

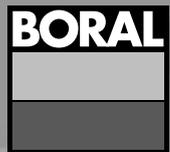
# The Sydney Papers

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**BORAL**



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Photo - David Karonidis

*Sandra Lee and Guzin Najim*

Guzin Najim, eldest daughter of a well-respected Iraqi general, married Ra'ad Said whom she met at university – he was the love of her life. For years they led the diplomatic life, travelling the world with their two children. However, Ra'ad returned to Iraq to serve in Saddam Hussein's foreign ministry in Baghdad and became one of Saddam's many victims – poisoned and left to die in front of his family. As he gasped for air, Ra'ad made Guzin promise to take their children out of Iraq at any cost and never return. Australian journalist Sandra Lee, working with Guzin Najim, has written *The Promise* (Bantam), to tell Ra'ad and Guzin's story. Guzin Najim escaped Iraq in 1998 and in 2002 arrived in Australia as a UNHCR mandated refugee with permanent protection. Sandra Lee and Guzin Najim addressed The Sydney Institute on Wednesday 18 February 2004.

# FLEEING SADDAM

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*HUSSEIN*

**Sandra Lee & Guzin Najim**

Many of you will be familiar with Guzin Najim from her powerful interview with Andrew Denton on his first program of *Enough Rope* in 2003. In December 2003, Guzin gave an interview after Saddam Hussein was captured. There have also been various newspaper articles in which Guzin has talked about the death threats that she has received in recent months.

I met Guzin Najim a year ago, just weeks before the Coalition of the Willing liberated Iraq from Saddam Hussein. From that first meeting, when she gave me the bare bones of what had happened to her and the family, I knew that this was a story that had to be told. Most importantly, I knew people would be interested in her telling of that story, in order to understand what it was actually like in Saddam Hussein's regime, without all the politics, without the issues being clouded by ideology and general opinions. This is Guzin's story.

After meeting Guzin, I found her to be a woman of formidable determination, great strength of character – lovely, warm, intelligent and funny. She is a devoted mother, and an absolutely doting grandmother. The story in our book *The Promise* is about people; it is not about politics. It is more a love story – the story of a husband and wife and their deep abiding love for each other. It's a story about a traditional family and, despite the subject matter, it is full of hope and promise. It's about the relationship between Guzin and her father. He was a father with a very progressive way of raising daughters. He told them to reach for the stars and strive for what they wanted, just as boys are encouraged in Arabic countries, often, where girls are not. *The Promise* is also a tragic story. It's about Guzin's husband, Ra'ad, who was murdered by Saddam Hussein's regime. It's about the hell his family went through after his murder during the three years they lived under house arrest in Iraq. It's about courage; it's about danger and ultimately triumph.

Guzin didn't know me at all but she took a huge leap in trusting me with her story. I've been a journalist for nearly 20 years. As a foreign correspondent, I've worked around the world and filed some

incredible stories. But I have to say this was one of the most compelling and most challenging. Not only because it involved a lot of heartache for Guzin, reliving her life in Iraq.

Guzin's husband Ra'ad was murdered by Saddam Hussein's secret police, the Mukhabahrat, in 1995. He had been a diplomat for two decades. The last words he spoke to Guzin were, "Take my children; leave Iraq. Don't waste any time and never come back." Two weeks later, when the family was still reeling from Ra'ad's murder, the Mukhabahrat knocked on the door of the family home in Al Mansour in the heart of Baghdad, stormed into the house and put the family under house arrest. They lived in constant fear. Guzin was afraid her daughter, Lina, would be raped – a favoured method of the Mukhabahrat. She worried that her son would be shot, another favourite method of intimidating dissidents. Then three years later, Guzin risked her life and the lives of her children to keep the promise she made to her husband on his death bed, the promise to take her children out of Iraq.

It's hard for us as Australians to understand all of this, sitting in this incredibly beautiful library, in a wonderful city that's obsessed by real estate prices, where we have enormous freedom – freedom of expression, freedom of the press, freedom of association, freedom of religion, freedom to choose our politics whatever they are, however popular or unpopular they are. It's difficult for us to imagine living under a dictatorship. But, worse, imagine living for three years under house arrest after your husband or wife has been murdered. Yet that's what happened to Guzin and her children. Imagine living in a country where you are too terrified to speak to your neighbours about what you think, or your political views, because they might be informers for the regime. Imagine living in a country where your fellow countrymen can be dragged off to Saddam Hussein's prison hell holes at any moment. Or to be the victim of one of his crazy, evil sons. That was what life was like in Iraq under Saddam Hussein.

While Guzin and her children were under house arrest, the kids couldn't go to school. They couldn't have any contact with any of their friends. They had to cut off all associations. That's why Guzin wanted to tell this story. To tell the truth about what it was like under Saddam Hussein.

Hers is a very emotional story and writing the book was gruelling. It caused Guzin a lot of pain, reliving those terrifying moments. But she was very determined to do it from the first day she came to Australia in 2002. Some of our interviews were so tough that we had to cut them short because Guzin would be a sobbing mess on the floor. It was the first time that she'd talked about what happened to her. Guzin didn't talk about her fears to her children during their ordeal and they didn't talk to her. If they had talked about their

feelings they would have been adding more burdens to each other, and they didn't want to do that. Each tried to keep their suffering to themselves. Guzin had to be a mother and a father to her children; she had to hide her fears and be incredibly brave. Anything else would have caused more pain and frightened her children even more.

As a journalist and author, extracting the information was one of the most difficult jobs I have ever had to do because, in doing so, I was causing Guzin extreme anguish and torment. But, there were great moments of courage and inspiration, too. Guzin's story is also one of incredible hope and promise. She fled Iraq on the promise she made to her dying husband. And she has kept her promise. She's also full of hope: Hope that Iraq will return to its former glory and that Iraqis will be able to rebuild a democratic future for themselves. She knows that Iraqis will have the strength to defeat the terror that has consumed their country, and she is certain her fellow Iraqis will reclaim Iraq from the terrorists who have hijacked Islam for their own, anti-Western purposes, setting Muslim against Muslim, and killing many, many innocent Iraqis.

And Guzin is hopeful about her new life in Australia. Even though in recent weeks she has received a string of violent death threats at her home with men speaking in Arabic and threatening to cut her throat simply because she exercised her democratic right to speak out against Saddam Hussein. She's also hopeful because she and her children are going to become Australian citizens later this year. Guzin's son Mohammad has already changed his name to a very Australian one. I'd now like to introduce you to the fantastic, brave, and formidable Guzin Najim.



**SANDRA LEE:** When I met Guzin, I was quite ignorant about the life that Muslim women lived in Iraq. Guzin grew up in a very progressive family where her father and mother taught her to reach for the stars and do things that boys were taught to do, or expected to do. Her father was a general in the Iraqi army until about the time Saddam Hussein's Baa'th Party came to power, when he was summarily dismissed. Guzin, tell us about your life growing up in Iraq in such a progressive family.

**GUZIN NAJIM:** It was a very nice country and I had a very nice life. My father raised me just like any boy. In our society the girls are always second and treated like second class citizens. But my father, he had no sons. I was both daughter and son. My father was a general and he raised me to be strong and self confident – equal to any man. He always said there is no difference between boys and girls; both

have a brain they can use for good. Iraq was a nice, safe country until Saddam Hussein.

**SANDRA LEE:** Guzin met her husband at university. She says her father encouraged her to get a good education. She studied politics for a Bachelor degree at Mustansiriya University, one of the most prestigious in Iraq. And her husband-to-be was there also, studying international law. Guzin, tell us how you met.

**GUZIN NAJIM:** At university I noticed there was somebody watching me and he was totally different from me. So one day I told my friend that we would stay where we were and wait for him. He was very shy but he asked my name. My name is not an Arabic name. Ra'ad asked me, "Are you Turkish?" I said no. He told me he had been raised in Istanbul and started to talk in Turkish. As it happens, my grandmother was Turkish. For months we continued a casual friendship. Then one day, as we finished university, he said he wanted to tell me something. I am very strong and don't feel shy. But he was so shy. He said, "I want to ask you something." I said, "Say it." He couldn't. So I said, "Okay, I know what it is. I agree." He wanted to ask me to marry him.

**SANDRA LEE:** It's a gorgeous story and there's more about it in the book. Tradition is very important in Iraq and was particularly for Guzin's and Ra'ad's families. Ra'ad followed in his father's footsteps and became a diplomat. Guzin and Ra'ad were abroad for many years. They were in London during the swinging seventies and later they were posted to Yemen, Afghanistan, Canada and finally Greece. Life abroad was an escape from Baa'th politics. But reminders of Saddam Hussein were never far away. Guzin and Ra'ad first came to the attention of the Baa'th party when they were in Yemen. Guzin, tell us what happened there.

**GUZIN NAJIM:** The Iraqi Embassy was full of secret police. They had diplomatic passports but they were not diplomats. They were secret police. They spied for Saddam Hussein. They realised that my family and my husband's family came from a different background and we did not believe in the Baa'th party or their politics. I would visit my father and my family in Jordan because my father had escaped Iraq and lived in Jordan. The secret police wrote negative reports on us and sent them to Baghdad. But one of the secret police became my husband's very close friend while we were in Yemen and he showed us the report. He was the same man who helped me to escape from house arrest in Iraq 20 years later.

**SANDRA LEE:** Guzin's father and sister fled Iraq in 1978, the year Guzin and Ra'ad moved to London (a year before Saddam Hussein rose to power). On two occasions during his diplomatic postings, Ra'ad tried to abandon Iraq. The first was in Canada after he heard about another Iraqi who had successfully sought diplomatic immunity

in the United Kingdom. But the Canadian government wouldn't let him defect. The second time was on the eve of the Gulf War in 1990 when Ra'ad was recalled to Iraq. He didn't want to go. Guzin, why was Ra'ad so worried about returning to Iraq and why, eventually, did you go?

**GUZIN NAJIM:** We were in Montreal, Canada, in the Consulate – he was the Consul. When they called him back to Iraq he tried not to go back. He tried to get diplomatic immunity with the Canadian Government. But, as a diplomat there, the Canadian government would not accept him for political asylum. He tried other Arab countries. They refused us. They refused me, too, 20 years after that. Then we returned to Iraq. The second time he tried was from Athens in 1990, two weeks before the war. We returned to Jordan, not Iraq, and my husband wanted to stay in Jordan. But the Iraqi Embassy in Amman called us and told him that he had to go to Baghdad immediately. They said he knew what would happen if he didn't. Of course, my husband was so scared. He told my father, "I have to go because if I don't they will kill my son." So we went back to Iraq.

**SANDRA LEE:** As Guzin says, that was two weeks before the first Gulf War, after Iraq had invaded Kuwait. You went back, you lived through the war – what was that like?

**GUZIN NAJIM:** You will be surprised, but most of the Iraqi people were very happy with that war. They thought it would be the end of the regime. At first, when the bombs fell we were frightened, but we lived with our neighbours as one family because there was no fuel, so no cars. In the day time there were no bombs. And my children and other neighbours could play and talk freely because we thought everything was finished with Saddam. But after that, when the war ended, we saw that Saddam Hussein was still in power and we were very frustrated and angry.

**SANDRA LEE:** After the war, what was it like living in Baghdad with the UN resolutions against your country. How did you get by day by day?

**GUZIN NAJIM:** We survived, but with Saddam Hussein people were angry and we were hungry. There was little food. Many couldn't provide for their children because there was no money. And there was mistrust between people. We couldn't talk to people, even our friends. We could talk privately, just out of our house, because it was possible our house was bugged by the secret police. So we felt like we were in a huge prison. We heard tragic stories. Like my neighbour. She had a son, just six years old. He went to school, where any child may joke with other children. Something was said one day – something very simple about Saddam Hussein. The next day they came to his house; they took his father away and killed him, and the family was

destroyed. As the child grew older, he would say, "I broke my family." They killed this family, they destroyed the spirit of Iraq.

**SANDRA LEE:** In 1995, Guzin's husband Ra'ad was taken from his office to the prime minister's office, Saddam Hussein's office, and then he was taken to the Mukhabahrat's headquarters. He was delivered back home three hours later, clearly in a state of distress. He could barely talk, his eyes were bloodshot, he had a fever. He died four days later in Guzin's arms, poisoned with rat poisoning, one of Saddam Hussein's favoured ways of executing political dissidents. Sixteen days later, the Mukhabahrat stormed into Guzin's house and put the family under house arrest. What did they want Guzin? And what did they do?

**GUZIN NAJIM:** Two weeks after my husband died they came knocking on our front door. They came in and told me, "You are under house arrest with your children. No school." My son was only 15 years old. It meant we had no longer any relationship with friends or neighbours. They asked for documents which belonged to my husband. I didn't have his papers. I still don't have his papers. So, every day, they came and beat me. They broke my arm and beat my children. They pushed my head to the wall and blood rushed out of my face. But I didn't cry in front of them. I never cried in front of them because I don't want them to beat me. I would tell myself what my father told me – that I can do everything if I believe in it. When my husband came back from the police that night he couldn't talk. But he begged me, "Promise me, take my children out of here and don't come back again." I tried to calm him but he refused. He just wanted me to tell him yes, I will take your children out of Iraq. And this is that promise. Now I am here with my children.

**SANDRA LEE:** Three years under house arrest is almost unimaginable. There were times when Guzin and her family didn't have food. Guzin wouldn't eat, telling her children she was too sick from an ulcer, which was a lie. She had to feed the kids first. The children couldn't go to school or university. They were captives in their own home. In 1999, Guzin managed to convince one of the Mukhabahrat, or secret police, who was guarding the house to help her escape from Baghdad. She paid him a \$10,000 bribe, which he used to pay off soldiers at different checkpoints to get them out of the country. It was a terrifying 26-hour journey across the desert. They could have been stopped at any time, and shot. Guzin's daughter, Lina, was pregnant but didn't know it. Her husband Ahmed, Guzin's son-in-law, was with them. What was going on through your mind, on that journey?

**GUZIN NAJIM:** He told me "You have only 30 minutes to pack a few clothes or anything you want". Only 30 minutes to leave everything behind. Everything in my house we had bought together. So I didn't know what to do. I went to the cupboard and picked something that

belonged to my husband. I have just two books with me now. I was thinking – ‘Am I taking my children to die today or not?’ Then I told myself, ‘We are dying every day and every hour, day by day, living in Iraq.’ So I have to take this risk. I don’t know how to explain it. I felt something very strong inside. I had to keep my daughter close company in front of the soldiers at the checkpoints, because she was crying so much. And I began to vomit blood because I had stomach ulcers. We couldn’t talk, and had no food or water, nothing for 26 hours. We arrived at the Jordanian border where I asked the driver to stop. I threw myself to the ground just to feel that I was free. I was crying. My children were safe and free.

**SANDRA LEE:** They arrived at the Jordan border. Guzin’s son, Mohammad, who had managed to escape the country a few months earlier, drove across Jordan from Amman to collect his mother, sister and new brother-in-law whom he hadn’t yet met to take them to their new home in Amman. But life in Jordan wasn’t as safe as what they had hoped. Within months the secret police, whether angry that one of their own had deserted them and betrayed them or angry that someone like Guzin had managed to escape, tracked her down in Jordan and started the harrassment again. Tell us about that?

**GUZIN NAJIM:** I thought that I had saved my family and would start a new life in Jordan but one day my son was shopping in Amman. He was attacked in the car park. The assailants told him he would have to return to Iraq. They said to tell his mother that she must go back to Iraq. I was also attacked; hit in the stomach and told we would be killed if we didn’t return to Iraq. My son was harassed at the University where he was studying pathology. He was taken home by the Jordanian police who then guarded outside my house for two days. But they kept attacking us.

**SANDRA LEE:** Guzin applied to the United Nations in Jordan for refugee status and was accepted as part of the Humanitarian Program. She and her children were offered a choice of Canada, America and Australia. Why did you choose Australia, Guzin?

**GUZIN NAJIM:** Every New Year’s Eve, we used to watch TV. One time, we saw the fireworks at the Opera House and the Harbour Bridge. From then on, my husband always used to say, “One day I shall take you to Sydney for a holiday to visit the Harbour Bridge and the very famous Opera House.” That was one reason I thought of Sydney. And then, after 11 September in New York, I felt the US was not safe for us. I had lived in Canada and it was very cold. So, I liked Australia and I liked its warm weather. I have lovely Australian friends. I like them very much. So I said I would go to Sydney. I was so lucky.



Photo – David Karonidis

*Graeme Samuel*

Graeme Samuel commenced as head of the Australian Competition and Consumer Commission in July 2003. Prior to taking up this appointment, he was president of the National Competition Council (1997-2003) and president of the Australian Chamber of Commerce and Industry (1995-97). In his address to The Sydney Institute, on Wednesday 25 February 2004, Graeme Samuel stressed the importance of education as part of the ACCC's role saying, "It is eminently more sensible to have business comply with the Act, instead of have them act in a way that does damage to both consumers and the business, and then have to try to undo the damage later."

# PROMOTING

## COMPETITION AND FAIR TRADING

Graeme Samuel

The last time I spoke in Sydney I was asked by the host as I entered the room, “How many people here tonight do you think you have irritated?” As I looked around, I noticed he had carefully placed the tables – over on one side, he had Qantas; over the other, AGL; at the back was *Readers Digest* and at another table was Telstra. I couldn’t find Coca Cola Amatil, but I’m told they were so angry with me they’d asked for a spot in another room. I felt like Hugh Grant in *Four Weddings and a Funeral* when he discovered he’d been seated at a table with all of his ex-girlfriends.

As I’m sure everyone here tonight is well aware, it is the task of the Australian Competition and Consumer Commission to bring about greater competitiveness in every sector of the economy. We do this not just because the *Trade Practices Act* requires us to do so, but because we believe in the fundamental principle that competition is crucial to the economic well-being of this nation, and the quality of life for all Australians. In recent months this has involved the Commission in matters as big as the Qantas/Air New Zealand merger, which would have controlled 90 per cent of the Trans-Tasman aviation market, to the fate of a credit union with less than \$300,000 in assets servicing one small country town.

### The media

Given the breadth of our role, there is virtually no transaction entered into between business and business, or between business and consumers, that is not in some way impacted by the Act and as a consequence potentially subject to scrutiny by the Commission. It is therefore entirely right and proper that the activities of the Commission are in turn subject to scrutiny by business, the public and of course the media.

There is a clear public benefit generated in publicising the activities of the Commission and all Commissioners, including myself, will never be shy about using the media and public forums such as this to keep consumers informed of their rights, and businesses informed of

their responsibilities, under the Act. But we must never seek publicity just for its own sake, and nor should we do so at the expense of the reputation of a business. In short, our use of the media should at all times be governed by the following rules:

- People must know what we do;
- Any publicity should have the goal of achieving behavioural change;
- Our involvement with the media should at all time be mindful of the need to not improperly harm the reputation of businesses;
- The confidentiality of those who come to us must never be compromised; and
- Our actions must always be driven by what we believe is the best outcome – not the media perception.

Publicising the work of the Commission through the media gives business and consumers the confidence that when they purchase goods and services there is a powerful ally there to protect them from dishonest and unconscionable conduct. Such publicity also educates business about the requirements of the Act and helps discourage behaviour which may harm both consumers and their business. But just as importantly, it ensures the actions we take are transparent, and we can be held accountable for our actions, not just to parliament and ministers, but also to the Australian public. It is proper that the Commission accounts for its actions. This is because the community has the inalienable right to be informed of the work and decisions of the Commission.

A good example of the way we used the media to bring about behavioural change was in the area of “dummy bidding” at auctions. As house prices have soared in recent years, more and more homeowners have been selling their houses through auctions in the hope of getting a better return. As has been well documented, it was common practice for many estate agents to arrange for dummy bidders to drive the price higher, which was good for the vendor but very unfair on the buyer who was being forced to pay more to outbid someone who wasn’t actually interested in the home.

So last year we announced that allegations of misleading and deceptive behaviour in the property industry – and specifically “dummy bidding” – would be a priority for us. As a result of extensive media interest in this announcement, and some well-honed court cases, we have seen a marked change in behaviour by the property industry. Consumers are watchful of dummy bids, and advertising in the industry is more circumspect.

The Commission used the media to bring about behavioural change on the part of this industry in a way that benefited consumers, and, we believe, business whose reputation can only be enhanced by fair and ethical behaviour. A good reputation is highly prized

by all businesses and the bad publicity that would inevitably come with an adverse judgment of say, pricing fixing or unconscionable conduct, can lower a firm's standing and reduce sales. That is why the Commission must be circumspect where rights and reputations might be adversely affected.

When businesses come into conflict with the Commission, good reputations must only ever be harmed by bad business behaviour. We will not be involved in improperly harming business reputations by making false allegations, or spreading rumours or innuendo or by background briefings. Any announcement of the institution of legal proceedings will be factual, moderately worded and balanced. They will not be the subject of further comment or backgrounding.

The Commission does not discuss cases whilst we investigate or bring a case to court. I might say in passing such restraint would be enhanced if some of those who are the subject of proceedings demonstrated a similar commitment to factual accuracy and moderate comment. Confidentiality is absolutely fundamental to the Commission. We simply cannot operate if people have any fears that information they bring to us which is clearly confidential in nature, will be disclosed, either privately or through the media. I refer here to information relating to breaches of the law or otherwise relating to commercial dealings, such as merger proposals. We must balance the right of the public to know what we are doing, with the rights of those who deal with us.

One final rule about the media is an extremely important one. One which those involved in the media sometimes fail to appreciate. It is a simple rule: we cannot be driven to do things because we're worried about how it will be portrayed by the media. We can never have the situation where the actions of the Australian Competition and Consumer Commission are driven by media perceptions of what we should be doing, rather than what we believe is the best outcome.

If I had my way, I would very much like to institute a sixth rule, which is that the media not report on the activities of the ACCC as if they were entirely the actions of one man, namely me. The Commission is not alone in this – how often do you see the activities of Qantas reported as being Geoff Dixon, or to cite a more recent case the National Australia Bank's recent problems all being ascribed to Frank Cicuto?

Robert Gottlieb tells me he is to blame for this. Thirty odd years ago he started the process of personalising business so that instead of BHP for instance, it's Chip Goodyear, and so with the ACCC it's not the Commission, but Graeme Samuel. I can tell you now I have never made a single decision on behalf of the ACCC and neither for that matter did Allan Fels. Every decision is taken at a meeting of the Commissioners. There is no merger Czar, no

Enforcement Commissioner – you cannot sit down with any single commissioner and get a decision.

Yes, sometimes it's useful to speak to the Chairman, but that's more as a matter of courtesy than anything else. You will find that it's far more important to deal with our staff – they are the ones that provide rigorous analysis to the Commission to enable us to make our decisions. However, I shouldn't be too critical of the media – they have been kind to me.

Very early in my term, the Commission had a big win in the courts on the Danoz Direct Abtronics – the belt that was supposed to melt fat away by simply strapping it to your waist. I was interviewed by Channel Seven's *Today Tonight* and they had me open up the belt and describe what it was supposed to do. I told them, "Oh, you strap it to your waist and it tones up your stomach muscles and gets rid of your love bites". The reporter interrupted me, "Don't you mean love handles?" Fortunately they let me film that bit again and didn't air the first take, although I'm sure it will turn up somewhere on one of those TV blooper shows.

## **Enforcement of the Act**

There has been some media speculation lately about where the Commission is heading with its enforcement actions. It is the aim of the Commission that all businesses comply with the *Trade Practices Act*, and to this end, the overwhelming focus of our work is on education, advice and persuasion – the sort of thing I referred to with regard to publicity and behaviour change.

It is eminently more sensible to have business comply with the Act, instead of have them act in a way that does damage to both consumers and the business, and then have to try to undo the damage later. In addition to using the media, the ACCC distributes around 800,000 copies of publications each year, many of them targeted directly at specific businesses, telling them about the Act and what it means to them. Our Internet site provides an easy access information source on virtually every aspect of the ACCC's activities. We also work with industry sectors on voluntary self-regulation schemes and encouraging corporate compliance schemes.

Such schemes are not a substitute for compliance with the Act, nor do they in any way act as a bar on the ACCC taking enforcement action. Rather, they are about putting in place rules and standards of best practices, generally related to business to business relationships, which are outside the strict legal responsibilities which are lawfully demanded of business under the *Trade Practices Act*.

The culture of a business is determined by the attitude management takes to compliance. If we detect a process or systemic problem in a business, relating to its compliance strategies, we will advise

senior management in an effort to overcome a problem. In the same vein, we will also advise senior management if we become aware of individuals in an organisation who we believe are, to put it bluntly, troublemakers in relation to compliance with the *Trade Practices Act*.

I believe this is an absolutely sensible thing for a regulator to do – to talk to senior management and tell them “you have a problem – you have people in your organisation who are going to cause you grief. It’s up to you whether you do anything about it”. I might say, in every case where this has occurred, senior management has thanked us, and acted swiftly to fix the problem

We issue court proceedings when we believe they will be effective in bringing about a quick result. If a company finds it is at the sharp end of one of the Commission’s enforcement activities, it can expect quick, tough, unrelenting court proceedings designed to bring about the right result for Australian consumers. But if a matter can be corrected quickly, reflecting the fact that there is a compliance culture within an organisation, it may not be necessary for the Commission to pursue this line of enforcement action.

As an example of this, in the last financial year the Commission received 53,532 complaints and inquiries relating to the Trade Practices Act. Of those we actually resolved 26,377, or just under 50 per cent, during the initial contact, usually involving a quick telephone call or letter. Just 634, or 1.2 per cent were escalated to investigation, of which 262 went to serious investigation and only 39, or .07 per cent of the total complaints received last financial year proceeded to litigation.

When enforcement is required, our policy, at all times, is to achieve very quick results which avoids or minimises consumer harm in the longer term, and brings about restitution to consumers when possible. It is a source of some frustration to the Commission that while we can get court orders finding that advertising was misleading, and have that advertising stopped and corrections ordered, that finding usually does not result in civil penalties, nor any order for consumers to receive their money back. In the Danoz Direct case I referred to earlier, we had a great outcome in the court and it made a great press release, but there had been 90,000 of these Abtronics sold at a cost to consumers of \$15 million paid before we succeeded in halting the deceptive ads.

There is very little satisfaction in getting a victory when consumers have already been ripped off, and have suffered harm over a long period of time.

Companies faced with substantiated Commission allegations have two choices. One is to deny the complaint and tell the Commission it is willing to go to the highest courts of the land to defend its position. The other way is to actually recognise that there is a problem, sit

down with the Commission and try to sort problems out quickly. If a company comes to the Commission and says “we’ve got a problem and we’d like you to help us fix the problem quickly”, I can assure you, you will find us very receptive.

There is one important proviso to this, and that is the Commission will not permit the process of negotiated settlement to be abused by serial misconduct.

By serial misconduct I mean more than once. If an organisation has a pattern of failing to comply, then the Commission is not inclined to undertake a process leading to a quick negotiated settlement. The Commission will not shy away from going to the highest courts of the land if this is what is needed to protect consumers. A company that takes a view that says “well, we’ll teach the ACCC a lesson not to take on a company of our size” will quickly learn that ACCC has the resources and the determination to take you on.

## **Cartels**

As you may be aware, the ACCC has now commenced substantial investigation into a number of cartels. We have identified more than 30 suspected cartels – some involving very small scale local price-fixing arrangements, others are nationwide and a few are operating globally. I am reasonably confident that the Commission will soon be able to start court action, potentially in co-operation with international regulatory agencies, to try and bring these secretive cartels to a halt.

Why am I so keen on busting cartels? Because frankly, cartels – that is, price fixing, bid rigging and market sharing – can in many instances do far more damage to our economy, to business, and to consumers, than many of the worst consumer scams. They are a cancer on the economy, a silent extortion. Cartels thrive on secrecy. The price fixing and fixed tenders only work because the public don’t know much about them and it’s therefore very hard for regulators to uncover them. The leniency policy we introduced last year is now allowing us to bust open this secrecy by encouraging whistleblowers to reveal some cartels that no-one’s ever known about. The policy encourages corporations and their executives to reveal the most serious contraventions of the Act such as price-fixing, bid-rigging and market sharing.

The policy makes corporate lawbreakers and their executives an offer to cease the unlawful conduct and report it to the Commission. In return they receive a clear and certain offer of leniency. The catch is that it is only the first in the door who benefits – be it a company or an executive. Their evidence then exposes others involved who will be investigated and, if the evidence permits, brought before the courts and given far stiffer treatment than those who first blew the whistle.

As Justice Wilcox noted in a recent case: “If this approach leads to a perception amongst colluders that it may be wise to engage in a race to the ACCC’s confessional, that may not be a bad thing.”

This brings us to the next issue of the penalties that should apply for those convicted of such behaviour. Under the current penalty regime a business may be faced with monetary penalties if caught but could potentially gain tens of millions of dollars by participating in such a cartel. I am certain the cost/benefit analysis will take on a different perspective if executives involved in the cartel arrangements instead find themselves facing several years behind bars. The Dawson Committee recommended the introduction of criminal sanctions for serious, or hard-core, cartel behaviour.

Serious tax cheats are imprisoned, sometimes even pensioners who defraud social security are sent to jail. Why should executives who deliberately enter secretive cartel arrangements to defraud their customers or taxpayers be treated any differently? Aside from important considerations of equity in the law, simply put, jail, like death, clarifies the mind marvellously well.

Jim Griffin, the Deputy Assistant Attorney General of the US Department of Justice Anti-trust Division, last year told Commission staff that in his 25 years prosecuting cartels he had listened to many accused say they would gladly pay a higher fine to avoid imprisonment but he had never once heard anyone offer to spend extra days in jail in exchange for a lower fine recommendation. To illustrate he spoke of a senior executive, who was committed to compliance with anti-trust laws, and who explained that:

So long as you are only talking about money, the company can at the end of the day take care of me – when you talk about taking away my liberty, there is nothing that the company can do for me.

These remarks go straight to the heart of why criminal penalties must be introduced for hard core cartel behaviour in Australia. A working party appointed by the Federal Treasurer is currently considering whether criminal sanctions for serious hard-core, cartel behaviour should be introduced and is expected to report to government in the first half of this year.

## **Mergers processes**

Another area of focus for the Commission in 2004 is looking at our merger processes in light of the recommendations made by the Dawson Committee. With the exception of the authorisation process, Australia has an informal process when it comes to approving mergers. Companies planning mergers come to us informally to tell us of their plans. We then talk to them and work informally with them on

possible restructures of their merger proposals if problems are evident. For the most part those involved believe this is a very good process.

At a recent workshop involving senior practitioners around the country there was almost unanimous support for this informal process, particularly for the 98 per cent of merger proposals submitted to the Commission which receive approval, with or without acceptable conditions. However, some practitioners have argued for a more formal process to deal with the two per cent of mergers that are knocked back.

This has been taken up by the Dawson Committee which recommended that there be a voluntary formal clearance process developed to operate in tandem with the current informal one. It also recommended a tight time frame which would see any merger not approved by the Commission within 40 days regarded as a rejection.

Now the Commission has never believed that our handling of matters such as this cannot be improved, and in line with another of the Committee's recommendations we now provide reasons for why a merger has been rejected, or subject to enforceable undertakings where the parties seek such disclosures. However, I am concerned that any move to a more formal system for approving mergers may lead to the end of the informal system as happened in New Zealand. Business must understand that if we proceed down this path one of the great benefits of the Australian regime – that is, the ability for parties to come to the Commission and to engage with both Commissioners and staff during the assessment process – may well be lost.

In recent years the Commission has, on average, only had problems with about five percent of the mergers it considers. Even then, about half of these are able to proceed after discussion and, in some cases, the offering of appropriate enforceable undertakings. Without wishing to put a figure on it I can see that this rejection rate is likely to increase with the introduction of more formalised merger assessment processes. For those arguing for a more formal process to hold the Commission more accountable in cases where mergers are rejected, I say they already have the right to challenge the Commission through the courts.

This is not a novel observation. The Swanson Committee in the 1970s considered suggestions for a more formalised merger clearance process similar to that which has now been recommended by the Dawson Committee. The Swanson Committee did not take up these suggestions, observing instead that:

A party disappointed with the Commission's decision may take its own decision, whether to proceed at risk, or seek a declaration from the court. In this regard ... section 163A ..... would allow any person to approach the court to seek a declaration on these matters.

This is exactly what happened in the recent acquisition of a minority interest in the electricity generator Loy Yang by AGL. AGL initially used the informal clearance process with the ACCC. However, after the Commission made it clear it believed the purchase would contravene the *Trade Practices Act* by substantially lessening competition in the electricity supply market, AGL pre-empted the Commission by going to the Federal Court. AGL successfully sought a declaration that the acquisition would not breach section 50 of the Act, thus preventing the Commission from intervening in the merger. As Justice French said in his reasons for granting AGL the declaration:

A justiciable controversy can arise, as in this case, where the proposed acquirer has approached the ACCC which after consideration of the proposed transaction, which is real and not merely hypothetical, has stated its opposition to it and its intention to act against it.

This is the first such declaration sought in court in relation to a merger and I will not hide the fact the Commission is disappointed by the decision. But what the case shows is that for those parties dissatisfied with the outcome of the ACCC's informal process in relation to a merger proposal, the safety valve is already in place. Companies can apply to the courts for a declaration and hold us accountable.

### **ACCC report into petrol and grocery sectors**

Earlier this month the ACCC made what is likely to be regarded as a landmark decision on competition policy, and in the process set out its views on the fundamental issue of the balance between protecting the rights of consumers and protecting small business. I'm referring to what is known as "shopper docket discounts" where consumers, principally those who shop at Woolworths and Coles, receive a docket giving them cheaper petrol, provided they buy the fuel at Woolies or Coles branded petrol stations. The ACCC decided to take no action against the schemes because we found shopper docket discounts offer substantial benefits to consumers and promote competition.

There is, naturally, some concern that shopper dockets will accelerate the decline in independent service stations and further entrench the major oil company sites which may, in the long term, lead to less competition and higher petrol prices. As some of you may be aware, Woolworths petrol stations began with the purchase of the independent Liberty chain and have now been extended nationally through a deal with Caltex, while Coles is a rebranding of Shell sites.

In the past 30 years, the number of retail petrol outlets has fallen by 60 per cent from 20,000 in 1970 to about 8,000 in 2003 and this process would have continued even without the involvement of Woolies or Coles. Where once there was a small petrol station on every corner of an intersection, now there is likely to be just one huge

service station with in excess of 20 pumps, a convenience store and other services located on a major highway with substantial traffic volumes.

New environmental fuel standards are also limiting the supply of cheap imported fuel, once the prime source of discounted petrol that enabled the smaller independent outlets to compete with the major fuel company outlets. Ultimately, though, it is not the job of the ACCC to preserve competitors or protect any sectors of the economy from competition. The role of the ACCC and the *Trade Practices Act 1974* is fundamentally to enhance the interests of Australian consumers by promoting fair, vigorous and lawful competition, whether it be between big, medium and/or small businesses.

The Commission cannot interpret its responsibility to promote competition to mean the protection of individual companies and the outlawing of vigorous, legitimate competition – even where that competition causes difficulties for individual firms. Vigorous competition is not market failure and it is inconceivable to me that such competition would require of government, or of the Commission, legal or regulatory intervention. The ACCC will only intervene in a case like shopper docket where such arrangements are likely to substantially lessen competition.

In this case, we firmly believe the shopper docket arrangements will benefit consumers and further enhance competition and there is already evidence of this. Shopper docket promotions similar to both Coles and Woolworths are now being offered by various independent supermarkets and petrol stations.

One innovative offer currently being advertised by IGA stores around the country offers customers a rebate on their purchases in return for docket from any petrol outlet. As consumer demands change and businesses become more innovative, those willing to take advantage of the competitive environment through innovation, improved efficiencies, and other forms of vigorous competition will thrive.

Smaller businesses are often more flexible and able to adapt to change and find new ways to get customers through their doors than their bigger competitors. In the course of the ACCC's investigations, a number of parties expressed concern about other types of conduct that may also raise competition or consumer protection issues, including claims of unconscionable conduct, misleading and deceptive conduct, and conduct that is claimed to constitute misuse of market power in the form of predatory pricing. The ACCC will continue to take these sorts of allegations very seriously and will continue to investigate allegations like these on a case by case basis.

Taking off my regulator's hat for a few minutes, I would just like to make some personal observations about the responsibilities

of business to meeting the expectations of both its shareholders and the community, and the possible consequences of getting the balance wrong. Primarily of course business is obliged to act at all times in the interest of its shareholders. Some have interpreted this as maximising shareholder wealth.

And, as I mentioned before, provided this is done in a way that complies with the Trade Practices Act, it is not the job of the ACCC to restrain such conduct. But I suggest to you that business also needs to be aware of community expectations, for it is those expectations that, if they are not met, can cause governments to introduce new laws which may hamper the capacity of business to act in the best interest of its shareholders. So business needs to balance its objective of maximising profits against community expectations, particularly where those activities may lead to a political backlash, as Microsoft for example discovered in the United States.

Some years ago, when Apple was almost put out of business by the success of Microsoft, moves began to break up Microsoft because it had become so dominant. This prompted Microsoft to assist in the bailout of its rival, as part of what now appears to have been a successful program to revive Apple and ensure at least some competition in the computer software market.

Let me emphasise this is not a discussion about corporate social responsibility. Rather it is inviting business to consider the real politic of the political environment in which business operates. My late father-in-law, a property investor, used to say in relation to his tenants, that if you squeezed the orange too hard you would get the pip. If business relentlessly pursues profits, without regard to community expectation as to the manner in which it conducts business activities, it may well find itself with the pip of government regulation.

