

Terrorism in Australia: An Inflated Threat

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In late February 2010, the Rudd government released its long awaited Counter-Terrorism White Paper.¹ The White Paper forms part of the Government's national security reform agenda and sets out its counter-terrorism strategy and efforts. It replaces the Howard government's Terrorism White Paper which drew heavily on the rhetoric of the Bush administration.² Launching the previous White Paper in 2004, the then Foreign Minister Alexander Downer proclaimed that Australia was engaged in a "struggle to the death over values" against "Islamofascists" who were "convinced that their destiny was to overshadow the democratic West" and who had embarked on a ruthless mission to "destroy our society by waging a version of total war".³ To its credit, the new White Paper largely refrains from employing such colourful rhetoric. Nonetheless, its underlying message is much the same: the terrorist threat has become a "persistent and permanent feature of Australia's security environment" and an attack "could occur at any time".⁴

The 2010 White Paper states that the "main source of international terrorism and the primary threat to Australia and Australian interests today comes from people who follow a distorted and militant interpretation of Islam that calls for violence as the answer to perceived grievances".⁵ To underscore this assessment the Paper claims that "numerous" terrorist attacks have been thwarted.⁶ Moreover, the significance of the threat is also highlighted by the fact that twenty people have so far been convicted of terrorism offences

¹ Australian Government, Department of the Prime Minister and Cabinet, *Securing Australia, Protecting our Community*, Counter-Terrorism White Paper 2010, <http://www.dpmc.gov.au/publications/counter_terrorism/index.cfm> [Accessed 21 June 2010].

² Australian Government, Department of Foreign Affairs & Trade, *Transnational Terrorism: The Threat to Australia*, Terrorism White Paper 2004, <<http://www.dfat.gov.au/publications/terrorism/index.html>> [Accessed 21 June 2010]. The 2004 White Paper was updated in 2006, see Australian Government, Department of the Prime Minister and Cabinet, *Protecting Australia Against Terrorism 2006*, <<http://apo.org.au/research/protecting-australia-against-terrorism-2006>> [Accessed 21 June 2010].

³ Alexander Downer, 'Transnational Terrorism: The Threat to Australia', Speech to launch the White Paper on International Terrorism, National Press Club, Canberra, 15 July 2004, <http://www.foreignminister.gov.au/speeches/2004/040715_tt.html> [Accessed 21 June 2010].

⁴ White Paper 2010, p. 7.

⁵ Ibid., p. 8.

⁶ Ibid., p. ii.

under the Criminal Code.⁷ What the White Paper fails to acknowledge is that *none* of those twenty people was charged for actually engaging in a terrorist act.⁸ Instead, all defendants were convicted of so-called ancillary offences which were enacted as part of extremely broad anti-terrorism laws introduced in the wake of the 9/11 and Bali attacks. Nonetheless, the criminal proceedings do shed some light on the nature and significance of the threat faced in Australia. However, rather than demonstrating the severity of the threat, the legal cases that have been concluded so far do not suggest that home-grown terrorism constitutes an issue of grave concern. In fact, the majority of cases have resulted in the defendants' acquittal of terrorism-related charges.

The case of Zaki Mallah, the first person to be charged with a terrorism offence in Australia, is particularly illustrative as it demonstrates the potential gap which can exist between "extremist views" on the one hand and the carrying out of violent action on the other. In 2003, Mallah received an adverse ASIO (Australian Security Intelligence Organisation) security assessment and was not permitted to renew his Australian passport. He thereafter recorded a video message in which he set out a plan to kill ASIO and Department of Foreign Affairs and Trade officials. This message was sold to an undercover officer posing as a journalist. Jihadi material and a gun were also found in Mallah's house. Mallah was charged with two counts of doing an act in preparation for a terrorist act—one count related to his possession of a gun and the other to his recording of a threatening video message.⁹ However, he was acquitted of both counts. The sentencing judge, Chief Justice Wood, concluded that:

The prisoner was an idiosyncratic, and embittered young man, who was to all intents something of a loner, without significant prospects of advancing himself ... While I accept that the Prisoner enjoyed posing as a potential martyr, and may from time, to time, in his own imagination, have contemplated creating a siege and taking the lives of others, I am satisfied that in his more rational moments he lacked any genuine intention of doing so.¹⁰

Other illustrative cases include the cases of John Amundsen and Jack Thomas. In 2005 Amundsen made threats to Queensland police to expect an Al Qaeda style attack in Brisbane. He was subsequently found in possession of 53 kilograms of explosive "powergel" in addition to four homemade bombs, ten detonators and a book about Osama Bin Laden. Amundsen was charged in 2005 with "making a thing (explosive devices)

⁷ Ibid., pp. ii, 14.

