention against Torture, which requires all State parties to prevent acts of torture 'in any territory under its jurisdiction' (article 2(1)), and not to return a person to a place where they face a risk of torture (article 3(1)).

There is no strict obligation on Australia not to render mutual assistance which may expose a person outside Australia (and not in Australian custody) to a risk of torture. However, it follows from the underlying purpose of the Convention that Australia should not, in good conscience, cooperate with foreign governments where such cooperation may lead to a real risk of torture by those foreign authorities.

Yours sincerely

Ben Saul