## **National champions**

A final issue I wish to tackle tonight concerns the area of national champions – the idea that the only way Australian companies can compete internationally is if they merge with their competitors and become monopolies here. This is a constant source of representation to the ACCC. It's the sort of argument that is often used against the four pillars banking policy, and by Qantas and Air New Zealand to justify their proposed alliance.

I have to tell you now, as a competition policy regulator, it is not an argument I find very attractive. When assessing merger proposals, we *do* take into account the need for Australian companies to become strong enough to compete in the global market place, and against international companies who compete here. But the Commission is not going to allow a business to become a monopoly, to the detriment

of Australia consumers, just so that company can further its own interest and benefit its shareholders.

It is just possible that if a company was able to expand overseas and benefit the Australian economy to such an extent, that it might be enough to offset any consumer detriment on it becoming a monopoly, particularly if regulations were imposed on the operations here. But as a general rule, the only people who benefit from a monopoly are the monopolists, and I can't see why Australian consumers should be asked to pay more just to benefit a company and its shareholders.

## **Conclusion**

It would be quite wrong to leave you with the impression that as a regulator, I believe the first best solution to a competition problem is regulation. It is not. It is better, cheaper and more efficient for markets themselves to be robustly competitive. But, if significant markets themselves fail, if they are too highly concentrated and if barriers to entry are high, then careful regulation is required to generate public benefit.

As Chairman of the Australian Competition and Consumer Commission I am committed to fostering a competitive culture where individuals and their businesses, large and small, have the opportunity to trade effectively and fairly. I am committed to doing this in an open and transparent manner which balances the public's right to know about the activities we undertake to achieve this, with our obligation to protect the confidentiality of those who come to us with information, and the good reputations of those we deal with.

## SYDNEY INSTITUTE ANNUAL DINNER 2004



*Photographer: David Karonidis*



Photo - David Karonidis

*Tom Pickering*

Tom Pickering is senior vice president for International Relations, Boeing and a member of the Boeing Executive Council. He joined the company and assumed this position in January 2001, upon his retirement as US Under Secretary of State for Political Affairs. In a diplomatic career spanning five decades, he served as US ambassador to the Russian Federation, India, Israel, El Salvador, Nigeria, and the Hashemite Kingdom of Jordan. On Monday 1 March 2004, Tom Pickering addressed The Sydney Institute.

# UNDERSTANDING THE

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## *NEW AMERICA— A US GLOBAL PERSPECTIVE*

**Tom Pickering**

Thank you for the opportunity to come and talk about a subject I care a deal about and have spent a lot of time on. This is an interesting subject not just for my country but, if I recall my Australian history well, for Australians also. Considering your life-line to Europe, stories from Gallipoli to Tobruk, to Basra to Baghdad – this part of the world had great meaning and interest for all of you as well.

I will try to talk in a reasonably short time about three inter-related issues, all three of which are on our minds these days: the Arab-Israel peace process, the future of Iraq, and Iran and its importance in the region from an American perspective. These are most demanding and challenging problems for all of us and they will have a great deal to do, I believe, with international developments, particularly over the next five years.

You all know the background of the Arab-Israeli dispute and I won't go into detail on that particular question except to say it is probably now the longest standing important ethnically based issue that remains to be solved by current day diplomats. Happily I think we're beyond the worst aspects of the historical part of the problem. There are yet to be solved contentious issues in Arab-Israeli peace over land and access to land. This is particularly troubling to most of us because the region is the centre of the three Abrahamic monotheist faiths most prominent in the world today. As Shimon Peres used to tell me, the Arabs grabbed the oily land and we got the holy land. So there are some interesting economic problems. There is contention over the holy places and there is a history of conflict.

It's an area of great international concern and the United States has played an important role. I remember well the days when Henry Kissinger became Secretary of State and almost immediately was faced by the Yom Kippur/Ramadan War in which he made it a particular point of personal pride to understand that the United States had a unique role to play, but one that could only be played well if we

provided an opportunity for ourselves to get to know and deal more effectively with the Arab world, just as we had been doing with Israel.

As to the present situation, the irony is that after all these years the parties are now closer in substance to the shape of an enduring and final agreement than they have ever been before. But let me tell you that the irony is made more acute by the fact that it is violence in particular that has continued to separate the parties. On one side suicide/homicide bombings and on the other Israel's military response to those make it difficult, if not very hard, for the parties to meet – much less to formulate – this agreement that is out there waiting to be had.

There are no easy formulas for overcoming the issue of violence. The Israeli fence is both a solution and a challenge. A solution because such a fence has worked well between Gaza and Israel in preventing people bent on destroying themselves or others for whatever cause it is they may espouse – it is certainly not a cause for peace. And yet it is a huge obstacle because where the fence goes it is critically important. Under Prime Minister Sharon, the fence does not go anywhere close, in most places, to the 1967 borders or the green line – the likely separation point between a future Israeli and a future Palestinian state. In doing so, many Palestinians are being cut off. They are being, in effect, located by the situation of the fence on the Israeli side of the line, many cut off from their own fields, and many from families. They are certainly cut off economically.

The Bush Administration has supported the fence with a very important caveat. An interesting one. That caveat is that the fence should run on the “green line” or inside Israeli territory. It's an important caveat because up until now, even indirectly, American administrations have refused to take a view on the geography of a future settlement. By taking this view on the fence, the American Administration, interestingly enough, is coming close to what I think is likely to be the future consensus on this issue on a territorial settlement.

What is the next step? End the violence, end the violence, end the violence. This is what I believe is the major cause for stasis and disintegration in the process. Israeli military and police action doesn't seem to be working. The end of violence requires Palestinian cooperation. We know that, by Palestinian cooperation, when it has taken place in the past, has resulted in significant periods without violence and the interruption of progress for bringing about peace in the region. The fence can stop some violence, but not all the violence. There is, as a result, a move on the part of many in the region – not yet the majority – for creating a de facto, two-state solution based on the fence.

Having spent a lot of time in the region, the fence is not a solution but only a step on the way. In the end, you need a situation where

there is both agreement and, I believe, future cooperation. But for some time we have been drifting towards a de facto separation. Prime Minister Sharon, less than a month ago, announced another step in that solution – that he would take the Israeli settlements out of Gaza which is, of course, a continuing move in that direction. For an Israeli prime minister this is an heroic move. For Ariel Sharon, it is in fact nothing particularly new. Begin gave him the job of removing the Israeli settlements from the north Sinai when the Egyptian/Israeli Peace Treaty was reached. The Catch-22 situation here is that, unfortunately, Prime Minister Sharon's view is that the US in return should support where he would like to put the fence, and also the moving of settlers from Gaza back into the West Bank. This is certainly a difficult point for the United States and something the US has not found it possible to do.

In the long run, to stop the violence there also needs to be an agreement on ending the expansion of Israeli settlements in the occupied territories. They are for most Palestinians, if not all, a serious and continuing aggravation, and add to own concerns about what territory they will inherit and how they can have a state. If you were to look at maps which Prime Minister Sharon, over the years, has shown me, they would show how hard it is to have a contiguous not cantonised state. And the settlements, if they stay where they are, will have the effect of breaking into small pieces in any future Palestinian state.

So the obvious trade off is Palestinian cooperation on violence and Israeli cooperation on freezing the settlements. In my view, freezing the settlements means probably no expansion even of existing settlements much less creation of new ones inside the occupied territories.

There is also an important role for the United States government, a robust role, complimented by something that Secretary Powell organised a year and a half ago, bringing into the process for the first time alongside the United States, the European Union, Russia and the United Nations. This is something the diplomats now call the quartet. The group is not yet capable of making wonderful music together but nevertheless is important because we have the major international players for the first time seeking together to find answers and road maps to peace.

The parties are now very close on the main lines. This is a result of the process that took place over the last decade – you might say the ABC of Abdullah, Barak and Clinton. Each contributed in their own way. Crown Prince Abdullah by saying that if there is a full removal of Israeli occupation there will be diplomatic relations between Israel and all the Arab States. Prime Minister Barak in an heroic effort to devise a peace settlement made a large number of concessions about

territory and other issues. President Clinton in his own personal role over the negotiations that took place in Taba in Egypt and then later formally in Geneva.

Let me tell you what some of the key features of the final agreement are likely to be. As regards security and the demilitarised Palestinian state, there will be some international supervision, perhaps for quite a long period of time. There will be technical monitoring and perhaps even joint patrols from the United Nations, Israel and the presence, quite probably, of some Americans. A territorial settlement will be along the “Green Line” (the division following the armistice in 1948) with negotiated adjustments. Almost everyone agrees that the very large suburban Israeli settlements in the occupied territories around Jerusalem will become part of Israel. But negotiated off-sets will have to come in other areas to make up for what the Palestinians are being asked to give up.

Jerusalem is, traditionally, the most difficult area. Ehud Barak when Prime Minister of Israel broke the back of that problem with a very generous proposal. Essentially Arab/Muslim areas were to become a Palestinian State, including the Arab/Muslim areas in the old city and the Christian quarter. The Jewish quarter and the Armenian quarter would remain part of Israel. On the Temple Mount, the holy sites on top are Muslim, the Western Wall Jewish, with no excavation in the area without the approval of both parties seems to be a way to solve that particularly difficult problem.

Refugees present a very tough problem which is not yet settled in any clear way. No doubt Israel will have to recognise a very limited right of return of people who left Israeli territory in 1948. Those people who actually left are now very few in number. For all the others, in their large numbers, now particularly in the nearby Arab countries – Jordan, Syria, Lebanon and Egypt – there will need to be international help of a very generous sort or broad resettlement and compensation for losses suffered years ago.

This is the essence I believe of settlement. The timing is particularly critical this year. We have an American election, in case you haven’t noticed. Sharon is under very significant and growing pressure. His likely successor would be former Prime Minister Netanyahu from the Likud party who seems to have even fewer answers. But I would say don’t count Sharon out. The Gaza move was unexpected. Many years ago, when I saw him frequently, he told me he had only two ambitions in life. One was to be prime minister of Israel – this was in the 1980s. And the second was, when he became prime minister, he was going to resolve the problem. So far he has been brilliant at the first and miserable at the second. How much longer we can wait I don’t know.

Finally, to conclude on this issue, there are three principles that are almost always at work on the Middle East peace settlement. One of them is fairly easy. The current biggest tragedy in the Middle East is the fact that it is less than a year away from a major American election. The second principle is the “bicycle” applied to the Middle East. If you’re not going forward you’re falling down. There is no maintenance of the status quo. The only thing that’s hard or even harder than settling the whole problem outright is finding a way to kill off the peace process. So I leave you with a note of optimism.

Let me turn now on a happier note to Iraq, which is anything but happy. Many of us considered Baghdad a fabled city of history. Iraq is a country of great oil wealth. A country which the United Kingdom put together after the Ottoman Empire collapsed out of the Ottoman provinces running down to the Persian/Arab Gulf. We had the First Gulf War to end the aggression against Kuwait which left Saddam in power. There was misplaced hope, in those days, for an early collapse of the Saddam regime. There was the kind of communist theory that Saddam would fall like a ripe plum from the tree as a result of his loss of Kuwait. It didn’t work. There were weapons inspections and frustrations. There was, I’m sad to say, a French/Russian approach particularly in the late 1990s that sought to accept that Saddam was going to be around for a while so why not deal with Saddam and make his life a little easier. There was a split in the Security Council in the last three years of the 1990s which eventually allowed the deterioration to take place.

I believe the combat phase of the war was brilliantly executed, but I cannot be so kind about the diplomacy. There are differences of view inside the American administration which, in the days leading up to the President going to the UN in September 2002, made that phase much harder. As a result, the United States went in without specific Security Council support, although I for one believed that there was a legal basis for going in on the basis of the existing UN resolutions. I dare to mention I happened to be the US representative at the UN during the First Gulf War and we carefully confected the cease fire resolution on the basis that if it were broken by Saddam it would allow the authority for the use of force legally to continue to be operative once again. But there was a failure to exploit that I believe and, as a result, there are serious questions and they remain today. The historians will argue for a long time about the issue of political legitimacy as opposed to legality.

There is a key principle that we have discovered as a result of the Iraq war. How you go in internationally often determines about how you come out. We will find it extremely hard, now that we need the United Nations, to bring the United Nations along. Iraq is a very important question for the future. There is a combination of organised

opposition and general lawlessness in the country. Most organised attacks apparently come from the opposition. It appears to be based in the Sunnis – whether Baathist or linked to Saddam supporters or perhaps al-Qaeda is not yet proven.

Just hours ago the Coalition provisional authorities and the governing council of the Iraqis agreed on an early transition constitutional document for the formation of the government. They resolved two difficult problems very deftly. One was whether Sharia – traditional Islamic law – should be *the* basis for future Iraqi law or *a* basis. Happily they chose *a* basis. The second was whether the Kurds who have been out from under Saddam and the Baathists for at least a dozen years since 1991 should have autonomy in their three provinces and it was agreed that would happen as well.

Iraqis also have to make the critical decisions about the future of Iraq. There is a target date of the transfer for power on 30 June 2004. They will need to solve some very tricky problems. I believe the United States will have to be there for quite a long period of time to help with security even while the Iraqi forces are built up. The UN will play a critical role in making that happen, rebuilding economic development and affecting social change. And also in providing support and assistance in the wide use of Iraq's oil resources. The US cannot, in my view, cut and run. The Coalition needs to have stability and security, particularly while Iraqi security forces are built up. The United Nations will be critical in assuring Iraqis, in particular, that they will get a fair share out of the international community in the future of their country.

So three elements must work in hand to meet the critical challenges. The US, UN and the Iraqis themselves. In that nexus there is reason to believe that, if progress can continue to be made, there can be, over the long term, a more optimistic future for Iraq. Certainly not immediately. It will not be a glorious example of Western Swiss style democracy but certainly something that, over a period of time, can approach a more sensible and, I hope, a more effective way of meeting people's needs in the Middle East.

Let me touch briefly on Iran. This is a country with an extensive and deep historical and cultural tradition of thousands of years. With the collapse of the monarchy, in 1978 and 1979, we saw the Islamic Revolution, heavily dominated by the pre-eminent Shia tradition in Iran. This continues as well as the resultant estrangement with the United States, with rare exceptions. One of those exceptions was the fact that Iran and the United States cooperated extensively two years ago in Bonn, Germany, in helping to set up a new government in Afghanistan.

American concerns in Iran are three – weapons of mass destruction, the Middle East peace process and Iranian opposition to that

process and its support for terrorist groups such as Hamas and the Palestinian Islamic Jihad that are opposed to the peace process. There are also ongoing concerns about civil and human rights among religious minorities in Iran and I would suspect that, after the recent election, there are concerns about electoral manipulation.

Inside Iran the situation is complex. But it is not just the contest between reformers and religious reactionaries in power against the needs of the conservatives. Reformers, until the last week, had a growing electoral support from the country and I believe that continues despite the increasing evidence that the conservatives did all that they could do to ensure the outcome of the last election was favourable to their position. The problem for a country like the United States is contact and talk. There is a lack of Iranian consistency and transparency and a lot of strategic insecurity and worrying about problems in the region. They too have a security issue. They have Pakistan. They have traditional concerns about Israel. Both countries are reputed to have nuclear weapons. They have Russian help for building nuclear reactors and, over a period of time, a growing sense even of Russian concern, widely shared with the Europeans, that the critical problem of an Iranian nuclear weapons program needs to be dealt with as soon as possible.

There is no historical enmity between Iran and the United States. Iranian cooperation is absolutely essential for the future of Iraq – to say nothing of the widely important Persian Gulf region. It has a very important role in my view to play in this region and I would strongly advocate, as I have in the past, that the United States do what it can to open the doors to official and diplomatic contact with Iran as soon as that can be done.

Let me just end with one brief point. I used to say that there are only two kinds of American diplomats that serve in the Middle East – optimists and lunatics. And I'm not yet ready to certify myself.



Photo – David Karonidis

Dr Leanne Piggott lectures in Middle East politics. She is the co-ordinator of the Postgraduate Coursework programs in the Discipline of Government and International Relations – International Studies and Public Policy. Whilst a specialist on the wider Middle East, Dr Piggott's particular expertise is the Arab-Israel Conflict. Her publications include *One Land Two People: A Concise History of the Arab-Israeli Conflict* (Harcourt, Brace & Co). Leanne Piggott addressed The Sydney Institute on Tuesday 2 March 2004.

# SECURITY AND

## ***LEGITIMACY: MANAGING THE ISRAELI-PALESTINIAN CONFLICT***

**Leanne Piggott**

Today is a day full of portent for the Middle East: it is *al-Ashurah*, a particularly holy day in the Shi'ite Muslim calendar, which Iraqi Shi'ites will be allowed to celebrate openly for the first time in decades. *Al-Ashura* is the commemoration of the martyrdom of Hussein, the grandson of the Prophet Muhammad, and the occasion is marked by public displays of guilt, self-flagellation and other self-inflicted wounds. Those of you who are aficionados of American politics will know that today is also "Super Tuesday" in the Democratic Party's primaries. Cynics may observe that it has more than a few parallels with *al-Ashurah*. Both events in their own way will influence the future of the Middle East as a region and its multiplicity of conflicts. I say "multiplicity of conflicts" in order to dispel at the outset the myth that there is any such thing as "the" Middle East conflict. There are only Middle East conflicts.

This evening I want to address the topic, "Security and Legitimacy: Managing the Israeli-Palestinian Conflict". Let me begin by identifying the thesis at the heart of my presentation. Why do I refer to "conflict management" and not "conflict resolution", as do most others when dealing with this topic? Resolution of a conflict means, in essence, "End of Claims, End of Conflict". That means that each side, once they have signed on the proverbial dotted line, will no longer have outstanding claims against the other side, for territory, water, return of refugees, compensation or anything else emerging from the history of the conflict. Having almost completed a book on the Arab-Israel Conflict, the latter part of which tracks the history of the peace process between Israelis and Palestinians from 1993 to 2003, I feel very confident in saying that these two peoples are far from being in a position to end their conflict by ending their claims against the other side. I do not believe that this generation of Israelis and Palestinians, or perhaps even the next, will see a resolution of the conflict in these terms. The Oslo peace process is dead and the Quartet sponsored Road Map lies in waiting for some profound shifts in the status

quo before we will see a resumption of the sorts of negotiations last witnessed at Taba in Egypt, back in January 2001. And so the best that can be achieved in the foreseeable future is for the conflict to be contained and managed, not permanently resolved.

What do I mean by conflict management and how far will it fall short of a permanent settlement? The Irish academic John Darby wrote an excellent paper more than a decade ago entitled, "What's Wrong with Conflict"<sup>1</sup> The title is not as perverse as it sounds, even in the context of the Israeli-Palestinian conflict. Darby's position on conflict as a phenomenon is antithetical to that of the conflict resolution industry that has mushroomed in recent times and its underlying assumption. That assumption, which Darby rejects, is that in the study of any conflict, a solution lies around the corner for anyone ingenious enough to find it. Drawing on the work of sociologists Georg Simmel and Lewis Coser, Darby argues that:

...it is as pointless to attack conflict as to attack the ageing process. Conflict is neither good nor bad, but intrinsic in every social relationship from marriage to international diplomacy. Whenever two or more people are gathered, there is conflict or potential conflict. The real issue is not the existence of conflict but how it is handled.

In other words, to paraphrase a well-worn phrase, "conflict happens". The more pertinent issue, therefore, is to distinguish between conflict and violence, and this point lies at the heart of what I want to say this evening. I am arguing that in the present context of the Israeli/Palestinian conflict, the highest priority must be given to reducing the most egregious and politically unsustainable manifestations of violence and to leave the resolution of the conflict to a time when the positive effects of conflict management, that is, a significant reduction of violence, have been sustained for a sufficiently long period to make it politically possible for the parties to move to an end of claims, end of conflict agreement. Some of the historical issues will have to be resolved, or partially resolved, to end the violence, but not all of them.

Although there are inevitable differences between the Israeli/Palestinian conflict and other ethnic conflicts around the globe today, there are some common denominators in all of them. In each case we have, living in close proximity to one another, two or more ethnic groups struggling for international recognition of their respective identities, who are unwilling to assimilate with one another politically, but unable, through the use of violence, to remove each other. Those concerned with managing, effectively, the conflict between Israelis and Palestinians, therefore, should be seeking, firstly, to identify each side's minimum pre-conditions for an end to the violence, and, secondly, to construct mechanisms to address all outstanding, unresolved claims. Such mechanisms, incidentally, often take many years, even decades, to reach a conclusion. But this latter process cannot

occur without the former, namely, the need to identify and act upon each side's minimum pre-conditions for an end to, or at least, significant reduction of, the violence. For Israelis, it is an end of violence against its civilians. For the Palestinians, it is also an end of violence against its civilians, and a withdrawal of Israeli forces to at least the pre-2001 lines which demarcated Area A where the Palestinian Authority (PA) had autonomy over all political and security matters and Area B, where it had autonomy over political matters and shared security with the Israeli Defence Forces (IDF).

Now I know that the scenario I'm describing is not as emotionally satisfying as conflict resolution but there is no practical alternative at this given time. As I have already noted, the Israeli-Palestinian peace negotiations, initiated in Oslo in 1993, are no more. They ended when the PA made the strategic decision to resume the use of armed conflict, in tandem with the negotiations that were still under way, following the failure of the Camp David summit in July 2000, and when, in response to the new intifada, the Israelis re-occupied the areas from which the IDF had progressively withdrawn since 1994. As for the Quartet-sponsored Road Map plan for ending the conflict and seeing the establishment of a Palestinian state by 2005, that lies dormant on a shelf somewhere collecting dust. Instead, the vicious pattern of Palestinian bombings and Israeli interdiction continues unabated. In the midst of the on-going violence and contention that surround Israeli-Palestinian relations generally, and the West Bank separation barrier in particular, simplistic slogans such as "not separation but conciliation" or "a return to the negotiation table is the only way forward" merely invite cynicism. So what is possible, in the grand scheme of conflict management I'm promoting here this evening?

Let me respond by first saying what is not possible. On 19 December 2003, Israeli Prime Minister Ariel Sharon announced his intention to unilaterally withdraw Israeli military installations and all settlements from Gaza as well as a small number of settlements from the West Bank.<sup>2</sup> In response, some among the Palestinian leadership, Prime Minister Ahmad Qurei included, said that if Israel goes ahead with this withdrawal, outside of negotiations with the PA, and annexes (formally and illegally) parts of the West Bank, then the Palestinians will abandon their effort to work towards a two-state solution to the conflict and pursue, instead, "a one-state solution". The Palestinians claim that in desperation they would abandon their long-held aspiration for their own state and instead insist that there be no borders between the Mediterranean Sea and the Jordan River, no two states, only one.

Those who propose such a "one-state" solution to the conflict realise that it would only be a matter of time before an Arab majority would emerge (the Palestinians have a much higher birth rate and

Jewish immigration to Israel is on the decline) and a democratic, one-person one-vote political system would then result in a predominantly Arab government ruling over a Jewish minority. To view such an outcome as a way to bring peace between Israelis and Palestinians is naïve in the extreme. It is also naïve to expect any Israeli government to acquiesce in a plan that would lead to such an outcome. Indeed, it is the fear of an eventual Arab majority within the territory encompassing both Israel *and* the West Bank and Gaza Strip, that led to Sharon's decision to withdraw from the Palestinian territories, beginning with all of Gaza and from some settlements in the West Bank.

It is interesting to note, therefore, that the idea of a one-state solution is not only being revived by some Palestinians as a bargaining tactic, but is also actually being taken seriously in certain Western academic circles. It should be remembered that these proposals were considered and rejected by the UN back in 1947, after a long and thorough process of fact-finding and debate. And the reasons were overwhelming. There were then, and there still are today, predominantly two peoples living in the mandatory territory of Palestine, Arabs and Jews. They each have a long historical association with the same land. They are very different in language, culture, religion, historical experience and temperament. It is fantastical in the extreme to expect two peoples with such divergent outlooks on life to feel a sense of common allegiance to a single sovereign State that is neither specifically Jewish nor specifically Arab and which therefore fails to give expression to their deepest historical aspirations. If political union between Jews and Arabs was a pipe dream in 1947 it has been made even less conceivable by the ensuing 57 years of bloody conflict.

I therefore do not adhere to the views of those who are arguing again, today, for a one-state solution to the Israeli-Palestinian conflict. Their arguments would seem to fit more snugly with trends of globalisation and the moves towards open borders in places like Europe. But the Middle East is not Europe, at least not the Europe of the twenty-first century. It is essential to remember that Europe has been working with the model of sovereignty exercised through the instrument of the nation-state since the Treaty of Westphalia in 1648. After centuries of bloody conflict with one another, the nations of Europe have finally, since 1945, been able to enjoy their national independence in relative tranquillity. Where that independence has been suppressed, as in the former Yugoslavia, bloodshed has re-emerged. Otherwise, as in the rest of Europe, nations who no longer feel that their independence is threatened have been ready to move on to economic and monetary union, with considerable success.

The Israeli-Palestinian relationship still has a lot of evolving to do before its people may be ready to follow a similar path. The Pales-

tinian people, in 2004, still have never experienced sovereignty over even part of their ancestral territory and the sovereign State of Israel has never had final borders and real peace with its neighbours. As one Israeli author, A. B. Yehoshua, has noted, "If I had to use a single word to define Zionism, I would say borders. And if I were permitted a second word, I would add sovereignty." Yehoshua explains that sovereignty "is not merely a flag in the breeze or a police station. It means that everything and each person within the borders defined by the State falls under its jurisdiction and supervision. Borders are like doors in a house which claim everything inside as the responsibility of the master. This is what Zionism means – realising Jewish sovereignty within defined borders".<sup>3</sup> For Yehoshua, therefore, we are clearly not in an era of post-Zionism.

Both Israelis and Palestinians need sovereignty and borders as essential pre-conditions for a full resolution of the conflict. In the meantime, they need a significant reduction in violence. However, no matter how desirable it is for Israeli and Palestinian official negotiators to return to talks, it does not look as though this will happen in the near future. And irrespective of the pending advisory opinion of the International Court of Justice as to the "legal consequences" of Israel's West Bank separation barrier, Israel will continue its construction.

This reality – the unlikelihood of a resumption of peace negotiations and the continuation of the construction of the barrier – reflects very much the significant power imbalance in the Israeli-Palestinian relationship. The Israeli government will not negotiate with the PA's Chairman, Yasser Arafat. On past experience neither the government nor the people of Israel believe that Arafat will adhere to any agreement he signs. It would therefore be political suicide for any Israeli government to re-start negotiations with the Palestinians while Arafat is still in charge. This is very frustrating for those Palestinians who are desperate to re-start negotiations with Israel in order to end the violence, and in turn, the conflict. Most Palestinians believe that whilst Arafat might be part of the problem he remains part of the solution. However, they are yet to convince the Israeli public and its government of this, let alone the US President and his administration's officials. It would also be political suicide for Sharon to halt construction of the West Bank barrier as, like the Gaza barrier,<sup>4</sup> it has the support of the majority of Israelis. It is the route of the West Bank barrier that causes debate and protest in Israel, not the need for it.

So until a new Palestinian leadership emerges that is not perceived by the Israelis to be beholden to Arafat, the short-term prospect of renewed formal negotiations remains dim. Arafat is no closer to relinquishing power than he was when he arrived in Gaza in 1994. Remember, he has held the reigns of power over the Palestine

Liberation Organisation (PLO) since 1968 and likewise over the PA since 1994, having been elected *rais*, or President, in January 1996.

Can anything positive then, in the way of conflict management, come from this second separation barrier now under construction and Israel's unilateral withdrawal from Gaza? The Palestinians' answer is a resounding "no". The West Bank barrier, which they call many things including the apartheid wall, has only brought them increased suffering. Life for Palestinians in the occupied territories since Israel's re-occupation in 2001, with its countless checkpoints, curfews and other daily humiliations, is now, as one Palestinian put it, "nothing short of hell". And, as a result of the barrier's route encroaching into Palestinian territory, many Palestinians are cut off from their lands and sources of income, and from essential services. In the light of Israel's determination to continue building the barrier, the best that the opponents of the route of the wall can hope for is that the small adjustments that have already taken place might be increased and the negative impact that the barrier is having on the Palestinians might be decreased. But there is no prospect construction will cease.

So what is the possibility for conflict management, that is, a reduction of violence, during a period when there is no likelihood of renewed final status talks in the short-term? Once the West Bank barrier is completed (scheduled for sometime in 2005) it is likely that the security of Israeli citizens will be increased, with the notable exception of those still living in settlements on the eastern side of the barrier. The evidence from the Gaza barrier supports this claim: with one or two exceptions, all Palestinian bombers have entered Israel from the West Bank. If the barrier delivers improved security for Israelis, then Israel will reduce its military presence in the West Bank and this will alleviate some of the daily hardships and humiliations suffered by the Palestinians caused by Israeli controls. Violent clashes between Israelis and Palestinians will also be reduced as a result of Israeli withdrawal from Palestinian towns and cities. Accordingly, the Palestinians' personal security will also be enhanced and the conflict will have been contained as both peoples experience a reduction in violence.

The resumption of peace talks would then again become possible. And I am optimistic that when final status negotiations are revived, it will not take much effort to finalise the borders of the two states and the West Bank separation barrier can be re-routed to accommodate the agreement. The reason for my optimism is that there are already at least three blueprints for a permanent settlement of the conflict. The first blueprint arose from the last round of official Israeli and Palestinian negotiations at Taba in January 2001. The second blueprint, known as the Ayalon-Nusseibeh Plan was published in early 2003, and the third, the so-called Geneva Accords, was launched in October

2003, after two years of “unofficial” negotiations between Israelis and Palestinians, with the involvement of the Egyptians and Jordanians.

It was with these previous negotiations in mind that the authors of the Quartet’s Road Map were confident that a viable Palestinian state could be formed with contiguous territory within the West Bank and Gaza Strip. One of the central tenets of all three blueprints is that the outcome of final status negotiations will not be a full and complete return to the West Bank armistice lines of 1949 (the Green Line). It is expected that Israel will annex the three major settlement blocs in the north, east and south of Jerusalem, on the eastern (Palestinian) side of the Green Line, while the Palestinian State will annex territory from the western (Israeli) side of the Green Line.<sup>5</sup> In May 2001, Arafat himself admitted that it was a mistake for the Palestinians not to accept the November 2000 “Clinton Proposals” which had formed the basis of the Taba negotiations two months later.

These negotiated blueprints are cause for optimism.<sup>6</sup> So too are the lessons about security and legitimacy that emerge from Israel’s previous unilateral withdrawal from Lebanon in May 2000. It is here that we have a concrete illustration of the benefits of unilateral withdrawal, as a conflict management initiative. Certainly, to-date there has not been an end of claims, end of conflict between Israel and Lebanon. There also remains low level violence in and around the border, as the Lebanese Shi’ite organisation, Hizbullah, continues to claim the Sheba’a farm area on the Golan Heights and lobs the occasional Katyusha rocket over Israel’s northern border to which Israel responds in kind. But this cannot be compared to almost daily loss of lives and injuries sustained by Israelis and Lebanese prior to May 2000. The fact is that the Hizbullah claims to the Sheba’a farms have received no endorsement by the international community. On the contrary, both the UN Secretary General and its Security Council have acknowledged that Israel has complied fully with all previous resolutions demanding its withdrawal from Lebanon.<sup>7</sup>

The on-going hostility of Hizbullah towards Israel has no support outside the Arab world and Iran. In other words, in the broad international context, it lacks legitimacy. I believe that if the UN had backed Hizbullah’s claims regarding Sheba’a farms, the level of violence would be much higher and the casualties much greater. What we can conclude, therefore, is that the Israeli-Hizbullah conflict has been managed successfully, even though there were no negotiations and Israel acted unilaterally. The de-escalation of violence on the Israel-Lebanon border has been made possible not only because it acted as it did, but because its actions were subsequently legitimised by the United Nations. More importantly, Hizbullah’s attempt to keep the conflict going has been de-legitimised by the international community.

Of course there are significant differences between the Israel-South Lebanon scenario and the Israeli-Palestinian scenario. But I see in the former, lessons for the latter, lessons about conflict management that will lead to greater personal security for the two peoples involved in the conflict, and in time, to greater legitimacy. Israel cannot achieve security without legitimacy, that is, regional and wider international legitimacy for its actions. Conversely, the Israeli government's constituency – the Israeli people – will not allow it to make the concessions that are needed to attract regional and international legitimacy unless the quid pro quo is, at the very least, the same level of security now prevailing on the Israel-Lebanon border. In other words, security and legitimacy are a package deal; you either achieve both or neither.

In concrete terms, a unilateral Israeli withdrawal from Gaza and abandonment of its settlements there will almost certainly receive similar approbation from the UN and the rest of the international community. Here, the required combination of security and legitimacy, at least for Israel, can be achieved.

This is certainly not the case in the West Bank where the route of the separation barrier is, for all intents and purposes, creating a highly contentious de-facto border between Israel and most of the West Bank. If any significant withdrawal from the West Bank occurs outside of negotiations, and if the route of the separation barrier is used as the line of deployment, then legitimacy will not come hand in hand with security. The security and legitimacy package, to which I have already referred, will not come about in Israel's case until the final border is negotiated with the Palestinians. The barrier can then be re-routed to accommodate that negotiated agreement realised in view of the three blueprints, Taba, Ayalon-Nusseibeh, and Geneva, already noted.

The other fly in the ointment regarding the question of security and legitimacy is in relation to the Palestinians and in particular, the desperate need for reform within the PA and the creation of a viable infrastructure for statehood. Both have been hindered primarily by internal Palestinian politics, and secondarily by Israel's re-occupation of the West Bank and military operations in the Gaza Strip. Israel's withdrawal from Gaza will present a renewed opportunity for Palestinian nation and State building in a number of important ways, as summarised by Ziad Abu-Zayyad, a member of the Palestinian Legislative Council (PLC):

Israel has reoccupied all areas which had been under full Palestinian control prior to September 2000. Without a full withdrawal from there, there will be no chance to progress with reforms in the PA or to restart peace-making efforts. ... Relieving the pressure on the [Palestinians] ... altering this climate will help to isolate extremists, allowing people to return to work and rebuild their lives. ...[This] will enable the reform process to continue

at all levels. Three factors – joint peace making efforts, a return to normal life and a reformed PA – will not just improve life for the Palestinian people, but will bring security to the Israelis, too.<sup>8</sup>

Abu-Zayyad made these comments nearly two years ago. In the light of reports now appearing on a regular basis of the collapse of civil society, systemic corruption, abuse of human rights and near financial collapse of the PA, his message is even more urgent today. Only time will tell if a new leadership will be able to realise the reform Abu-Zayyad and many others within the PLC and wider Palestinian community call for.

Will there be resolution of the Israeli-Palestinian conflict one day, meaning an end of claims, end of conflict? I believe so, but we are a long way from this outcome. In the meantime, we need good conflict management that will enhance both Israeli and Palestinian security, with the legitimating approval of the international community.

## Endnotes

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- 1 John Darby, *What's Wrong with Conflict*, (Coleraine: University of Ulster, 1991).
- 2 According to what Sharon refers to as his "Disengagement Plan", Israel will relocate its military installations and all Israeli settlements from the Gaza Strip into the State of Israel as well as other military installations and a small number of settlements from the West Bank. In the present circumstances, with an absence of negotiations with the Palestinians, it is Israel's intention that the withdrawal process would be complete by the end of 2005.
- 3 A. B. Yehoshua, "For a Jewish Border", *Jerusalem Post*, 19 July 2002.
- 4 Support in Israel for a West Bank separation barrier is directly related to the perceived success of the Gaza barrier. Almost all Palestinian bombers have been from the West Bank. Construction of the Gaza separation barrier began just after Israel withdrew from most of Gaza in 1994 and was completed in 1996.
- 5 In the Geneva Accords the Palestinian State will also annex Israeli territory from the eastern (Israeli) side of the 1950 Armistice Line that separates Israel from the Gaza Strip.
- 6 All three blueprints also contain arrangements for the sharing of sovereignty in East Jerusalem and for the payment of compensation to Palestinian refugees. Palestinian refugees will be settled in the new State of Palestine, or in their host countries. The claim that the Palestinians have a "right of return" to Israel is abandoned.
- 7 See UNSC Resolution 1310 – operative para. 4.
- 8 Ziad Abu-Zayyad, "Seeking the Road to Peace", *Palestine-Israeli Journal*, vol.9, no. 2, 2002, p. 24.



Photo – David Karonidis

*James Franklin*

Associate Professor James Franklin, author of *Corrupting the Youth: A History of Philosophy in Australia* (Macleay Press), has no time for postmodernists. He has described postmodernists as an “intellectual disease ... that infect(s) many corners of the humanities world.” Yet he is ambivalent about Australia’s most influential realist, John Anderson. As Challis Professor of Philosophy at Sydney University (1927–58), Anderson spawned two generations of intellectuals who led the charge against prevailing social and moral conventions. While these movements improved life for some, Franklin maintains that many young people lost their way on immutable moral values. James Franklin addressed the Sydney Institute on Wednesday 10 March 2004.

# REMEMBERING

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*PROFESSOR JOHN ANDERSON*

**James Franklin**

Very few can now literally remember Anderson, so first, a brief biography. After study in philosophy at Glasgow University around the time of the First War, he was disappointed that the General Strike of 1926 failed to lead to the Revolution and decided on a change of scene. Sydney University appointed him its professor of philosophy and he occupied that position until 1958. Sydney University was the only university in the State for most of that time and he was long the only professor of philosophy, so his influence on impressionable Arts students such as future schoolteachers was much greater than would be possible today.

