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Panel III

Commentary—Maritime & Coalition Operations

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While Australia has not yet participated in maritime interception operations in support of the global war on terrorism, Australia has been involved in maritime interception operations in the Gulf of Arabia enforcing UN Security Council resolutions against Iraq for over ten years. Australia strongly supports the Security Council sanctions enforcement regime and its involvement in these operations is ongoing. Given our participation in such maritime interception operations, Australia has been perfectly positioned to closely observe the conduct of maritime interception operations in support of the global war on terrorism. In my view, Australia would have few legal difficulties supporting these operations which have their legal basis in Article 51 of the UN Charter. Ample legal authority exists for conducting such operations provided the essential elements of an Article 51 operation are met. While it is certainly preferable to have a United Nations Security Council Resolution authorizing these interception operations, such authority is not necessary given

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the existence of Article 51 and the customary international law right preceding this codification of the inherent right of self-defense.

On the subject of significant coalition legal issues that confronted Australia in the lead-up to deploying troops in support of the US-led military response to international terrorism, host nation basing arrangements was near the top of the list. Notwithstanding Australia's early agreement to support the US-led coalition, it took some time for Australia to put in place the necessary international agreements to support the basing of Australian troops in the Middle East. Most Middle East countries supported the United States in its endeavors to root out international terrorism from the region but negotiating basing agreements takes time. What quickly became apparent was that these potential host countries were fielding requests from a variety of nations to base people, aircraft, ships, etc. in their territory. Unlike Australia, the United States and United Kingdom had pre-existing relationships with many of these countries and, accordingly had little difficulty activating existing or negotiating new basing agreements. Australia had few pre-existing agreements with regional Middle East nations and it took time to negotiate relevant basing rights. This directly impacted on the timing of the deployment of relevant Australian Defence Force elements. The lesson for Australia then, and one it seems the United States understands well, is that existing strategic relationships with countries throughout Australia's sphere of interest is preferable to trying to put such relationships in place only when the need arises.

From a legal planning perspective, Australia had difficulties deploying its military legal officers (Judge Advocates) to those locations where they could best value-add to the operation. When the number of personnel deploying on an operation are limited, it is often difficult identifying where and when legal officers should be involved in the planning and operations process. In Australia's case, legal officers deploying on operations is a relatively recent phenomena. As the audience recognizes however, early identification and resolution of key legal issues can save considerable time and frustration later on. Because of this inability to position legal officers as desired and get them involved early in the coalition legal planning process, Australia tended to coordinate its rules of engagement only with the United States (as opposed to the United Kingdom and Canada, for example) and only then very late in the ROE development process. Although these ROE seem to be working fine for Australia today, from a coalition legal planning perspective this approach is not recommended. Proper positioning of legal officers early and in the right locations is a lesson re-learned for Australia's military legal staff.