



ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

**Annual Conference of the
Australian and New Zealand Society
of International Law
National Museum of Australia
Thursday, 26 June 2008, 9.30am**

CHECK AGAINST DELIVERY

[Acknowledgements]

- **First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.**

[Other Acknowledgements]

- **Professor Campbell McLachlan, President,
Australian and New Zealand Society of
International Law**
- **Professors Kim Rubinstein and Gerry Simpson,
co-chairs of the conference organising committee**

- **Distinguished Australian and international speakers**
- **Ladies and gentlemen**

[Introduction]

1. I am very pleased to join you today.

Thank you Professor McLachlan and your organising committee for inviting me to open the conference.

2. Since my appointment as Attorney-General I have been regularly reminded of the significance of international law to many current issues confronting the Government.

I'd like to touch on a number of these this morning.

As I think of my experience in the Australian Parliament, I've had a good deal of exposure to international law.

I was, in fact, a member of the inaugural Joint Standing Committee on Treaties back in 1996.

3. And so to the theme of your conference: 'Security, Scarcity, Struggle: The Dilemmas of International Law.'

4. Certainly, the modern complexities that challenge international law continue to exercise all our minds and force us to continually review our interpretation of the international legal system. But the challenges are not insurmountable.

[Engagement with the United Nations]

- 5. Let me begin by outlining the Government's thoughts on some of the challenges facing international peace and security – in particular the role of the United Nations.**
- 6. While it's by no means a perfect institution, the UN has served and will continue to serve a country like Australia very well indeed.**
- 7. The reason for this is that I believe the international legal challenges that confront us as a nation are overwhelmingly shared problems. They require a shared response.**
- 8. Our decision to seek election to a non-permanent seat on the Security Council in 2013 is an**

indication of the Rudd Government's determination to do our bit.

- 9. And I believe Australia can make a strong contribution to the United Nations and to the Security Council.**
- 10. Ours is a well developed and prosperous nation. We have a robust parliamentary democracy. We desire a strong and effective United Nations and believe that the best way of achieving that is through engagement.**
- 11. We respect the rule of law and human rights.**
- 12. And importantly, Australians are tolerant and respectful, and engage positively on all levels within the international community.**
- 13. But in recent times, under the previous Government, Australia was not as active as it should have been within the UN.**
- 14. Renewing this participation will enhance our standing in this region as a middle power and partner.**

15. My colleague, Stephen Smith, Minister for Foreign Affairs, uses the term ‘*effective international citizenship*’.

Effective international citizenship is about exercising a responsibility to shape, and to help others shape, a stronger, rules-based order for the modern world.

Indeed a more stable and secure international system is fundamental to Australia’s current and longer-term national interest.

16. What does this mean for me as Attorney-General?

I consider promoting respect for the rule of law to be one of the most important aspects of my role.

Domestically, Australia’s strong and independent justice system underpins this work.

Internationally, however, there is more work to be done – a fact taken up in the theme for your last Conference: ‘Restoring the Rule of Law in International Law’.

[Human Rights]

17. Back in 1945, the importance of the rule of law in international law was not the primary focus of the groundbreaking UN Charter.

Rather, the Charter — quite properly for the time — focussed on international peace and security.

18. I would like to think that, in the 21st Century, we can effectively advocate for both, that we can focus not only on the maintenance of peace and security, but also on justice for victims of human rights abuses, wherever they occur.

19. We are faced with two options in relation to advancing international human rights.

We can either snipe at international human rights institutions from the sidelines while other nations take the lead.

Or we can engage with those institutions in a spirit of cooperation.

20. And let me assure you that this Government will not be on the sidelines.

- 21. This year marks the 60th anniversary year of the Universal Declaration of Human Rights. Coincidentally, one of the drafters of the Declaration, Australia's H V 'Doc' Evatt who was, at the time, President of the UN General Assembly was also once a Federal Attorney-General and the Member for Barton – the seat I now represent.**
- 22. I have big shoes to fill, as Doc Evatt had much to say about human rights and equality. And he was instrumental in forging a strong early relationship between Australia and the UN.**
- 23. Today, the Rudd Government places a very high priority on our commitment to human rights and to rebuilding a strong relationship with the UN on these issues.**
- 24. In our first six months in office, we are already demonstrating our commitment to re-engage the UN to promote the rule of law and human rights internationally – commencing the long overdue**

process of becoming a party to a number of key international human rights instruments.

[OP CAT]

25. I have expressed before my great support for the Optional Protocol to the Convention Against Torture.

And the Government has begun the process of becoming a party to this instrument.

26. In April this year, Australia appeared before the UN Committee Against Torture – the first appearance before a treaty body since the Rudd Government came to office.

Our delegation stressed the Government's commitment to the Torture Protocol and also to greater engagement with the UN.

27. In their concluding observations, the Committee commended several new initiatives of the Government, including our support for the Torture Protocol.