Politically, he was first a “Theoretical Adviser” to the Communist Party of Australia but fell out with them, then after a Trotskyist phase became in many respects a conservative. His firm anti-Stalinism was one factor in the low profile of the far left at Sydney University compared to Melbourne University. He deliberately provoked public controversy, notably in 1931 when he condemned war memorials as “idols” and in 1943 when he attacked religious teaching in schools. In both cases his views were heatedly debated in the New South Wales Parliament; in the second case, he was condemned *nem. con.* by the Legislative Assembly for statements “calculated to undermine the principles which constitute a Christian State”. Somewhere in the late thirties Anderson began an affair with one of his second-year undergraduate students and later appointed her Australia’s first female lecturer in philosophy. When she had to be taken away for electroconvulsive therapy his loyal staff (all appointed by him) covered for her and the whole matter stayed under wraps.

His philosophy, in briefest summary, was atheist and materialist, at that time not such a common position as today. The human activity he praised most was criticism — especially criticism of the established ideas of leaders of society, but the party-line Communists came in for his criticism too, which is why they broke with him. Believing there was no such thing as the good of society, he was against any kind of state planning, technological universities and the like, which made

him out of step with postwar thinking. One very peculiar aspect of his strictly philosophical views was that he thought there was no such thing as moral obligation: although he said certain activities were “good” — “productive” ones, such as criticism, also sex — that did not mean either that they ought to be done or that he, Anderson, recommended anyone do them. Some students confessed to shop-lifting under his influence.

What was it like to see him? There are memorable accounts of his impact in the lecture theatre in the memoirs of two of his students, Donald Horne and Peter Coleman. Horne recalls:

Light came into the philosophy lecture theatre, where the Literary Society held its meetings, through leaded glass windows, and on either side of the blackboard there were murals, one of classical and one of modern philosophers. There was the sense of an inner temple about this room when early in term Pritchett and I sat in it to hear Anderson give his annual address to the Literary Society, of which he was president. When he began speaking in an urgent Glaswegian sing-song the room seemed stilled by significance. Most of the time he spoke strongly, but occasionally his voice hovered and fluttered while he stuttered for words, by this hesitation building up a pressure that then burst through into a confident and sustained high note. The style of his address was intensely serious, but lightened now and again with a wisecrack, or with sarcasm ... when the discussion was over, he made a triumphant ending, flowing strongly again, correcting errors and confusions and bestowing agreement like a final blessing. It took only an hour, but we felt that we had just witnessed an important new contribution to the theory of aesthetics.

Coleman has a good deal less respect for the decor, but is more direct about the effect of what Anderson had to say:

On the walls were crude paintings of great philosophers — Plato, Bacon, Descartes and so on. I do not know how many students were turned away from philosophy by this mural *kitsch*, but at the time I ignored it. A number of *dévots* walked in, dropping their voices, pocketing pipes. Finally the Master — tall, stooped, pop-eyed, waistcoated — took up his position at the dais and began speaking in a high-pitched, Glaswegian stammer.

He took us on a *tour d’horizons*, which shocked as much as it fascinated me ... I was still not prepared for the full blast of Anderson’s impiety. The world was going downhill fast. It was an age of socialism, religion, communism, rationalism. Abroad President Roosevelt had delivered Central Europe to communist gangsters. In Australia Labor and Liberal parties were both committed to destroying freedom and independence. The Churches and the Rationalists, the universities and newspapers, were all servile to the spirit of the times.

But from a more adult point of view, here is an impression of him by a visiting philosopher at the Australasian Philosophy Conference in 1951:

As to his “atheism”, there is no doubt about this. But when I first saw the man—he was chairing the first meeting of the congress—another observer whispered as he was talking that he was exactly like a Presbyterian clergyman. And so, indeed, he is (there is much more in it than a Scottish accent); though of a type which is now dying out. The leader of some fairly small dissenting Scottish sect, scorning mere “conventional religion”, reverencing nothing but his God, dominating his flock and yet honestly appealing for (and sometimes evoking) independence of mind and action. And there are still more definite echoes of Calvinism in his creed. Strict determinism, for one thing. Asked at the congress whether we would have an obligation to assist a wounded man lying before us, he replied that we would have none, except in the sense that we might feel good impulses striving within us with bad; if the good prevailed, we would help the man, and if not, not. He also has a deep and obvious distaste for anything that smacks of the hierarchical, even in quite abstract realms. All facts, for example, are of the same order — there are not “deeper” truths and more superficial ones; what is the case is the case and there’s an end on’t. Professor Ryle, of Oxford, in a recent critical article in the association’s journal, sums up the Andersonian position in the sentence, “There are only brass tacks”.

One of the points of remembering Anderson at this late date is his influence on students, which meant the effects of his teaching lasted for decades after his death. John Kerr was one student who claimed to have learned something about logic from him. The celebrated or infamous Sydney Push of the sixties took to heart what they took to be his demolition of the “fraud of moralism” and got on with freeing themselves from moral constraints. Their most famous book was Germaine Greer’s *The Female Eunuch*, which shows traces of Andersonian libertarianism that made it problematic for the more groupthink and organizing styles of feminism. In philosophy, Anderson’s students David Armstrong and David Stove dominated philosophy at Sydney University for thirty years; they were the main figures of the Right in the acrimonious split in the Sydney University Philosophy Department in the seventies. John Passmore and Eugene Kamenka, influential and widely-read philosophers at ANU for many years, were also students.

We understand Anderson – atheist, materialist, critical of established opinions and mores. Since the 1960s we have all met hundreds of people with those views, if perhaps not with Anderson’s skills in arguing for them. Do we understand so well his opponents? They are worth remembering as well — and a critical thinker like Anderson can only be understood in the light of what he was criticising. His opponents came in two main kinds, idealists and Catholics.

A hundred years ago, Absolute Idealism was the orthodoxy in philosophy departments everywhere in the world (London, Paris, Heidelberg, Peking, Sydney...). Around the 1920s it evaporated and there is now hardly any memory of it. A sample comes from the attack on Anderson in Parliament in 1943 by the Reverend Donald

Macdonald, MLA for Mosman, a Presbyterian minister and former military chaplain. He said:

I submit that Professor Anderson takes the sensate view, and dismisses the ideational. The things that are seen are only part of the whole; the things that are believed, that cannot be expressed, are the deeper part of man's being and of man's hope. The ideational is something that may not be demonstrated – like this desk – the idea that lies beyond this desk is the growing tree; and the elements and mystery of nature and the mystery of creation. But the sensate view says: "This is just a wooden desk." A primrose is just a primrose to one man while to another it conjures up thoughts too profound for words or tears: A primrose by a river's brim,/A yellow primrose was to him,/And it was nothing more.

Idealism was in favour of large, noble and progressive conceptions. The Empire, for example. Spaul's school textbook, *New Syllabus English and Australian History for Fifth Classes, with Civics and Moral Stories* (Sydney, 1937), advised that on Empire Day,

... in almost every school in the Empire, children are reminded, not so much of the greatness and wealth of the Empire, but of the need to keep it bound together by ties of good will and love. This can be done by helping one another, and being fair to one another ... In a small way, even a boy may become an Empire builder, for so long as he works honestly, strives for the right, and keeps his mind clean, he is adding something to the greatness and glory of our Empire.

An entity that can be benefited by a boy's keeping his mind clean is more than just a stretch of territory. It is an idealist entity, a being in its own right with super-personal mental properties, which has a life over and above the individuals that make it up.

Other improving projects of idealism included the League of Nations and Conciliation and Arbitration. Henry Bournes Higgins, the judge of the Harvester minimum wage case, wrote of the purpose of arbitration,

Give them [the workers] relief from their materialistic anxiety; give them reasonable certainty that their essential material needs will be met by honest work, and you release infinite stores of human energy for higher efforts, for nobler ideals, when "Body gets its sop, and holds its noise, and leaves soul free a little". (The quotation is from Robert Browning.)

The idealists were all for Progress. They were sure history was on their side. Thinking of history as something that can be on someone's side is itself an idealist project (taken over by its Marxist corruption). Horne recalls in his memoirs still being taught in primary school that history was an inevitable progress "towards better and happier conditions of life". But the 20 years from the Somme to the Depression had made some wonder if History might not have lost the plot. Idealism's impenetrable optimism proved its undoing.

John Anderson later recalled with a degree of horror watching his own idealist philosophy teacher, Sir Henry Jones, forcing himself to

spell out the optimistic idealist faith of Browning while suffering the pains of advanced cancer. The incident gives some hint of the force behind Anderson's rejection of idealism.

The Catholic opposition to Anderson, though much more a minority view in his time, outlasted both him and idealism. It rested on different premises. It had two strong voices in Sydney, the priest and anti-Communist speaker Dr "Paddy" Ryan and the founder of the Aquinas Academy, Dr Austin Woodbury. Ryan said:

I personally have argued for hours with graduates of Sydney University in a futile endeavour to convince them of their own existence, — so deeply had their very reason been undermined by scepticism and sophistry ...

The main philosophical disagreement they had with Anderson concerned morality. According to the Catholic natural law theory of ethics, there is an objective difference between right and wrong, and it is founded on a natural worth (or preciousness or dignity) of persons:

Ultimately, then [says Ryan], the morality of human acts is not to be explained by the civil legislation, public opinion and tradition, nor the authority of great men, nor mere utility, nor by gradual evolution from brute beginnings, nor their relation to the production of the super-man, but by their conformity to the law of God, founded in the nature and essential relationships of things, and known by reason.

The Catholics in Anderson's day had control of schools and seminaries but not much else. But they, like Anderson, were able to project something of their thinking into the distant future. Many Catholic writers gave special attention to the natural law approach to legal theory, according to which the point of law is to be in harmony with the natural principles of justice. That view contrasted with the "official" legal view, most famously expounded by Owen Dixon, that the law is just what has been decided so far, and any attempt to make it accord better with morality is a dangerous attempt by judges to impose their personal moral views. (Anderson, of course, had no legal philosophy, beyond condemning legal concepts like obscenity, blasphemy and sedition as "confusions".) Sir Gerard Brennan and Sir William Deane, the main judges in the Mabo case, were heavily influenced by Catholic natural law philosophy. They agreed that "the precepts of law are designed to be the precepts of justice" and that, although stability in law is an important value, it is not absolute. Natural law philosophy underpinned their determination to overturn the doctrine of *terra nullius* in favour of what they took to be a deeper legal principle, the fundamental natural equality of persons.

An aspect of these events was a matter of contention at the Sydney Institute talk given by Fr Frank Brennan on 11 February 2004. Brennan took exception to the claim of Keith Windschuttle that his father Sir Gerard Brennan's views in the Mabo case had

been “informed” by his (Frank’s) views on native title. Unfavourable reference was made to my book *Corrupting the Youth: A History of Philosophy in Australia*, which Windschuttle had cited as a source, but without close reference to the text of the book. While “informed by” is a somewhat unspecific claim, the book did not make that claim, though it did call attention to certain parallels between the opinions of the two Brennans. Frank Brennan added that “I had thought I had put the Hugh Morgan-Ray Evans Catholic conspiracy to rest in my unanswered letter to *Quadrant* in September 1999.” “Conspiracy” is an unfortunate word, and claims of conspiracy are easy to deny. What is at issue, however, is a congruence of views arising from a common philosophical understanding. There is no need to conspire when there is already agreement. Frank Brennan further quoted the opinion of Tony Coady in his *Age* review of *Corrupting the Youth*, which said, “Franklin’s idea that Catholic philosophy via natural law theory had a big influence on the Mabo decision” is “unconvincing”, “since resorting to morality to justify legal decisions has other foundations other than natural law, as is clear in the work of the Oxford philosopher Ronald Dworkin and in much of the human rights movement.” But the question is not the philosophical one of what conceptions might be logically relevant to the Mabo judgment, but the historical one of what conceptions actually did influence it. Gerard Brennan and William Deane have made clear that their reading was in Catholic writers.

David Stove, as severe a critic of Anderson as any, wrote as follows of his impact. Though the remarks are about Anderson in particular, they might stand for the influence of any successful philosopher; a serious philosophical teacher in the idealist or Catholic traditions could inspire similar comment (though one in anti-philosophical traditions like postmodernism or sociobiology could not.) The passage answers not only *What was that man for?* but *What is philosophy for?*

The influence Anderson exercised was purely, or as purely as a human influence can be, purely intellectual. I never felt anything like the force of his intellect. Disagreeing with Anderson was (to compare it with something most people have experienced), like playing chess against someone altogether above your own class. Your strongest pieces are, you cannot tell how, drained of all their powers, while on his side even pawns can do unheard-of things; and as though by invisible giant fingers, you are quickly crushed ... He was in love with philosophy himself, and he communicated the love of it to others so effectively that many will have it while they live. This is the greatest service he did.

Yet for every person whom he made a philosopher he left ten people, I should say, with a respect for philosophy, and a recollection of what it is like to wrestle in earnest with desperately difficult intellectual questions. This may not sound much, but I think it is much. Whoever can remember what

serious thinking is like, is to some extent armed against all the enemies of education. He is armed against the acknowledged leaders of the war against education, the educationists. He is armed against educational levellers of every kind. And he is armed against systems, such as Marxism, which pretend to answer every question out of a little holy catechism, and which just for that reason often act like a revelation on unfurnished minds.

In this way, Anderson leavened the lump of middle-class life in Australia; for, because of him, there is a teacher or a doctor here, a librarian or a lawyer there, who can remember what serious thinking is like.

## **Endnote**

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The publication of Anderson's works is proceeding under the direction of the Anderson Research Fellow, Mark Weblin. The edited texts of many of the lecture notes are now available at [setis.library.usyd.edu.au/oztexts/anderson](http://setis.library.usyd.edu.au/oztexts/anderson) )

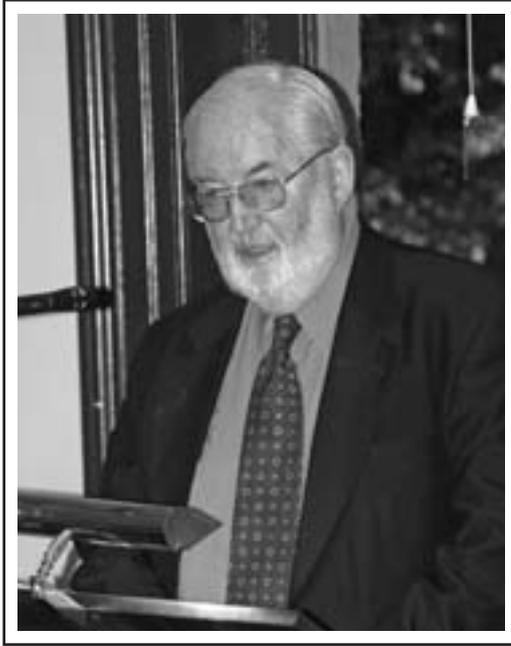


Photo – David Karonidis

*Jim Griffin*

Jim Griffin, in his recently published book *John Wren: A Life Reconsidered* (Scribe), re-examines the evidence and concludes that John Wren, the man made infamous by Frank Hardy in the best seller *Power Without Glory*, has been misunderstood. Wren was a self made wealthy entrepreneur, of Irish Catholic origins and with interests in horse racing and football, a Labor Party fixer who sought an entry into polite society. In *Power without Glory*, Frank Hardy depicted Wren as an uncouth gambler, racketeer, murderer and abusive husband. This image, embellished by television portrayals, Manning Clark and others, has stuck. In an address to The Sydney Institute, on Tuesday 16 March 2004, James Griffin exposed some of the myths.

# JOHN WREN – A LIFE

## RECONSIDERED

James Griffin

My interest in writing about John Wren was kindled when writing the entry on his friend, Archbishop Daniel Mannix, for the *Australian Dictionary of Biography*, Volume 10 (1986). I subsequently wrote the entry on Wren for Volume 12 (1990) – a mere 2000 words or so. When Frank Hardy's *Power Without Glory (PWG)* was published in 1950 I was 20 years old and a member of Melbourne University's radical Labour Club. We were left in no doubt that it was meant to depict, novelistically, the career of entrepreneur John Wren, in the manner of the muck-raking author, Upton Sinclair. My contemporaries believed that Hardy's defence in his trial for criminal libel, that he had drawn "John West" only as a "composite fictional" character was simply wormwood. The portrait of Wren was meant to be as near to reality as the fictional form would allow. And that is the way it is still accepted today by most readers except for those desperately trying to retrieve some shreds of decency for that incorrigible liar, Frank Hardy.

A "key" to the characters in *PWG* was circulated with Hardy's knowledge almost simultaneously in 1950 with the publication of the book and another in 1976 with the 26 part TV series of the book. In an international publication, *The Modern Library: The Two Hundred Best Novels in English Circa 1950*, an Australian expatriate and foundation editor of *Virago*, Carmen Cahill and the noted Irish novelist, Colin Toibin, justified their choice of *PWG* not on literary grounds but on what they believe to have been the real, the historical Wren who was:

...the corrupt magnate who *controlled Melbourne* – its sporting, gambling and political life, its police and its Catholic Church in the decades before 1950  
[emphasis added]

On 1 March 2003 a former editor of *Overland* wrote in *The Age* that *PWG* "tells a *history* [emphasis added] that no one else seemed prepared to record, of the betrayal of the labor movement, Labor Party and working-class Australians by a self-regarding gangster [i.e. Wren]". A new "key to all the identities of the characters" based on allegedly up-to-date research was published along with eulogistic essays. In spite of this my book was criticised last weekend (*Age*,

13 March 2003) for considering *PWG* “as if it were a work of non-fiction” by a person currently in receipt of an Australian Research Council grant at Monash University to write a biography of Frank Hardy. Actually I did not say that exactly: what I have maintained is that, what Hardy and his Stalinist mentors wanted you to believe was that anything nefarious in the book about “West” had in reality been done or should have been done by Wren unless you could disprove it. If you could, the character “West” became “composite” – a “no lose” situation.

Take Hardy’s infamous calumny that Mrs Ellen Wren, portrayed as “Nellie West” in *PWG*, committed adultery with a bricklayer working at her mansion and conceived a child who was named Xavier. Thirty years later he published *Who Shot George Kirkland* (1981) to justify himself. This novel develops the proposition that if Hardy’s informant had told him the truth about the demise of the hoodlum Kirkland, then he was also veracious about Mrs Wren’s adultery. The novel purports to document Kirkland’s murder in the 1920s although he actually died in a psychiatric unit in Melbourne in 1944. As for Xavier, the name of Ellen Wren’s last child, Hardy knew the infant’s real name but not its birthdate. The adultery which he dates before Xmas 1917 bore fruit only in late September 1919 – an elephantine gestation, one might say. To exemplify how callous Hardy could be, the real Xavier Wren died in 1922, almost three years of age. Parental sorrow did not bother Hardy. Not long before he died (1994) he was still bragging that he had found new evidence of Mrs Wren’s adultery, but did not disclose it.

Researching the entry on Wren for *ADB12* was difficult, especially as I was mostly at that time in Papua New Guinea. John Wren’s eldest son, John Francis, kindly gave me several interviews but their limitation can be imagined as he said that, until *PWG* was published, he did not know his father ran the Collingwood Tote. (He was not born when it was closed in January 1907, and it is quite credible that it was not discussed at home or mentioned by acquaintances). As I pointed out to the 1990 Irish–Australian Conference, the problem was writing about Wren was one of evidence:

Documentary and reliably recorded oral testimony are in short supply. Wren kept no diaries, his business records are not preserved, his letters are scarce and brief. His activities and general career was rarely analytically scrutinised in spite of the Hardy trial and various royal commissions which concerned themselves with interests in which he had a part (in P. Bull et al, *Irish-Australian Studies*, July 1990, 63). So the *ADBIZ* entry was the best I could do at that time.

Then in 1992 the wife of one of Wren’s grandsons discovered a baby’s “carry-basket” full of letters and assorted papers under the stairs of the disused servants’ quarters in her late father-in-law’s house.

Most noteworthy were ten letters from Dr H. V. Evatt to “his friend” John Wren, and a miscellany of correspondence with E.G Theodore, (Senator) Pat Kennelly, James Scullin, Sir Gilbert Dyett and other notables together with some commercial papers. These created the possibility of a significant enlargement of the Wren life-story. But there was much more to be done. In 1996, after I had retired from employment, five of Wren’s grandchildren, who knew very little of their grandfather (d. 1953) agreed to finance a part-time, adhoc research worker. (I was living in Canberra and not very mobile). My recently published book, *John Wren, A Life Reconsidered*, is the result. It has gaps and inadequacies. For example, there is little about Wren’s activities in Sydney. I consulted several scholars in the field to find there were no apparent “leads”.

However, I would not like this audience to think that lack of evidence is a serious problem for all other writers on Wren. Australia’s most celebrated historian, who had research assistants, could not find Wren’s actually date of birth: “probably 1865” (rather than 1871) although it was accurately recorded in an accessible publication e.g. *Australian Encyclopaedia* (1959). That is, after all a mere small fact. Professor Manning Clark linked the usually taciturn and personally austere Wren with John Norton, the paranoid dipsomaniac proprietor of the scandal-sheet, *Truth*, under the caption, “Embourgeoisement”. Clark juxtaposed their photographs on the same page and, psychophysionomically we may say, reads in Wren’s face “the loneliness of a man enslaved by the bitch goddess of success”. As for Wren’s philanthropy, Clark saw him simply as “a Father Christmas to the afflicted and distressed”. I would have thought that only a person swaddled in bourgeois comfort could fail to appreciate handouts to the needy by people like Wren before the days of the welfare state.

Clark’s footnotes for his pejorative opinions disclose only one substantive source: the article “Wren and his Ruffians”, published in the first issue of *The Lone Hand* (1 May 1907), just after the Tote was closed after which Wren concentrated on legal money-making. Other items in the footnotes are mere bluff. Hardy maintained that when Clark was writing about Wren he used to telephone him for information and it reads that way. They had collaborated on an article on Karl Marx in the late 1940s. So let us take one item of fact.

Clark says that Wren rigged the 1904 Caulfield Cup which he famously won with his lightly weighted gelding, Murmur. Wren, says Clark, corrupted *all* starters. Hardy in *PWG* says he corrupted *some*. The *Lone Hand* article, written by the reputable journalist Monty Grover, later founding editor of the *Sun News Pictorial* and the source for both Clark and Hardy, says that, although suspecting Wren of improper practice was not “groundless” it was “erroneous” in this

case. Murmur's was "an honourable victory by three lengths" says the source. Did Clark really read it? Was this dishonesty or dyslexia?

But perhaps Clark can be excused if we think of him as writing what is fashionable today as "performative history". Melbourne University's laureate Dean of Arts Professor Stuart Macintyre contends that Clark:

sought to make Australian history dramatic and compelling. To this end the characters had to be strong and dramatic...the melodramatic element became an important part of what he was trying to do.

(Quoted in T. Costello and R. Miller, *Wannabet?*, Sydney 2000, 36).

So Clark's most publicised error that Phar Lap won *two* Melbourne Cups is not meant to be taken literally. Professor Brian Matthews has said that Clark meant that Phar Lap was so outstanding that he *ought* to have won *two*. By that formula Wren *ought* to have rigged the 1904 Caulfield Cup and more besides.

It's a pity that Manning Clark did not live to read about Penny Wren's discovery of the basket with the Evatt-Wren letters in it. Evatt was a hero to Clark: he had "the image of Christ in his heart and the teaching of the Enlightenment in his mind" – quite a double whammy for a politician. Would Clark have revised his opinion of Wren's life as "a vaudeville of devils"? Some in the audience will know how Dr Evatt, through the agency of Alexander Wilson MHR, helped in 1941 to make John Curtin prime minister, "the saviour of Australia". There is circumstantial evidence that Wren may also have been involved. What disillusion it would be for Wren's most severe critics if the evidence became more than circumstantial. Curtin certainly would have hated the idea. It is a mistake in historiography to imagine we have seen the last word.

Some biographers have managed to blot Wren out of their stories together. The late Dennis Murphy, an admirable Labor historian, told me once that Tom Ryan, Queensland premier 1915–20 and prospective federal Labor leader, steered well clear of Wren. In my book I have Ryan on the same platform as Wren and saying, "To Australian democracy as a whole Mr Wren was a good friend". John Robertson, the worthy biographer of Prime Minister, James Scullin, writes that Scullin would have nothing to do "with a shady Roman Catholic entrepreneur" like Wren and denies that Wren had any political influence at all. (I don't think Dr Robertson was a Roman Catholic.) This is quite ridiculous. Surely he must have read the memoirs of Arthur Calwell and Jack Lang.

As I had only limited research funds and not unlimited time, there are inadequacies in my book apart from those owing to my own fallibility. But several things are certain:

- *PWG* is not based on creditable research. To take the most serious allegations against Wren and his brother, they were not involved in the five gangster homicides specified in *PWG*.
- Mrs Wren was not involved in adultery. That is a Lady Chatterley type fantasy that only a literary hoodlum would pin on an elderly woman.
- *PWG* was planned by leading members of the Australian Community Party and supervised by them to discredit the Labor Party and the Catholic Church. Truth was irrelevant.

That most reputable historian of Melbourne, Graeme Davison, believes that without *PWG* Wren would not be a significant figure in Australian history. To refute this we can cite:

- His role as a focus for sectarianism and wowsersism, an important aspect of social history 1890-1914.
- His role as a provider of public entertainment. John Cain Jr calls him “arguably the most audacious and innovative showman in Australia” during the first half of the twentieth century (*On With the Show*, Melbourne 1998, 162).
- His role in supporting organisationally and financially campaigns in Australia for Irish Home Rule and the Irish Free State in 1916-22.
- His role as a catalyst (or “fixer”) in politics, involving assistance to the Labor Party and trades union (some £250,000, he told Scullin) and also to some Country Party interests such as those of Albert Dunstan about which we seem to know little.
- His role as a trusted entrepreneur and financier in commerce and industry: mining, land, war assets, liquor, cosmetics, food processing etc. There is much more to be explored here but he stands up well against the “land boomers” and had no need to flee to Majorca, invest in Van Gogh Irises or indulge in asset-stripping.
- He was a notable philanthropist. He told Fr. Hackett S.J. quite credibly, that he had given £2 million away during his life time. St Vincent’s Hospital and Caritas Christi Hospice were notable recipients but not all went to Catholic institutions. J. M. Mullins MHR who served on the Hospital and Charities Board for six years estimated that Wren donated “half a million pounds” during that period, “always anonymous”. (Letter to Wren family, n.d. c. 1976, Wren papers).

There is room for more research into Wren. It may be that some of it may be discreditable but until it is found Wren is entitled to at least qualified respect. If that happens my book will have achieved its purpose.



Photo – David Karonidis

*Sally Begbie*

The Hutton Inquiry was set up to investigate the chain of events surrounding the death/suicide of Dr David Kelly, a British scientist who had given confidential information to BBC journalist Andrew Gilligan. Gilligan's reporting led to Gilligan claiming that Blair adviser Alastair Campbell had "sexed up" a dossier on Iraq's weapons of mass destruction. The Inquiry absolved Campbell and led to resignations at the top of the BBC. Former ABC journalist and Communications academic at Charles Sturt University, Sally Begbie has researched the outcomes of the Hutton Inquiry. She addressed The Sydney Institute on Tuesday 23 March 2004 to correct some of the media myths surrounding the affair.

# THE MEDIA AFTER

## *LORD HUTTON'S REPORT*

**Sally Begbie**

On 28 January 2004, Lord Hutton delivered his report into the circumstances surrounding the death of the British scientist, the late Dr David Kelly. Lord Hutton's Report delivered a powerful message to the British public, and to everyone concerned about the standards of news media, the conduct of journalists and the increasingly adversarial war which has developed between the self-appointed members of the fourth estate and elected governments.

A single starting point to the significance of Lord Hutton's Report is his terms of reference. He was not commissioned – as you might have thought from reading recent Australian media reports – to investigate chicanery by the British government. He was commissioned to examine the conduct by people from three institutions: the British government, the BBC and those involved in the drafting of the dossier released by the British government on 24 September 2002 entitled Iraq's Weapons of Mass destruction.

Lord Hutton's investigation was thorough and wide ranging. For months, the media greeted it with acclaim – openly rejoicing in the expectation that the British government would be humiliated. That applause halted abruptly when Lord Hutton reported.

In his report, Lord Hutton pilloried the BBC for broadcasting fabrications and rejecting complaint without making any enquiry and without attempting to verify the basis of the stories which were put to air in dramatic and colourful language. Not surprisingly, the response of the media has been to condemn the judge. They cannot be wrong. The referee must be wrong. That is the only explanation acceptable in the world of the media.

I found Lord Hutton's Report and conclusions to be entirely unsurprising in its content and its conclusions. Indeed, in December 2003, I spoke at a media conference at Melbourne University on this same topic. Having had the ability *via* the wonderful world of the internet, of having read the transcript of the hearings, and viewed the exhibits as the investigation progressed on a daily basis, my paper on December 2003 postulated almost precisely the same conclusion

as Lord Hutton. Indeed that is why Gerard invited me to speak here today – I sent him a copy of that paper back in December. I do not say that only to give myself a pat on the back. My point is much simpler. There was only one result open to any informed and considered reader who read the transcript and viewed the exhibits.

I see a simple message in Lord Hutton's Report. The time has come – and it not just the walrus saying this – for journalists to either form ourselves into a properly constituted self-regulatory profession, enforced by statute, or have regulation forced upon us. There is, of course, a third option. We can throw up our hands and say we are just purveyors of words and we make no claim to professionalism – we can hide behind the flag of freedom of speech, saying we will broke nether criticism nor complaint.

I will not spend any time on that last option. Freedom of speech is a wonderful thing – and indeed central to a democracy. However, just as I cannot shout fire in a crowded theatre when there is no fire; nor can I shout liar on the front page of a newspaper when I know of no lie. The truth is that we, as journalists, are purveyors of words – and we are in the market every bit as much as is the purveyor of toothpaste. It has been decades since anyone said that the purveyors of toothpaste could mislead, deceive or recklessly ignore the truth or basis of their assertions about their products. As a journalist, I refuse to be party to an argument that says my product – words and news – is of lesser significance in a society than toothpaste and is so irrelevant that we need apply no standards.

### **Lord Hutton's Report and findings**

The findings of Lord Hutton's Report exposed – putting them briefly:

1. a lack of professional standards in journalism;
2. the dangers to a civil society of permitting the continuation of a battle between elected government and the non-elected news media;
3. the breakdown of public trust in both the news media and government; and
4. the risk to news consumers of relying on an unaccountable news media.

### **Andrew Gilligan's false claims**

The basis of the problem exposed by Lord Hutton's Report is simple. The journalist – Andrew Gilligan – made a series of claims that were entirely false. Andrew Gilligan made his false claims on one of the most respected radio current affairs programs in Britain. The claims were of a most serious nature. If Andrew Gilligan were an Australian advertising company making false claims about a brand of toothpaste, he would have been liable for substantial fines under the Trade

Practices Act. However, because, it seems, we care about the quality advertising more than we do about the standards of journalism, someone like Andrew Gilligan, could invent a little story about the government deliberately lying to its people over why it took their country to war, and expect to get away with it. More to the point – and even more disturbingly – today many journalists say the fact that he made up the story does not matter, because they say the “spirit” of the story was right. Well that might be fine if you re-write *The Castle* for the next screenplay. But I find it leaves a very sour taste in my mouth when it means that news has no more contact with reality than fiction. That, however, is the somewhat bizarre situation in which the public now finds itself when viewing the news.

The only sanction a journalist faces for serious breeches of professional conduct is public exposure. For journalists this is not necessarily a bad thing. In many cases, all publicity is good publicity. Andrew Gilligan left the BBC of his own volition for another job in journalism. It is yet to be announced where he will be working but it is not hard to imagine how attractive Andrew Gilligan must be to the British tabloid media.

For the BBC, however, Lord Hutton’s Report will take a lot to get over. It was a devastating critique of the lack of journalism standards and the editorial practices at the BBC. Today the BBC is looking for a new Chairman for the Board of Governors and a new chief executive. It is facing a Charter review process. And the newly constituted independent broadcasting regulator, called the Office of Communication, and referred to as OFCOM, is undertaking a major review on the future of public service broadcasting. The BBC is no longer able to rely on the reputation of its journalism, it is being forced to account not only for the standards it requires of its journalists, but also for the process through which it ensures those standards are met.

Lord Hutton’s report exposed a culture of arrogance within sections of the BBC, from individual reporters through to executive management. This culture is equally representative of certain journalism and broadcasting in this country, which is characterised by the lack of accountability, partiality and – most sadly – the sheer ignorance which has come to pervade much of contemporary journalism.

### **Lord Hutton’s findings**

Let us look at the particular example before Lord Hutton – two single short radio reports, broadcast on the BBC’s prime current affairs program *Today*, 29 May 2003. At 6.07am, on that morning Andrew Gilligan, then reporting from his home in a chat session with the program’s presenter said:

What we've been told by the one of the senior officials in charge of drawing up the dossier was, actually the government probably err, knew that the 45 minute figure was wrong, even before it decided to put it in.<sup>1</sup>

Mr Gilligan added:

Things go wrong in good faith but if they knew it was wrong before they actually made the claim, that's perhaps more serious.<sup>2</sup>

Quite so. The government agreed. Downing Street immediately contacted the *Today* program with a denial. At 7.32am on the same day, the BBC broadcast the denial that by the government: "Not one word of the dossier was not entirely the work of the intelligence agencies." <sup>3</sup> as it introduced Andrew Gilligan's second piece – which was much to the same effect as the first. The only substantial change Andrew Gilligan made to his second report was to change the allegation from being that the government knew the 45-minute claim was "wrong", to say that the government "knew it to be questionable".

Lord Hutton's Inquiry heard from the BBC Board of Governors' Gavvyn Davies that he had heard the report as it went to air, but he like everyone else in the BBC thought nothing amiss. While it is understandable that Davies may have been distracted, it was the job of BBC's news editors from the program editor through to their Head of News, Richard Sambrook, and ultimately their Editor in Chief, Greg Dyke, not to be. One of the most striking aspects of this story is just how the extraordinariness of Andrew Gilligan's claim, how the breadth of his allegation – put bluntly that the government lied deliberately – could pass as being so utterly ordinary as to be unremarkable.

For the world's most trusted news organisation, this failure raises serious questions about how it can maintain its standards in the face of the 24-hour news cycles, where news is instantaneous and continuous, where editorial capacity is clearly stretched, and where the demand for any information to fill the space becomes the dominant concern. What had permitted Andrew Gilligan's reports to be allowed to go live to air, unscripted and unedited, from his home?

Andrew Gilligan – through the BBC – alleged that:

1. the UK Government knew the 45 minute claim was false;
2. the intelligence agencies did not believe the claim was necessarily true;
3. Downing Street – meaning the Prime Minister or his office had "ordered" that the claim be inserted into the dossier; and
4. the claim was put in at the last minute when Downing Street ordered the dossier to be "sexed up".

This was no minor claim. As the British Prime Minister, Tony Blair told Lord Hutton's Inquiry:

This was an attack that went to the heart of not just the office of Prime Minister, but also the way our Intelligence Services operated. It went in [*sic*] a sense of credibility. I felt, of the country, never mind the Prime Minister. It was a very, very serious charge.<sup>4</sup>

In his closing address to the Inquiry, Counsel for the Government, Jonathan Sumption QC, characterised the Gilligan claims as “quite plainly an allegation of conscious wrongdoing on the part of the government”<sup>5</sup> Lord Hutton was to agree with him. By contrast, Mr Sumption characterised the reaction of the BBC to the Gilligan claims as just a bit of fun, submitting that:

The BBC seems to have regarded this as a routine piece of political mud slinging, chatter in the air. It seems to have been thought that the BBC could shoot off its fireworks and then steal away. The dogs would bark, the caravan would move on, nobody would pay any more attention.<sup>6</sup>

Mr Sumption was right. In evidence to the Inquiry, the then Director General of the BBC, Greg Dyke revealed more than perhaps he meant to of the internal culture operating within the BBC. He admitted that he and his Head of News, Richard Sambrook were shocked that the government maintained and intensified its demands for the BBC publicly to apologise for the Gilligan stories. Oddly enough, they were shocked by the fact that someone had taken them seriously. That, indeed, is an interesting comment upon their view of their product.

### **Mr Andrew Campbell and the BBC**

Mr Alistair Campbell is a contentious figure within the British media. A member of the Prime Minister’s personal staff, he oversaw the relationship between the Blair government and the British media. Unsurprisingly, Mr Campbell is hardly a shrinking violet, and he quickly became known as Blair’s Spin Doctor.

In January, this year, the Phillis Commission review into government relations reported that the communications strategy adopted by the Labor administration on coming into power in 1997, and the reaction of the media and the press to that strategy, had contributed to the breakdown in the relationship between government, the media and the public.<sup>7</sup> During much of Iraq war, the Blair Government believed it was not getting fair treatment in the news media. On March 30, *The Guardian* reported:

Sources close to the Prime Minister have complained that the broadcasters are acting as if there is a “moral equivalence” between America and Britain and Saddam Hussein’s regime.<sup>8</sup>

Within months of the *Guardian* story, Andrew Gilligan and BBC had aired their story, and Alistair Campbell sought an apology. During June, there was a robust exchange of private correspondence between himself and the Head of News, Richard Sambrook. Put shortly, Mr

Campbell asked Richard Sambrook to explain how Andrew Gilligan's report confirms to the BBC's own producer guidelines that "programmes should be reluctant to rely on only one source". On the 11 June, Mr Richard Sambrook replied:

If we had thought the single source incredible, we would not have reported the allegation at all. You would not expect me to reveal the source (and I am gratified you have not asked) but I can assure you that I am satisfied the source knew what he/she was talking about. It is fanciful to imply that Andrew or anyone else for that matter can simply put stories on air without discussion with his editorial management<sup>9</sup>

There are some ironies in that. Andrew Gilligan in fact later contacted the Parliamentary Committee to name the late Dr Kelly as the source of another journalist, Susan Watts, in terms that were calculated to expose the late Dr Kelly as Gilligan's source. And the truth was the stories did go to air without proper discussion with editorial management.

