

## **For the Joint Standing Committee on Treaties (JSCOT):**

### **Inquiry into the United Arab Emirates treaty**

#### **Issue taken on notice:**

CLA took on notice, following a question by the chairman, Mr Thomson, whether we could advise the committee on other cases, like Rivera, where people complained about the equity of their case. We are not aware of any.

Our submission tried to draw the committee's attention more broadly to extradition requirements, emphasising the model treaty applies to any offence requiring more than one year's imprisonment.

During the hearing, CLA highlighted the lack of governance around the extradition process once a person had been extradited. Other witnesses confirmed that there is no mandated agency follow-up or information collected once an extradition occurs.

Given the paucity of information – and what would be reluctance by requesting governments to make public breaches of extradition conditions – it is difficult to know if and how many instances of this may have occurred. An abuse of process involving the death penalty is likely to become public, but the likelihood should not be considered a safeguard in lieu of active government inquiry and monitoring.

The extent of any problem is unknowable by external monitors with only volunteer resources like ourselves. Hence the real need for annual reporting by agencies such as A-G's and/or DFAT and/or AFP. Annual reporting would allow public monitoring but would also inform future decisions of JSCOT on new and renewable treaties, based on real examples of any problems.

After 35 treaties, JSCOT is not in a position to consider what aspects are working, and what are not, because there is no governance follow-up or re-assessing of changing risk. There has been no reporting on the success – or otherwise – of the existing treaties.

#### **Rights of the person being considered for extradition:**

The A-G's representative, Mr Steven Marshall, referred to rights of the person being extradited to a 'hearing'. We understand there is no 'hearing' in the legal sense of appearing before a legal officer (or Minister), with claim and counter-claim, and being legally represented.

CLA is not aware there is any right for the person to see the range of the 'information' presented against him/her, and in particular to see/know what the A-G's submission is to the Minister (this is secret information as far as the person being extradited is concerned). Such submissions could well contain errors of fact. This is like asking a person to fight for liberty with one hand tied behind his/her back, and both eyes closed.

## Can an extradited person be transferred to a third country?

A-G's appears willing to accept assurances that a country would not act contrary to a treaty regarding extraditing a person to a third country. This appears a somewhat naive trust as some countries do not feel bound to honour similarly-important assurances in other international agreements.

Even countries with strong and long-standing human rights protections, part of the European Union, appear to be not honouring treaties. The case of Hassan Mustafa Osama Nasr in Italy is an instance where international behavior norms are being ignored in the name of combating terrorism.

... more than a half dozen high-level officers of Italy's secret service who have also been indicted, all accused of in some way approving, masterminding or carrying out the kidnapping plan. The Italian government has tried to block the prosecution...

[http://www.nytimes.com/2008/05/15/world/europe/15italy.html?\\_r=1&oref=slogin](http://www.nytimes.com/2008/05/15/world/europe/15italy.html?_r=1&oref=slogin)

In this climate of changing relationships and justification for ignoring the norms, any assurance is somewhat illusory.

For example, high-tech equipment and parts supplied by the USA have been passed to a third country, against stringent export conditions and promises in formal state-to-state agreements: the USA found that these promises were broken, and that some high-tech parts turned up in roadside bombs targeting American (and Australian) servicemen in Iraq.

### **U.S. Alarmed as Some Exports Veer Off Course**

By ERIC LIPTON

New York Times, Published: **April 2, 2008**

WASHINGTON — Roadside bombings of American troops in Iraq were occurring with unnerving regularity when military investigators made a disturbing discovery: American-made computer circuits sold to a trading company in the United Arab Emirates had turned up in the bomb detonators.

That finding set off a clash with Washington last year when the Bush administration cited the diversion of the computer circuits to Iran, and eventually Iraq, as proof that the United Arab Emirates were failing to prevent American technology from slipping into the wrong hands. Administration officials said aircraft parts, specialized metals and gas detectors that have a potential military use had also moved through Dubai, one of the emirates, to Iran, Syria or Pakistan.

...

But the country, which is made up of the emirates Abu Dhabi, Dubai, Sharjah, Ajman, Al Fujayrah, Umm al Qaywayn and Ras al Khaymah, has deep economic and cultural ties with Iran, which is only about 70 miles across the Persian Gulf from Dubai. As many as 400,000 Iranians live in the emirates, many of them traders who track down goods in the sprawling consumer bazaar of Dubai and then re-export them to Iran, at times ignoring United Nations trade sanctions related to Iran's nuclear program and a broader United States embargo.

...

Ms. O'Brien's\* efforts helped jump-start criminal investigations into the diversion of American-made goods to Iran. As of last year, 58 inquiries, nearly half of the total, involved the United Arab Emirates.

\* *a compliance inspector from the USA*

[http://www.nytimes.com/2008/04/02/washington/02UAE.html?\\_r=1&scp=2&sq=united+arab+emirates&st=nyt&oref=slogin](http://www.nytimes.com/2008/04/02/washington/02UAE.html?_r=1&scp=2&sq=united+arab+emirates&st=nyt&oref=slogin)

CLA comments that a model treaty (or model international agreement) may not be appropriate for countries where there is a track record of not abiding by international agreements or UN sanctions, and a record of illegal transfer of sensitive items to a third country.