⁸ For a comprehensive stock-take of terrorism-related criminal proceedings in Australia, see Nicola McGarrrity, "Testing" our Counter-Terrorism Laws: The Prosecution of Individuals for Terrorism Offences in Australia', *Criminal Law Journal*, vol. 33, no. 4 (2009), pp. 201-35.

⁹ *Criminal Code Act 1995* (Cth) s 101.6(1).

¹⁰ *R v Mallah* [2005] NSWSC 317 at [38].

connected with preparation for a terrorist act¹¹ and with a range of offences under Queensland law, including buying explosives dishonestly, using a carriage service to make a threat to kill, possessing a false passport, and counterfeiting Australian banknotes. However, in 2007, the terrorism-related charge was dropped after Amundsen admitted that his plan was to detonate bombs outside his girlfriend's house to win back her love.

Joseph "Jack" Thomas may not have been quite as romantic. His charges related to allegations that he trained with Al Qaeda in Afghanistan. Thomas—nicknamed "Jihad Jack" by the media—allegedly also received money, an airplane ticket and a falsified passport from a senior Al Qaeda operative. He was convicted for "intentionally receiving funds from a terrorist organisation (Al Qaeda)¹² and for "possessing a falsified passport"¹³ while acquitted on two counts of intentionally providing support to a terrorist organisation. However, the convictions were overturned on appeal on the basis that admissions he made in Pakistan in March 2003 had not been voluntary. Thomas was subsequently retried after he had given an interview on Australian television in which he discussed his involvement with the Taliban and Al Qaeda. Nonetheless, in 2008 he was acquitted again of the terrorism-related charge but convicted for possessing a falsified passport.

One of the few cases that did result in the conviction of the defendant on terrorism charges was the case of Faheem Lodhi. The charges against Lodhi, laid in 2004, related to allegations that he had taken aerial photos of Australian Defence Force establishments, possessed a document about how to make bombs, had collected maps of Sydney's electrical supply system and had sought information about the availability of materials for making bombs.¹⁴ In 2006 Lohdi was subsequently convicted for "possessing a thing (document about how to make bombs) connected with preparation for a terrorist act",¹⁵ "collecting documents (maps of the Sydney electrical supply system) connected with preparation for a terrorist act",¹⁶ and for "doing an act (seeking information about the availability of materials used to make bombs) in preparation for a terrorist act".¹⁷ He was sentenced to 20 years imprisonment, with a 15-year non-parole period. While he repeatedly maintained his innocence—stating that killing innocent people was not part of Islam—his appeal against conviction and sentence was dismissed in 2007.

Another case that resulted in the conviction of some of the accused is the so-called Benbrika trial. In November 2005, a joint operation of the New

¹¹ *Criminal Code Act 1995 (Cth)* s 101.4.

¹² *Criminal Code Act 1995 (Cth)* s 102.6(1).

¹³ *Passports Act 1938 (Cth)* s 9A(1)(e).

¹⁴ Natacha Wallace, 'Lodhi Guilty of Terror Plot', *Sydney Morning Herald*, 19 June 2006.

¹⁵ *Criminal Code Act 1995 (Cth)* s 101.4(1).

¹⁶ *Criminal Code Act 1995 (Cth)* s 101.5(1).

¹⁷ *Criminal Code Act 1995 (Cth)* s 101.6.

South Wales, Victorian and Federal police (Operation Pendennis and Operation Hammeru) had culminated in raids of houses in Melbourne and Sydney and the arrest of thirteen men in Melbourne. The men were alleged to be part of a terrorist group that planned to wage holy jihad against the Australian government with the intention of coercing it to withdraw from Iraq. The group was led by Abdul Nacer Benbrika, the alleged spiritual leader. Benbrika was well known to ASIO in the lead up to the arrests. During 2004 and 2005 he had been under surveillance as a possible instigator of terrorist acts. In March 2005 his passport was withdrawn on advice from ASIO and agents raided his Melbourne home in June. Benbrika had also appeared on national radio and television praising Osama bin Laden a “great man”—hardly the sort of behaviour of someone secretly preparing a large scale terrorist attack.