The tone of self-righteous indignation obvious in Richard Sambrook's response was indicative of the BBC's behaviour throughout the Gilligan affair. It was very much the big man put down of the little man. It was game playing, it was dismissive, and it failed to engage with the substance of the concerns. More than that, it was an improper and ill-considered response to legitimate journalistic concerns.

On 25 June, Mr Campbell was called to give his own evidence to the Foreign Affairs Committee. Frustrated and dissatisfied with the responses he had received from Richard Sambrook, Mr Campbell put on the public record his complaints about the BBC handling of the Gilligan stories. He did so during his evidence to the Foreign Affairs Committee, saying:

I find it incredible and I mean incredible that people can report based on one single anonymous, uncorroborated source, can report, and let's get to the heart of what the allegation is, that the Prime Minister, the Cabinet, the intelligence agencies, people like myself, connived to persuade Parliament to send British forces in to action on a lie. That's the allegation. And I tell you until the BBC acknowledge that is a lie I will keep banging on.<sup>10</sup>

That should have come as no surprise. However, it did. The then Director General of the BBC, Greg Dyke heard about it at a conference he was attending his Head of News, Richard Sambrook in Surrey. Greg Dyke told Lord Hutton's Inquiry: "We both agreed we should leave the conference and go, I mean an attack of this sort of scale from the government's director of Strategy and Communications was pretty near unprecedented."<sup>11</sup>

This was the recasting of the debate. It is one that is not uncommon. Confronted with complaint, the journalist invokes the concept of "independence" to assert immunity from criticism; and

a complaint about journalist or broadcasting error – including as the facts here show – a very justified complaint – is re-badged as an attack upon independence. Let us be clear. Independence is not immunity.

The BBC had, for the best part of a month, effectively ignored Mr Campbell's complaints. Now the BBC reconstituted the complaints, as being the subject of the story and classed that as an attack upon the BBC's independence. Richard Sambrook said:

I think Alistair Campbell yesterday seriously misrepresented the BBC's journalism. I mean he said we have accused him and the Prime Minister of lying, that's not true, we haven't. He said we accused the Prime Minister of misleading the Commons. We've never said any such thing. He said we were trying to suggest the Prime Minister had lead the country to war on a false basis. We've never suggested that. He said the BBC had an anti-war agenda. It's untrue we have no agenda. And finally, he said we've not apologized. We'll that is true because we have nothing to apologise for.<sup>12</sup>

Sambrook's attack represents a series of assertions without proof. It was the same form of bullying the BBC had been so quick to accuse Andrew Campbell of doing to it. The BBC executive was clearly viewing the complaints of Alistair Campbell as part of what they perceived to be his ongoing vendetta against the BBC for biased war coverage. That arrogance ultimately would result in a lack of proper enquiry into the allegations, and would cost the Chairman of the BBC Gavvyn Davis and the Chief Executive, Greg Dyke, their jobs.

This was the clear illustration of the sorry slide from independence to immunity, which flows from the lack of standards. The reality is that the senior officers of the public broadcasting body did not consider either that they should have to account for the content of the BBC's broadcast; or that anyone was entitled to criticise them or those broadcasts.

Andrew Campbell had told the FAC, that he believed the BBC's coverage of the Iraq conflict was biased, but dismissed he had a personal vendetta against the BBC. During his evidence, he twice publicly endorsed the BBC as having a deserved reputation for its journalism and producing some of the best journalism during the war.<sup>13</sup>

In fact it was Andrew Gilligan who first personalised this particular dispute between the BBC and the government. As Counsel for the Government told Lord Hutton:

It is important to emphasise that in spite of the tendency of the press to personalise this issue that the dispute about the broadcast was never a personal campaign by Alistair Campbell. The original BBC broadcasts had not mentioned Mr Campbell. That was something that Mr Gilligan added to the allegations when he came to sell his intemperate and inaccurate article to *The Mail on Sunday*<sup>14</sup>.

On the Sunday following his sensational allegations on the BBC, Andrew Gilligan wrote a tabloid article for *The Mail on Sunday* (1 June 2003). The headline for the article read: "I asked my intelligence source why Blair had mislead us all over Saddam's weapons. His reply, one word Campbell<sup>15</sup>". That publication, of course, was in a private publication – a tabloid newspaper. It was, as Lord Hutton's Report demonstrated – and Andrew Gilligan later admitted – quite simply wrong. I shall return to this point later.

However, there was to be no recasting the debate as a bit of mudslinging before Lord Hutton. What the judge was interested in was: what were the editorial and managerial systems governing journalists at the BBC; had the systems worked; who was responsible for their implementation; how did their internal self-regulatory systems respond; how the BBC operated in the public interest in the face of persist allegations of wrongdoing by the Blair Government.

What Lord Hutton found was a trail of persistent self-interest and reckless indifference at the BBC. The broadcaster's internal practices been held up to scrutiny. What was laid bare was that the BBC's rhetoric did not match the BBC's system or practice. His report exposed a chain of devastating editorial and managerial failures at the BBC.

In relation to the allegations reported by Andrew Gilligan, Lord Hutton concluded that:

1. The allegations were "unfounded";
2. The late Dr David Kelly did not say that the government probably knew or suspected that the 45 minutes claim was wrong before that claim was inserted in the dossier;
3. The late Dr Kelly did not say that the reason why the 45 minutes claim was not included in the original draft of the dossier was because it only came from one source and the intelligence agencies did not really believe it was necessarily true;
4. The allegations made by the Andrew Gilligan were of great importance.

In relation to the role of editorial and the management systems at the BBC, Lord Hutton concluded:

1. The editorial system within the BBC was defective;
2. BBC management have failed to investigate properly the government's complaints;
3. The Head of News, Mr Richard Sambrook had failed to examine Andrew Gilligan's notes before responding to Alistair Campbell, in his letter of 27 June 2003;
4. BBC management failed to appreciate that the notes did not fully support the most serious of the allegations;

5. BBC management failed to draw the attention of the governors to the lack of support in the notes for the most serious of the allegations;
6. Operational management systems within the News and Current Affairs department of the BBC were defective because relevant information about the BBC's relationship with and opinion of Andrew Gilligan had not been passed up the line;
7. Andrew Gilligan was known to have a "loose and distant" relationship with the *Today* program, and was also known for his "lack of judgement in some of his phraseology".

In relation to the BBC Board of Governors, Lord Hutton concluded:

1. The governors were right to take the view that it was their duty to protect the independence of the BBC;
2. The governors failed to distinguish the separate and specific concerns the government had about Andrew Gilligan's broadcasts on 29 May from Alistair Campbell's more general claim as expressed in his evidence to the FAC, that the BBC had an anti-war agenda;
3. The governors should have recognised that protection of the independence of the BBC was not incompatible with properly investigating the government's complaints, that the allegations against its integrity reported in Mr Gilligan's broadcasts were unfounded;
4. The governors failed to make a more detailed investigation into whether Andrew Gilligan's allegation was supported by his notes;
5. The governors failed to give proper and adequate consideration to whether the BBC should publicly acknowledge that this very grave allegation should not have been broadcast.<sup>16</sup>

For the first time, the BBC was subjected to the same level of scrutiny as the government, and the BBC had come off second best. The Corporation was shown to have displayed a culture of arrogance and dismissiveness inappropriate to a public broadcaster that has resulted in widespread damage to its reputation. Any claim the BBC might have an effective system of self-regulation was now seriously questionable. Moreover, for news consumers worldwide, the question was if you could not trust the BBC, whom could you trust?

### **Reaction of the British government**

In accepting in full the findings in Lord Hutton's Report, the Prime Minister told House of Commons that Lord Hutton's Report "is an extraordinary, thorough, detailed and clear document. It leaves no room for doubt or interpretation"<sup>17</sup>. Unlike the BBC, the Blair Government had moved proactively to deal with the adversarial nature of its relationship with the British Media. The Government

had commissioned Bob Phillis to conduct a radical review of government communications.

### **The Phillis Review**

The Phillis Review had delivered its interim report on 27 August 2003. It identified a three-way breakdown in trust between government and politicians, the media and the public. It considered it vital for the health of democratic institutions that trust between government, the media, and the public be rebuilt. It recommended a new structure be instituted within government that would be responsible for all government communication. It would be a civil servant lead Communications unit based within the Cabinet Office. The Prime Minister immediately adopted its recommendations. By September 2003 – there was to be:

1. A new permanent secretary appointed to oversee government communications; that person would be a civil servant;
2. And deputy to act, as the Prime Minister's senior official spokesman, would be most likely a political appointee with no civil service management role.

This was effectively the downgrading of Alistair Campbell's position. He was to announce his resignation two days after this announcement. That meant that his resignation was announced immediately following upon his having given evidence before Lord Hutton. It was envisaged that this new structure would help to clarify the delineation between government communication and political communication.

Nine days before Lord Hutton delivered his Report, the Phillis Review delivered its final report. It recommended a number of additional measures but none were as significant as its interim findings. In short, the Blair Government had proactively sort an independent external review and had adopted the majority of its recommendations. This was not something the BBC had proved itself capable of considering let alone doing.

Lord Hutton cleared Alistair Campbell, who, gave a press conference and said:

Having been in both journalism and politics, I would say this: if the public knew the truth about politicians, they would be pleasantly surprised. If the public knew the truth about the way certain sections of our media operate, they would be horrified.<sup>18</sup>

### **Reaction at the BBC**

During Lord Hutton's Inquiry, calls for the BBC to be regulated intensified. The Chief Executive of ITV, Charles Allen, said the BBC should be brought under the regulation of the British government's new communications regulatory authority, Office of Communication (OFCOM).<sup>19</sup> The Head of Endemol Television, Peter Bazalgette said:

Can the BBC governors be both cheerleaders and regulators? Everyone understands that the BBC [board] has long been captured by the people they are supposed to regulate. In fact, they've not been so much captured, they've gone for the full Stockholm Syndrome.

OFCOM is currently undertaking its first major review on public service broadcasting. The outcomes of which will also influence the BBC Charter review. Structural change will occur at the BBC just as it did for the Blair Government, the only question is just how those changes will be configured. Lord Hutton's Inquiry exposed just how desperate the BBC is for internal change.

### **Media reaction**

The reaction of the media to Lord Hutton's Report was predominantly one of shock and outrage. In another irony in the story, the findings of the report had been accurately leaked the day before to the tabloid newspaper, *The Sun*. As I said before, the media had expected that Alistair Campbell would meet his day of reckoning, and the Blair Government would soon be gone. Journalism would claim some big scalps. When this was did not happen, the media retaliated. They had already worked out their line of fire.

Two days before Lord Hutton's finding was delivered, the National Union of Journalists issued a statement saying that the BBC and the Andrew Gilligan were right to pursue the story, that it was in the public interest, and that the "BBC's story was true".<sup>20</sup> The line being taken was that the thrust of Gilligan's story was right, even if some detail was wrong. In short, Andrew got it right – Britain had been taken to war on wrong intelligence.

That might turn out to be correct. However, that was not Gilligan's story. Gilligan's story was that he had a specific source who made a specific allegation. That was proven false. To pretend now that the story was something else is an act of gross public deception. It is the news media's very own "conscience act of wrong-doing". It is a line that still enjoys currency. It did not matter to the media defenders of the faith that findings of Lord Hutton could prove that Andrew Gilligan had breached at least three of the National Union of Journalists' Code of Conduct. He breached the following provisions in the code:

- Code 1. A journalist has a duty to maintain the highest professional and ethical standards.
- Code 3 A journalist shall strive to ensure that the information he/she disseminates is fair and accurate, avoid the expression of comment and conjecture as established fact and falsification by distortion, selection or misrepresentation.
- Code 4. A journalist shall rectify promptly any harmful inaccuracies, ensure that correction and apologies receive due prominence

and afford the right of reply to persons criticised when the issue is of sufficient importance.<sup>21</sup>

Rather than facing facts, the National Journalist Union issued a statement saying: "Andrew Gilligan should be recognised for the great service he has supplied to the public."<sup>22</sup> and then focused their attack upon the judge. He must be wrong. It is inconceivable that a journalist could be wrong. Therefore, if journalism was to be protected, Gilligan had to be right, and Hutton wrong. This was brazen self-interest masquerading as the public interest.

Interestingly, this was not the first time the journalists had tried to twist the debate. When the issue as to the identification of Andrew Gilligan's source arose, the media took the view that it was grossly inappropriate for the Government to name the source to disprove the story. Why? On one version a twisted reading of the obligation to the whistleblower. On another, it would be an interference with journalistic independence to prove that the "source"; of the story was false both as to role – you will remember the debates as to the job held by the late Dr David Kelly – and as to content – because the source who had identified himself to the government denied making the statements attributed to him.

Once again, the slip was from independence to immunity. This time, the journalists invoked the confidentiality of sources which is asserted to buttress independence to say that anyone used as source by a journalist is now immune from identification by others – including for the purposes of denying that that the source said that which the journalist attributed to the source. Again, that is nonsense.

*The Independent* produced a now famous bare white front page with the words: "Whitewash?? Lord Hutton's Report". The traditionally conservative *Spectator* published an inflammatory piece by Rod Liddle, the person who initially employed Andrew Gilligan at the BBC: "Lord Hutton has flung the whitewash around with copiousness, a completeness, which must have surprised even the inhabitants of Downing Street."

Not content to rubbish the report, Liddle went on to launch a vicious personal attack on the judge:

The only thing we can learn from Lord Hutton's report is that next time we yearn and clamour for an inquiry into some piece of governmental chicanery, we should avoid at all costs importuning a senior member of the legal community to write it. Instead, we should get someone a little more sentient, a little more observant, a little less inclined to accept without question the protestations of the innocence of the ruling political elite. A plumber, for example or maybe the members of Atomic Kitten. Be a bit cheaper, too.<sup>23</sup>

The next day, in the *Sydney Morning Herald*, Richard Ackland weighed in on the same terms:

Maybe it is not a good idea to have judges doing these sort of critical reports. Their views of how the actual world functions are preposterous. Germaine Greer or Johnny Wilkinson probably would have done a fairer job. Yet judges and senior barristers are wheeled out for these big set-piece exercises on the strength of their capacity to distil large quantities of evidence, see through the fibs, get to the truth and make worthy recommendations.<sup>24</sup>

The central point is actually reflective of the central problem of journalism: contempt for expertise. What these journalists – and yes I know Ackland has legal training – are saying is that the task of conducting an inquiry, of assessing witnesses and credibility, of sifting through multiple versions of the facts, should be given to any person except a person whose training has equipped them for that task.

Lord Hutton is an experienced professional lawyer and judge, with a lifetime of work and experience in dealing with witnesses, disputed facts and analysis. But his critics – because they do not like his result – say that task would be better done by a feminist academic specialising in art; a now defunct girlie pop band, a rugby hero or plumber. The proposition is clearly ludicrous. Imagine the outcry if indeed the Prime Minister had announced that a plumber would head the inquiry into the circumstances surrounding the death of the late Dr Kelly.

On the ABC TV's *Media Watch*, David Marr agreed with the British news media and characterised Lord Hutton's Report, as a failure to recognise the overall accuracy of Gilligan's report. The Marr verdict was "it was spin and it worked". He told his viewers that for "the journalist at the centre of the fuss, Andrew Gilligan, it's been a great week, as more evidence emerged that his story was essentially correct."<sup>25</sup> Thus Australia's leading forum for media analysis (that's how they bill themselves) failed to provide any balance in its reporting of the story.

*Media Watch* had failed to analyse the potential problems for journalism, its credibility and its future, that Lord Hutton's Report raises. *Media Watch* failed to mention the British government's response to the Phillis Commission. In doing so, *Media Watch* failed to contextualise its report. Instead it preferred to advance, the "they were wrong we were right argument" of journalists about governments.

To be fair to David Marr, his and Marian Wilkinson's work on the Tampa saga had given him reason to be sensitive to the government spin angle. But this was not the central fact or finding relating to journalism in Lord Hutton's Report, and to try and make it such was to deny the viewers the context necessary on which they could make their own decisions. It is a style of reporting which under estimates the viewer.

## The significance of the journalistic problems revealed in Lord Hutton's findings

The editor of the *Financial Times* magazine, John Lloyd describes such journalism as laser-guided journalism. Writing in response to Lord Hutton's Report, Lloyd said laser-guided journalism

1. depends on a pervasive contempt for the governing classes, especially for politicians;
2. defines of all official and corporate public relations as "spin";
3. concentrates on process at the expense – often the complete obliteration – of policy and outcomes; and
4. privileges conflict and complaint and dramatisations of ordinary conflict, as within government, as crises, irrespective of any tendency to contain the conflict with compromise.<sup>26</sup>

For the editor of the *Financial Times*, Andrew Gowers, Andrew Gilligan's sexed up stories "were a dreadful misadventure which should serve as a wake up call to journalists" He wrote:

The true message of Lord Hutton's Report is that this was a story about journalism, about a story that was wrong, defended against furious government complaints by a management that had not bothered to check it and backed by governors determined to resist external pressure at the expense of obscuring the truth.<sup>27</sup>

"*The Guardian's* Martin Kettle wrote a column entitled "the threat to Journalism is real. It comes from within". Mr Kettle went on to warn: "I do not believe we have even begun to realise the damage that some modern journalism is doing to the fabric of public and private life."<sup>28</sup> The director of the independent think tank the Demos Foundation, Tom Bentley, contextualised Lord Hutton's findings more broadly, arguing that the Report by Lord Hutton exposed the extent to which competition between individual journalists and news organisations in the era of 24 hour news services has had devastating results. Mr Bentley writes:

The growing intensity of this competition to uncover and define the story, and the pugilistic public culture that it reinforces, threaten to paralyse the possibilities of government itself, by creating conditions in which decision-making in the public interest, on issues which by definition are complex and uncertain, becomes impossible.<sup>29</sup>

In this case, an elected government unable to get satisfaction from a public broadcaster about what turned out to be legitimate concerns, is called to account before a judicial inquiry, partly over whether it was right for the government to defend itself from allegations that it lied to its people over the reasons for taking the country to war. In his final submissions to the Inquiry, Mr Sumption QC, reminded Lord Hutton that: "A government is as much entitled to defend itself against false-

hoods as anyone else. If that means disclosing, the truth, then it not only can do it but it ought to.”<sup>30</sup>

Yet what becomes startling clear through Lord Hutton’s Inquiry, is just how hard it is for anyone, including the government, to defend themselves against false allegations by an unregulated news media, even when those false allegations are made by a public broadcaster. Lord Hutton’s Report has consequences beyond Britain. It serves as a warning to journalists, government and citizens in democratic countries to re-examine rules of engagement in the twenty-first century. Former Controller of Policy at the BBC, and now Director of Policy for Britain’s Independent Television Commission, Dominic Morris says:

The consequence of reduced, lower quality, cheaper or editorially compromised news coverage is likely to be a more ignorant and less interested electorate becoming progressively more disengaged from the national and international issues affecting us all.<sup>31</sup>

It is also evidence of how large sections of journalists are stuck in reporting models which are failing more and more to meet the needs of today’s audience. The Gilligan stories were at the end of the day “shock horror they did wrong, and I am right, and I can prove it because someone told me stories in secret.” So much of investigative journalism falls into this category.

However, in a society operating under improved systems of governance scandals get harder to find. The whistleblowers are usually, like Dr Kelly, the rather disgruntled members of their workplaces. People concerned about broader issues in their workplaces can usually find the avenues to address them internally. And real inquiries are called with some regularity. You only have to recall the varying stories about certain hospitals in the Nepean region in Sydney to see that in operation today.

The more serious side of journalism knows that the privileged position investigative journalism has held within journalism, can only be maintained if notions of what has constituted investigative journalism change. Dealing with whistleblowers in a sense is easy; dealing with complex systems of procedures and knowledge is not. That is where the future of investigative journalism lies. It is not in being an uncritical publicist for a whistleblower on the naïve assumption that the critic must be right. As a journalist, you must make independent inquiry and assessment before lending your name to someone else’s complaint.

The skilled twenty-first century journalist must be able to collate, investigate and interpret large amounts of information, and be able to make that information interesting and accessible to the public. The job is to uncover the public policy stories about which the citizen must

be informed – whether the government likes it or not. The journalist must report without fear or favour – and equally without petty bias and or axe to grind.

Perhaps, the old style investigative reporters sense that their time is up. They are the first ones to scream “spin” and “lie”. Such protestations are just shorthand covering, disguising the lack of full engagement with the information. They really amount to complaints that the journalist lacks the resources – particularly the intellectual resources – or the interest to check the facts, assess the story and articulate a clear factual statement.

Let us take a moment to unpack what is happening when a journalist screams spin. Is the journalist not saying they should not have told me that; that is not right? If so, then such a complaint by journalists is that they would prefer to be publicist rather than journalist.

Is it not the journalist's role to make an independent assessment of the press release or the partisan story, to make independent inquiry and to present an impartial view? If the journalist fails to do this, then the journalist is simply a publicist. The public relations industry already knows this and on some level journalists know this too. Increasingly lead-time for stories is so short there is little time for independent inquiry. Twenty-four hour news cycles require journalists who are better educated and more specialised. If independent assessment of information has to be done in shorter periods, then the best protection for journalists, their news organisations and the public, is that journalists start from a stronger than average knowledge base. That means greater specialisation within journalism. It also requires increased resources within news operations.

### **Questions for Australia's public broadcasters**

In Australia, both the ABC and SBS are reviewing the complaints handling procedures. The ABC is also awaiting the Australian Broadcasting Authority's review into the complaints by Senator Alston. Senator Alston, then Minister of Communications, first complained to the ABC about “biased and in particular anti-American coverage by the ABC, particularly on the *AM* program” on 28 May 2003. Incidentally, it was the day before the fateful Gilligan broadcasts. Senator Alston cited 68 examples of alleged bias aired between 21 March 2003 and 14 April 2003. The complaints were investigated internally by the Complaints Review Executive (CRE) and two of the complaints, No 6 and No 58, were upheld. No evidence was found of systematic anti-American or anti-Coalition reporting.<sup>32</sup> Senator Alston expressed his dissatisfaction with the finding, and complaints were forwarded to the ABC's Independent Complaints Review Panel. The ICRP itself is currently under review. On 10 October 2003, it found that:

1. It agreed with two findings by the CRE that these two reports, displayed a lack of objectivity;
2. It upheld another 15 complaints, bringing the total no of complaints upheld to 17;
3. In relation to 12 of these complaints, it found that “one or more statements by a presenter or reporter displayed serious bias”;
4. In relation to another four complaints, the IRCP found breeches of the ABC editorial polices which required presenters or reporters to refrain from “emotional language and editorialisation”;
5. In relation to one complaint, the IRCP found that the sources of the report had not been properly identified.<sup>33</sup>

However, the ICRP found no evidence, overall, of biased reporting or anti-Coalition coverage. Editor-in-chief Russell Balding “instructed senior News and Current Affairs management to take note of the ICRP review, particularly in relation to the upheld complaints”.<sup>34</sup> But will this be considered sufficient? Unlike Alistair Campbell, who went after the BBC on a specific story, Senator Alston went after the ABC on territory that was much harder to prove – cultural bias. The type of analysis required to prove this case, or not, required a different methodology than was originally applied. The matter is now before the Australian Broadcasting Authority. It will be interesting to see whether the framework the ABA applies to its investigation yields a different result.

The ABC and SBS have separate provisions under the ABA than do the commercial broadcasters. The ABA’s General Manager Giles Tanner told Senate estimates:

In the case of the ABC and SBS we are more in the position of an ombudsman – we do not have any direct power but we can criticise what they are doing and take up the issue in parliament if we are not satisfied with their response.<sup>35</sup>

Therefore, it is open to the ABA to recommend greater regulation of the ABC.

In February 2004, Liberal Senator Santo Santoro questioned the ABC closely during Senate Estimates. He raised questions that could be viewed as relating to possible breaches of the ABC’s Code of Practice, particularly in relation to Section 4 of the Code of Practice covering News, Current Affairs and Information Programs and Section 5 of Factual Programs. Senator Santo asked about three different topics:

1. Richard Ackland’s on-air comment about Lord Hutton’s Inquiry that “in Australia, if you lie, you get re-elected”;

2. A memo to ABC staff from the ABC head of international operations telling them not to refer to Hamas, Hezbollah and Islamic Jihad as terrorist organizations;
3. Comments by David Marr on the program *Media Watch* regarding what Senator Santoro regarded as “ignoring a central fact, or in fact, misrepresenting a central finding in Lord Hutton’s Report”.

In the main, the ABC took these questions on notice. But they are unlikely to go away; even though the new Communications Minister, the Hon Daryl Williams, has adopted a less openly combative approach than his predecessor, the Hon Senator Alston. In any event, last year Senator Alston called for an independent regulator for the ABC. The issue is still very much alive and it is hard to imagine it not flowing onto the SBS.

### **Media accountability systems**

Australia is not alone, the concerns about journalism standards is a hot issue throughout the Western world. I have already discussed Lord Hutton’s Inquiry and the Alston complaints saga. In the United States, the *New York Times* is still recovering from the Jayson Blair scandal: he was demonstrated to simply make up some of his stories.<sup>36</sup> In Germany, the highest court ordered a main line newsagency to lift its standards over inaccurate reporting about the colour of the Chancellor’s hair. They made that up too. The German Constitutional Court very pointedly referred to a duty of care in reporting.

The question is not whether journalism requires regulation, but how that should be done. No one seriously suggests that there should be no standard and nor system of regulation. Even the diehard defenders of the faith say there should be standards. They say that there already are; and that union rules are more than adequate. They ignore that union membership is not compulsory. And, in any event, history – particularly recent history – gives the lie to the claim that the system is working. For the moment I will ignore the irony that journalists who demand accountability for all others simultaneously maintain that they should be accountable to none but themselves.

Professor Claude-Jean Bertrand – who operates out of Paris – has proposed a self-regulatory model for the news media. His media accountability system, or MAS, is a system of structured relationships between the news media, news management and news consumer, and postulates several levels. He has developed a complex system, but one, I suspect, is too ideal to be fully realised. It requires a level of input, time and resources from all the participants – news organisations, journalists, journalism teachers and consumers – which I think will be hard to find.

## **Regulation and enforceable standards are inevitable**

The reality today is that there is a rapidly developing concern – among both journalists and the public at large – about the standards of news reporting. Working journalists may respond to this push for greater regulation two ways. They may ignore it and assert complacently that the system is working well and independence (by which they mean immunity) must be maintained and resist change asserting that it “ain’t broke”, don’t fix it. Alternatively, journalists can recognise the simple reality that the system is broke – and gravely in need of fixing. They can seize this opportunity to maintain their autonomy and self-regulate. If we as journalists ignore the problem, we will find increasingly that regulation will be forced upon us – with little regard for our opinion. That happens if you make yourself irrelevant in a debate.

I have already proposed a system of self-regulation for Australian journalists. Two years ago, at the ABA’s annual conference, I outlined my proposal for an independent professional body with the capacity to regulate and, importantly, discipline working journalists. The reaction from the press was hostile resistance, symptomatic of (as Professor Bertrand described) as being the typical journalistic resistance to cultural change. Professor Bertrand describes the process thus:

Both media owners and journalists feel endowed with the special grace of running the Fourth Estate and cannot see any reason to share that privilege. The profession closes ranks against external critics who cannot be anything but ignorant, vindictive, partisan and deranged. Such clannishness is not surprising, but journalism seems to be the only profession not to have set up effective means of self-discipline. Violators of the code are rarely cited; their transgression is disclosed to neither the management or to the public.<sup>37</sup>

The media seized on the idea that the ultimate sanction for misconduct would be expulsion from the profession. They thought that appalling. In doing so, they failed to engage with the substance of the proposal, which was that Australian journalists should form a professional body. Oddly enough, the complaint highlights the problem. Journalists see no reason why those demonstrated to be unsuited to the task should not remain in practice. If lawyers or doctors took the same view, the media would go berserk.

## **My model for a professional body for Australian journalism**

My model for a professional body for Australian journalists would:

1. Establish a common set of standards and an enforceable code of practice;

2. Set and manage accreditation procedures, which include a national registration scheme, and requirement of compliance with professional standards;
3. Establish and manage disciplinary procedures – perhaps enforced by statute;
4. Enforce professional standards – including by investigation, assessment and sanction.

However, let us be clear. I do not advocate a mate's club. I do not advocate a closed process. I do not advocate the setting of standards in a smoky chamber on the quiet. We as journalists operate in the world of publicity. The very minimum courtesy that we owe to our audience is to inform them of the standards that we apply to ourselves when we set about commenting on others. The standards that we apply to ourselves must be no less than those we apply to others. It is ironic that journalists may write stories complaining and criticising advertising copy or accusing manufacturers of lying about their product, when journalists are the only purveyors in the country who actually escape the application of those very same standards of disclosure and honesty? There is only one way that all journalists – whether working for private employers or public broadcasters – may be required to comply with specified standards such as legislation, whether primary or delegated, *via* a regulatory body. That is not unusual. The same is true of doctors, lawyers, and engineers, and others.

Lawyers solved problems by creating statutory bodies – in NSW the Law Society and the Bar Association – and have, for each of them, set standards by way of codes of ethics which are enforceable and ultimately sanctioned by expulsion from the profession where the breach is egregious – or suspension in cases of lesser seriousness. We as journalists set ourselves up as the watchdog of democracy. But we are subject to no enforceable standard or discipline. The answer to the age-old question of who guards the guardians, I regret to say, is no one.

## Conclusion

If journalists need further reasons for starting on this process, they need only look to their diminishing audiences and an emerging generation who take the news in grabs from a range of sources. The news consumer is beginning to wander and the future of journalism relies on securing the future of this engagement. To do so, journalists need to do their bit to restore the audience's trust, to prove to the audience that journalism is not about just barking dogs and noisy empty rhetoric. As *The Guardian's* Martin Kettle wrote of Liddle: "You get the sense that the modern journalist is prone to behaving like a child throwing its rattle out of the pram because it has not got what it wanted."

While journalists continue to exhibit such flagrant immaturity, while they continue actively to deny that their rights require them to take some form of regulated responsibility, it is the journalist who remains the greatest threat to journalism, not the judge, not the minister, not even the government. To repeat Kettle's words: "The threat to journalism is real. It comes from within."<sup>38</sup>

The time has come to offer a solution from within also.

## Postscript

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On June 23rd, his first day in his job, the new Director General of the BBC, Mark Thompson, proposed a radical overhaul of journalism practice and education within the BBC. He accepted in full the recommendations of the Neil Review, which the BBC commissioned in February 2004 to identify the editorial lessons the corporation could learn from Lord Hutton's Inquiry and Report. The Neil Review concluded that Andrew Gilligan's report into weapons of mass destruction was "unfounded".

The Review's most ambitious recommendation was for the BBC to establish a college of journalism under the leadership of an academic principal. The emphasis would be on ongoing journalism education. This was not to be a traditional one off cadet training programme but a structured and continuous program of education all 7,000 BBC journalists. The BBC's Board of Governors has already approved the funds for the establishment of the training facility.

New editorial procedures adopted from the Neil Review include:

- Greater scrutiny of single source stories. Reports such as Andrew Gilligan's on Dr Kelly. could only be broadcast if there is "significant public interest" and with the clearance of senior editors.
- If a program editor demands to know the source of the story, the reporter will be obliged to tell the editor. A requirement which the National Union of Journalists immediately raised concerns about .
- A clear distinction will be made between whether the BBC or a third party is making a particular allegation. Throughout the Hutton Inquiry the BBC maintained it was their source not the corporation who was making the allegations.
- A fair opportunity be available for people to respond to serious claims which may have been made against them.
- Live two way reports, or chats between reporters and presenters, the sort which allowed Andrew Gilligan's sensational allegations to go to air unchecked, will still be permitted but will normally be considered to be inappropriate for breaking news stories containing potentially defamatory material.

In a veiled reference to the role of Alistair Campbell in the Gilligan affair, the BBC said that all complaints will be treated in the same fashion regardless of who makes the complaint.

The core values of BBC journalism were reaffirmed as being independent reporting in the public interest which is truthful, accurate, impartial and accountable.

For BBC journalists and journalism, the legacy of the Hutton report has been the creation of a template for improved standards of education, practise and accountability. The recommendations of the Neil Review represent a significant move towards turning journalism from a craft to a profession.

## Endnotes

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### SYDNEY INSTITUTE ANNUAL DINNER 2004



*Photographer: David Karonidis*



Photo - David Karonidis

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# **AFGHANISTAN, IRAQ**

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## ***AND THE WAR ON TERROR***

**Amin Saikal**

Afghanistan, Iraq and the US-led war on international terrorism are each at different critical phases, but the fates of all the three are now interlocked, with the outcome in one capable of seriously affecting fortunes in the others. Afghanistan has achieved a great deal during its transition over the last two years from a theocratic past, but now is balanced on a knife-edge. By comparison, Iraq, where the US and its allies are currently both politically and militarily bogged down, faces greater upheaval with more uncertain outcomes. Meanwhile, the “war on terror” has lost its initial focus, with the Iraq conflict diminishing the ability of the United States and, for that matter, the international community, either to deliver on Afghanistan or to prevent Al Qaeda and its associated groups from expanding their circles of operations and recruitment. What the US and its allies have so far done in the “war on terror” is to rely heavily on their military power and focus on some of the symptoms of what has helped to give rise to Al Qaeda’s Islamic extremism, rather than to identify and address the deeper causes of the phenomenon as the best way to cut it off at its roots. As long as this remains the case, it is doubtful whether the international community will be able to address effectively the problems of either Afghanistan *or* Iraq *or* international terrorism, at least in the foreseeable future. Let me now turn to expand on these points by focussing in some detail on the Afghan and Iraqi situations as well as the state of the war on terror.

Both Afghanistan and Iraq are seriously disrupted states. They are made up of numerous micro-societies – more so in the case of Afghanistan – which have segregated as a result of this disruption. For these countries to achieve democracy, stability and viability, they would need to achieve a number of imperatives. They are: (1) a legitimate, culturally relevant, institutionalised, participatory political order; (2) a functioning “legal” economy; (3) an appropriate plan for national reconstruction and development; (4) a secure national political and social environment in which the micro-societies can feel free of domination by one another and have the necessary degree of

security to function with some autonomy and dependence in relation to one another and the central authority; (5) a balanced interaction between Islam (as part of most citizens' identities) and the requirements of modern life; and (6) a clear correlation between realities on the ground in these countries and the approach of the international community, especially its most powerful actor, the United States, in helping them in the processes of their reconstruction.

Neither Afghanistan nor Iraq has ever experienced a tradition of democracy, or a fair and equitable system of justice and national reconciliation. Afghanistan, however, since the overthrow of the Taliban's theocratic rule by the US and its allies in the wake of the terrorist attacks of 11 September 2001, has achieved a number of objectives as enshrined in the intra-elite Bonn agreement of 5 December 2001. They include, most importantly, the establishment of an internationally recognised government under Hamid Karzai, and the convening of two Loya Jirgas (the traditional Afghan grand assembly) – one as a means of legitimising the transformation of the Karzai government from Interim to Transitional and providing for a degree of national reconciliation; and another as a mechanism to endorse a new constitution providing a legal-rational framework for politics and paving the way for regular democratic presidential and parliamentary elections by mid-to-late 2004. This has been accompanied by relative security returning to Kabul and some other parts of the country and a substantial decrease in internecine conflict, as well as the implementation of a measure of economic reconstruction. Afghanistan has also made some progress in institution and capacity building, especially with steps taken to create a national army, police force and border guard. All this has been very helpful in facilitating the return of some three million refugees.

A number of factors have worked in favour of Afghanistan reaching this stage of state reconstruction. The first is the somewhat polycentric ethnic character of Afghanistan. Although composed of numerous and at times hostile micro-societies, 24 years of warfare and the consequent power parity that this has established between the largest ethnic Pashtun cluster and the majority non-Pashtun groups has proved critical in enabling the micro-societies to move, though very gradually and painfully, in the direction of some wider domestic political compromises and to refrain from overtly seeking supremacy over one another. The second is that the Afghan transition has enjoyed, from the outset, international consensus and multilateral support, though in the context of the "war on terrorism". The UN's overall supervision of Afghanistan's transition, and US and NATO-led military involvement in providing security for the Karzai government in Kabul and keeping the remnants of the Taliban and Al Qaeda as well as Afghanistan's neighbours at bay have been generally successful.

Of course, more international help is needed to provide wider security and reconstruction, to curb the influence of local power holders, and as a consequence also to widen the writ of the Karzai government beyond Kabul. Kabul's requests have so far received mixed reactions. While the US and its allies have given a positive response in principle and set up a number of Provincial Reconstruction Teams (PRTs) to help with reconstruction and security in some provinces, more resources and greater involvement are needed to produce satisfactory results. One can argue about the efficacy of the constitutional provision for a strong presidential system as against a strong parliamentary system, and be critical of the fact that Afghanistan still lacks a viable administrative-bureaucratic system, and that most of its citizens continue to suffer from ravages of war. It could also be argued that the national conditions are far from ready for a fair and free election to secure a publicly mandated government, as is now scheduled to occur by September 2004, and that such an election is likely to re-open rather than heal deep-seated political and social divisions in the country. But the important point is that the process of Afghan transformation has moved in a relatively hopeful direction. This has been accomplished with far less international military and economic support and fewer casualties on the part of the US and its allies than might have originally been anticipated.