The culture – religious, legal, moral, social – in some countries is so radically different from the culture in Australia that assurances in one place do not have the same weight as assurances in the other. Similarly, the assurances given by long term allies can also be subject to unexpected re-interpretation or, at worst, total abrogation of an undertaking.

Australia itself is not immune to its agencies defying international sanctions, as the behavior of the Australian Wheat Board amply demonstrates.

It is a courageous assumption that all agreements would be honored to the letter of the law equally in all parts of the world.

CLA is extremely concerned that, for a variety of reasons, the headlong pursuit of 'model' agreements is ultimately lowering the quality and integrity of the agreements and the protections applying to anyone who becomes caught in the treaty's net. The ultimate effect is to lower Australia's standards, and to expose Australians to laws and codes we would not adopt in our own country

### **Who may be affected?**

It is unfortunate that the concentration is often on death penalty cases when discussing international treaties, and that police and security agencies emphasise drugs and terrorism as the motivators for the need for such agreements.

Death penalty cases are likely to be reported extensively in the media, as would major drug cases. Other cases, with penalties in the 1-5 year time frame, may not receive any publicity.

It is important to note that the extradition agreements apply to any offence with a potential one-year jail sentence, or longer. There is considerable risk that treaties with the UAE may become very sensitive agreements indeed, and that greater safeguards may be needed in this agreement because of the heightened risk due to UAE's central location, and its diverse relationships with Australia.

Since the UAE treaty was first proposed, in 1995, there does not appear to have been an updated assessment of risk and governance issues done.

The following developments have occurred in relation to the UAE since 1995: (they don't include the massive rise in Australian tourists and transit passengers, and military

personnel on R&R, for example, and does not take account of UAE citizens residing in, or traveling, through Australia):

The ANZ Bank is opening a branch in the UAE, because there are 45,000 Australians living in the vicinity.

Australian cricketers: Australian cricketers, including the Australian Test-level side, regularly play in the Sharjah one-day tournament.

Australian Rules footballers: A NAB Cup pre-season AFL game in 2008 was at the Ghantoot Polo Club between the Emirates-sponsored Collingwood and the Adelaide Crows.

The Australia Soccer Football team is due to play Iraq in a World Cup Soccer qualifier in Dubai this year.

It is not unknown for Australian cricketers and footballers to have difficulties with local laws, particularly involving relationships with females.

Halliburton: This major American company is now headquartered in the UAE. Australian employees of Halliburton, working in the Middle East, could be subjected to UAE law if Halliburton chooses to write contracts, or to seek have them litigated, in the UAE. There is a danger that extradition to the UAE may result in a person being convicted under UAE law, then convicted again subsequently for a different but similar offence under the law of another country where the person may have worked.

There is no protection for an extradited person once the extradition-related legal proceedings are over. In fact, an extradited person who is not convicted in the UAE could be turned over to a third country for the same offence. The monitoring of what happens to people Australia has extradited is critical to knowing whether examples like this occur.

Apart from the different integrity of decisions by officials in countries that are autocracies rather than democracies, any assumption that major corporations always act morally is certainly naïve based on the recent history of American and Australian entities operating in the Middle East, let alone the history of companies headquartered in the Middle East.

Universities: There are Australians teaching at UAE universities and places like the University of Wollongong in the UAE. It is not difficult to envisage someone teaching legal studies, or international law, or human rights, being caught up in disputed interpretations of, say, the rights of women.

NSW Police are also present in the UAE, training local police.

We are not confident that changed governance and risk management considerations have been adequately considered, if at all, in relation to this and similar treaties for sensitive parts of the world. It may be wise for JSCOT to recommend that a new 'Middle East model' treaty, or an 'other nations' treaty, be drafted from scratch. Certainly, reviewing changed risk and the probable need for enhanced governance, in relation to certain treaties would appear appropriate given the changed world circumstances since 2001, and since the UAE agreement was first proposed in the mid-1990s.

To say that the one form of agreement is used as model because a 'no evidence' approach means...

*...the short answer is: it does make it administratively and legally a lot more expeditious to conduct an extradition because you do not have the problems associated with ensuring that documentary material produced under the requirements of an entirely different legal system accord with Australia's legislative requirements for admissibility of evidence.*

– Steven Marshall, Attorney-General's Department, JSCOT TR16, 8 May 2008

That is to say that:

- Australia is happy to drop its customary legal standards for the convenience of the public servants who have to do the paperwork; and
- any old evidentiary standards of any old country are OK, because extradition 'information' (not 'evidence') doesn't have any standard to meet\*.

In the absence of our standards, only those of the foreign country apply. Effectively, we have imported their standards – and their laws – into Australia.

Worse, once we've extradited someone, there is no mandated follow-up procedure ...so we don't necessarily know what happens to people we have handed over on no evidence.

- *Except in the cases of the United States of America, Hong Kong, Israel and South Korea. CLA sees no reason why Australia's standards concerning the level of evidentiary proof required should be lower than the standards of these four countries.*

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