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This edition provides an update of recent and interesting international legal developments affecting Australia and distinctive contributions made by Australia to contemporary international legal issues during February 2009.

Litigation - Extradition for War Crimes - *Snedden v. Republic of Croatia* [2009] FCA 30 (Cowdroy J, 3 February 2009)

This judgment dismissed an application for review of an extradition order requested by Croatia in connection with the alleged commission of war crimes contrary to Croatian national law. It was found that Croatia was capable of providing a fair trial and there was insufficient evidence to establish any likelihood that the applicant's trial in Croatia would be prejudiced. Any delay in prosecuting the applicant did not amount to an abuse of process under the Australian Constitution. Finally, the applicant had not been denied the right to trial by jury because he had not been charged with an offence under Australian law.

This judgment follows a series of earlier proceedings. Following consideration of several matters relevant to habeas corpus, proceedings were initially adjourned until a magistrate had determined the applicant's eligibility for surrender pursuant to s 19 of the *Extradition Act 1988* (Cth): *Dragan Vasiljkovic v Minister for Justice and Customs and Ors* [2006] FCA 1346. The applicant has also previously been required to remain in custody following consideration of special circumstances and the risk of flight: *Snedden v Republic of Croatia* [2007] FCA 1902. The High Court had also determined that the applicant, a naturalised Australian citizen, could, consistent with the separation of powers, be detained without a judicial order and be extradited on a 'no evidence' basis: *Vasiljkovic v Commonwealth of Australia* [2006] HCA 40. See further *Vasiljkovic v Commonwealth of Australia* [2006] HCATrans 61 (15 February 2006); [2006] HCATrans 72 (23 February 2006); [2006] HCATrans 149 (15 March 2006); [2006] HCATrans 199 (13 April 2006); [2006] HCATrans 314 (15 June 2006); [2006] HCATrans 652 (15 November 2006). For comment on the High Court proceedings, see Sascha Morrell, 'Vasiljkovic v Commonwealth of Australia' [2007] *Syd L Rev* 12.

Indigenous Rights - UN Committee on the Elimination of Racial Discrimination - Request for Urgent Action on Northern Territory Intervention

Approximately twenty indigenous Australians affected by the Northern Territory Intervention have submitted a Request for Urgent Action with the UN Committee on the Elimination of Racial Discrimination. Urgent procedures are intended to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination. The criteria for initiating an urgent procedure includes, for example, the presence of a serious, massive or persistent pattern of racial discrimination or a situation that is serious and there is a risk of further racial discrimination (see further the Committee's working paper on possible measures to prevent, as well as to respond more effectively to, violations of the Convention, UN Doc A/48/18 (1993), Annex III).

The request claims that Australia is in breach of several obligations under the 1966 International Convention on the Elimination of All Forms of Racial Discrimination [1975] ATS 40 (ratified by Australia on 30 September 1975, with one reservation to Article 4(a), and coming into effect for Australia on 30 October 1975) (the Convention). The provisions of the Convention at issue are the obligation to implement the Convention (Article 2), equal treatment before the law (Article 5(a)), the right to participate in public affairs (Article 5(c)), freedom of movement (Article 5(d)(i)), the right to own property (Article 5(d)(v)), the right to social security (Article 5(e)(iv)), the right to equal participation in cultural

activities (Article 5(e)(vi)), the right of access to any public place or service (Article 5(f)), effective protection and remedies (Article 6) and the adoption of immediate and effective measures to combat prejudices (Article 7). The submission also expresses concern that the passage of the Northern Territory Intervention legislative package was not accompanied by consultation with Aboriginal representatives. The legislative package at issue includes the *Northern Territory National Emergency Response Act 2007* (Cth), the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) and the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth).

The submission requests that the UN Committee take urgent action by calling upon Australia to take certain steps, including reinstating the operation of the *Racial Discrimination Act 1975* (Cth) and to initiate significant and meaningful discussions with affected communities and individuals. The Northern Territory Intervention legislation declared that the legislative provisions were 'special measures' for the purposes of the Racial Discrimination Act and the Convention. Special measures are permitted under Articles 1(4) and 2(2) of the Convention. The Aboriginal and Torres Strait Islander Social Justice Commissioner has indicated that the Northern Territory Intervention contravenes a number of international human rights conventions: see further Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007* (2007), 209 – 11. Australia has suspended or excluded the operation of the Racial Discrimination Act on three prior occasions.

The Request for Urgent Action and additional information may be found at http://www.hrlrc.org.au/files/E75QFXXYE7/Request_for_Urgent_Action_Cerd.pdf (accessed 5 March 2009).

National Law - Counter-Terrorism - Report by the International Commission of Jurists

The International Commission of Jurists (ICJ) is a non-governmental organization devoted to promoting the understanding and observance of the rule of law and the legal protection of human rights. The ICJ established an Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights (the Panel), composed of eight distinguished jurists to report on the global impact of terrorism on human rights. It has recently issued a report entitled 'Assessing Damage, Urging Action'. The Foreword to the Report notes that '[i]t is regrettable that during the last eight years many States have responded to terrorism in a manner that threatens the very core of the international human rights framework, that represents perhaps one of the most serious challenges ever posed to the integrity of a system carefully constructed after the Second World War'. The research process for this report included sixteen hearings covering more than 40 States. This included hearings and private meetings conducted in Australia and attended by academics, legal practitioners, Australian government officials and non-governmental organisations (see pp.178, 189 and 193-4 of the Report for a complete listing of participants). The issues identified by the Panel in relation to Australia included the following:

- the detention and interrogation of people by intelligence agencies for the purpose of intelligence gathering (see pp.74-75 of the Report);
- deportation as a security solution (p.94);
- resort to administrative detention (p.107);
- the introduction of preventive control order regimes (pp.112, 121);
- the use of listing procedures against individuals (pp.114-115);
- the definition of terrorism and terrorist acts under national law (pp.124, 127);
- legislation proscribing terrorist organisations and ancillary offences targeting the provision of financial, material and other support to terrorist activities or organisations (p.133);
- accessing bail (p.149);
- the use of evidence obtained by coercive techniques (p.150);
- access to evidence and non-disclosure orders (pp.152-3);

➤ the burden of proof (p.154).

The full report can be obtained at <http://ejp.icj.org/IMG/EJP-Report.pdf> (accessed 5 March 2009).

National Law - Implementation of Security Council Resolutions - Sanctions Enforcement:

Charter of the United Nations (Dealing with Assets) Regulations 2008.

(<http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/all/search/9385ECE2ABD7D2DECA25755900194B6C?OpenDocument>) (accessed 5 March 2009).

Charter of the United Nations (Sanctions - Al-Qaida and the Taliban) Regulations 2008.

(<http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/all/search/52D30E28409E6B2ACA2575590018927A?OpenDocument>) (accessed 5 March 2009).

Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008 (incorporates amendments: Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2009 (No. 1)).

(<http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/all/search/27A1E0518B75F466CA257558007DCA56?OpenDocument>) (accessed 5 March 2009).

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