[Disabilities Convention]

- 28. I can also tell you that we are working to fast track the ratification process for the United Nations Convention on the Rights of Persons with Disabilities.**
- 29. This is a clear sign of the importance the Rudd Government places on upholding the rights of people with disability.**
- 30. Indeed, last week the Joint Standing Committee on Treaties departed from its usual practice and tabled a one page report, only three days after public hearings, recommending that the Government take binding treaty action on the Convention.**
- And I hope to have more to say on this in the not too distant future.**

[OP CEDAW]

- 31. We are also placing priority on the Optional Protocol to the Convention for the Elimination of Discrimination against Women.**
- 32. The Government is committed to the protection and promotion of women's rights, and to making gender equality a reality.**
- 33. To this end, my colleague, Tanya Plibersek, Minister for Housing and Minister for the Status of Women, and I have started the necessary process of consultation on Australia becoming a party to the Optional Protocol.**
- 34. The Rudd Government will continue to engage with the international community to vigorously promote women's rights.**
- 35. The Rudd Government has placed a high priority on actioning these important instruments early in our term.**
- Quite simply, we feel that under the previous Government they were ignored for far too long.**

[Cluster Munitions]

- 36. But as I said earlier, it's important that while remaining focussed on goal of promoting and protecting human rights, we also work to advance international peace and security. Indeed, balancing these goals remains one of the most important 'dilemmas' facing Governments around the world, including our own.**
- 37. A good example of this balance is the treaty that was concluded in Dublin last month that bans the use of inhumane cluster munitions.**
- 38. The Government supports this treaty and is convinced that the time has come to act against cluster munitions that cause unacceptable harm.**
- 39. The treaty's ground-breaking provisions on victim assistance will deliver real outcomes for the survivors of cluster munitions and their families (both present and future). And its clearance provisions will help deliver**

communities their lands, free from contamination by cluster munitions.

40. But the treaty also contains a provision that rightly recognises the reality that not all States will become party to it in the short term.

I understand that this provision is not without its critics, but this is part of the balance needed to make such treaties achievable.

41. The provision seeks to preserve the ability of the military forces of parties to the treaty to continue to operate together with those of non-parties.

Importantly, the provision maintains the humanitarian objectives on which the treaty is based.

I congratulate the Australian delegation to Dublin, who played a key role in the negotiation of this important treaty element.

42. The Australian Government also pays tribute to the leadership role played by our friends in New

Zealand in the process that led to the adoption of the treaty.

[Nuclear Non-Proliferation Treaty]

- 43. Another example of balance and adaptation in international security law is that of nuclear non-proliferation.**
- 44. The Government has always supported and defended the Nuclear Non-Proliferation Treaty. Earlier this month the Prime Minister announced the establishment of an International Commission on Nuclear Non-Proliferation and Disarmament. The Commission will be co-chaired by former Australian Minister for Foreign Affairs, Gareth Evans.**
- 45. The Commission will assess the progress made in achieving the NPT's aims and examine how its provisions might be strengthened.**
- 46. And it will report to a major international conference of experts in late 2009, sponsored by**

Australia, and will help pave the way for the NPT Review Conference in 2010.

47. There are pressures on the efficacy of the NPT that need to be addressed by the international community. The Rudd Government's initiative will help form a basis for this to take place.

[International Courts and Tribunals]

48. Before I leave you to your deliberations this morning, there is one final matter which, as Attorney-General, I should address.

And that is the role of strong international courts and tribunals.

49. There's no question that these institutions are integral to the international rule of law.

50. Of course, international litigation is not a substitute for diplomacy – it is a significant step, and not one to be taken lightly.

51. Also, it is a course of action that should not be considered in isolation.

Factors such as the effect of commencing litigation on relations with other countries must be considered.

52. Another factor which must be carefully reviewed is the likely result of the litigation.

This means assessing not only the prospects for success, but also the likely consequences of success or, indeed, failure.

53. In making these decisions, Governments must have before them comprehensive international legal advice – advice that is relevant and advice which properly scopes the relationship between all the issues in play.

54. It is of fundamental importance that the jurisdiction of the court or tribunal be properly matched with the law and the facts of the case.

55. In short, the foundation of any decision to litigate internationally is more than just an assessment of the possible legal arguments.

56. Such a decision requires a Government, on the basis of proper advice, to weigh up a range of legal and diplomatic factors.

57. Of course, having weighed those factors, Governments should not be afraid of taking legal action through international courts where that is the appropriate course.

[Conclusion]

58. I agree with former US President, Theodore Roosevelt, when he stated that the first requisite for good citizenship is to be able and willing to pull one's own weight.

59. But let me take this suggestion one step further and say that good citizenship also means anticipating the needs of our rapidly changing world.

It means asserting responsibility for our own times and not simply waiting to be invited to engage.

60. That's what Australia is committed to.

We will continue to engage proactively with the international community.

And demonstrate our respect for and commitment to upholding the international rule of law.

61. Your work as international lawyers is vital to advancing and supporting these ideals.

And you should be aware that the work you do greatly assists the development of good public policy.

62. I wish you well in you deliberations, and extend every good wish for a successful conference.

ENDS