

TERRORISM AND HUMAN RIGHTS

FOREWORD

Australia might seem an unlikely target for a terrorist attack. We are geographically isolated and only minor players in the 'War on Terror'. Nevertheless, Australia was an active military partner in the 'Coalition of the Willing' that went to war in Iraq in 2003 and supplied troops for the conflict in Afghanistan. Australia has also come to the direct attention of terrorist organisations, with an April 2004 statement purporting to be from Al Qaeda attacking Australian Prime Minister John Howard. The Director-General of the Australian Security Intelligence Organisation, Dennis Richardson, also stated at around that time that 'we now know that Al-Qaida had an active interest in carrying out a terrorist attack in Australia well before 11 September and that we remain a target'.

Although it has been many years since there was a terrorist attack on Australian soil, terrorism does constitute a serious threat to Australia's national security and to our individual rights. Indeed, many Australians and their families and friends have now been profoundly affected by terrorism. Australians died in the September 11 attack, and a year later, on 12 October 2002, 202 people were killed when two bombs exploded in the Sari Club and Paddy's Bar in Bali, Indonesia. Of the dead, 88 were Australian.

The law has been at the forefront of debate about how we should respond to these events. New laws have been made in Australia and around the world. International lawyers have also been challenged by new doctrines championed by nations including Australia and the United States, such as the idea of pre-emption as a form of self-defence. However, the capacity of such laws and doctrines to deter terrorism should not be overstated and Australia's legal response should not be disproportionate to the threat. It should be consistent with fundamental human rights and the rule of law.

The following Feature on Terrorism and Human Rights is an important contribution to this debate in dealing with some of the most contested domestic and international legal issues facing Australia after September 11. These issues include, in the articles by Andrew Garwood-Gowers and Katie Peters, new challenges to accepted understandings of international law as it applies to the use of force and self defence. The article by Matthew Ball tackles similar questions, along with broader conceptions of social justice and democracy. It demonstrates how any legal framework like Australia's that is adapted to better respond to the threat posed by terrorism must not forget its origins in the western liberal tradition. It would be sad indeed if the fight against terrorism undermined the same democratic principles that are being defended.

A similar theme is central to the article by Patrick Emerton. He demonstrates how, in the name of the 'War on Terror', well accepted principles that underpin the criminal justice system are being departed from. One of the most fundamental of these is an idea derived from long experience of the potential for the abuse of power by governments and their agencies. It is that a person should not generally be detained without charge.

Legal reform to enable new forms of detention is only one example of many other like changes, such as in regard to bail laws and new offences about associating with terrorist organisations.

Unfortunately, new laws in Australia and elsewhere are rarely subject to a sunset clause and can thus represent a long term shift in a legal system. As such, they can over time be seen as less exceptional and more a normal feature of how the law works. This gives rise to important concerns about just how much of an effect current changes will have on Australian democracy and the international legal order. As these articles demonstrate, the events of September 11 have produced a legal and political climate in which it has been possible to seek a fundamental re-ordering of some aspects of domestic and international law, especially as they relate to the laws of war and the interaction of national security and human rights.

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