



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

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

Director, Sydney Centre for International Law

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

By email: jsct@aph.gov.au

19 June 2008

Dear Joint Standing Committee on Treaties

Re: Agreement between the Government of Australia and the Government of the United Arab Emirates Concerning Defence Cooperation

Thank you for the opportunity to make this submission. Closer bilateral defence cooperation is to be welcomed, as long as it does not diminish Australia's commitment to multilateral, collective security approaches through the United Nations. This submission makes two short points.

First, the requirement in **Article 1** of the treaty that Parties shall cooperate in accordance with their international obligations is welcome. In future bilateral defence cooperation treaties, however, such an obligation could be further strengthened by also specifying (in **article 7** of this treaty) that the personnel of the sending Party shall not only observe the national laws in force in the host country, but also public international law (and in particular, those branches which directly concern the individual, including international humanitarian law, international human rights law and international criminal law). This is particularly relevant, for instance, to ensure that visiting personnel respect human rights law in the host country, which may not have a direct national law equivalent (for example, in Australian law where no crime or tort is involved). It should also be noted that under article 7, Australian personnel visiting the UAE who commit crimes may be subject to the death penalty or judicial flogging under UAE law – which is arguably incompatible with human rights law.

Secondly, the provision in **article 3** for 'military and technical training' and 'academic education', and in article 4(d) for 'military or civilian courses, training and exercises', is welcome. In implementing such provisions, it is strongly recommended that such cooperation should include instruction in the *international humanitarian law* and *international human rights law* obligations of armed forces. Both Australia and the UAE are parties to the four 1949 Geneva Conventions, which require State parties 'in time of peace as in time of war' to disseminate the Conventions 'as widely as possible in their respective countries' and 'in particular, to include the study thereof in their programmes of military and, if possible, civil instruction' (articles 47, 48, 127 and 144 respectively of the four Conventions). Australia has a strong military heritage of humanitarian law instruction and the transfer of such knowledge to UAE forces would be an important means of strengthening defence cooperation.

Yours sincerely