Benbrika and other members of the Melbourne group were charged with a range of offences including membership in a terrorist organisation, preparation for a terrorist act, and providing funds to a terrorist organisation.¹⁸ In addition, Benbrika was charged in 2005 with directing the activities of a terrorist organisation. In late 2008, seven of the men, including Benbrika, were subsequently convicted of some of the terrorism-related charges. The seven convicted men have all lodged appeals against their convictions and sentences. In his judgment, Justice Bongiorno noted that “terrorist acts as they have been experienced in modern times are often carried out by amateurs whose principal attribute has not been skill, but rather zealous or fanatical belief in some ideology or other which seeks to promote itself by the use of violence.”¹⁹ According to Bongiorno “Benbrika clearly had such a belief and fanaticism and imparted it to his young associates.”²⁰ Nevertheless, the judge accepted that Benbrika had no military or terrorist training. Moreover, the Court found no evidence to suggest the group had a firm target or that they had obtained explosives or weapons.²¹

The above cases appear to confirm the Government’s assessment that there is a small number of Australians who hold “extremist views”. Nonetheless, it is important to keep this assessment in perspective. The situation in Australia, for instance, is hardly comparable to the conditions and dynamics in the United Kingdom, France, Spain and other parts of Europe. The above

¹⁸ All twelve men charged with intentionally being a member of a terrorist organisation (s 102.3 of the *Criminal Code Act 1995* (Cth)); Four men (Joud, Ahmed Raad, Sayadi and Merhi) charged with intentionally providing resources to a terrorist organisation (s 102.7(1)); Six men (Joud, Ahmed Raad, Ezzit Raad, Bassam Raad, Taha and Shoue Hammoud) charged with attempting (s 11.1) intentionally to make funds available to a terrorist; Benbrika charged with intentionally directing the activities of a terrorist organisation (s 102.2(1)).

¹⁹ Gary Hughes, ‘Terror Leader Benbrika to Serve at Least 12 Years in Jail’, *The Australian* (Sydney), 3 February 2009.

²⁰ Ibid.

²¹ Ibid.

cases also demonstrate that extremist views do not necessarily lead to violent action. Even in the cases that resulted in conviction of the accused, none of the penalised actions amounted to immediate preparatory action for a terrorist act. Moreover, none of the prosecuted individuals' actions had progressed to a stage where possible targets for attacks were identified. This does not mean, of course, that the penalised actions as well as certain individuals do not pose any threat whatsoever. It only takes a few determined individuals to launch a terrorist attack. However, it remains questionable whether the small number of "extremists" who are ready to employ violence can be considered an unprecedented threat to Australia's national security.

In fact, the chances of getting killed in a terrorist attack in Australia are close to zero. In comparison to other risks, terrorism is a triviality. For instance, compare terrorism-related fatalities to fatalities totally unrelated to terrorism. Figures from United States show that terrorism there poses a far lesser statistical threat to life than most other activities. While 1440 US citizens died in terrorist attacks in 2001, three times as many died of malnutrition, and almost 40 times as many people died in car accidents during the same year.²² Even with the 9/11 attacks included in the count, the number of Americans killed by international terrorism since the late 1960s is about the same as the number of Americans killed over the same period by severe allergic reaction to peanuts, lightning, or accident-causing deer.²³ Similarly, the number of annual deaths from Sports Utility Vehicles is reported to be greater than the total number of deaths caused by all terrorist acts combined.²⁴ Furthermore, it is still more likely to get killed by bee stings or DIY accidents than being killed in a terrorist attack.²⁵

At the global level, the statistics are equally revealing. Anthony Cordesman and Brian Jenkins have independently provided lists of violence committed by Islamist extremists outside of such war zones as Iraq, Israel, Chechnya, Sudan, Kashmir, and Afghanistan, whether that violence be perpetrated by domestic terrorists or by ones with substantial international connections.²⁶ Included in the count are such terrorist attacks as those that occurred in Bali

²² Sarah Stephen, 'Terrorism: Governments Fuel Fear', in Justin Healey (ed.), *Terrorism* (Balmain, NSW: Spinney Press, 2004), p. 39.

²³ John E. Mueller, 'Terrorism, Overreaction and Globalization', in Richard N. Rosecrance and Arthur A. Stein (eds), *No More States?: Globalization, National Self-determination, and Terrorism* (Lanham, MD: Rowman & Littlefield, 2007), p. 48. The 3572 people who died in terrorist attacks in 2001 were three times more likely to die from being hit by lightning.

²⁴ Russel Hardin, 'Civil Liberties in the Era of Mass Terrorism', *Journal of Ethics*, vol. 8, no. 1 (2004), p. 79.

²⁵ Richard Jackson, *Writing the War on Terror: Language, Politics and Counter-terrorism* (Manchester: Manchester University Press, 2005), p. 93.