Yet all this is not to claim that Afghanistan is out of the doldrums. The changes have so far shifted Afghanistan into a grey area between stability and instability, security and insecurity, reconstruction, and de-construction and viability and uncertainty. Many serious challenges still lie ahead. One emanates from the fact that although, under Karzai, a governing elite has emerged it is not as consensually unified as it should be. The elite has dangerously polarised, not only along the traditional Pashtun and non-Pashtun lines of divide, but also between the so-called "democrats" and "warlords" – terms which are partly deployed from within by some of the US-backed expatriate members of the Karzai cabinet, who have also been prepared to expand the traditional Pashtun/non-Pashtun dichotomy to advance their objectives. The expatriate ministers coming from exile (especially from the US) have had no substantial power base of their own in Afghanistan and have therefore been constantly in need of wider international, and most specifically American, support. They have not hesitated to stimulate such support by conveniently labelling those power holders who had not left Afghanistan during the years of conflict as "warlords". They neglect the fact that "local hegemons" have historically existed in Afghanistan, albeit under different names, such as khans, sardars, begs and pirs – some more armed than others. During Zahir Shah's monarchy (1933-1973), this problem had been addressed largely through an alliance between the monarchy, the religious

establishment and tribal and ethnic leaders. If an appropriate political order and genuine process of national reconciliation are not instituted, the revival of this problem could prove to be very damaging to the process of Afghanistan's transformation.

Another major challenge is the growth of a narco-economy in Afghanistan. This has now become so pervasive that it makes up roughly one third of Afghanistan's GDP. It finances many illegal practices, to the detriment of national unity and processes of democratisation and stabilisation.

The third challenge stems from the lack of trained manpower and the inability or unwillingness of the Karzai presidency to entice more qualified Afghans from abroad to join its administration. The old Afghan corrupt practices of nepotism, based on family, ethnic and factional connections, have once again returned in filling governmental positions.

The fourth challenge arises from the absence of an effective system of justice that could ensure a fair trial of criminals, let alone those who have stood accused of massive human rights violations.

The fifth challenge relates to the very slow pace of economic development, to aid donor fatigue and to the absence of a national reconstruction plan. Of the \$4.5 billion reconstruction aid promised to Afghanistan at the first donor conference in Tokyo in January 2002, so far only one-third has been delivered. Not much of this has been spent on reconstruction. To reassess the international commitments for Afghanistan's reconstruction and to address additional requirements, another donor conference was held in Berlin on 31 March – 1 April 2004. While describing the aid commitments of the Tokyo conference as "peanuts", at the Berlin gathering, the Afghan Finance Minister called for as much as \$27.5 billion in donations over the next seven years if Afghanistan is to raise its per capital income from less than \$200 to \$500 per year and stabilise itself within the next ten years. However, given the pressure on the United States and many of its allies to invest in stabilising and securing Iraq, the best the Berlin Conference could come up with was a commitment to a total of \$8 billion over the next three years, although it remains to be seen to what extent this commitment will be met. In fact, the pressure on the US had already been reflected in the Bush Administration's treatment of Afghanistan. Of the total of \$87 billion that the US Congress approved at the request of the Administration for military and reconstruction expenditures in Iraq and Afghanistan during 2004, about \$20 billion was earmarked for reconstruction. However, the Administration allocated only \$1 billion of it for rebuilding Afghanistan. In the meantime, with NATO having already shouldered the task of maintaining security in Kabul on an open-ended basis and expanded its operations in a few provinces, and with Japan and Australia facing

hefty bills from their commitments in Iraq, one cannot be too optimistic about a very substantial increase in funding for Afghanistan's reconstruction.

The sixth challenge concerns the number and operations of NGOs in Afghanistan. Although in general the NGOs perform very usefully in Afghanistan, it is important that their priorities and activities be consolidated and rationalised in a way as to prevent a culture of dependence and complacency taking hold among the Afghans.

The seventh challenge relates to the insecurity of Afghanistan's borders, especially with Pakistan. A failure to make the Afghanistan-Pakistan border secure, with a resolution of the dispute over the Durand line, could seriously imperil the course of Afghanistan's national reconstruction and stability. A wider Pakistan-India rapprochement should of course be welcomed. But, without the removal of Afghanistan's concern over its border with Pakistan, such a development may cause much fear in Kabul that it might free up Islamabad to resume its past adventurous policies towards Afghanistan. Although President Musharraf has lately made a demonstrated military effort to hunt Al Qaeda fighters on the Pakistan side of the border – possibly as a way of soothing the US anger over Pakistan's proliferation of nuclear technology and know-how – Pakistan's domestic environment could easily militate against Musharraf's efforts. He faces a serious Islamic opposition, with much sympathy for the Taliban and Al Qaeda, as well as enormous political, economic and social problems. Pakistan is a prime candidate for domestic meltdown and potentially very dangerous, given its nuclear capability.

The eighth challenge is grounded in a degree of disunity of purpose and action that exists among the international actors involved in Afghanistan. Most importantly, not only are the main members of the European Union – France, Germany and Britain – divided among themselves in their approach and commitment to Afghanistan, but there is also little coordination between them and the United States. US and EU involvement is more an extension of the war on terror than a result of a genuine commitment to help the Afghans to rebuild their lives and country.

From this point, Afghanistan's successful transformation will ultimately depend on the willingness and capacity of the UN and the US and its allies to maintain a common commitment that goes beyond the prosecution of the war on terror. They need to provide for wider reconstruction, security and constitutional implementation. If the commitment is expanded, and better resourced, and if Afghanistan's borders, especially with Pakistan, are secure, one can have reason to be optimistic about Afghanistan moving forward in its state reconstruction as a prelude to reduced international involvement in the long run – that is over the next decade. Otherwise, as the situation stands,

Afghanistan's democratisation and reconstruction remains at serious risk.

In the case of Iraq, the road to democracy, stability and national reconciliation is likely to prove to be a lot more tortuous, bloody and costly than in Afghanistan. The lack of effective balance between its various national groups, the absence of UN support for the US-led invasion and occupation of the country, and the level of anti-American anger among Arabs and Muslims, especially over the US conduct of the war on terror and support for Israel, are all factors militating against the US goal of transforming Iraq into a workable democracy and de-legitimising the Iraqi resistance. The fact that the original justification for the invasion – that Saddam Hussein's regime possessed stocks of weapons of mass destruction – has turned out to be false has left the Coalition of the Willing with little credibility to sell their ongoing occupation either to the Iraqis or the international community. This is very much reminiscent of the problems that the Soviet Union had with its invasion of Afghanistan and the failure of that invasion in the 1980s.

Iraq's three main national groups – the Shi'ites, the Sunnis and the Kurds, with the first two being Arab and the last one non-Arab – had in the past coexisted very uneasily. Given their deep-seated differences, they had required a central authoritarian regime of one kind or another to hold them together in a state. Until the overthrow of Saddam Hussein such a regime had ruled Iraq with the help of the Sunni minority, at the cost of suppressing the minority Kurds and the Shi'ite majority. The Sunni imposition was legitimised, in their view at least, by Iraq's identity as part of the larger Arab domain and the Western support for the Sunni Arabs as dominant forces in this domain. This is also a factor which underpins the current Iraqi resistance, in which radical Sunni Islamists and nationalists, backed by external Sunni extremist forces, such as Al Qaeda, and partly financed from alms given by citizens of oil-rich Arab state in the region, appear to have a central role. In the meantime, while the Shi'ites have numerical strength and sectarian cohesion as well as strong sectarian affiliation with the resourceful and predominantly Shi'ite Islamic Iran, the Kurds are deeply distrusted as American collaborators by both the Sunnis and Shi'ites. Meanwhile, neither Iran nor Turkey favours too much autonomy or independence for the Kurds as it could encourage their respective substantial Kurdish minorities to make similar demands with a possibility of a wider independent Kurdish state eventually emerging out of the Iraqi, Turkish and Iranian territories. The US and its allies seem to be placed in a no win situation, irrespective of whether they exit from Iraq earlier or later.

The Sunnis and the Kurds cannot hope to achieve a position to rule Iraq through a free and fair election and therefore they have

reason to be opposed to any rapid democratic transformation of Iraq that could relegate them to a secondary position in the national management of Iraq. It was in deference to this that the US originally proposed the formation of a central authority through an indirect caucus-based election and the handover of power to this authority by 30 June 2004 as a prelude to a democratic transformation of Iraq. This was a proposal which was swiftly and firmly rejected by the Shi'ite majority, who demanded a direct election-based hand over of power in the certainty that their majority status will prevail in such an election. In this, the Shi'ites are backed by Iran. Their leader Ayatullah al-Sistani has potentially as much influence as the founder of the Iranian Islamic regime, Ayatullah Khomeini, who turned the Iranian revolution of 1978/79 against the US-backed Shah's regime into a broader anti-American phenomenon. Al-Sistani cannot be expected to compromise on his demand that the Iraqi Shi'ites be allowed to exercise their democratic right as the majority in Iraqi politics. Ultimately Washington has found itself with little choice but to give in to the Shi'ites' demand and withdraw its proposal for a caucus-based election in favour of a direct election which, according to the UN, will not logistically be possible to hold until early 2005. Al-Sistani's firm belief now is that this election should be held not too long after the American handover of sovereignty, and it was only in pursuit of this goal that he finally and very reluctantly agreed to what was adopted by the US-appointed Iraqi Governing Council in early March 2004 as the Iraqi Interim Constitution. He agreed to the document with a clear proviso that once the US has transferred the power to the Governing Council, the process will begin for creating a new, permanent constitution enshrining the position of the Shi'ites as the majority. This means the hard political bargaining has yet to begin in Iraq and there is no guarantee that it will not degenerate into serious political and possibly armed conflict between the main national groups in the country – a development which could leave the US and its allies as security providers, democratisers and nation-builders at greater risk than has hitherto been the case.

Logically, it may be appropriate for Washington to recognise the fact that if it wants democracy in Iraq the ultimate outcome may well be a Shi'ite-led Islamic government. Yet this is not a development which the US could easily allow to take shape as it would find it geopolitically contrary to its regional interests, and to its relations with the Iraqi Kurds, Turkey and the Sunni Arab world. It would be very conscious of the sectarian affinity between an Iraqi Shi'ite-led Islamic government and Iran. At present, there are no processes of confidence building in place between various Iraqi communities as a necessary means to foster national reconciliation, encouraging the communities to agree to a kind of power-sharing which could satisfy all of them.

This leaves the American promise of bringing democracy, stability and prosperity to Iraq in tatters. By the same token, it leaves the US little space for an honourable exit from Iraq, unless the UN takes over the management of Iraq's political transition and the US continues to provide security for the UN to fulfil this task over a long period of time. Is the UN prepared to risk its reputation and personnel in taking over a problem in the creation of which it has had no role in the first place, and is the US prepared to accept continued casualties while President Bush is facing an election? So far, the UN has remained reluctant to engage fully, not least because of uncertainties about the US's commitment to provide security in the long run. Even if the UN goes in, there is no certainty that it will have any more success in resolving the political conundrum than the US and the members of its Coalition of the Willing have had thus far.

Irrespective of what may transpire in Iraq, the US has now opened a battle ground in Iraq for all those radical Islamists and Arab nationalists who have historically shunned the US's strategic partnership with Israel because of the plight of the Palestinian people, and who reject the USA's dominant role in the Middle East in particular, and in the Muslim world in general. Prime Minister Blair recently claimed that Iraq would determine the course of West's relations with the Muslim world. This is also precisely what Bin Laden and his leadership associates would claim.

More than this, the fight in Iraq also constitutes a battle for the soul of post-September 11 world order. While the methods by which the Iraqi resistance operates are wholly condemnable, it has in many ways succeeded in defining the limits of American power. It has also helped to invigorate all those forces in world politics that have opposed the US-led invasion, and enabled the UN to prove its relevance in the face of the Bush Administration's pre-Iraq War condemnation of it as irrelevant. It has struck a serious blow to the Administration's unilateralist tendencies and "doctrine of pre-emptive strike". It has strengthened the position of Iran not as a member of the "axis of evil" but as a regional player to the extent that the Bush Administration would now like to open direct dialogue with it to help bail itself out of its Iraqi predicament, despite the Administration's public criticisms of Tehran over its failure to make a full disclosure of its nuclear program. Meanwhile, it has rendered an American use of force against Syria remote and left Israel in a position no better than when Saddam Hussein was in power. If the Bush Administration had banked on the possibility of using its occupation of Iraq to prompt Israel to reach a final settlement with the Palestinians and in return attract wider regional Arab support for America's Iraq adventure, the Sharon government's over-use of the legitimacy of America's war

on terror to intensify its suppression of the Palestinian resistance to Israeli occupation has squandered that possibility.

More important than all this, the Iraqis' resistance has badly discredited the agenda of the neo-conservatives in the Bush Administration to reshape the Middle East in the image of the United States and to marginalise the defiant forces of political Islam in world politics. Despite the US up-beat predictions, the Iraqi resistance is likely to continue for the foreseeable future: it has support inside Iraq and popularity in the region, and is relatively cheap to maintain. What options does this leave the United States?

No doubt one option is to exit from Iraq as quickly as possible. This is something on which the Bush Administration might be keen for electoral purposes, but would the US be able to wear the political and strategic costs of such an exit in terms of its overall interests in the region and its war on terror? The consequences of leaving Iraq soon could prove to be as damaging as those of staying in for the long haul. Moreover, whereas the US stands to gain little from the Iraq occupation, there is a danger that if Afghanistan is not given the priority that it deserves by the US and its allies, the Iraqi and Afghan situation may interact to undermine seriously the war on terror. This is already happening to some extent. With the anger of the Arab and Muslim worlds deepening and widening over what is viewed as the growing plight of the Iraqi and Palestinian peoples under occupation, and the Bush Administration's deception in relation to Saddam Hussein's WMD and advancing of one standard for Israel and another for Arabs and Muslims, two things are clear. Few Arabs and Muslims believe or attach credence to what the Bush Administration says or claims any more. The tragedy is that, according to all the recent opinion surveys, more and more Muslims – including some of the informed and modernising segments of populations in Muslim countries – identify with Al Qaeda's causes. This is indeed a bad news for the war on terror. Another is that, whatever the Bush Administration's claims, the situation in Afghanistan remains very fragile and vulnerable and the war against the Taliban and Al Qaeda remnants is not progressing as well as it should. This means that, if the US continues on its present path, many of its resources and those of many of its allies will remain tied down in Iraq for a long time. In the meantime, Al Qaeda and its associates will have plenty of fertile grounds not only to survive but to flourish.

Another option is for the US to review its entire Middle East policy and its "war on terror" strategy. It needs to rationalise its strategic partnership with Israel to secure a viable resolution of the Palestinian problem as quickly as possible, and to identify the other root causes of international terrorism in order to address those causes rather than treating their symptoms. It has to realise that although

the use of military power can work up to a point, beyond that point it will have to have a sound political strategy to treat those root causes which defy military solutions. At present, three minority extremist groups – Al Qaeda and its associates from the Muslim side, the reborn Christians and neo-conservatives from the Western, more specifically the US, side and inflexible Zionists from the Israeli side, although in alliance with some of their reborn Christian and neo-conservative counterparts, have become too assertive on the world stage by feeding one another's activities. It is time for the mainstream to reassert its position in world politics to prevent these extremist minorities from shaping the future world order and determining our destiny. The US and its allies should focus their energy towards promoting and achieving longer term goals for the common good of humanity as well as for themselves rather than acting in pursuit of narrowly defined short-term political and strategic gains. The question is: is the American democratic system, which favours short cycle policies, capable of supporting long-term solutions?

## SYDNEY INSTITUTE ANNUAL DINNER 2004



*Photographer: David Karoniadis*



Photo - David Karonidis

*Amanda Vanstone*

All developed nations put severe restrictions on who can immigrate to them. These are usually justified on economic grounds with worries that the entry of poor workers would lower wages and the nation's standard of living as well. Usually, however, the actual reason for limiting immigration is cultural. Australia is one of only five countries in the world that actively encourage large numbers of immigrants. On Tuesday 6 April 2004, Senator Amanda Vanstone, Australia's Minister for Immigration and Multicultural and Indigenous Affairs, addressed The Sydney Institute to argue that critics of the government's detention policies were harming Australia's good name as a country which had welcomed migrants and refugees from all over the world for decades, and continues to do so.

# THE DAMAGE DONE

## BY CRITICS OF AUSTRALIA'S IMMIGRATION POLICIES

Amanda Vanstone

In *The Guardian*, February 2004, internationally famous Australian author Thomas Keneally attacked his country's policies in relation to asylum seekers. Such policies, he said, meant that we could no longer sing the lines "for those who've come from across the seas We've boundless plains to share" without "a shared wink of irony".

In making this slur of xenophobia<sup>1</sup>, Mr Keneally joins a conga line of Australians prepared to disparage their country's reputation internationally in order to attack their old ideological foes. Monday's papers carried similar criticism, aired in Geneva by Howard Glenn, from a lobby group that titles itself "A Just Australia". The name chosen indicates that the body sees itself as "just" and equally sees anyone who disagrees with them as being unjust. Indeed they set themselves up as the arbitrators of what is just.

This follows a trend amongst commentators in this area. Such commentators do not seek to have a conversation. Your view or mine is irrelevant. They seek to place themselves as the arbiters of what is right and to lecture the rest of us on their views. They seek to denigrate the makers of our current border control policy. They see themselves as "we the righteous and principled" with the rest of us as unprincipled and ill informed. The wide public support for our border control policy is nothing but an inconvenience. Such is the shallowness of much of the debate surrounding Australia's immigration policy.

Most Australians are in no doubt that theirs is a tolerant country. The simple right and wrong picture fits easily into the emerging moral framework of children. Without experience outside their own neighbourhood they may easily believe teachers, and others in authority, who tell them there are Australians who don't like foreigners or people

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1. The speech as delivered simply paraphrased the Keneally article as an attack on Australia as "xenophobic". To clarify, the key words from Keneally's text are quoted in the preceding paragraph.

of other races. The children are rightly horrified by such an un-Australian thought.

If teachers tell them that there are hundreds of children locked in detention with no opportunity to play or who are denied access to education, they will accept this at face value. If they are lucky enough to hear that the government denies such outrageousness, they are likely to be told, "of course, the government would say that, it is obviously lying." Perhaps some children will think that if the government is doing these things to the children of asylum seekers then it must be all right.

Certainly, there is a risk that a small minority of bigots among the adult population will take heart from claims that their government is racist. They will feel that their views enjoy wide support.

Thomas Keneally and "A Just Australia" are making a big mistake. They are misleading the world and confusing Australian children. The false view they peddle is based on overlooking three things. They ignore the facts of Australia's substantial refugee and humanitarian programs. They ignore the fact that people smuggling is a rapidly growing international criminal activity that threatens to overwhelm international processes for granting asylum to people fleeing persecution. And they ignore the risks that their constant refrain about Australia being xenophobic will become a self-fulfilling prophecy.

Reading Thomas Keneally's article, you would never guess that in the past ten years, Australia has welcomed over 100,000 people under our humanitarian program. The majority of these people have come from overseas, mostly from refugee camps such as Kakuma in Kenya. The humanitarian program has always enjoyed broad-based community support in Australia. In fact, since the Second World War, Australia has provided a home to 620,000 refugees. Australians should be justly proud of this achievement. Not many other countries have opened their hearts to people in need to the extent that Australia has.

Of the countries that recognise the need for an international system to handle displaced people, we are the third largest taker of refugees. Others may take more, but not willingly, and not in a planned way. They take more because they can't control their borders.

It is ironic that critics argue that the support enjoyed by the government's strong border control is based on xenophobia. To say that we are fearful of new arrivals is arrant nonsense. Over the past ten years, Australia has welcomed almost a million new arrivals. Almost a quarter of our population is foreign-born. Australia is the world's best example of a peaceful, prosperous multicultural society. All Australians are saying is that we are happy to give people a fair go, if they abide by the rules.

## **Migration – skilled entry increase**

It is not only refugees who are welcome. Australians are not xenophobic, nor is their government. Labor's last immigration intake in 1995-96 was 82,500. We expect this year's to be 114,000 and next year's 120,000. That's effectively a 50 per cent increase. Next year will see the largest ever intake of young skilled migrants. Nearly 80,000 new skilled migrants will settle in Australia in 2004-05. Many will come here to live in our regional and rural areas. They will bring their hopes and dreams with them. Australia is drawing skilled migrants like a magnet to its shores. That's because our economy is strong, there is demand for skilled labour, we live in peace and harmony and opportunities abound. The magnet has also attracted the unwanted attention of the modern scourge – the people smuggler.

## **The problem of people smuggling and asylum seekers**

The global problem of people smuggling has emerged as a major international challenge. The IOM estimates that there are 30 to 40 million illegal immigrants worldwide. Annually, an estimated 500,000 illegal migrants enter Europe and another 700,000 enter the USA. The drivers of this criminal enterprise are obvious. Understandably people desperately want to travel to countries with better opportunities for themselves and their families. Callous, greedy and unscrupulous people smugglers take advantage of this understandable desire. These criminals charge exorbitant amounts to move people across borders to the country of their choice.

That's a critical point. Let me repeat it. People are using people smugglers not simply to escape persecution – they are seeking to go to a country of their choice. Frequently they go through three or four countries of first asylum before getting to Australia. People requiring protection should get it. However, they are not entitled to choose who hears their claim or where protection is offered.

The issue of people smuggling is clearly threatening the asylum regime established after the Second World War. Under the UN Refugee Convention of 1951, unlawful entry cannot be a bar to a claim for asylum – a fact that the UNHCR strongly insists is important. But supporters of the Convention need to recognise, however, that people smuggling cannot be ignored because it poses a serious threat to the whole asylum seeker process. Spivs and criminals undermine the international system of protection because they deliver people who have the cash to countries of their choice. These countries must then process them as refugees under the Convention rules. A system that gives better outcomes to people with the dollars to pay people smugglers steadily undermines the Convention.

Australian policy is designed to strengthen the Convention. Under our system, all people who arrive here without proper authority are detained until they are granted a visa, or leave Australia. If a person makes a claim for asylum then their claim is independently assessed and, if approved, they are released with a protection visa. It is a fair system and an orderly system that protects Australia's sovereignty. The majority of Australians want such a system of border protection. Most Australians see no contradiction between controlling our borders and welcoming those in genuine need from all over the world. Australians just want the system to be fair.

People such as Tom Keneally deride the term "queue-jumper". There is no queue they say. Perhaps he should try telling that to the thousands of refugees in Kakuma. People who attempt to jump the queue generally won't win the respect of the Australian people.

### **The Issue of Compassion**

The word *compassion* dominates Australian media coverage of the asylum seeker issue. Ironically, most refugee advocates spend their time speaking about people who have been found not to be refugees.

These advocates ignore people they have never met who are in camps such as Kakuma in Kenya. The plight of these people is much greater than anyone in Australia seeking asylum yet there is little support for them from noisy advocates. The so-called compassion of the noisy advocates is instead directed towards their wholly political task of blackening Australia's name as a nation that rejects refugees. The truth that the advocates and political commentators refuse to admit is that we continue to welcome all genuine refugees.

Indeed I recently announced a 50 per cent increase in our annual refugee intake from July 2004. This received warm support across the board including from the Opposition. Despite the increase, Australia's capacity to help refugees will always be limited. Any limited resource should be allocated according to fairness and need.

Frequently asylum seekers who have been found not to be refugees take appeal after appeal. These people have appealed and appealed right up to the High Court. Over 90 per cent of RRT decisions are upheld by the courts. Under these circumstances people, where it is safe to do so, ought to return to their homeland. Advocates who challenge any removal process are in fact arguing for an open door policy. They are arguing that it is irrelevant whether or not you are determined, through a fair and transparent process, to be a refugee or not, because you should be able to stay permanently, in any event.

This is misplaced "compassion". Australia cannot accept anyone and everyone who decides to arrive on our shores. We are a very generous people, but we will not be taken advantage of. Refugee

advocates must understand the consequences of being a failed asylum seeker. Deciding who is a refugee means accepting the consequences for those who are not.

### **European response to asylum seekers**

In Europe many asylum seekers have had very weak claims for protection and failure rates of claims have been high. In most European countries, there have been few removals of failed asylum seekers. Europeans tend to emphasise the importance of voluntary return. In Germany, for example, there were about 1.6 million claims for asylum between 1992 and 2002. All Western European nations have experienced very large numbers of people entering their territory and subsequently either seeking asylum or remaining unlawfully. If failed asylum seekers are not removed, then there is really no need for an assessment process. In recent years, if you make it to a Western European country you could, in most cases, stay. Up to now, the Europeans have made a virtue out of necessity. They cannot easily prevent arrivals nor remove people, so they describe their response as an exercise in compassion. They also describe it as upholding the Convention.

Things are changing, however. And quite dramatically. The Europeans are quietly following Australia's lead. The Netherlands, a past champion of the Convention, has been making changes. In February 2004, the Dutch Parliament legislated to introduce involuntary removal for an estimated 26,000 failed asylum seekers who arrived after 2001. Some still have avenues of appeal open, but they now know that involuntary removal stands at the end of the process. The Dutch have even proposed to set up "departure centres" to assist with the removal process. France has also announced an extension of detention times, speeding up of processing and to provide one year subsidiary protection for some people who don't meet the Convention standards. The UK has introduced detention for certain illegal migrants and has recently announced a small refugee resettlement program to accept people through the front door.

Again the general direction of change is clear. The Europeans have decided to act to save the UN Convention on Refugees from becoming meaningless. Without a strong Convention, with rules and consequences, the entire international asylum system faces collapse. Awareness of this appears to be growing in Europe.

### **Australia's response to asylum seeking**

Although Australia has not had the same numbers as European countries, our whole system faced serious challenges in 2001. With no land borders, almost all lawful arrivals come through specified ports and airports. Australia has long sought to minimise unlawful entry.

We have a different view of our borders because we are an island continent. In response to the thousands of illegal boat arrivals a few years ago, the government acted decisively to stamp out the people smuggling business. People smugglers have nothing to sell. They cannot guarantee landing their human cargo in Australia. Our policies on temporary protection visas, mandatory detention of unlawful non-citizens and offshore processing of asylum claims have all contributed to a very sharp decline in people smuggling.

Of these policies, there is no doubt that offshore processing has had the greatest impact. The inability to access Australia's legal system and the prospect of resettlement in countries other than Australia are significant disincentives to non-genuine asylum seekers. Temporary Protection Visas are also important because they provide fairness. They mean that the most valued contribution to refugee problems that Australia can contribute – a permanent visa – is reserved for those most in need.

I believe that Australians want an orderly migration system that is fair and within our capacity to support. People smugglers are the undermining enemy of a decent international system. Being strong against people smugglers is standing up to support a decent international system for most in need.

So what's the damage done? Australia's reputation is unfairly besmirched. Australians are not allowed to be proud of having one of the most generous, open and non-discriminatory immigration policies in the world and perhaps worst of all, if people are consistently told they're racists and bigots – some might actually come to believe it.

## SYDNEY INSTITUTE ANNUAL DINNER 2004



*Photographer: David Karonidis*



*Tom Frame*



*Chris Oxenbould*

Photo – David Karonidis

On 10 February 1964, the aircraft carrier *HMAS Melbourne* sliced the destroyer *HMAS Voyager* in half, during night manoeuvres. Eighty-two officers and seamen lost their lives, the largest loss of life in Australia's peacetime history. The collision sent *HMAS Voyager* to a watery grave. It was an event of great political controversy. Shaken by the event, the defence vigilant Menzies Government held a hastily convened inquiry hoping to lay the matter to rest. It did not, and the government was forced to hold a second Royal Commission into the disaster where new evidence against *HMAS Voyager's* captain Duncan Stephens was heard. On Wednesday 14 April 2004, Anglican Bishop to the Australian Navy and author of *Where Fate Calls*, Dr Tom Frame, joined Rear Admiral Chris Oxenbould, now the CEO of the Sydney Waterways Authority following a distinguished 37 year career in the Royal Australian Navy, to discuss what really happened on that tragic night in February 1964.

# THE SINKING OF

## HMAS VOYAGER: WHAT HAPPENED?

Tom Frame

I could deliver a very short one minute version of this address and a much longer one lasting fifteen minutes, and both would end the same way. What happened off Jervis Bay on the night of Monday, 10 February 1964? *HMAS Voyager* failed to keep an adequate lookout and collided with *HMAS Melbourne* and sank causing large loss of life. *Voyager* was completely to blame, Captain Duncan Stevens was entirely responsible and the immediate circumstances were unique. There was, therefore, no need for any public inquiry; *Voyager*'s commanding officer paid for his failings with his life; and there was no pressing requirement for reform in the Navy. But here the longer and shorter versions would diverge. The longer paper – the one you will get – seeks an explanation for a collision that was seemingly inexplicable; accounts for why the parliament needed to convene two royal commissions into the tragedy; and why *Voyager* became a watershed for the Navy and its people.

First, why did the ships collide? There are many theories about why the two ships collided and they range over a number of possibilities. They were all presented at the two Royal commissions – the first of which was convened in 1964 and the second in 1967. It appeared as though the immediate reason for the collision could lie in one or all of five areas. First, that signals sent between the ships did not reflect the intentions of the originator. Second, that *Voyager* had mistaken her position relative to *Melbourne*. Third, that *Voyager* correctly assessed her position relative to the carrier but had miscalculated the area in which she had to manoeuvre. Fourth, that the state of training and readiness in either or both ships was poor, and fifth, that there was an equipment failure in either or both ships that went undetected. The latter three were rejected during the two inquiries. *Melbourne*'s commanding officer, the late Captain John Robertson, favoured the second. My strong preference is for the first – the so-called “mistaken signal interpretation” – and believe the mistake occurred on *Voyager*'s bridge. I have argued that those on *Voyager*'s bridge believed that *Melbourne* was executing a turn to the west or south-west and this

accounted for the destroyer's final and fatal turn in that direction. When *Voyager's* bridge realised that their ship was on a collision course with the two ships closing rapidly at a range of 850 yards, a tragedy was inevitable.

Second, who was at fault? Responsibility and blame are two different things. The commanding officer of a warship is responsible for the safety of the ship and all on board. This responsibility cannot be shifted or delegated. Had Duncan Stevens not been killed, he would have been held responsible for the loss of his ship, would never have gone to sea again and been disciplined for totally inadequate command and leadership. But the parliament, the press and the public were more interested in apportioning actual blame. Who or what caused the collision? There is no doubt that the collision occurred because *Voyager* failed to keep a proper lookout. Had the carrier been kept under closer observation any error in signalling would have been noticed earlier and a collision averted.

There can be no disputing that Captain Stevens and *Voyager's* OOW, Lieutenant David Price, were responsible as they ordered *Voyager's* final manoeuvres. As their errors seemed so fundamental, most observers, especially those outside the Navy, looked for systemic causes, such as poor training standards, or institutional factors, such as a culture of professional ill-discipline. And because Stevens and Price were dead, not only could they not speak for themselves, they had even gained some public sympathy and were of little use in providing someone to blame. The first Royal Commission was critical of *Melbourne's* captain, navigating officer and OOW. The press and the public rallied to the side of Robertson who was not reappointed to command of the carrier after the Royal Commission reported to Federal parliament in September 1964.

The Labor Opposition consequently blamed the Menzies' Government for the poor statement of Naval administration and chastised the Naval Board for deficient command and control. The second Royal Commission refuted the findings of the first with respect to *Melbourne's* officers and said their performance that night could not be faulted. By this stage (1968), the question of who was to blame for the loss of a destroyer and 82 men had faded from view. The parliament, press and people needed reassurance that it would not happen again because it could not happen again. But it did in June 1969 when *Melbourne* collided with and sank *USS Frank E. Evans*. Another 74 men were killed. It did not take long to realise that the circumstances were different and that *Melbourne* was in the wrong place at the wrong time – again. Who was personally to blame for the loss of *Voyager*? Clearly, Captain Duncan Herbert Stevens, *Voyager's* OOW, Lieutenant David Price and the navigator, Lieutenant Harry Cook.

Third, what was needed to prevent any repeat within the RAN? After a little reluctance, perhaps born from shock and disbelief that *Voyager* was gone, the Naval Board accepted the need for change. But it would occur in its way at its pace. After the first Royal Commission, there were changes to tactical signalling procedures, the content of work-up programs after refits, the operation of emergency equipment, and training in survival at sea procedures. The reforms were specific and procedural. The 1967 Royal Commission into the health and drinking habits of Captain Stevens prompted changes that were broad and cultural. The Naval Board altered procedures for the medical examination of captains, reviewed instructions for medical officers and provided new aide memoirs, and amended the principal administrative manual, *Regulations and Instructions to the RAN*, where it dealt with reporting collisions, the submission of punishment returns and the exercise of command at sea. Indeed, in a minute to the Departmental Secretary (Sam Landau) forwarded before the second inquiry had even concluded in October 1967, Captain Jeff Britton said that if another Royal Commission were appointed to inquire into other areas of naval administration, such as pay, accounting and engineering, "there would be as many if not more anomalies in the instructions as have been highlighted in the present Royal Commission". For an organisation seeking to have an established set of procedures for every situation and occurrence, this was a clear recognition of a marked deficiency in its method of administration. *Voyager* brought about many operational reforms and a great deal of cultural change in the Navy with substantial and enduring benefits.

I have argued elsewhere that there has only been one occasion in which the Australian parliament and people lost confidence in the Navy – 1964. The loss of *Voyager* was the climax of a series of accidents after 1956 and the public thought that what the Navy did had moved from being difficult to dangerous. But full public confidence was soon restored when Australian ships and sailors were deployed with distinction in waters off South Vietnam. Lessons had been learnt.

Since then, successive generations of Australian officers and sailors have shown the capability of the nation to produce men and women with both the aptitude and ability to operate a navy able to achieve and maintain world's-best practice in naval operations. For a nation of 20 million people, this is a singularly spectacular but rarely celebrated achievement. RAN officers have served in exchange postings with every major Western navy and, more recently, most regional navies. They have commanded British squadrons and, in the case of Malaya, entire navies. Australian sailors have never shown any difficulty in being able to operate technologically advanced equipment or technically complicated machinery. They have become adept at maintaining aircraft and manning submarines, and have displayed a

genuine willingness to get the job done. Without such individuals, and the ability of the Australian mindset to adapt to the rigors of naval life, the RAN would be more of an idea than a reality a century after the *Defence Act* was first passed by the federal parliament. But it took the loss of *Voyager* to demonstrate the consequences of complacency and the perils of over-confidence in command at sea. This was, and is, the only thing that redeems the loss of 82 men from being an unmitigated waste. May they “Rest in Peace”.

Let me end on a polemical note, even as I am reminded that I hold a tri-service appointment: the RAN can be trusted with the implementation of national policy because it is capable, self-reliant and experienced in working with Australia’s friends and allies. There are few countries able to maintain the security of their sovereign waters or to control the passage of people and goods across their borders. Because of the Royal Australian Navy, Australians can still say with a sense of reassurance and perhaps even a measure of relief: “our home is girt by sea” and guarded by our Navy.

# THE SINKING OF

## HMAS VOYAGER: *WHAT HAPPENED?*

Chris Oxenbould

The title of this talk and the question – what happened? – is daunting when you consider that some of the country’s best legal brains – a string of QCs including Sir Laurence Street and Gordon Samuels – have considered the issue in great depth and it still remains unresolved. As Tom Frame points out in his book, however, much of their effort was devoted to protecting the interests of those they were representing. They were not pursuing the more fundamental question of – what happened? Nor did the Navy, as a formal inquiry.

I have thoroughly enjoyed Tom’s book, *Where Fate Calls*, and consider it to be a very erudite and comprehensive piece of work. I learnt a lot from reading it. I have also appreciated an article written by Commodore David Ferry that was recently published in the *Journal of the Australian Naval Institute*.

Forty years ago in 1964, I was in my third year at the naval college at Jervis Bay, finishing schooling and studying for matriculation. I remember the night of 10 February 1964 very clearly; the senior cadets were in the process of initiating the first year cadets – a tradition that I believe stopped on that night. We were down at the boat harbour completing the initiation when the Search and Rescue alarm sounded. The rescue craft stationed at the college to support the nearby naval air station were crash sailed and proceeded to sea as quickly as they could. We were all sent back to our accommodation blocks and it was not until the next morning that we became aware of the tragedy that had occurred off the coast. A year later, I joined my first ship and started a career at sea in the Navy.

Clearly, I was interested in the subsequent outcomes and commissions but I was far removed from them and, as a junior officer, much of it went, literally, over my head. In addition, I was overseas in the United Kingdom for two of the critical years that led to and included the second Royal Commission. I did not know the main players but I knew very well the four midshipmen killed in the accident.

When I returned from the UK in 1969, I went to sea to gain a bridge watchkeeping certificate and pursue a career as a seaman

officer. I was very attracted to navigation and shiphandling and was fortunate in 1971 to be appointed as Navigator of *HMAS Duchess* – a ship of the same class as *Voyager* and the ship obtained by the RAN to replace *Voyager*. Later I became a navigation specialist after further training in the UK and as such became the Captain's advisor in shiphandling and manoeuvring. I served as Navigator of three destroyers while the RAN was still operating the *Melbourne* and during that time spent a lot of time as the Rescue Destroyer – the role that *Voyager* had on that fateful night 40 years ago. Later I had command of two destroyer type vessels, a group of ships during the first Gulf War and ultimately the RAN Fleet – my comments this evening draw on this experience.

I would like to stress that my experience was post both of *Melbourne's* collisions and, clearly, they had a major impact on the Fleet and its operations and introduced considerable change.