²⁶ Brian Michael Jenkins, *Unconquerable Nation: Knowing Our Enemy and Strengthening Ourselves* (Santa Monica, CA: RAND Corporation, 2006), pp. 179-84; Anthony H. Cordesman, *The Challenge of Biological Weapons* (Washington, DC: Center for Strategic and International Studies, 2005), pp. 29-31.

in 2002, in Saudi Arabia, Morocco and Turkey in 2003, in the Philippines, Madrid and Egypt in 2004, and in London and Jordan in 2005. The lists include not only attacks by Al Qaeda, but also those by its imitators, enthusiasts, and wannabes as well as ones by groups with no apparent connection to it whatever. The total number of people killed in the five years after 9/11 in such incidents comes to some 200-300 per year. By comparison, over the same period far more people have perished in the United States alone in bathtub drownings.²⁷

In Australia, the statistics tell a similar story. To date, not a single person has been killed in a terrorist attack on Australian soil in the post-9/11 era. 128 Australians have died in terrorist attacks overseas, most of them in the Bali bombings of October 2002. A calculation of annual fatality risks for the period of 1970-2007 reveals that the risk of getting killed in a terrorist attack in Australia is 1 in 33,300,000.²⁸ Even with the Bali bombings included, the fatality risk stands at 1 in 7,100,000.²⁹ By comparison, the risk of getting killed in a traffic accident amounts to 1 in 15,000.³⁰ Yet, many Australian highways remain in a shocking condition.

The Government's response to terrorism, on the other hand, has been gigantic. Since 2001, Australia's total defence spending has increased 59 percent from \$13.7 billion to \$21.8 billion. More than \$16 billion have been spent in extra defence, counter-terrorism and foreign aid by 2010-11. Over the same period, ASIO's budget has increased by 655 percent, the Australian Federal Police (AFP) budget by 161 percent, the Australian Secret Intelligence Service by 236 percent and the Office of National Assessments by 441 percent. Most recently, the Government has announced a \$200 million package of aviation security measures to better protect our air transport system from terrorist attack. And the White Paper provides \$69 million for introducing biometric-based visa systems to reduce the risk of terrorists, criminals and other persons of concern entering Australia undetected.³¹

The legislative response has been unprecedented, too. Parliament has enacted more than 40 pieces of "security legislation" since 9/11 which ensure that Australia has some of the most draconian anti-terrorism laws in the Western world. In contrast to the United States, the United Kingdom and Canada, Australia's domestic intelligence agency, ASIO, was given unprecedented powers to detain persons not suspected of any offence for up

²⁷ John Stossel, *Give Me a Break* (New York: HarperCollins, 2004), p. 77.

²⁸ John E. Mueller and Mark Stewart, 'Hardly Existential: Terrorism as a Hazard to Human Life', Paper presented at the annual convention of the International Studies Association, 17 February 2010, p. 14.

²⁹ Ibid.

³⁰ Ibid.

³¹ White Paper 2010, p. 36.

to seven days without charge or trial.³² The AFP was given extensive stop and search powers and may apply for control and preventative detention orders.³³ Australia's criminal law and procedure has seen radical changes, too. These include, among other things, the introduction of an overly broad definition of "terrorist act", the reversal of the presumption in favour of bail in terrorism-related cases, and executive powers to proscribe (and criminalise) organisations considered to be "terrorist".³⁴

The Rudd government deserves credit for issuing a new Counter-Terrorism White Paper. It is regrettable however, that it continues to sell terrorism as a defining threat to Australia's security. Compared to other risks, terrorism is negligible. Granted, statistics alone do not capture the symbolical importance and political ramifications of terrorist attacks.³⁵ Nonetheless, nine years after 9/11—and with no terrorism attack having occurred on Australian soil—it is time for a comprehensive and facts-based review and reform of Australia's approach to counter-terrorism. This process should have started with the realisation that the risk of terrorism in Australia is insignificant.

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³² Christopher Michaelsen, 'Anti-Terrorism Legislation in Australia: A Proportionate Response to the Terrorist Threat?' *Studies in Conflict & Terrorism*, vol. 28, no. 4 (July-August 2005), pp. 325-28.

³³ Andrew Lynch, 'Control Orders in Australia: a Further Case Study in the Migration of British Counter-Terrorism Law', *Oxford University Commonwealth Law Journal*, vol. 8, no. 2 (2008), pp. 159-85; see also Andrew Lynch and Alex Reilly, 'The Constitutional Validity of Terrorism Orders of Control and Preventative Detention', *Flinders Journal of Law Reform*, vol. 10, no. 1 (2007), pp. 105-42.

³⁴ See generally Andrew Lynch and George Williams, *What Price Security—Taking Stock of Australia's Anti-Terror Laws* (Sydney: University of New South Wales Press, 2006).

³⁵ At the same time it is important to note that the hyperbole about terrorism as well as its political importance is, in large parts, constructed by government rhetoric itself.