### **Some general comments**

Before examining the particular case, there are a couple of general comments, though somewhat self-evident, that I would like to make:

- firstly, night flying and rescue destroyer duties are always demanding, requiring a high degree of alertness especially when moving to take up station, and
- secondly, I recall it working best when the bridge command team worked as a well trained team, with the Captain, Navigator and Officer of the Watch working closely together and supported by an officer in the operations room.

More importantly, I would like to make the point that a distance of 1,000 to 1,500 yards is close when operating with ships of *Melbourne's* size moving at 20+ knots, especially for a destroyer being within 20–30 degrees of the bow. It is an uncomfortable station, where it is difficult to take ranges because of radar blind arcs and in a Daring class you had to contend with funnel fumes when looking astern. High closing rates of up to 40 knots can develop quickly and you can get into an *in extremis* situation in less than a minute. In these stations, you are always looking over your shoulder and carefully watching the range and bearing and making small adjustments of course and speed to maintain station.

### **What did happen?**

Tom has explained what happened on the night of the collision and some of the surrounding theories. Two main theories have emerged:

- the first, that *Voyager* lost the tactical picture and believed itself to be on the port bow of *Melbourne* rather than the starboard bow, and

- the second involves a misinterpretation of the flying course signal and expectation that *Melbourne* was turning further towards the West to 270, 200 or 220.

I think there are flaws in both and I place a different emphasis to Tom in some aspect of each theory. From what is available to me, I also believe the lookout kept in both ships was inadequate and that a range of contributing factors came into play.

### **What should have happened?**

The smartest manoeuvre for *Voyager* to take up station, as planeguard, would have been a full circle turn to starboard using about 25 or 30 degrees of rudder. There may have been a need to increase speed towards the end of the turn to slide into its correct station 20 degrees on the port quarter of *Melbourne* at a range of 1,000 to 1,500 yards. *Melbourne* would be on a bearing of 040. This manoeuvre would be smart, quick and safe – turning away from the carrier and not across the bow.

The manoeuvre that was carried out – first turning 45 degrees to starboard with 15 degrees of rudder and then turning to port in a slow continuous turn with 10 degrees of rudder – was inherently unsafe and would inevitably lead to a close quarters situation or a collision.

### **The tactical picture**

Examining any of the theories introduces quite a degree of speculation as none of the officers on the bridge of the *Voyager* survived. The main input from *Voyager* comes from a junior signalman, Tactical Operator Evans and only half the story is available.

In the first theory – the loss of the tactical picture – it is quite easy to imagine how this could have occurred. When the two ships were on a course of 060, *Voyager* would have been 30 degrees on *Melbourne*'s port bow. When the signal turn port 020 was executed, *Voyager* would have moved from 30 degrees on the port bow to 10 degrees on the starboard bow.

About the time of the turn, Captain Stevens' attention was distracted to the chart table to discuss a signal or message. If he was distracted while still on *Melbourne*'s port bow, this image may have remained with him. The situation was further complicated by the flying course being signaled while the ships were still turning to 020 and when *Voyager* may still have been on *Melbourne*'s port bow. This was also the order for *Voyager* to take up the planeguard station.

Tom discounts this theory primarily on the fact that *Melbourne*'s green starboard navigation light should have been clearly visible to the bridge of *Voyager*. My experience from operating with *Melbourne* is that this is not necessarily the case. *Melbourne* had its navigation lights dimmed for flying operations and I have a very clear recollection of

the starboard navigation light being difficult to detect. Contributing to this was that *Melbourne* had a number of openings on both sides of the ship below the flight deck and red lights, used as internal night lighting, often emanated from these spaces and were brighter than the dimmed navigation light. This observation is supported by Albert Riley, who was a co-pilot of a helicopter that flew the Royal Commission members around the *Melbourne* at night at the height of *Voyager*'s bridge as a re-enactment. Albert commented "that only a red light could be seen from *Melbourne*'s darkened starboard bow".

If this were the case *Melbourne*'s two steaming lights should have provided an indication of whether you were on the port or starboard bow, as the aft light is higher than the forward light. However, they were sited close together and were very insensitive, especially at fine angles on the bow.

Evidence presented from the port lookout in *Voyager*, Ordinary Seaman Sumpster, was that very shortly before the collision *Voyager*'s OOW, Lieutenant Price, was using his binoculars. This is common practice at close range when you are trying to determine the inclination of another ship. That is the aspect of the other ship and in this case at what angle was *Voyager* on *Melbourne*'s bow and on which bow. This may have been when Lieutenant Price realised things were not as he expected.

In addition, determining the aspect of carriers at night is notoriously difficult because of their profile and the number of lights around the flight deck for flying operations. Shortly after the *Voyager* collision, the Royal Navy's Far East Fleet Commander issued an instruction reminding Commanding Officers that "it is exceptionally difficult to judge the inclination and varying rate of turn of a carrier" and that "the large number of red lights on a carrier are confusing". To add to all of this, the best I can make out from Tom's book is that this was the first night *Voyager* had spent at sea in company with another ship for over five months and all of the seamen officers on the bridge, with the exception of the Captain, were new to the ship. Consequently, I do believe that the loss of the tactical picture by *Voyager* is plausible. At the second Royal Commission, Captain Robertson and the Naval Board favoured this explanation.

### **Misinterpretation of the Flying Course signal**

There is considerable conjecture about the maneuvering signals that were sent and in particular the final message "Foxtrot Corpen 020 - 22" - the second theory. When decoded it meant that the intended Flying Course was 020 at a speed of 22 knots and it was the signal for *Voyager* to assume the planeguard station. We can be confident that the signal was correctly transmitted from *Melbourne* as the signalmen, Leading Tactical Operator Everett, was being supervised by a Chief

Petty Officer, Chief Yeoman Barker, and was using a loud clear voice able to be heard by the Captain and other officers. Any error in transmission would have been detected and corrected.

In *Voyager*, a junior signalman, Tactical Operator Evans, received the message. He too was being supervised by Petty Officer Cullen, *Voyager's* Communications Yeoman. Following receipt of the signal Captain Stevens, Navigating Officer Lieutenant Cook and Yeoman Cullen proceeded to the chart table to confer, most probably on the manoeuvring signal just received. In doing so, they were not watching *Melbourne* and this was left to the OOW, Lieutenant Price, who continued with a manoeuvre that ended up in a slow turn to port towards the carrier.

The conjecture lies over whether the signal was relayed correctly in *Voyager*. If the *Corpen* and *Foxtrot* were transposed it could be misinterpreted as a turning signal. Similarly, if 020 was jumbled, or mixed with one of the ship's callsigns Zero Seven, and relayed as 200, 220, 270 or some other variant, *Voyager* could have expected *Melbourne* to continue its turn from 060 right around to the south-west to any course between 200 and 270.

The first Royal Commission made a lot of this point and Tom Frame accepts it. I have some difficulty with the theory for a number of reasons:

- Firstly, it would have required two coincident errors in relaying the message to the command team of *Voyager*.
- Secondly, the method of execution. All major alterations of course up to this point were signaled using the delayed or immediate executive method. This method being designed for precision manoeuvres where both ships are required to initiate a synchronised turn at the exact time of execution. The "Foxtrot Corpen 020 – 22" signal was executed with a time. This type of execution is used for informative messages such as small alterations of course or when only one of the two ships was required to react and a high level of precision was not required. To execute a major alteration of course with a time would have been very sloppy and unexpected of the Flagship.
- Thirdly, from my understanding of the signal procedures used at the time, a transposed "Corpen Foxtrot" signal would not provide an indication of the direction of the turn – that is whether the turn should be to port or to starboard. If the new course is accepted as 200 or 220, port is the wrong direction to turn: it is the long way around, greater than 180 degrees and it would be quicker and normal procedure to turn to starboard.
- Finally, if the signal was transposed there would be sufficient confusion generated for Captain Stevens to *Verify* the manoeuvring signal. A verification can only be authorised by the Captain

and requires the originator of the signal to check what has been sent and retransmit the message. In doing so both bridges would have been alerted to the confusion and any jumbling of numerals or transposing of “Corpen” and “Foxtrot” would have been resolved.

What was probably troubling Captain Stevens and caused him to confer was the question of whether *Voyager* should proceed to the planeguard station automatically or await a further signal. Such confusion could be expected with a new command team conducting night flying operations for the first time in at least six months. What I cannot explain is why *Voyager* was allowed to continue to swing to port. This must have been either unintentional or based on a belief that *Melbourne* was altering course to the west or south-west. The latter supports Tom Frame’s argument. If Captain Stevens had any doubt as to what course *Melbourne* was turning to, I would have expected him to be at the Pelorus (the compass platform) and personally monitor *Melbourne*’s rate of turn, its bearing movement and its range.

### **Who was to blame?**

*Voyager* had a clear and undisputed responsibility to keep out of the way of *Melbourne*. Both Royal Commissions were critical of the lookout maintained by *Voyager* and this stands out as the real reason for why a collision *was not prevented*. What is inexplicable is why did *Voyager* reverse its course to port and continue a slow turn that put it on a collision course with *Melbourne*? Why did Captain Stevens allow his attention to be diverted at such a critical time? Why were the lookout and the collision avoidance in *Voyager* ineffective?

A fundamental of safe shiphandling, is to monitor continuously the bearing and range of other ships when you are in close company, especially when manoeuvring. If this had been followed by either ship the steady bearing and closing range should have alerted the Captains to the fact that a collision situation was developing and allowed *Voyager* to take avoiding action.

There has been much speculation to answer the questions posed but that is all it really is: speculation and conjecture. A mistake was made in *Voyager*; otherwise, the collision would not have occurred. The difficulty is in pinpointing the mistake. I do not see how we will ever know. The answer was unfortunately lost with the officers on the bridge of *Voyager*.

### **Could it happen again?**

The stark answer is yes. That is the nature of naval operations. There remains a large human element, which always provides such a potential. Nevertheless, I am very confident that operational procedures have been introduced into the Fleet along with new technology

that significantly mitigates the risk. A number of things struck me in reading Tom's book that I believe have been rectified and were in place when I left the Navy almost five years ago. Indeed, it would be surprising if this were not the case after 40 years of the Navy's pursuit of continuous improvement and active benchmarking with the best navies in the world.

Today, pre-workup and command team training before the ships proceeded to sea would follow major changes to the command teams in any ship. Complex evolutions such as night flying operations would be simulated in the Bridge Procedural Trainer and the Tactical Trainer. Before going to sea, ships would be assessed in all basic and safety drills. An independent shakedown is carried out at sea and a series of trials and tests are conducted before the operational workup starts. The workup would be very structured and build progressively with complex night operations being practised first during daylight hours. There would be close monitoring of progress by the Sea Training Group. The ship's operations rooms would be manned with a Principal Warfare Officer on watch during flying operations, monitoring the manoeuvring signals, advising on courses to take up station and monitoring safety – all with the aid of a sophisticated computer combat system.

The Navy learnt from the collisions. Procedures were introduced to challenge quickly any ship, if its manoeuvre was not understood and caused concern. In *Melbourne's* final years, there was a very detailed operating handbook available to all ships that operated in company. The handbook established a clear zone for 2,000 yards ahead of the ship into which escorts were not allowed to enter without specific approval. Turns towards the carrier to take up station by an escort ahead of *Melbourne's* beam were outlawed. *Voyager* would not have been permitted to turn to port. Rigid properly choreographed procedures were well practised and enforced.

The first Royal Commission made a great deal of Captain Stevens' experiences and doubted he could make fundamental mistakes. The reality is that a ship is far more than the individual Captain: it is a team. The Captain has a vital role and ultimate responsibility but he is the captain of a team and the ship is as good as the team he leads. The team needs to be trained or worked up to perform well. By today's standards, what *Melbourne* and *Voyager* were trying to achieve on, what I understand to be, their first night at sea in company after a long refit was ambitious.

### **So what actually happened?**

In summary, my belief is that *Voyager* became confused by the "Corpen Foxtrot" signal and at some stage where it was in relation to *Melbourne* – it lost the tactical picture. This is not extraordinary in

itself and there are very few commanding officers, if any, who have not had a similar experience. What is extraordinary are the consequences and that the checks and balances that should have worked to prevent a collision failed. I do not believe that we will ever know the reason why.

What I would add to the debate, however, is a belief that the new command teams in both ships, particularly *Voyager*, were a contributing factor – compounded by little apparent preparation for these types of manoeuvres following five-months of refit.

## SYDNEY INSTITUTE ANNUAL DINNER 2004



*Photographer: David Karonidis*



Photo – David Karonidis

*Philip Ruddock*

In the words of The Hon Philip Ruddock, Australia's Attorney General, victory in the war on terror will be measured by citizens feeling safe in their homes and not by territory gained or regimes toppled. Defending Australia in this war will only be possible by constitutional means. Australia's constitution, one of the world's oldest and most stable, according to Philip Ruddock, "provides us with a mechanism to protect our country and at the same time protect civil liberties through human security laws". Philip Ruddock addressed The Sydney Institute on Tuesday 20 April 2004 to elaborate on this message.

# **A NEW FRAMEWORK:**

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## ***COUNTER-TERRORISM AND THE RULE OF LAW***

**Philip Ruddock**

The trilogy of terrorist acts in New York, Bali and Madrid created new imperatives and new challenges for Western liberal democracies around the world. The fundamental duty of government to protect our country, our people, our way of life, our values and our freedom is in sharper focus than before.

The war on terror is like no war in living memory. This is a war which may have no obvious conclusion, no armistice and no treaty. Victory in this war will not necessarily be measured by territory gained or regimes toppled. In this war victories will be measured by disasters averted and democracy strengthened. This war's victories will be measured by citizens feeling safe in their homes. This war's victories will be measured in the steadfastness and resolve of Australians to be cognisant of, but not to fear, a potential terrorist threat.

While terrorism and targeting civilians is not a new phenomenon, the nature of the new global terrorist – whose extremism is aided by more destructive weaponry and communications technology – provides a real threat to the whole community. People cannot and do not discount the possibility that they or their family members may become victims. Our response to modern terrorism therefore requires different and more nuanced responses than in the past.

To triumph in this war Australia, like other Western liberal democracies, will need to defend our country through constitutional means. Our Constitution, one of the world's oldest and most stable, provides us with a mechanism to protect our country and, at the same time, protect civil liberties through human security laws. In enacting such laws we are not only preserving traditional notions of civil liberties and the rule of law but we are recognising that these operate in a different paradigm. If we are to preserve human rights then we must preserve the most fundamental right of all – the right to human security. Tonight I wish to:

- examine terrorism in its historical context, making the observation that while terrorism is not new the current threat is quite different;
- acknowledge that our Constitution provides a rule of law framework for the counter terrorism law to operate;
- discuss the new framework for debate of counter terrorism laws; and
- apply this framework to our existing and proposed legislation.

## Historical background

Although some believe that the threat of terrorism is new, terrorism – the strategic use of violence to create fear in order to bring about political change – is an ancient political tactic. Sometimes it has been employed by the state, sometimes it has been employed by ruthless groups or individuals.

Terrorist activity occurred in Australia as early as 1868 when James O'Farrell – who *initially* claimed membership of the Fenian movement – attempted to assassinate the visiting Duke of Edinburgh. More recently, in 1978, a bomb meant to kill visiting Commonwealth dignitaries exploded outside the Hilton Hotel in Sydney. And, although not on Australian soil, many Australians were killed in the terrorist attacks in Bali in 2002. The threat of terrorism in Western liberal democracies is not new. Between 1894 and 1914 at least seven Heads of State were assassinated in Western Europe. As Geoffrey Blainey has observed<sup>1</sup>:

Most of these deaths were the work of anarchists, whose creed was powerful in Italy and France. They did not believe in parliaments; they did not believe in private property. The assassins, though facing an almost certain death penalty, proved as willing to give their lives for their cause as are the Islamic extremists today. The radical anarchists did not normally try to derail trains loaded with Christmas passengers or steamboats carrying summer excursionists along the Rhine and Danube. Their special target was the heads of governments. Using mainly knives and light firearms, they did not have access to the portable and deadly military technology and biological weapons now available to terrorists.

As Blainey suggests, the new terrorism with its potential for mass civilian casualties and destabilisation is not like the terrorism of old. Co-ordination through global technology and communications makes the threat of terrorism so much greater to the ordinary citizen than before. As we have seen, modern terrorists do not distinguish between civilian and military; armed combatant and infant child. Although the threat of terrorism is more extreme than in the past, the government has responded in a measured way. We are committed to dealing with the terrorist threat through constitutional means.

## **The Constitution providing a framework for counter terrorism laws**

The Australian Constitution is a remarkable document. It provides both safeguards and flexibility. The Constitution embodies the federal principle. It divides power between levels of government (the State and the Commonwealth). It also divides power between organs of government (the executive, legislature and judiciary). No one actor is supreme. It is through the separation of powers in particular that the rule of law is protected.

More than 50 years ago Sir Owen Dixon indicated his concurrence with an American view that<sup>2</sup>:

... it is within the necessary power of the federal government to protect its own existence and the unhindered play of its legitimate activities. And to this end, it may provide for the punishment of treason the suppression of insurrection or rebellion ...

Despite the absence of a specific head of power to deal with “terrorism” or “crime” the Commonwealth Constitution provides a patchwork of powers to enact various specific measures designed to protect the Commonwealth and deal with terrorism. The Commonwealth has power to:

- make laws with respect to the influx of criminals;
- protect every State against invasion and protect every state against acts of internal violence;
- make laws to protect “Commonwealth” places, and territories;
- make laws about terrorist acts or threats having the requisite connection with certain corporations, postal, telephonic and other communication services;
- make laws about Acts or threats which disrupt interstate or overseas trade or commerce, banking and insurance; and
- make laws which give effect to a treaty to which Australia is a party, customary international law and matters of international concern.

As Dixon acknowledged, the Commonwealth has some inherent power of self-protection. That power may be relied on to authorise more general counter-terrorism legislation. However, the limits of the Commonwealth’s inherent power, and its potential to support coercive laws, are far from clear.

While the patchwork of Commonwealth powers is extensive, it is also complex. It is impossible to rule out unforeseen gaps in constitutional support for federal government action. It is possible to identify some circumstances where there may be no clear constitutional support for unilateral federal action. However, the fact that the Commonwealth does not have specific constitutional powers need not create a problem. The framers of the Constitution acknowledged

the need to make the Constitution flexible enough to cover “unpredictable emergencies, and possible and desirable developments”<sup>3</sup> in national government.

The Constitution allows the Commonwealth to make laws based on constitutional referrals from the states in areas where the Commonwealth might otherwise lack power. As Deakin explained a referral of power provides “a means by which the [States] may by common agreement bring about federal action ...”<sup>4</sup> Current federal terrorism offences, created by the criminal code, depend to some extent on referrals of State power. The referrals ensured, in effect, that the Commonwealth could enact comprehensive offences and amend them. The arrangement with the states provides that future amendments of these offences will not be made without the approval of a majority of the States and Territories.

### **Counter-terrorism and civil liberties a balance or a partnership?**

Having established the historical and constitutional framework for our counter-terrorism laws, I want to examine how we view counter-terrorism laws in our constitutional system.

The traditional analysis of counter terrorism laws suggests a dichotomy of concerns to be balanced one against the other. On this analysis the competing concerns of protecting the country are balanced against protecting human rights. Robert Menzies, for instance, recognised that laws designed to protect the security of the country against subversive threats created the special dilemma of:

... how to reconcile necessary and legitimate opposition to subversive or aggressive movements with the broad tolerance of all kinds of thought, even the most radical, which was one of the most valuable traditions of [our] way of life and its greatest source of spiritual strength.<sup>5</sup>

Similarly Chief Justice Rehnquist of the US Supreme Court has written: “In any civilised society the most important task is achieving a proper balance between freedom and order.”<sup>6</sup>

However, this analysis is being questioned and a new framework is being explored. Earlier this year I met with my Canadian counterpart Professor Irwin Cotler who, prior to becoming Attorney-General, was a distinguished international human rights lawyer and academic. Irwin Cotler has cogently observed that counter terrorism legislation:

... has been characterised – if not sometimes mischaracterised – in terms of national security versus civil liberties – a zero sum analysis – when what is involved here is a ‘human security’ legislation that purports to protect both national security and civil liberties.<sup>7</sup>

Human security is a broad concept focused upon the individual or community, rather than the state. Human security rests upon security

for the individual citizen, which requires not only the absence of violent conflict, but also respect for human rights and fundamental freedoms. According to the UN Secretary-General Kofi Annan:

Human security in its broadest sense, embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfil his or her own potential.<sup>8</sup>

Allowing individuals to reach their potential is dependant upon a secure environment in which fundamental human rights may be realised. In this way, protecting human security requires the protection of both national security *and* civil liberties. To preserve civil liberties, Australia's response to the threat of terrorism must strive towards the twin goals of security *and* justice. Rather than *balance* one *against* the other it must achieve both goals. This is the new framework for understanding counter terrorism and the rule of law.

Unfortunately the debate on counter-terrorism issues has been dominated by traditional analysis of protecting *either* national security, *or* civil liberties, as if the protection of one undermines the protection of the other. This discourse is unhelpful as it implies that counter-terrorism legislation is inevitably at odds with the protection of fundamental human rights.

Terrorists do not abide by rules or engage in regular forms of combat and instead use whatever means are available to them in an effort to achieve their political or ideological purpose. They do not target states per se, but rather innocent civilians with no means of defending themselves. In this way, our nation's security affects us all *personally (individually)*, and the extent to which we can continue to enjoy our civil liberties rests upon the effectiveness of our counter-terrorism laws. In this new climate of terrorism, we can no longer assume that protecting national security is opposed to protecting our civil liberties.

I am not suggesting that counter-terrorism legislation should not be scrutinised to ensure that limitations on human rights are minimised; indeed, I encourage such an appraisal. But failing to recognise that national security can in fact *promote* civil liberties (by preserving a society in which rights and freedoms can be exercised), will inevitably lead to the incorrect conclusion that civil liberties have been overlooked in an effort to promote national security. While it is accepted that any tightening of security arrangements will impact on certain rights, a more useful debate is to consider whether tightening security arrangements is in the interests of protecting fundamental human rights as a whole.

As Irwin Cotler observes:

... an examination of the legislative framework of other free and democratic societies upports the view that not only is anti-terrorism legislation representative of free and democratic societies, but its very purpose is to ensure that such societies remain free and democratic while the rights of its citizenry to live in peace and security are safeguarded.<sup>9</sup>

I would now like to outline how counter-terrorism laws have met our constitutional requirements and maintained human security.

## **Listing organisations**

A new law which commenced last month<sup>10</sup> allows the government to list terrorist organisations taking into account Australia's national security interests. Indeed I can announce tonight that, shortly the government plans to list another terrorist organisation.

Prior to this legislation, unless it passed legislation dealing with individual terrorist groups, Australia could only list an organisation if the UN Security Council had identified it as a terrorist organisation. The problem with restricting listing to UN identified terrorist organisations was that the UN does not necessarily act quickly enough to respond to Australia's individual needs and its decisions are often reflective of international political considerations not relevant to the security of the Australian people.

Listing terrorist organisations deters Australians from becoming involved in the activities of those organisations. It also strengthens Australia's ability to prosecute related offences under counter-terrorism laws, which make it an offence to belong to, direct, recruit for, train with or provide training for, and receive funds from or make funds available to a terrorist organisation, whether in Australia or abroad.

Some people have expressed concerns with the potential for a government in the future to list legitimate protest movements and political opponents. The Howard Government is not in the business of outlawing legitimate political and community organisations or confiscating their funds. Instead the legislation provides a transparent listing process. Before an organisation can be listed, as Attorney-General, I must be satisfied that the relevant organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. The Act also provides that the Leader of the Opposition must be briefed about a proposed listing.

Any regulation listing a terrorist organisation is subject to disallowance on the recommendation of the relevant Parliamentary Committee. In addition the regulations are also subject to a two-year sunset clause. The legislation illustrates a triumph of parliamentary accountability over executive action. An individual or organisation may also make a de-listing application on the grounds that there is no basis that the listed organisation is directly or indirectly engaged in,

preparing, planning, assisting in or fostering the doing of a terrorist act.

This law places Australia in the same position as the United Kingdom, Canada, New Zealand and the United States who are able to determine for themselves which terrorist organisations pose a threat to their citizens and interests and to act independently to list those organisations.

### **Maintaining human security and questioning powers**

Laws dealing with questioning powers put the human security framework to the test. Last year the government increased the powers of ASIO to obtain intelligence about possible terrorist activity in Australia<sup>11</sup>. Information gathered under these powers can be used to prevent an attack, or inform police of lines of inquiry that they may wish to follow in the investigation of offences.

The government increased ASIO's powers to question, and detain while questioning, people involved in, or who may have important information about, terrorist activity. Under the Act, the Director-General of ASIO must obtain a warrant to authorise the questioning of a person from a federal judge or magistrate. Questioning under a warrant must take place before a prescribed authority. A prescribed authority includes a former judge of a superior court, a current judge of a State or Territory Supreme or District Court, or a President or Deputy President of the Administrative Appeals Tribunal.

A person may be questioned for up to 24 hours (or 48 hours where interpreters are used). The need for questioning must be reviewed by the prescribed authority after each eight hour period of questioning. The maximum continuous period for which any person may be detained under a warrant is seven days.

After each eight hour block, a person may not be questioned for longer unless the prescribed authority overseeing the questioning has permitted an extension of time. An extension is only permitted if the overseeing prescribed authority is satisfied that there are reasonable grounds to believe that continuing the questioning would substantially assist the collection of intelligence important to a terrorism offence and that the questioning is being conducted appropriately. He or she may revoke this permission at any time. The subject of a warrant must be released immediately after the questioning or detention period ends.

If a further warrant is sought the Director-General must provide me, as Attorney-General, with a statement outlining the period for which the person has been questioned, and if appropriate, detained under each of the previous warrants.

As Attorney-General, I must be satisfied that issuing a further warrant is justified by the additional information. Similar require-

ments must be satisfied before a prescribed authority can issue the warrant. The Act does not apply to anyone under the age of 16 and contains special protections for young people between the ages of 16 and 18. Subject to the discretion of the prescribed authority all persons detained will be able to contact a lawyer of their choice at any stage of the proceedings.

A person who is subject of a warrant can contact the Inspector-General of Intelligence and Security or the Commonwealth Ombudsman at any time. If the Inspector-General is concerned about an impropriety occurring during questioning he may advise the prescribed authority who may suspend questioning until the concerns have been addressed. The Inspector-General also inspects warrants if a person has been detained under two or more warrants.

### **Future action**

The government is constantly reviewing our terrorism laws and measuring them against international standards to make sure that we have the best laws possible. In 2002, the new offence of terrorism and offences relating to membership and other specified links with a terrorist organisation such as providing or receiving training for terrorist acts were created<sup>12</sup>.

These provisions may fall short of what is required to comprehensively protect the country from terrorism, and I am looking closely at the appropriateness of a consorting offence which would apply to people who have links with a terrorist organisation or its members, but who themselves are not members of the organisation and who do not have an active involvement with the activities of the organisation.

Another area of review has been in the area of questioning for the purpose of investigating an offence. Care has been taken to recognise that questioning for the purpose of investigating an offence is an altogether different activity from questioning for the purpose of intelligence gathering. The former is about gathering reliable evidence that can be used by a court to convict and sentence someone for many years of imprisonment. Apart from the civil liberties concerns, people who make statements after hours of questioning, isolation and sleep deprivation are not good witnesses.

Currently the fixed time for questioning arrested suspects is a maximum of 12 hours. This is not sufficient for complex terrorism investigations. The level of complexity and magnitude of federal terrorism investigation conducted within Australia, spanning State, Territory and international borders is unique. Liaising with overseas agencies in different time zones is often necessary. These considerations demand a more flexible framework to enable police to gather sufficient evidence and properly question persons suspected of

terrorist attacks. The government has proposed amendments that will increase the proposed questioning period to 24 hours.

Maintaining a fixed time limit for questioning, as well as other investigatory safeguards such as magisterial approval of extensions beyond the initial four hours of questioning, electronic recording of the interview, the right to an interpreter, the presence of a lawyer and time for rest should enhance the reliability of the evidence that is gathered and the potential for successful prosecution.

## Conclusion

The new terrorist threat presents immense challenges for Western liberal democracies. We must protect ourselves from attack and we must ensure the safety and security of our citizens. In confronting this uncommon threat we must not compromise the integrity of our democratic traditions, processes and institutions. The way the government has responded to terrorism has strengthened and reinforced the democratic processes so vital to both our national and human security. We have engaged in a practical process applying the machinery of government to preserve our basic human rights.

The safeguards we have applied to the listing of terrorist organisations and the questioning of terrorist suspects are practical illustrations the government's measured response to the new challenges. In the war on terror, our democratic traditions and processes are our greatest ally and our greatest strength. They are the tools which will help repel the terrorist threat and protect and preserve and the rights that we value so dearly.

## Endnotes

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6. WH Rehnquist *All the Laws But One*, Alfred A Knopf, 1998, at 222.
7. I Cotler, "Thinking Outside the Box: Foundational Principles for a Counter-terrorism Law and Policy", unpublished, 9 November 2001.
8. Kofi Annan, Press Release SG/SM/7382, "Secretary-General Salutes International Workshop on Human Security in Mongolia" (Ulaanbaatar, May 8-10 2000).
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10. *Criminal Code Amendment (Terrorist Organisations) Act 2004*
11. *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003* and *ASIO Legislation Amendment Act 2003*
12. *Security Legislation Amendment (Terrorism) Act 2002*



Photo – David Karonidis

*Ellie Wainwright*

Dr Ellie Wainwright is Program Director – Strategy and International with the Australian Strategic Policy Institute (ASPI) She is a Queensland Rhodes Scholar, completing both her Masters and Doctorate in International Relations at Oxford University. Now working on research into Australia's relations in the Pacific, Dr Ellie Wainwright told the ABC in 2004: "What you have in the Solomon Islands at the moment is this climate, this broad environment of lawlessness, and it seems to us that is the root of the problems in Solomon Islands. And the economy is just not going to get back on track until the security situation there is stabilised." Ellie Wainwright addressed The Sydney Institute on Tuesday 27 April 2004.

# **SOLOMON ISLANDS,**

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## ***PAPUA NEW GUINEA AND AUSTRALIA'S POLICY SHIFT***

**Elsina Wainwright**

Australia's policy towards the South Pacific has changed profoundly in the past year, to one of increased engagement with the region. The first step in this policy shift was the Australian-led Regional Assistance Mission to Solomon Islands (RAMSI). And towards the end of last year, the Australian government announced an Enhanced Cooperation Package of around 300 police and public servants to help Papua New Guinea address its governance and law and order challenges.

How did this policy shift come to pass? This paper examines the situation in Solomon Islands prior to the assistance mission, and some of the factors behind the change in policy. It then looks at the progress of the mission, the challenges ahead, and the implications for the broader region. It also analyses some of the issues facing Papua New Guinea and Australia's assistance to PNG.

### **Solomon Islands prior to the assistance mission**

In the years leading up to last year's intervention, Solomon Islands acquired many of the characteristics of a failing state. It was virtually paralysed by a political and security crisis.

Solomon Islands consists of over 1,000 islands in an arc to Australia's northeast – in between PNG and Vanuatu. It was a British Protectorate that became independent in 1978, and now has a population of around 450,000 people. Its state institutions did not achieve great traction, either during the colonial period or after independence. Traditional social and political structures proved to be very resilient, and there was little sense of nationhood among Solomon Islanders. By the end of the 1980s economic development had slowed, while land and population pressures continued to increase.

From 1998-2000, Solomon Islanders endured an ethnic conflict between the ethnic groups the Guadalcanalese and Malaitans. The conflict stemmed from the settlement over a couple of generations and economic success of Malaitans on the island of Guadalcanal. Resent-

ment on the part of the Guadalcanal men soon led to the formation of militias on both sides. Clashes ensued, and the Malaitan Eagle Force (MEF), with its close links to the Royal Solomon Islands Police, came to dominate Honiara. In June 2000 Solomon Islands police officers aligned with the MEF gained control of a national armoury, and Prime Minister Bart Ulufa'alu was deposed in a de facto coup.

The ethnic conflict was to a large extent brought to a halt by the Townsville Peace Agreement (TPA) of 15 October 2000. However, core parts of the TPA – such as the weapons surrender – were not implemented effectively, and the TPA expired in October 2002 leaving a society still in considerable disarray.

By 2003 Solomon Islands had become a state that had in many respects ceased to function. The ethnic conflict had morphed into a law and order crisis, in which ex-militias and armed criminal gangs held the rest of the society to ransom. Ex-militias and gangs had links with some politicians and members of the police force, and there was a broad climate of criminality and impunity. The police were either involved in criminal activity or powerless to do anything about it.

The Solomon Islands government was paralysed in the face of this situation. It was also bankrupt. Politicians and bureaucrats had often been subject to intimidation and extortion attempts. The economy nose-dived, there was an entrenched culture of corruption, and services such as education and health were in a critical condition. And the population growth rate was around 3.3 per cent a year, with approximately half the population under 15 years of age.

### **Australia's policy shift**

Successive Solomon Islands leaders had requested international – particularly Australian – assistance to help address this situation, and until 2003 the Australian government had declined. Our policy was to provide aid, but to expect Solomon Islands to solve its own problems. But then in late April last year Solomon Islands Prime Minister Sir Allan Kemakeza wrote to the Australian Prime Minister requesting Australian assistance to combat the political and security crisis. This time, the Australian government said yes.

There were several factors behind this change. First, there was an increasing awareness in Canberra that Australia's national interests were directly engaged by the situation in Solomon Islands. Solomon Islands was Australia's immediate neighbour, and its instability presented a security challenge.

In particular, there were concerns that a state in such a critical condition with weak security infrastructure and a poor capacity to regulate people flows could serve as a potential haven for transnational criminal operations, including gun running, drug trafficking, people trafficking, and money laundering. A bankrupt Solomon Islands could

seek assistance from state or non state sources, and some of these could have interests inimical to Australia's interests.

There were also fears that the Solomon Islands crisis could destabilise the broader region. The conflict in the Papua New Guinea province of Bougainville had spread over the porous border into Solomon Islands in the form of refugees, weapons and a macho gun culture. There was therefore concern that the fallout from a failing Solomon Islands could flow back the other way and have a damaging impact on PNG.

The second factor was the changed context and intellectual climate. The formal war in Iraq had just ended, and there seems to have been an element on the Australian government's part of adjusting back to attend to some regional issues. There is no doubt that there was a lower level of tolerance more broadly for state failure and state weakness after September 11 2001. 9/11 had raised security considerations to the top of the international agenda, and amplified concerns about weak and failing states being potential attractive breeding grounds for transnational criminal operatives.

Through the 1990s, from the collapse of Yugoslavia onwards, there was a growing awareness that states cannot insulate themselves from events within a neighbouring state – these events often spread out and affect the broader region. The states of Europe had initially roped off the crisis in the collapsing Yugoslavia by declaring they could not intervene in a civil war. Europe then felt the consequences, including thousands of refugees and transnational crime emanating from the Balkans. And conceptions of sovereignty were changing. Events in Bosnia, Kosovo and also in Rwanda and East Timor had made the idea of outside intervention in another country's affairs less acutely neuralgic.

Third, there was also a growing belief that Australia's policy approach towards Solomon Islands – and the South Pacific more broadly – simply was not working. Australia's policy towards the countries of the South Pacific had involved the provision of often-generous amounts of aid but the expectation that these countries would address their own problems. This policy could be traced back to the decolonisation of the region, and was underpinned by a laudable repudiation of colonialism and a respect for state sovereignty.

But the situation in Solomon Islands had continued to deteriorate. Australian aid to Solomon Islands had trebled to \$37 million per year over the four years to 2003 – this had proved insufficient by itself to arrest the decline. Australia's policy required the Solomon Islands government to address its own difficulties, and that government had proved incapable of tackling them and kept asking us for help. A new approach was required.

Fourth, there was a moral and humanitarian dimension – that Australia had a responsibility to do something about this degree of misery and disarray on our doorstep. Solomon Islands had asked for our help, and many believed we had a moral obligation to provide it.

The fifth factor concerned Australia's diplomatic standing. Australia is in part regarded by the rest of the world – including the United States – according to how it behaves in its immediate neighbourhood. If there is a natural disaster in the region, for example, there is an expectation that Australia, as the regional metropole, will provide prompt and effective assistance. The deterioration of Solomon Islands due to man-made troubles fed into how Australia was viewed in the region and beyond.

### **The assistance mission**

In late July 2003, the Australian-led Regional Assistance Mission to Solomon Islands (RAMSI) was deployed. It comprised of around 2,225 police, military and development advisers from Australia, New Zealand, PNG, Tonga, Kiribati, Cook Islands, Fiji and Samoa.

In the Australian Strategic Policy Institute's (ASPI's) report of June 2003, we recommended an intervention in two phases. The first phase largely entailed the restoration of law and order, which we saw as the precondition for progress on all other fronts. The second phase was the broader nation building component, involving long-term capacity building.

RAMSI broadly accords with this model. Its initial purpose was to restore law and order by piercing the climate of criminality. Around 300 police were deployed to Solomon Islands to fulfil this task, which required the removal of weapons from the gangs. The police were initially supported by a large military force providing logistical support and protection to the police, although the bulk of this military contingent has since withdrawn.

RAMSI's second phase entails a state reconstruction and development program. This program has many components, including economic, financial and justice assistance. The goal is to provide Solomon Islands with the institutions and expertise that will enable it to function as an effective state. The mission has a Special Coordinator and a number of other officials, including experts in the Ministry of Finance and in the Law and Justice sector.

The civilian contingent of RAMSI will remain on the ground for up to ten years, to pursue criminal investigations and to help to build up Solomon Islands' institutions, including its police.

### **Key features**

The assistance mission in Solomon Islands has several key features that make it fairly unique. A number of policymakers and analysts

from around the world have been struck by these features and are eager to draw lessons from the mission that could be applied elsewhere.

First, the mission is police-led. This feature alone makes this mission somewhat of a departure from more traditional peace operations. The purpose of the mission has been to restore law and order, and this was judged to be a police role. The military component of the operation was there in support of the police as they performed this role.

Second, the operation has taken place at the request of the Solomon Islands government and with the consent of the Solomon Islands parliament. It also has the support of the vast majority of the Solomon Islands population. This clear consent has been a vital element underpinning the intervention – it would not have taken place without it.

Third, the mission has regional participation and endorsement. The Pacific Island Forum's meeting of Foreign Ministers in June 2003 endorsed the operation, and placed it within the parameters of the Forum's Biketawa Declaration, which provides for a collective response. This regional involvement is an important feature of the operation: a state in crisis affects the whole region, and needs a regional response. This response also helped to allay regional concerns about Australian unilateralism and heavy-handedness.

Fourth, the operation has the *ex post facto* support of the United Nations Security Council (in the form of a UN Security Council presidential statement) and the UN Secretary-General. Both the Security Council and the Secretary-General welcomed the collective regional action in August 2003, and noted the leadership of Australia and New Zealand in this regard. The UN is in general supportive of regional solutions to regional crises, as it does not have the resources to establish too many UN interim administrations such as exist in East Timor or Kosovo.

Fifth, the mission represents a long-term commitment to Solomon Islands on the part of the Australian government. The nation building component of RAMSI requires comprehensive engagement for a number of years.

### **How is RAMSI faring?**

Thus far, the intervention in Solomon Islands has gone very well. RAMSI has proved to be a circuit breaker to the lawlessness, and Solomon Islanders now feel that their country can move forward. Over 3,700 weapons have been recovered, over 50 ex-militants have been arrested, and considerable progress has been made in cleaning up the police. People are no longer threatened by gun-toting gangs, and children and teachers have felt they can return to schools. Stolen

property has been returned in Honiara, and there is a sense of civic pride in the capital.

The economic stabilisation program has also achieved very good results – there is a workable budget in place, and police, teachers and other public servants are now being paid on time. The Solomon Islands government's debt is being managed down, there has been a significant increase in revenue compliance, and ghosts are being removed from the payroll.

One of the reasons for this success till now has been the strength of RAMSI's leadership. Both Special Coordinator Nick Warner and the Australian Federal Police's Ben McDevitt have had substantial prior experience in Melanesia, and this has certainly contributed to RAMSI's effectiveness.

## Challenges

However, many challenges still lie ahead. Nation building is a long and complex endeavour. Addressing corruption and rebuilding the Solomon Islands police force, for example, are difficult tasks. The assistance mission is based on a minimal derogation of Solomon Islands' sovereignty. Consequently, the operation is vulnerable to shifting political alignments in that country. While the Solomon Islands parliament currently supports the mission, there is a risk that changing circumstances might affect support for it in the future. The mission still enjoys great support among Solomon Islanders. But they now want to see the "big fish" targeted for corruption. Some of these "big fish" are the very people who invited RAMSI in – this presents an obvious and very difficult problem.

The mission also needs to ensure that RAMSI enhances Solomon Islanders' skills, and does not just end up eroding them. Preventing the creation of a culture of dependency will be an ongoing challenge, as it is in all nationbuilding operations. There are concerning signs: some Solomon Islanders are already saying in the face of all sorts of problems "*weitem olketa RAMSI bae kam stretem*" ("wait for RAMSI to come and fix it").

Of course, one of the keys to Solomon Islands' long-term success will be the revival of its economy. RAMSI will need to continue to work in partnership with the Solomon Islands government to implement necessary economic reform, which will help to foster local and foreign investment.

## What are the implications for the broader South Pacific?

The Australia government has not seen RAMSI as an exact model for what else to do in the region. All responses necessarily depend on

the context. There is a great variety in the performance of the Pacific Island states, and some states such as Samoa are doing reasonably well. Certainly no other Pacific Island state is in as bad a shape as Solomon Islands was before the intervention. But it is the case that the challenges of young populations, small populations and small resource bases, ethnic tensions, and the need to generate sufficient economic activity affect a number of them.

RAMSI has marked the beginning of a new Australian policy towards the region – one based on increased Australian engagement. This policy seeks to prevent further state decline by building up the states of the South Pacific and maximising their stability and prosperity.

In accordance with this aim, Australia and New Zealand have been promoting increased regional cooperation and closer regional integration. This push can be seen in a number of initiatives first raised at the Pacific Islands Forum meeting last August, including a regional police training centre and regional shipping and aviation scoping studies. Australia also successfully pushed for Australian former diplomat Greg Urwin to become the Forum's Secretary-General.

Forum leaders met in Auckland earlier this year, and – acting on the recent Eminent Persons' Group review – agreed to give increased powers to the Secretary-General to respond to a crisis like Solomon Islands, and to work towards pooling resources of governance.

## **Papua New Guinea**

In addition to pursuing regional integration, Australia has revised its policy towards Papua New Guinea. While not in as acute a state as Solomon Islands was prior to RAMSI, PNG faces serious governance, service delivery and law and order challenges. At 5.7 million people (with over 800 languages), PNG is more than ten times the size of Solomon Islands. PNG has a 2.6 per cent population growth rate, which means that around 50 per cent of its population are under 19 years of age. Absorbing large numbers of young people into a non-existent job market each year causes significant social strain. Lack of economic activity fuels crime and many social problems.

PNG's law and order situation – especially in Port Moresby and the Southern Highlands – is of considerable concern, as is its HIV/AIDS infection rate. There is also a failure of the delivery of services such as health and education in many parts of the country. This is not the result of a lack of resources. Nor is it the result of a lack of development assistance. Australia has provided around \$330 million per year in aid to PNG – it is our biggest bilateral aid program. Our aid program to PNG has achieved a considerable amount and prevented additional misery.

Rather it is a problem with the collection and the distribution of public money – mismanagement and corruption mean resources either do not reach the state coffers or are inappropriately allocated once they have. Either way, a sizeable amount of state resources is not reaching the people in the provinces. There are also deep-rooted problems relating to the working of parliament and also with the relationship between politicians and their electorates.

### **Australian assistance**

In the second half of last year, the Australian government decided to become more actively engaged in PNG. It has not sought to replicate RAMSI in PNG, but it has adopted RAMSI's deployment of police and public servants to in-line positions. Late last year the Australian and Papua New Guinea governments broadly agreed to the Enhanced Cooperation Program (ECP), under which Australia will deploy around 300 police and public servants to in-line positions to assist PNG with some of its challenges. While some advisers have already been dispatched, the main deployment has been postponed awaiting the settlement of the jurisdiction question, which has proved very difficult.

Unlike Solomon Islands, PNG is not a failing state. And the issue of Australian assistance – particularly the issue of jurisdiction – is a thornier one than it has been in Solomon Islands. There is more bridling over issues of sovereignty on the part of some of PNG's elite – a far cry from the situation in Solomon Islands. Some of the PNG elite have been concerned by what they see as a heavy-handed Australian tone over the ECP, which unlike RAMSI is bilateral.

Of course, PNG was an Australian colony and that history necessarily pervades the relationship, for good and ill. But many people in PNG want things to improve and want increased Australian involvement. This is particularly the case outside Port Moresby and at the grass roots level, but is also so among sections of the elite.

Certainly the ECP's move away from traditional advisory roles to more in-line assistance makes sense. But there is more that can be done. Australia needs to assist PNG to engage in deeper structural reform to address critical issues like the management of public money. Australia also should ensure that it works to build broad support among PNG's elite for Australian assistance.

There is a need to thicken up the Australia-PNG relationship, which has lost a lot of its intimacy over the last decade or so. It is important to rebuild people-to-people links at all levels. This will help to build up trust, and to make the relationship more than just about the disbursement of aid.

## What does all of this mean?

In closing I would like to make three observations.

First, Australia's involvement in Solomon Islands, Papua New Guinea and the South Pacific more broadly represents a significant refocussing on the immediate region. The Australian government has made a sizeable commitment – both in financial and personnel terms – to our immediate region, and it has been a whole-of-government response. My own view is that this commitment is appropriate and necessary, for humanitarian and strategic reasons.

This policy shift seems reasonably durable, at least for the medium term. Opposition leader Mark Latham's avowal of the importance of the South Pacific region to Australia plus the fact that his first overseas trip as leader was to Papua New Guinea seem to suggest that this is the case whichever party wins this year's election. However, changing domestic and international imperatives could always mean that this approach is brought to an end earlier than is currently intended. In my opinion this would not be optimal, since the policy will have the greatest impact if it is long term – in the order of ten or so years.

Second, there has been a shift in who is on the front line of maintaining Australia's security abroad. It is no longer just the Australian Defence Force (ADF), it is increasingly the police. In February 2004, more Australian Federal Police (AFP) were deployed abroad as a proportion of the organisation than there were Australian Defence Force personnel as a proportion of the ADF. The AFP has been greatly stretched by growing international demands, as the government has acknowledged with its recent creation of the International



Deployment Group within the AFP – we at ASPI had recommended something along similar lines.

And it is not just the police who have been mobilised. Public servants such as financial experts and lawyers are also involved – on deployments but also in strategic and management roles back in Canberra. The Department of Finance and Administration and the Treasury both have personnel deployed in the Pacific, and there is now a Pacific and Assistance Division within Treasury and a Pacific Support Branch within Finance.

And finally, Australia needs to ensure that its approach is not perceived as heavy-handed in the South Pacific. The key to moving forward will be to build consensus in the region and to show due respect for regional sensitivities. There is a real opportunity here to bring the region closer together and draw Australia closer to the region. This will help to improve the lives of many as well as to shore up the security of the neighbourhood. And there is, by and large, support in the region for increased Australian involvement. It would be a great shame if concerns about Australia's style put all of this in jeopardy.

## SYDNEY INSTITUTE ANNUAL DINNER 2004



*Photographer: David Karonidis*



Photo – David Karonidis

Writer and broadcaster William Shawcross was guest speaker and guest of honour at The Sydney Institute's Annual Dinner on Wednesday 28 April 2004, at the Harbourside Ballroom, Star City, Sydney. William Shawcross is the author of biographies of Alexander Dubcek, the Shah of Iran and Rupert Murdoch, along with *Deliver Us From Evil: Warlords and Peacekeepers in a World of Endless Conflict* (2000), which addresses the complex moral and political arguments surrounding humanitarian intervention and *Allies* (Allen & Unwin 2004) on Iraq and the Coalition of the Willing. Earlier works by William Shawcross include *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*.

William Shawcross was introduced by the Institute's Meredith Hellicar. MC for the evening was Sydney Institute Board member Paul Murnane. The Annual Dinner 2004 was sponsored by Australia Post.

# **THE US, BRITAIN AND**

## ***AUSTRALIA – IN THE AGE OF TERRORISM***

**William Shawcross**

I am very pleased and grateful to be here tonight. This is not the first time that Gerard and Anne Henderson have invited me to speak at The Sydney Institute, which they have both done so much to make into the important think tank it has become. But it is the first time that I have been given the singular honour of delivering the Institute's annual lecture. It is daunting, particularly given the difficult and painful subject before us tonight.

I once talked to members of the Institute about Rupert Murdoch because many years ago I wrote a biography of this extraordinary Australian. Indeed, it was research for that book which first brought me to Australia and began what, for me, has been a very happy if not constant enough relationship with this country.

Tonight, I want to talk about several subjects. First, about Iraq now, one year after the overthrow of Saddam; secondly, about Iraq before the war and the reasons for the war; thirdly, about aspects of the war on terrorism; and fourthly about the future. Or bits of it.

And I want us to consider all this in the context of a quotation from Osama bin Laden. When he issued his declaration of war upon the United States in 1998 he mocked America for its weak response to his attacks against it in Africa and elsewhere. He said, "When people see a strong horse and a weak horse, they naturally gravitate towards the strong horse."

### **Iraq now**

In early March, I was on the way to the Windsor Archives when Emma Bonino, an Italian politician and friend of mine, called. In 1998, I went with her to Afghanistan. It was the height of Taliban rule and we got ourselves arrested. Now Emma is leader of Italy's radical party and a member of the European Parliament. She said, "Come and get arrested in Iraq."

We set off first to visit the Italian troops – some 3,000 of them – in Nazariyah, in the South, and then to Baghdad. I should emphasise

that this was before the recent and horrific upsurge of violence in some of Iraq. But let me remind you of one of the causes of that violence. It is progress. The more progress is made in Iraq by the Coalition – the US, Britain, Australia and 32 other countries – the more violence by people determined to stop it.

Every Iraqi we met confirmed the findings of the poll published by the BBC and other broadcasters in March. The majority of Iraqis said that their lives were better now than before the invasion and 70 per cent said they felt that their lives would be better still in a year from now, one third saying, much better. In this context it is important to remember that before the war many people predicted a massive refugee crisis. It did not happen. Indeed, in the last year, Iraqis have been coming home, not fleeing.

About half said they opposed the presence of Coalition forces but few of them wanted them to leave now. In Nasariyah, one of the poorest provinces, security had worsened recently, with both gangs of criminals and fundamentalist militias marauding. We met Sabri al Rumadia, the nominated Governor of Nasariah. He was proud that the marshes, which Saddam had drained in a brutal act of ethnic cleansing, were being refilled. The Marsh Arabs were returning, though they would never be able to come back in such numbers as before.

He said that the priorities were economy, transport and security. The lack of security – though not everywhere – is one of the greatest failures of the Coalition and understandably one of the principal reasons for growing disillusion with the occupation.

Emma asked him, “What is your message to the world?”

He replied, “It is to say: “Please send any help you can to Iraq. Don’t stay away. That would be a big disaster for us.”

He was horrified by what had happened in Spain. “If the troops withdraw the situation will deteriorate further. It’s essential that the Coalition forces stay to put pressure on our neighbours (especially Iran) not to interfere.” Iranian subversive and terrorist interference is very serious.

Since then, the new Spanish government has announced that its troops are coming out at once – rather than even waiting for the 30 June handover of sovereignty and the possibility of staying under a UN umbrella, as many had hoped. Many, many Iraqis will be terrified by Spain’s precipitate decision.

We met with some ten women, representing themselves or some of the new women’s and other groups, like teachers. Emma Bonino asked “Do you think life has changed a bit for the better or not?” One of them answered, “We have great hope for the future. The problem is now.” Several said that not enough had changed in the last year.

Emma pointed out that in Italy, after 1945, it took many years to rebuild the country.

Baghdad is surreal. The first impression driving off Saddam's vast military airfield and into the city is of the dictator's insane megalomania. There is palace after palace after palace, many of them built in the nineties when the country and people were suffering under sanctions imposed because of his refusal to abide by UN disarmament resolutions.

Behind the headlines of the awful violence of the last month, there is another reality. Now Baghdad is a boom city. Every corner is piled high with boxes of air conditioners, televisions and other consumer durables for sale. There is now more electricity in more places than under Saddam. But the huge new demands imposed on the fragile grid will probably cause it to crash constantly this summer – leading to more discontent.

There is an explosion of ideas as well as consumer goods. The interim constitution, adopted by the Governing Council in March, gives citizens and particularly women more rights than they enjoy in any neighbouring states. It is truly a revolutionary document. The question that women, in particular, ask, is "Will it last?"

Children are back at school in most of Iraq – and they no longer just have to worship Saddam. Almost all hospitals are re-opened. Foreign capital has begun to return. The vital oil industry is being restored, despite terrorist sabotage. Last month OPEC produced its full oil quota of crude oil for the first time since 1979.

The US is spending \$1/2 billion on democracy building programs. \$27 million of this will be spent on setting up women's centres and teaching women's rights in every province. There have already been municipal elections in 17 Iraqi cities and in each of them victory has gone to democratic and secularist parties. Similarly in professional associations. All the opinion polls favour democratisation.

Fifteen months ago there were only pro Saddam newspapers and television. Now there are over 200 newspapers and satellite dishes, outlawed under Saddam, are one of the biggest sellers. Unfortunately the two principal Arabic broadcasters, Al Jazeera and Al Arabiya are totally opposed to the American led venture in Iraq. They broadcast poison.

Unemployment is certainly very serious. But the US's \$18 billion aid program will kick in very soon – it should have come much sooner, but it will help alleviate unemployment. The World Bank reckons that per capita income will rise by 33 per cent this year and GDP by 60 per cent. Inflation will rise also.

We met with a group of young people – students and artists amongst them. "The end of Saddam was like a dream," said one. "Now we can talk for the first time in our lives." "The Coalition has

not protected our security well enough” said another. A third said, “We believe Saddam himself was the real Weapon of Mass Destruction. We have freedom now ... Don’t leave now.”

From the press reports it is easy to come away with two images of Iraq today – (1) that it is all a hopeless war zone and (2) that Iraqis do not want us there. Bonino and I came to a very different view: that most Iraqis are very glad that the Coalition overthrew Saddam, and that most of them are for the first time enjoying many of the freedoms that we take for granted. We understand the trauma that the Spaniards endured in the Madrid bombing but we were convinced that it is quite wrong for the new Spanish Prime Minister, Jose Luis Rodriguez Zapatero, to describe Iraq as “a disaster”.

It is not a disaster. It is incredibly difficult to attempt to reform a crucial state in the most dangerous part of the world. It is made more difficult by the Coalition’s failures – in particular its failure to send enough troops to police the country. The resistance is by no means all Iraqi – foreign subverters and terrorists have been rushed in from Iran, Saudi Arabia and Syria to make sure this progress towards civil society is destroyed. The more progress, the more violence.

The disaster would be to fail, to turn away from the commitment we have given the Iraqi people and ourselves. That would see terrible repercussions with Iraq and beyond. I am sure that that is something Australia would never do.

## **The threat of Saddam**

How did we get there anyway?

I believed that the war against Saddam was justified above all because he was in total defiance of the United Nations over its twelve years demand that he reveal and destroy his Weapons of Mass Destruction. But we have not found the “smoking weapons” that we thought Saddam possessed and it has become almost axiomatic to declare and believe that George Bush, Tony Blair, John Howard and others “lied” about them.

I think it is important to state that that is not true. There is no evidence that any major Western leader – Bush, Blair, Howard, or Spain’s Jose Maria Aznar – lied. Every major intelligence service in the world believed through the end of the 1990s and into the new millenium that Saddam was still pursuing his old dream of WMD and that he had failed to comply with all the multiple binding resolutions against him. However, some of the intelligence was clearly wrong.

Before 9/11 already Saddam was seen as a serious threat. It is not just President Bush who thought that. Consider this quote:

If we fail to act or we take some ambiguous third route, which gives him yet more opportunities to develop [his] weapons of mass destruction and continue to press for the release of sanctions...he will conclude that the

international community has lost its will and that he can go right on and do more to rebuild an arsenal of devastating destruction. And some day, some way, I guarantee you he will use the arsenal ...

Who said that? Not President Bush, not some wild eyed Neo Con in his employ. No. It was President Clinton. When? In February 1998.

Clinton was aware that Saddam, uniquely among current leaders, had form. Saddam had actually used WMD against both his neighbour (Iran) and his own people; by 1998 Iraq was in breach of almost all of the obligations of many years of binding Security Council Resolutions. Clinton went on to say:

In the next century the community of nations may see more and more of the very kind of threat Iraq poses now – a rogue state with weapons of mass destruction, ready to use them or provide them to terrorists ... If we fail to respond today, Saddam, and all those who would follow in his footsteps, will be emboldened tomorrow by the knowledge that they can act with impunity ...

Clinton was absolutely right. But at the end of 1998, caught in the toils of the Monica Lewinsky crisis, he failed to follow through. He continued the policy of containment – including sanctions, air patrols, and covert operations. He left office still convinced that Saddam had to be removed.

The popular belief is that Bush came into office obsessed with Iraq. But he did not at once seek to change the Clinton policy. The early pre-occupation of the new administration was not Iraq but the growing power of China (which is still a concern). Donald Rumsfeld said Asia would be the new focus of defence policy.

Then came 9/11.

By extraordinary chance, John Howard was in Washington DC on 9/11. The attacks, understandably, had a profound impact upon him and he realised at once that we had entered a fearsome new world. On his return to Australia, Howard invoked the ANZUS treaty, which since 1951 has been the cornerstone of Australian foreign policy. I think most Australians believe that the American alliance has served this country well.

You do not need me to tell you that Howard was determined that Australia should play a full role in the war on terror which bin Laden had begun. The ADF played an important part in the campaign to remove the Taliban and Australian Special Forces were committed to the western desert of Iraq in March 2003, where they acquitted themselves well.

Today Australian troops are crucial in sustaining operations at Baghdad airport. There is an Australian naval presence in the Gulf, which was called into action to save Americans under attack a few days ago. There is a CI30 airborne detachment. Australians are training Iraqi troops, something the ADF does very well. By its

actions, Australia has certainly demonstrated over the last three years that it understands the magnitude of the crisis with which the world is now faced.

There is much criticism of the Bush administration for focussing on Iraq after 9/11. But I think we should ask whether containment of Saddam was really still sustainable. One might ask whether it was even moral. The French and the Russians were anxious to have sanctions lifted unconditionally as soon as possible. As the massive UN oil for food scandal reminds us, Security Council members were already subverting their own resolutions.

Anyone who looked at Iraq before or after 9/11 would have to have concluded that this was a rogue state using the privileges of statehood to evade international law and endanger peace and security of the region, if not further afield. Saddam had demonstrated over 20 years that he would not be restrained from using any weapons he managed to acquire. Far from rushing to action, it had taken twelve years – in which Iraqis and their country suffered immeasurable harm. This was a regime which had tortured and killed hundreds of thousands of its own people, in which children were murdered in front of their parents to make them confess to non-existent crimes. Saddam was hated and feared by most countries in the region, even if they did not always dare say so.

The Council voted again unanimously in Resolution 1441 of November 2002 that Saddam was still defying the world on WMD and gave him a final opportunity to co-operate fully. He did not take it. Hans Blix, the chief UN inspector, said that Saddam's stocks of VX and anthrax remained unaccounted for and that little progress had been made on the solution of other serious issues. David Kelly, the British weapons expert who was so misused by the BBC, also thought that the invasion was inevitable.

In spring 2003, the debate in the UN became bitter. In my view it was not the US which walked away from the UN, but France and Germany which refused to enforce Resolution 1441. Instead of concentrating on the problem of Saddam, they concentrated on the US and as a result split NATO, the European Union and the Council itself. The French position was, apparently, that the 200,000 US and other troops poised in Saddam's borders should remain there until France decided they could move. No US President would ever have accepted that.

The war was won brilliantly fast, without any of the disasters predicted by its opponents.

Since then, to the surprise of many, including myself, we have not found the biological and chemical stockpiles we expected. But we do now know that Saddam was illegally building long range missiles.

Once sanctions had been lifted then he could arm them by reconstituting his biological and chemical stockpiles.

George Bush, Tony Blair, John Howard and their allies are now attacked for this failure. But imagine the consequences if Iraq had in fact been as advanced along this road as North Korea, or even Iran? Not without reason, the historian Philip Bobbitt points out, "It cannot be better to avoid action until we are certain that the situation we most fear has indeed come about." Saddam may not have been an immediate threat but he was an inevitable one.

Rolf Ekeus, the measured first chief UN weapons inspector, said last summer that the attacks on Bush, Blair, Howard and other Western leaders for the failure to find the WMD predicted were "a trivialisation of a major threat to peace and security". He argued that Saddam's policy in recent years had been to concentrate on design and engineering rather than accumulating stockpiles. "The combination of researchers, engineers, know-how, precursors, batch production is what constituted Iraq's chemical threat" – not rusting drums. And don't forget that in 1991, the UN inspectors were appalled to find that Saddam's nuclear program was far more advanced than they expected. There are 30 million pages of Iraqi official weapons documentation in Qatar now; they are being read by machines to find more clues. There are still many interviews to do.

Dr David Kay, the first head of the Iraq Survey Group, has said that we know that terrorist groups were anxious to acquire "the knowledge of how to make ... small amounts [of WMD] which is, after all, mostly what terrorists want. Iraq remained a very dangerous place in terms of WMD capabilities, even though we found no large stockpiles of weapons."

Consider in parallel with that, this remark by Eliza Manningham Buller, the director of MI5, British counter intelligence: "Al Qaida has the ambition to carry out unconventional attacks on the West. They have said so." But do they have the means? she asked. "My conclusion, based on the intelligence we have uncovered, is that we are faced with the realistic *possibility* of some form of unconventional attack. That could include a Chemical, Biological, Radiological or Nuclear attack. Sadly, given the widespread proliferation of the technical knowledge to construct these weapons, it will only be a matter of time before a crude version of a CBRN attack is launched at a major Western city."

## **Terror**

It is in the context of that grim reality that I would like to turn now to the war on terror, which has affected Australia as horribly as any country. The road from 9/11 through Bali to Madrid, and most recently Basra and Riyadh, is a gruesome and depressing one.

Even so, I think we sometimes fail to recognise how great the threat is. It long predates the overthrow of Saddam. President Clinton said in the mid 1990s that terrorism was akin to World War Two and the Cold War. I quote, “It is the enemy of our generation and we must prevail.” Others have said that Islamic terrorism or Islamofascism is the third “ism” that we have to defeat after Nazism and Communism.

The first thing to say, and this is what senior counter intelligence people do say, is that 9/11 did not so much change the threat from terror in itself, as it changed our perception of it. Before 9/11 we had a failure of imagination.

Intelligence cannot tell us everything. It can only illuminate some parts of the picture. Our intelligence agencies have to sift through masses of material and make judgements. They get bored with having to repeat the refrain “the possibility cannot be discounted that ...” The problem with tracing and stopping Al Qaida is that it is not a structured organisation like the IRA or other nationalist terrorist organisations. It is much broader, more diffuse, more dangerous. It is a *network* or *franchise*. If part of the network is destroyed it simply knits together again. This makes it ultimately more dangerous and more difficult to deal with.

There are those who argue that the war in Iraq has and is inflaming Islamic opinion and creating more people willing to give their own lives to destroying the West. Well it may be so. The first Gulf war, fought to liberate Kuwait, was one of bin Laden’s early clarion calls for holy war. Should we therefore have left Kuwait in the hands of Saddam?

Other Western policies may also anger Islamists. Of course the hideously painful stand off between Israel and the Palestinians creates militants. But even if the destination on the Road Map, a two state solution for Israel and Palestine, were reached immediately, that would not end the threat from bin Laden and those who think like him. They see this as an existential war.

Do not forget that during the 1990s, when there was no war in Iraq, thousands, perhaps tens of thousands, of Islamic warriors were trained in the bin Laden camps in Afghanistan. That was a time when the US president, Bill Clinton, was working overtime to create an agreement between Israel and the Palestinians. The United States finally came to the rescue of Muslims in Bosnia, after Europe had failed to do so, and then led the effort to save Muslims in Kosovo. None of that stopped bin Laden from building up his organisation and attacking the US wherever he could.

In the 1990s, the US failed to respond decisively to the attacks upon it. Bin Laden saw the US as weak. In his “Declaration of War against the Americans”, he mocked the US for withdrawing from Somalia after 18 soldiers were killed in a firefight in Mogadishu

in 1993: "You left the area in disappointment, humiliation and defeat ... You had been disgraced by Allah and you withdrew." Islam was the strong horse, he said. After 9/11 President Bush and his coalition partners were determined to show that the West as a whole was not a weak horse after all.

Bin Laden does not himself direct all the terrorist attacks in the Western and Arab world. But his evil doctrine and his extraordinary success on 9/11 have given a poisonous new strength and vision to disparate Islamic groups around the world. They live to kill. The most determined live to die. Or, perhaps more often, they brainwash others to do so. For example, here is the story of a young Kurd who was about to become a suicide bomber. He was arrested by the Kurdish authorities and this account was published in the London based Arabic paper *Al-Sharq Al-Awsat*. I quote:

Kaywan Qader, 18 years old, grew up in Suleimaniya. He was one of ten children in a moderately religious family. In the mosque he met Sawara Ali, who discussed religion with him and then recruited him to [the terrorist group] Ansar al-Islam...He was able to convince Qader that Jihad would offer him paradise and save him from hell. Qader agreed to join Ali in one of the camps to prepare himself for Jihad, and all of his father's efforts to dissuade him from that failed. Qader told his father that Allah's wish supercedes his family's wish ... In the camp Qader agreed to carry out a suicide mission because he was told it is the highest level of jihad ... Another detainee who spent time in the camp says that they listened to lectures where they were told that each of the martyrs will find 72 virgins waiting for him in paradise ...

Sergio Vierra de Mello, Kofi Annan's superb representative in Baghdad was murdered by a suicide bomber in August last year. You will remember that de Mello was the man who skilfully oversaw East Timor's transition to independence. Consider what al Qaida said about of him. They described him as "the diseased Sergio de Mello, representative of America's criminal slave, Kofi Annan ... Why cry over a heretic? De Mello is the one who tried to embellish the image of America, the crusaders and the Jews in Lebanon and Kosovo and now in Iraq ... he is the crusader that extracted a part of the Islamic land (East Timor)."

For helping East Timor, Sergio, the UN and Australia earned Al Qaida's total enmity – long before the invasion of Iraq.

Last summer, an Al Qaida spokesman Suleiman Abu Gheith said that Muslims have the right to kill four million Americans, including two million children, so as to reach parity with alleged American attacks on Muslims – "Furthermore it is our right to fight them with chemical and biological weapons." Such evil zealots will not stand down if bin Laden is killed or captured or promises any truce. To quote Manningham Buller again, "The supply of potential terrorists among extreme elements of the Islamic world is unlikely to diminish.

Political dialogue and a process of reconciliation are not on the horizon as groups like Al Qaida have aims that are absolute and non-negotiable.”

They cannot be appeased.

The new Spanish government is quite, quite wrong. Withdrawal from the attempt to build a decent Iraq will not protect anyone. On the contrary, it will lead to disaster. Jose Maria Aznar, the defeated Premier of Spain, said this week that withdrawal “tells the Iraqi people that they cannot count on us. We are saying that we are not going to help them secure the liberties that we ourselves enjoy and that we are not prepared to take the slightest risk for them. Appeasement does not protect one from danger; instead, it fortifies the danger itself.”

### **Effects of the invasion**

Bernard Lewis, one of the great Western authorities on Islamic culture, has written: “If the peoples of the Middle East continue on their present path, the suicide bomber may become a metaphor for the whole region, and there will be no escape from the downward spiral of hate, rage, spite and self pity, poverty and oppression.” The only long term hope of preventing that lies in the transformation of the region.

Consider the UN Development Program’s 2002 Arab Development Report. This made chilling reading. Consider – in one of the richest areas of the world, 40 per cent of adult Arabs are illiterate (two thirds of them women). And consider – the combined GDP of the 22 Arab League states is less than that of Spain. One third of the people of the region live on less than two dollars a day.

And consider – 50 million young Arabs will enter the labour market by 2010, 100 million by 2020. If current trends continue, it would take the average Arab 140 years to double his income; other regions will do so in less than ten years. There is “poverty of capabilities and poverty of opportunities”. These have their roots in three deficits: freedom, women’s empowerment and knowledge. The study found that of the seven regions of the world the Arab region had the least freedoms of all. No wonder that so many people there are so angry and rebellious.

Why does the future look so bleak? One of the principal reasons is bad government. Saddam’s was the worst in the Arab world, but there are many others. Syria is governed by a corrupt and despotic family clique from a minority sect. Egypt has been ruled by emergency decree since 1981.

An important part of America’s strategy in Iraq was very bold. It was to change the criminally destructive complacency of governments in the region. It has not provided overnight transformation but it is already possible to see good effects of the removal of Saddam in the region. First, and most dramatically perhaps, Gadaffi sued for

peace. He has handed over all his WMD programs in return for being allowed back into the international community.

In the last year, civic movements demanding change have grown for the first time in Egypt, Saudi and Syria. They were not created by George Bush, but they do say that Washington's new democratisation policy has given them a voice, an audience and a partial shield against oppression – three things they did not have a year ago.

Now reform is on the agenda throughout the Middle East. Who has put it there? Not the European Union, for sure. The United States. Right now, at US insistence, the so called sherpas from major Western governments are preparing for the June G-8 summit.

The hope was, and must remain, that success in creating a better society in Iraq, can have a domino effect on the region. It seems to me tragic that Romano Prodi, the European Commission President, Dominique de Villepin, till recently the French foreign minister, and other politicians elsewhere are now competing with Spanish premier Zapatero to denounce the United States and its allies in Iraq. They represent a terrible spirit of Euro-effetism. But, importantly, this spirit does not exist amongst the new or aspirant members of the European Union – Poland, Latvia, Rumania, Estonia, Bulgari, these and others know how vital the US was to their liberation.

Before the war, Jose Ramos Horta, the East Timorese dissident, criticised the anti-war marchers in the West, saying, "If the anti-war movement dissuades the US and its allies from going to war in Iraq, it will have contributed to the peace of the dead."

The great Peruvian novelist, Mario Vargas Llosa, has written of the "various sects and movements bent on provoking the Apocalypse in order to prevent Iraq from soon becoming a free and modern country, a perspective that rightfully terrifies and drives insane the gangs of murderers and torturers of the Mukhabarat and the Fedayeen of Saddam Hussein along with the fundamentalist commandoes from Al Qaida and Ansar al Islam as well as the terrorist brigades sent to Iraq by the ultra conservative conservative clerics. All of them know that if Iraq becomes a modern democracy their days are numbered."

If it happens, it will be above all because of the sacrifice of soldiers from 35 countries. As so often, the greatest sacrifice will be borne by young Americans. More than 100 have been killed in the past month alone.

Australia's strategic reality is a partnership and alliance with the United States. I think that most Australians understand that hatred of America is both powerful and destructive. Some of that hatred is caused by America's mistakes, though that is not true of Islamic nihilists, a minority whom nothing can assuage. The bottom line is this. For all its faults, American commitment and American sacrifice are essential to this world. As in the twentieth century so in the

twenty-first – only America has both the power and the optimism to defend the international community against what really are forces of darkness. In this endeavour America needs its allies in the liberal democratic world, for both real and symbolic purposes. Indeed the two often march together.

The new beginning in Iraq is proving much more painful than anyone, supporters or critics of the war, would have hoped. The terrorists want to see Iraq subjugated again – either under a Saddamite or an Islamic dictatorship. It would be a catastrophe for Iraq and the world if they were allowed to succeed.

I have no doubt that, for all the violent attempts to stop change, Iraq is already a better place than it was under Saddam. For all the horrible problems, most of the 25 million Iraqis have more freedom and a better chance than ever before.

I believe that Australians understand that and I believe that Australians will not want to abandon this brave, difficult and important mission.

## SYDNEY INSTITUTE ANNUAL DINNER 2004



*Photographer: David Karonidis*



Photo – David Karonidis

*Kevin Rudd*

Kevin Rudd MP, Australia's Shadow Minister for Foreign Affairs and International Security, sees three prongs to multilateralism which are imperative for Australia to support. They are firstly, an open, fair, rules-based system governing international behaviour; secondly, global strategies within this framework to deal with common threats and common opportunities; and thirdly, the application of political, economic and collectively authorised military sanctions when these rules are fundamentally breached. To expand on all this, Kevin Rudd addressed The Sydney Institute on Thursday 27 May 2004.

# **MULTILATERALISM IN**

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## ***THE POST-IRAQ ORDER – AUSTRALIA'S COMMITMENT***

**Kevin Rudd**

When you're in the middle of a major international event, it's difficult, if not impossible, to understand what its long-term significance might be. Unfortunately, that is where we now find ourselves with Iraq.

Will domestic security be able to be returned to Iraq? Will the Brahimi Plan for the political transformation of Iraq succeed? Will Iraq represent the first or last neo-conservative experiment in the democratisation of the greater Middle East? And will Iraq represent the first or the last hurrah for the doctrine of global military pre-emption?

We do not yet know the answer to any of these questions. But what we do know is that the Iraq war has represented a fundamental assault on the post-war international system.

As one of the co-architects of that system back in 1945, we in this country face a stark challenge. Will we be party to the incremental destruction of the UN multilateral system? Or, in the aftermath of Iraq, will we now play a constructive role in the rebuilding of that system? This is not an academic question. It's a real and practical question facing Australian diplomacy today.

### **Defining multilateralism**

Multilateralism can best be defined as a system of rules, institutions and patterns of cooperation between states to deal with common threats to their security and prosperity. Multilateralism rests on three basic principles:

- An open, fair, rules-based system governing international behaviour;
- The development of global strategies within the framework of this rules-based system to deal with common threats and common opportunities; and
- The application of political, economic and, where collectively authorised, military sanctions when these rules are fundamentally breached.

Multilateralism, of course, does not represent the exclusive machinery of the international system. Bilateralism and regionalism also play a major role – but these are at their best when they conform to, and complement, the multilateral system as a whole. These fundamental principles of multilateralism are reflected in the UN Charter and the United Nations Organisation which it created.

It's worth reflecting for a moment on the objects of the United Nations, first articulated in 1945:

- To save succeeding generations from the scourge of war;
- To reaffirm faith in fundamental human rights;
- To promote social progress and better standards of life in larger freedom.

In the half century that has passed since the United Nations adopted these high ideals, wars have not stopped. Human rights continue to be abused. And some parts of the world have seen very little social and economic progress. But before we engage in hearty, collective ridicule of the UN of the type populist politicians so enjoy, it is worth recalling for a moment the absolute magnitude of the human destruction wrought during the three preceding centuries of the largely rule-free post-Westphalian order.

The Napoleonic wars, the Crimean War, the Franco-Prussian War, the war to end all wars, and 20 years later the world war that succeeded the war to end all wars. Not to mention the Holocaust. Not to mention the wars of colonial invasion and occupation across Asia, Africa and Latin America. A combined human carnage of untold millions.

So when pedestrian, provincial politicians today remind us that the United Nations has not succeeded in living up to all its expectations, we should, with some humility, agree. We should also recall Churchill's great aphorism about democracy: Democracy, the worst system of government in the world, apart from all the others. The United Nations: the worst system of international government in the world, apart from all the others.

Of course the United Nations does not represent the totality of the multilateral system. While nominally under the purview of the UN's Economic and Social Council, the Bretton Woods institutions – the five organisations that make up the World Bank and the International Monetary Fund – are to all intents and purposes independent. So too is the World Trade Organisation which together with the Bank and the Fund complete the global economic architecture. The International Labour Organisation predates the war and was designed to advance international labour standards.

Beyond these institutions again lie a myriad of specialised organisations dealing with a range of legal, technical and commercial matters – from postal services, intellectual property and civil aviation,

to meteorology. What all these institutions have in common, however, is the simple principle that cooperative behaviour is generally better than unilateral behaviour in achieving global outcomes.

## **Defending multilateralism**

So in defending multilateralism, what are the principal arguments to bring to bear? First, a rules-based system, however imperfect, is better than no system at all. Rules-based systems, when determined consensually, help define fairness. They can also deliver efficiency where competitive or duplicative systems would otherwise be dysfunctional. Most importantly, rules-based systems constitute the primary basis of legitimacy in international behaviour. It is instructive to note that, despite the derision with which the Australian government treated the United Nations in the lead up to the Iraq war, the Australian government, together with the other Occupying Powers, felt constrained to at least try and construct an international legal legitimacy underpinning their decision to go to war based on an arcane interpretation of previous Security Council resolutions. Just as they subsequently sought the legitimisation delivered by Security Council resolutions 1483 and 1511 to define their powers for the period of the occupation.

Just as the Occupying Powers now seek to engage the United Nations as a further mechanism of international legitimisation – both in securing future international participation within Iraq, as well as conferring legitimacy on the political transformation process within Iraq itself. It is instructive to recall that in the first half of the last century, no such legitimisation was sought or invoked by the Great Powers as they embarked upon the First and Second World Wars. At minima, the UN Charter at least offers this modest constraint, given that all states now accept the international legal principle that it is unlawful to invade another state in the absence of authorisation under the UN Charter.

Beyond the simple argument that some rules are better than no rules, a second argument in favour of multilateralism is that the changing nature of the international terrain itself mandates greater levels of international cooperation. Put simply, global challenges require global solutions. We've seen this with economic globalisation and the global regulatory responses that have become necessary to govern international capital transfers, the international trade goods and services, as well as a rules governing intellectual property.

More recently, the international community has become increasingly conscious of the globalisation of security. Terrorism, international organised crime, international people smuggling and the international narcotics trade require international, not just national, responses. Of course, this has been the case with global climate change and other global environmental challenges for some

time. Kyoto rests on the unremarkable assumption that the only valid response to global warming should be a global one – although this unremarkable logic still appears to escape the comprehension of the current government.

The central point is this – that the nature of the policy terrain that the international community now faces is the collapse of the so-called “great divide” between the national and international, the external and the internal, the foreign and the domestic. And for this fundamental reason, the sheer quantum of security policy, economic policy and environmental policy activity that is now shifting to an increasingly seamless trans-national domain – demands trans-national responses, if responses are to be effective, rather than cosmetic.

The third critical reason in defence of UN multilateralism is that it affords middle powers like Australia an ability to punch above their weight. It was for this reason that Australia was able to influence the shape of the UN Charter of the UN Organisation in the first place. Evatt used the dynamics of the San Francisco Conference to become the spokesman for small and middle powers – thereby delivering fundamental changes to the eventual shape of the UN Charter compared to the draft that had been agreed by the Great Powers at Dumbarton Oaks the year before.

Since then, successive Australian Labor governments have been active multilateral players: on security, through the Australia Group coordinating export controls on chemical and biological weapons, materials and dual use items; the negotiation of the Chemical Weapons Convention and the Comprehensive Test Ban Treaty; as well as delivering a comprehensive peace settlement in Cambodia. Similarly, previous Labor governments have sought to use the Cairns Group within the World Trade Organisation agenda to advance the interests of agricultural trade liberalisation.

The capacity for Australia unilaterally to have delivered similar policy outcomes would have been negligible. Furthermore, those who argue against UN multilateralism need to ask themselves the following, fundamental counter-factual questions:

- If the UN Security Council did not exist, there could never have been an Australian-led intervention in East Timor.
- If the International Criminal Tribunal for the former Yugoslavia had not been established, Slobodan Milosevic may never have been brought to justice;
- If the UNHCR did not exist, an estimated 50 million refugees would not have been helped to start new lives over the past five decades and 12 million internally and internationally displaced persons today would be without any form of protection.

- If the World Health Organisation didn't exist, there would have been no body to coordinate an effective international response to the SARS outbreak.
- If the World Food Program did not exist, 70 million fewer people wouldn't be fed and kept alive each year.
- If UNICEF did not exist, millions of children's lives would have been lost.
- And if the Montreal Protocol did not exist, over 180 countries may not have made legally binding commitments to reduce their consumption of chemicals harming the Ozone Layer.

Finally, the UN manages to achieve these outcomes on the basis of a relatively modest core budget. The UN's core budget is around US\$1.3 billion per year, which is less than Australia's total annual aid budget of US\$1.49 billion per year. The entire UN system (including UN peacekeeping operations, UN programs, funds and specialised agencies) spends around US\$12 billion annually. Once again, to put this into context this represents 10 per cent of the Australian Government's 2004/05 total budget of US\$134.6 billion.

This does not mean that the UN multilateral system does not need to be reformed. That its powers need to be better defined. That better decision making processes need to be established. That greater efficiencies need to be gained. But these are arguments in support of the UN multilateral system. They are not arguments to dismantle the UN multilateral system – or to stand passively by while the system slowly falls into disuse.

## **Historical commitment to the UN**

Labor's approach to foreign policy is based on three pillars:

- Our alliance with the United States;
- Our membership of the United Nations; and
- Our policy of comprehensive engagement with Asia.

It has been the Australian Labor Party which has given effect to these principles in the post-war government of Australia. It was Labor under Curtin that took Australia into our alliance with the United States. It was Labor under Whitlam that took Australia into Asia. And it was Labor under Evatt that took Australia into the United Nations. As noted above, Bert Evatt made a significant contribution to the UN Charter and the early staffing of the UN organisation. An Australian was the first President of the UN Security Council. An Australian was the third President of the UN General Assembly – in the person of Evatt himself. Evatt, in addressing the United Nations Association of Australia in 1949 stated with some eloquence:

International peace and justice can be achieved only by building on the United Nations: those who would destroy it are pointing the road to chaos. It is no good supporting the principles when they suit us and abandoning

them when they appear to be to our temporary disadvantage. Australia has consistently stood for the Charter and its application to all disputes and problems. It is for that reason that Australia's international prestige stands very high.

Evatt's words, half a century later, continue to ring in our ears as we confront Australia's contemporary circumstances: a government which derided the United Nations last year, but a government desperately seeking to cling to UN legitimacy this year now that events have turned very badly in Iraq. Evatt had a broad view of the United Nations – broader than simply the maintenance of international security. In the same 1949 lecture, Evatt stated:

The United Nations does not belong to governments, or diplomats or officials: it belongs to the people. It exists to give effect to their desire for a world of peace, justice, freedom and welfare. All men of good will yearn for such a world, not so much for themselves as for their children...

Here was Evatt translating basic social democratic values into the international domain. Values of security. Values of democracy. Values of prosperity. Values of equality. Values of fairness. For Labor, our basic values have never stopped at the continental shelf. They are as valid in guiding our domestic policy orientation as they are in guiding our international policy orientation. Evatt was responsible for drafting the economic and social chapters of the UN Charter, creating ECOSOC and, in time, its associated economic and social institutions, organisations and agencies. And to these enduring Labor values, half a century later we add the value of sustainability. Valid domestically. Valid internationally. Global sustainability being the common cause of our collective humanity.

Labor's support for the UN Charter and the United Nations Organisation remains unabated this last half century. Under Whitlam. Under Hawke. Under Keating. And I've already noted Australia's considerable diplomatic achievements under these governments – most notably those of Foreign Minister Evans on Cambodia and disarmament and Trade Minister Cook through the Cairns Group. When you actually look at the record, it's amazing what a country like Australia has been able to achieve through an activist diplomacy working through the multilateral system. Japanese foreign policy academics, having analysed Australia's foreign policy achievements through the Hawke and Keating period, have produced research papers advocating Australia as an effective middle power model for the future direction of foreign policy activism by Japan.

## Attitude of the Howard Government

Until recently, there has been bipartisan support in Australia for the UN multilateral system. As Prime Minister Malcolm Fraser stated in Parliament in June 1976:

In a world where increasingly complex problems transcend national boundaries, a commitment to multilateral cooperation, particularly in the field of economic and social development, is an indispensable part of Australian foreign policy. We support the United Nations, its Charter and the work of its various specialised agencies...Australia will make every effort to help the organisation expand its effectiveness. We shall be seeking opportunities to work cooperatively within the United Nations framework as in other multilateral forums.

However, in recent years, this bipartisan consensus has regrettably broken down. We have seen it in what the Howard Government has had to *say* about the United Nations. We have also seen it by a series of things the Howard Government has *done* in response to the United Nations. It is a pattern of behaviour that predates Iraq.

In 1998, Mr Reith attacked the UN's International Labour Organisation for daring to question his handling of the 1998 waterfront dispute. In March 2000, Foreign Minister Downer unleashed on the UN Commission on the Elimination of Racial Discrimination for having the audacity to critique Australia's mandatory sentencing laws on the detention of aboriginal people. In 2002, Foreign Minister Downer unleashed on the United Nations High Commissioner for Refugees over its criticism of the Government's approach to the mandatory detention of asylum seekers. Mr Downer said that:

... Australia didn't appreciate ill-informed criticism of Australia's policy from international organisations such as some of the United Nations' agencies...and that such criticism undermines international support for UN agencies ... It's not what we pay the United Nations to do.

This was followed by Prime Minister Howard at the outbreak of the Iraq war when he attacked the Security Council when he stated:

I believe that if the UN Security Council walks away from its responsibilities [in Iraq] it weakens its authority, perhaps fatally.

And just in case the international community had not got the message by then, Foreign Minister Downer, in a fit of post war triumphalism, stated that:

Increasingly multilateralism is a synonym for ineffective and unfocused policy involving internationalism at the lowest common denominator.

And that Australia was:

... prepared to join coalitions of the willing that can bring focus and purpose to addressing the urgent security and other challenges that we face.

As others have said before me, in diplomacy, words are bullets. And when political bullets are fired by friends, rather than foes, the political impact is even greater.

The truth is that the international community, in addition to members of the UN agencies themselves, have been surprised, stunned and dismayed by the systematic nature of the Australian government's relentless assault on the integrity of the UN multilateral system. The cumulative impact of these statements has been to erode the moral authority of the UN – a moral authority which is particularly important in those parts of the world which have historically depended on various forms of UN intervention and where adherence to international norms are uneven.

Words, however, are one thing. Deeds are another. And this is one area where the Howard Government's words have matched its deeds in their rolling repudiation of the UN system. At its most simple level, it is reflected at the level of government representation at critical UN ministerial conferences. There was no Howard Government ministerial representation at the June 2000 World Summit on Social Development. There was no Howard Government ministerial representation at the 2002 Monterrey Conference on Financing and Development. There was no Howard Government ministerial representation at the World Conference Against Racism and Racial Discrimination in Durban. And most recently, despite the Howard Government's rhetoric on both Afghanistan and Iraq, Mr Downer failed to attend the international ministerial Donor's Conference on Afghanistan held in Tokyo in January 2002. And in October 2003 the Minister again failed to attend the ministerial Donor's Conference in Madrid for Iraq – despite the fact that both the Tokyo and Madrid Conferences attracted ministerial representation from most mainstream western democracies including the United States, the United Kingdom, France and Germany.

After a while, your absence is noted. Ministerial participation in critical UN conferences is one thing. Ministerial refusal to ratify critical UN conventions is another. In September 2000, the Howard Government refused to sign or ratify the optional protocol to the convention on the elimination against all forms of discrimination against women (CEDAW) – causing one of the co-founders of Menzies' Liberal Party Dame Beryl Beaurepaire to remark: "From this decision it seems to me that Australia is trying to cut itself off from the United Nations."

In July 2002, Australia was one of eight countries that voted against the UN protocol against torture. But the granddaddy of them all remains the government's refusal to ratify the Kyoto Protocol on Climate Change – despite the fact that the Russian president's recent decision to ratify this instrument has left the government increasingly

internationally isolated in this critical area of global environmental governance.

While Australia did sign the Millennium Declaration and endorse the Millennium Development Goals aimed at poverty reduction across the developing world within definable timetables, the Howard Government's statements and policy decisions, including the Foreign Minister's annual foreign aid statement, either ignore the Millennium Development Goals altogether or at best gave them some sort of superficial single mention.

Beyond non-ratification, there are also problems with non-compliance. In August 2000, the Howard Government decided to restrict access to UN Human Rights Committee visits to Australia. This is despite the fact that similar committees had visited other developed countries such as Germany, the United Kingdom and the Netherlands and had delivered negative findings on various acts of human rights non-compliance in those jurisdictions as well. However, this did not result in any of those governments seeking to ban Human Rights Committee visits altogether – or to restrict their access.

The hallmark of a mature, self-confident democracy is complete transparency. If democracies start denying or restricting access to Human Rights Committees visiting, monitoring and reporting within their jurisdictions, this establishes a less than helpful precedent for states where democracies are less well developed – or not developed at all.

The Howard Government's commitment to rolling back UN multilateralism is also reflected in its determination to withdraw altogether from certain existing UN agencies. This is demonstrated at present by the government's stated intention to withdraw from the International Finance for Agricultural Development (IFAD) – a specialised UN agency in grassroots rural development.

Finally, and most recently, there has been the Howard Government's spectacular contempt for the UN process in participating in the invasion of Iraq – in the absence of the explicit sanctioning of the United Nations Security Council under Article 42 of the UN Charter. This single act undoubtedly constitutes the government's single greatest act of contempt for the UN system as a whole. Invading another state is no small matter. But doing so with cavalier disregard for international law, for a state like Australia which is not a Great Power and has so much at stake in the continued integrity of the international system; such a decision bordered on the reckless.

Quite apart from the other direct implications of that decision in terms of Australia's foreign policy and national security interests in the Middle East and Islamic South East Asia. Taken collectively, this series of statements and actions taken by the Howard Government over the last five years have painted a picture of a country seeking

increasingly to distance itself – if not remove itself – from the UN multilateral system. Unfortunately this has been well recognised in the wider UN family. As UN High Commissioner for Human Rights, Mary Robinson, said at the height of the Tampa crisis in 2001:

It is very worrying that a country with a fine tradition like Australia would find itself unable to reach out in appropriate terms and in established practices to people such as these.

Or in the words of Professor Anne Bayefsky, the head of a major review of the UN Human Rights Committee system said in the same year:

If democratic countries like Australia don't take a leadership role in responding to the very few findings of violations against them, how can they expect other countries with much worse human rights records to do better? They simply can't have it both ways.

Or as former US Secretary of State Madeleine Albright noted last year in relation to general critics of the UN:

The United Nations might seem useless to the self-satisfied, narrow-minded and micro-hearted minority, but to most of the world's population, it remains highly relevant indeed.

Of course, all of this comes at a price. It may be recalled that back in 2002, the Foreign Minister announced with great fanfare that Australia would be pushing for a seat on the UN Security Council for the 2007/08 period. However, come July of that year, it became apparent that there was insufficient support in New York and in capitals for an Australian candidature to proceed at all. Humiliatingly for Australia, the Security Council push was quietly dropped in the hope that nobody would notice. The last time Australia had a position on the UN Security Council was when Bob Hawke was Prime Minister and Dick Woolcott was our Permanent Representative in New York. That was nearly 20-years ago. What a long way we have come.

## **The UN at the cross-roads**

The Howard Government's attacks on the United Nations over the past several years have been part of a broader, global neo-conservative assault on UN multilateralism. This attack came to a head within the Iraq war. So much so that Secretary General Kofi Annan's statement to the UN General Assembly last year when he stated that the "consensus" underpinning the UN system of collective security had been "called into question" and further:

We have come to a fork in the road. This may be a moment no less decisive than 1945 itself, when the United Nations was founded. At that time, a group of far-sighted leaders, led and inspired by Franklin Roosevelt was determined to make the second half of the 20<sup>th</sup> century different from the

first half. They saw that the human race had only one world to live in, and that unless it managed its affairs prudently, all human beings may perish. So they drew up rules to govern international behaviour, and founded a network of institutions with the United Nations at its centre, in which the people of the world could work together for the common good.

Both in the view of the UN itself and in the view of its neo-conservative critics, the system is indeed in crisis. Views differ, however, on how countries, individually and collectively, should respond to this crisis:

- The Howard/neo-conservative paradigm which advocates a combination of military pre-emption, loose “coalitions of the willing” which are purpose-specific and which can be deployed irrespective of multilateral institutions and the rule of international law.
- From the left, an anti-globalisation movement which argues blanket opposition to globalisation and global institutions – a lack of faith in all collective solutions, which is anchored in a fundamental hostility towards liberal capitalism.
- Third, an approach which we would describe as effective multilateralism which recognises that effective international rules institutions and patterns of cooperation provide the only secure means of ensuring security, peace and prosperity – but rules, institutions and patterns of cooperation that nonetheless require significant reform.

It will come as no surprise to you that an Australian Labor government would favour this third approach – an approach which is grounded in the enduring advantages of multilateralism which have been argued earlier in this speech: but an approach which is equally grounded in our recognition of the complexity of the global challenges which now confront the international community.

### **A new commitment to UN multilateralism – a five point plan.**

First, the Security Council. Secretary General Kofi Annan has commissioned a high-level panel on UN reform on ways to strengthen the Security Council’s capacity to deal with new and complex security threats. This panel has two principal remits:

- Forging a new consensus on the meaning and application of Article 51 of the Charter which recognises each country’s right to self-defence if an attack occurs; and
- Achieving a new consensus on a common doctrine of international humanitarian intervention in the aftermath of Rwanda, Bosnia and Kosovo.

An Australian Labor government would place high priority on examining and advancing appropriate proposals from this high-level

panel on UN reform. Much productive work has already been done by the International Commission on Intervention and State Sovereignty and the specific criteria it has outlined in order to justify any armed intervention in states for the purposes of protecting peoples within states. The hard challenge now is to take these precepts and translate them into norms within the framework of the UN Charter – and within the framework of UN practice. The United Nations cannot sustain another Iraq where the UN Charter was flouted. But nor can the United Nations sustain another Rwanda where the UN Charter and its inherent principle of state sovereignty was used to exonerate the international community from a responsibility to act.

In this context, the international community cannot remain indifferent to the present plight in the Sudan. According to the International Crisis Group, the conflict there has already claimed 30,000 lives and an estimated 1.2 million people have been forced from their homes. Experts have warned that without a rapid international response, a further 350,000 lives could be lost through either starvation or disease.

On 25 May, the UN Security Council expressed “grave concern” about the deteriorating humanitarian and human rights situation in Darfur and called on the Sudanese Government to neutralise and disarm the militias it has been sponsoring. The Security Council welcomed the Sudanese government’s announcement that it will facilitate the international relief effort, but expressed concern about “logistical impediments” that this operation will now face.

The ICG has recommended that the Security Council should authorise planning for military intervention in Darfur to create a series of internationally protected concentrations of displaced persons. The ICG has also recommended that the Security Council consider authorising a no-fly-zone – and if the government does not disarm its militia the Security Council should authorise the use of force to achieve this. To prevent starvation, the ICG also recommends that states launch a high level diplomatic offensive to urge the Sudanese Government to allow aid workers full access to affected populations.

Obviously, the Sudan is a long way from Sydney. But so too is Baghdad. And so too is Kabul. Australia, as a responsible member of the UN multilateral system, should be engaged now in active diplomacy in identifying a solution to the Sudan problem. And beyond diplomacy, Australia now should be making provision for a large-scale humanitarian assistance effort in the Sudan, in conjunction with the European partners, in order to avoid a humanitarian disaster. The Sudan presents us with a current and confronting example of how the international community, acting through conscience, should move through appropriate mechanisms to protect the civilian population of

that country. The international community cannot remain silent. This is a challenge to our common humanity.

Second, an Australian Labor government is committed to strengthening and extending the current counter-proliferation and disarmament regime through stronger export controls, more intrusive inspections, more widely applied and tougher enforcement regimes. Particular priorities for an Australian Labor government will include:

- The negotiation of a verification protocol to the Biological Weapons Convention;
- Securing speedy ratification of a Comprehensive Nuclear Test Ban Treaty; and
- Developing a multilateral machinery to deal with the threat posed by non-state actors using WMD.

The UN's disarmament and counter-proliferation regimes are grinding to a halt. What is required is a resumption of Australia's disarmament activism in international fora, where once again the real threat posed by weapons of mass destruction around the world (rather than imaginary threats presented for other political purposes) are properly dealt with.

Third, development assistance. Australia has endorsed the Millennium Development Goals. It is worth restating here what precisely the millennium development goals are:

- To eradicate extreme poverty and hunger;
- To achieve universal primary education;
- To promote gender equality and empower women;
- To reduce child mortality;
- To improve maternal health;
- To combat HIV/AIDS, malaria and other diseases;
- To ensure environmental sustainability; and
- To develop a global partnership for development.

Against each of these objectives, measurable goals within measurable timelines have been set. To begin with, an Australian Labor government will re-engineer the framework of the Australian overseas aid budget to make it compatible with the framework of the millennium development goals. Furthermore, an Australian Labor government will actively work with the world's other principal aid donors operating within a common MDG framework on priority projects in our region.

In a speech last week in Berlin, I outlined the desirability of Australia pursuing common projects with the European Union in our own region – given Europe's total aid budget of some US\$36 billion annually represents approximately half of the total OECD aid budget worldwide. Australia has a national interest, and we have an international obligation, to see the realisation over time of the MDG targets within our own region. Within our own region, and within the framework of the Millennium Development Goals, we should be

unabashed in our pursuit of the central objective of the elimination of poverty.

Fourth, international and humanitarian law. This has been brought into stark relief through recent examples of prisoner abuse in Iraq – and the failure to apply properly the provisions of the Geneva Conventions for the protection of prisoners. The Geneva Conventions were brought into being by the international community in 1949 to avoid a repeat of the humanitarian disasters of the Second World War. These disasters not only related to prisoners of war, but also to civilian prisoners, as seen by the unspeakable horror of the holocaust.

The Geneva Conventions were also brought about to provide a better regime for the protection of civilian populations during times of war. They outline the doctrine of the Occupying Power (a doctrine from which the Howard Government seeks to cut and run in terms of its current obligations in Iraq) and the responsibility of Occupying Powers to provide for the physical protection and sustenance of a civilian population in times of war. The need for the Geneva Conventions has been rediscovered in recent weeks – in Iraq, in Afghanistan and in Guantanamo Bay.

In recent years, the Australian government and many other states in the international community signed and ratified the Rome Statute establishing the International Criminal Court. The International Criminal Court has been vested with particular responsibilities to prosecute breaches of the Geneva Conventions – in terms of crimes against humanity and war crimes – if any such breach has not been properly prosecuted within the jurisdiction of the national of the offending state.

The current position of the Australian government is that it is actively considering granting a so-called section 98 exemption for the government of the United States – the effect of which would be that Americans guilty of grave breaches of the Geneva Conventions residing in or visiting Australia would be immune from prosecution in Australia. In August 2002, the Foreign Minister said that he was “sympathetic to what the Americans say...”

The Australian government should have ruled this out as a matter of course when it was first advanced following our ratification of the Rome Statute in June 2002. But my challenge to the Australian government is to rule out now the possibility of Australia granting an Article 98 exemption to the United States. For Australia to do so now under current circumstances would be unacceptable in the extreme.

Fifth, ratifying Kyoto. As noted above, a Labor government signed the UN Framework Convention for Climate Change at the Rio Earth Summit in 1992. A Labor government, elected later this year, will ratify the Kyoto Protocol. We will then play a constructive role in taking the Kyoto agenda forward, focusing on the following priorities:

- the development of a global emissions trading regime to help industry cut emissions at the lowest possible cost;
- formulation of an ambitious post-2012 agenda to the Kyoto process, including ways to include developing and emerging economies; and
- developing renewable energy sources.

## Conclusion

This is by no means an exhaustive plan of action on the part of an incoming Labor government in terms of the reform of the multilateral system. It represents part of our reform program. But only part. An incoming Labor government would also address organisational reform with the UN itself, consistent with the Secretary-General's initiative of September 2002. We would also review the effectiveness of the Bretton-Woods machinery – the Bank and the IMF – and also the WTO. Within the WTO Australia would resume its traditional posture of international activism – the baton having been dropped by the current trade minister who has been almost exclusively preoccupied with bilateral negotiations over the last several years.

We would also aim to reform the International Labor Organisation to ensure that it resumed its proper place as part of the post-war global economic architecture – in the proper defence of international labour standards. We would examine the global resources, protocols and powers of the UNHCR – so critical in a world of unprecedented population mobility. Then there is the complex question of the expansion of the UN Security Council itself in order to make it a more representative body – with appropriate additional representation from Europe, Asia, and elsewhere.

In short, we propose to be a reformist government – both domestically and internationally. We do not have the slightest intention of sitting on our hands. Even less do we have the intention of quietly, and, from time to time loudly, participating in the incremental destruction of the multilateral order that has been the policy of the current government. Our intention is to participate in the ongoing reform, restructuring and revitalisation of the multilateral system. Our intention is to deploy our diplomatic energies through that system to deliver good outcomes for Australia, the region and the world.

Some may describe this as the reassertion of Labor idealism. For this we make no apology. As a political movement we have always believed that we can create a better world than the one we inherited. But ours is an idealism equally tempered by the realism that we confront today in terms of national security and national prosperity on the home front. This, however, should never cause us, or constrain us, to construct a “little Australia” – with a “little vision” for Australia's place in the region and the world. Ours is a much larger canvas.

My central purpose tonight is to signal loud and clear to the Australian people our political commitment to once again make this country a positive contributor to constructing an effective multilateral system that maximises global security, democracy and prosperity.

Within the United Nations system, Australia was once known as a contributor state. Now, regrettably, we are known in many quarters as a problem state – one prepared to tear down, but not prepared to build up. We intend to restore this country's reputation as a contributor state. And in doing so to create an international reputation for Australia of which we can all be proud.

## SYDNEY INSTITUTE ANNUAL DINNER 2004



*Photographer: David Karonidis*

## SYDNEY INSTITUTE ANNUAL DINNER 2004



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## Supplementary Speeches

### Annual Dinner – 2004

#### **Introduction to William Shawcross – Meredith Hellicar**

It's truly hard to know where to begin in introducing William Shawcross. Born in the UK and son of the chief British prosecutor at the Nuremberg trials and a Labor Minister, William attended Eton and Oxford and, having sought a career in the diplomatic service, he quickly took leave to study sculpture at St Martin's College.

After a visit to Prague, William abandoned the foreign service and wrote his first book, on Alexander Dubcek in 1970. After this, he joined the *Sunday Times*, progressing quickly to become a foreign correspondent in South East Asia. But his principles alerted him to the aggressions by communism's enemy, the USA in South East Asia and his 1979 book, *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, was the result. This was reviewed as being a rigorous indictment of Kissinger and Nixon's personal instruction of the secret American bombing of Cambodia". "Cambodia was not a mistake," he wrote. "It was a crime."

This book was followed by what critics term Shawcross' bravest, most complicated and astute work in 1984 ... the little known *Quality of Mercy: Cambodia, Holocaust and Modern Conscience* which examined and challenged deficiencies in the international aid program to Cambodia. He argued that because we are preoccupied by past conflicts we too often ignore the atrocities of our own time and are unable and unwilling to act until it is too late.

Whilst his intervening books were well received, in 1992 William struck great controversy and much criticism from the left for being too kind in his biography of Rupert Murdoch which was intended to and did concentrate on the astuteness of Murdoch's business career. Perhaps this was only the start of his disappointment with liberalism which was certainly evident in his 2000 book, *Deliver Us from Evil: Warlords Peacekeepers and a World of Endless Conflict*, for which he traveled with Kofi Annan through the war zones of the post-Cold War world. He realised that the members of the UN Security Council were motivated less by moral outrage than by pragmatism and self-interest, which was why the world allowed more than half a million people to be slaughtered in Rwanda and why so little is being done to end the perpetual war in the Congo. He wrote: "In a more religious time it was only God whom we asked to deliver us from evil. Now we call upon our own man-made institutions for such deliverance." But, as

one commentator noted, such deliverance seldom arrives on time, if at all. Following publication of this book, critics described Shawcross as “the foremost journalist of his generation”.

Today, Shawcross is journalist, writer, broadcaster, board member, occasional lecturer and hotelier. Apart from his articles in *Time* magazine, *Newsweek*, *International Herald Tribune*, *The Spectator*, *Sunday Times*, *Washington Post*, *Rolling Stone*, *New York Review of Books*, *Far Eastern Economic Review*, etc. etc, he has written nine books and nine television documentaries (most for the BBC) and lectures on geo-politics, South East Asia and refugees.

He has been nominated for a Pulitzer Prize, awarded the Freedom from Hunger Media Award and won the George Polk Award, the Sidney Hillman Award and the BAFTA award. His books span topics as diverse as Dubcek, Hungary, Cambodia, the Shah of Iran, Rupert Murdoch, the United Nations, conflicts in East Timor, Somalia, Bosnia, Sierra Leone, Rwanda and Kosovo, as well as the Queen, and last year he was asked to write the authorised biography of the Queen Mother! His documentaries are no less diverse, spanning the Mekong River, the Salt Road, Cambodia, post Cold War disorder, satellite broadcasting, the monarchy, Islam and, again, the Queen! I'm not sure what this latter day obsession with queens is all about!

William Shawcross' board memberships include past Chairmanship of *Article 19*, a London based charity and pressure group which defends the rights of free expression enshrined in Article 19 of the Declaration on Human Rights, and former membership of the *High Commission for Refugees*; he is Chairman of Response, a charity which helps refugees and others who have suffered for their political opinions; he is a board member of the International Crisis Group and was a Member of the Council of the *Disasters Emergency Committee*. Seems to be a theme here of actually doing something about the problems he sees and writes about!

With the publication of his latest book, *Allies: the US, Britain, Europe and the War in Iraq*, reviews ranged from, on the one hand,;

William Shawcross is one of a handful of European intellectuals who have bravely resisted the...rush to condemn Bush and Blair for liberating a country accurately described as a prison above ground and a mass grave beneath it. Shawcross' well-informed, lucid account of events leading up to (and beyond) the war explains why Bush and Blair were prepared to take such enormous risks, not just with their political careers, but with the lives of twentysomething farm boys from the Carolinas or motor mechanics from Middlesbrough. Shawcross' brilliant account of high-level diplomacy is unsparingly damning of the slippery Chirac and Schroder.

And on the other hand: the “one time poster boy of the anti-Vietnamese war Left” and “model progressive” is “a fellow-traveller of US imperialism, a committed Euroskeptic, a powerful advocate of pre-

emptive war and an apologist for monarchy and inherited privilege". Shawcross' response was, "If they think I've betrayed them, that's fine with me. It's not illiberal to support getting rid of one of the nastiest regimes in the world."

His marriage to Olga Polizzi, daughter of catering tycoon Lord Forte and his partner in the ownership and management of the Hotel Tresanton, has allowed Shawcross to pursue his real aim in life, to be a "Basil Fawlty to my wife". Although he claims he hasn't shouted at many guests, he does concede that "they won't let me wait on tables. I just wander around, carry bags, valet parking..." So please indulge him if he tries to clear your plates away this evening! But for now, I'm thrilled to introduce to you, William Shawcross.

### **Vote of Thanks – The Hon Jim Spigelman**

I can remember Willie's first visit to Australia when he was writing the book on Murdoch. I was spending the holidays with my family on the Central Coast and went to pick him up at the railway station at Woy Woy – a town of which he was aware for its international renown as the home of Spike Milligan's mother.

He arrived clutching a newspaper. It had three stories that morning. Alan Bond was under investigation by the Australian Broadcasting Tribunal for a very large defamation settlement that he had paid to Joh Bjelke Peterson – the allegation being that it was some kind of bribe. Terry Lewis, the Queensland Commissioner of Police, was under investigation by the Fitzgerald Inquiry about corruption in the Queensland Police Force, the detail of which story I do not recall. And Warwick Fairfax was under cross-examination by Tom Hughes QC about a \$100 million success fees, which he had agreed to pay to Laurie Connell.

Willie got off the train at Woy Woy and said, "You never told me what a fantastic country this is. You have such great stories here. This is an investigative journalist's dream, this place. It's wonderful." And we do. We do have great stories. Willie has been able to come back from that time on various occasions because of that.

What we've had this evening is a manifestation of a number of characteristics that have been with William Shawcross throughout his career, from the early days of his books on Eastern Europe, through his revelations on Cambodia, to various books on Iran, on UN peace keeping operations and, more recently, on Iraq.

The first characteristic is a sense of intellectual engagement. You know where he stands. He has a clear position. Second, is his direct involvement as a journalist rather than as an academic: going and visiting places and talking to the people who are actually directly involved in the respective activities. Third, is the articulation of a

position based on a moral stance. You may not agree with the implications, but you cannot doubt the strength of the moral stance that he starts from. And finally, his eloquence. In his writing and, as we've seen this evening, in his speech, he has a facility with the English language and an ability to explain quite difficult things in language of force and simplicity in a way that few have the capacity to master. It is not necessary, in order to be insightful, to be unintelligible. And throughout his writings and his speeches there is manifest an extraordinary capability of explaining his position.

All of those characteristics have come together with the force that we've witnessed this evening. Quite clearly, William has articulated positions that not every person in this room would share. But I think we would all agree that we all come away better informed. Thank you very much William for a very stimulating presentation.

# GUEST SPEAKERS AT THE SYDNEY INSTITUTE February 2004 – May 2004

**Sandra Lee** (Editor-at-Large, *Marie Claire* & author *The Promise*)

**Guzin Najim** (the subject of *The Promise*)

*Fleeing Saddam Hussein*

**Graeme Samuel AO** (Chairman, Australian Competition & Consumer Commission)

*Promoting Competition and Fair Trading*

**Tom Pickering** (Senior Vice President, The Boeing Company)

*Understanding the New America – a US Global Perspective*

**Dr Leanne Piggott** (Author & Lecturer, Middle East Politics, University of Sydney)

*Security & Legitimacy: Managing the Israeli/Palestinian Conflict*

**Dr James Franklin** (Mathematician & philosopher, author *Corrupting the Youth: A*

*History of Philosophy in Australia* [Macleay Press, 2003])

*Remembering Professor John Anderson*

**Professor James Griffin** (Author, *John Wren: A Life Reconsidered* [Scribe, 2004])

*John Wren – A Life Reconsidered*

**Sally Begbie** (former ABC Journalist and Communications academic)

*The Media after Lord Hutton's Report*

**Professor Amin Saikal**

(Director, Centre for Arabic & Islamic Studies, Australian National University)

*Terrorism, Iraq and Afghanistan*

**Senator The Hon Amanda Vanstone** (Minister for Immigration and Multicultural and Indigenous Affairs)

*The Damage Done by Critics of Australia's Immigration Policies*

**Bishop Tom Frame** (Author *Where Fate Calls: The HMAS Voyager Tragedy* and Anglican

Bishop to the Australian Defence Force)

**Rear-Admiral Chris Oxenbould AO**

(Chief Executive Officer, Waterways Authority Sydney)

*The Sinking of HMAS Voyager: What Happened?*

**The Hon Philip Ruddock MP** (Australia's Attorney General)

*A New Framework – Counter Terrorism and The Rule of Law*

**Dr Elsina Wainwright** (Program Director - Strategy & International Program, Australian Strategic Institute)

*State Weakness in the Pacific: The Solomon Islands and New Guinea*

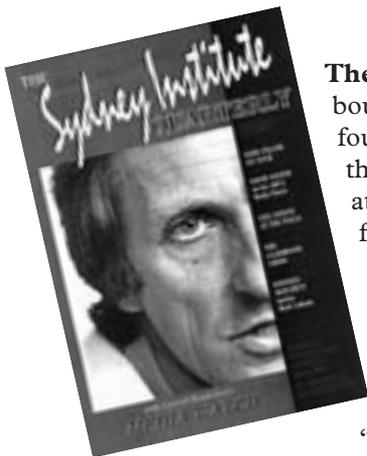
**William Shawcross** (Author, writer and broadcaster)

*The US, Britain and Australia – in the Age of Terrorism*

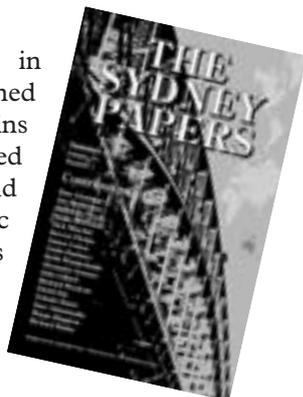
**Kevin Rudd MP** (Shadow Minister for Foreign Affairs and International Security)

*Multilateralism in The Post-Iraq Order – Australia's Commitment*

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