TERRORISM – A DISEASE IN SEARCH OF A CURE*

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INTRODUCTION

When I was invited in late September to deliver this lecture the only stipulation was that I should talk about something topical. At the time, like most of you, I was mesmerized by the world media on the topic of terrorism. So, it did not take much imagination to come up with the topic I have chosen. Terrorism is not only topical it is "the topic" at the moment.

The terrorist attacks on the World Trade Centre and the Pentagon on 11 September 2001 were the most serious in human history, both in terms of loss of life and damage to property. It is still difficult to be precise about the number of persons killed but seems to be of the order of 4500[1] in both attacks. Most of the dead were naturally US citizens, but citizens of 85 other countries were killed as well. Three Australians have been confirmed dead, and 17 are missing. The consequences of these attacks have been far reaching and are still unfolding.

Today I want to talk about the nature of terrorism, its historical dimensions, its causes and how the law (both domestic and international) has addressed the problem. I also wish to talk about a number of issues which need to be addressed if the international community is going to grapple effectively with the problem. I cannot offer a cure for the disease but I want to suggest some measures which, if implemented, may go some little distance in the long journey towards a cure.

Noting the origins and purpose of the Mayo Lecture, my remarks have primarily a legal focus. But, having regard to the complex nature of terrorism, those remarks cannot be confined to the law.

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[1] There has been a wide variance in these figures over time. This estimate comes from the office of the Mayor of New York in recent days.

Nature of Terrorism

The Oxford English Dictionary defines "terrorism" simply as "a system of terror"; and more generally, as "a policy intended to strike terror against those whom it is adopted; the employment of methods of intimidation; the fact of terrorizing or condition of being terrorized"

The origins of the word itself lie in the system of government repression carried out during the excesses of the French Revolution in the period

1789-1794 in what is now commonly known as the Reign of Terror. But the phenomenon of terrorism extends well back into human history.

Scholars have identified precursors of modern terrorist groups in the *sicarii*, a religious sect of zealots who fought Roman occupation in Palestine in 66-73 AD and the Assassins, a Muslim sect which operated in the Islamic world between the eleventh and thirteenth centuries.[2] But it has been the last fifty years which have seen an unprecedented increase in the level and ferocity of terrorism stimulated by a wide variety of political, religious and ethnic causes.

It is also important to note that "terrorism is not an ideology but an insurrectional strategy, that can be used by people of very different political persuasions."[3]

The US Department of States Annual Reviews of Global Terrorism show the magnitude and ferocity of terrorist attacks over recent years

Year	No of Attacks	Casualties
1993	431	314 died, 629 wounded
1994	321	165 died, 6291 wounded
1995	440	331 died, 2652 wounded
1996	296	314 died, 2912 wounded
1997	304	221 died, 693 wounded
1998	274	741 died, 5952 wounded
1999	392	233 died, 706 wounded
2000	423	405 died, 791 wounded

The total number of deaths over this period was 2881. This means the attacks of 11 September had a death toll almost twice the total number of deaths resulting from terrorist attacks around the world in the last eight years.

The major terrorist attacks (in terms of loss of life) in recent years were:

- the 1988 bombing of Pan Am Flight 103 over Locherbie, Scotland, killing 259 passengers and crew;

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[2] Andrew Selth "The Terrorist Threat to Diplomacy: an Australian Perspective", Canberra Papers on Strategy and Defence No 35, 1986, p13.

[3] Walter Laqueur *The Age of Terrorism*, Boston, Little, Brown and Company, 1987, p4.

- the first bombing of the World Trade Centre in 1993 which killed 6 persons;
- the bombing of a Jewish cultural centre in Buenos Aires in 1994 killing 100 persons and wounding 200 others;
- in 1995 the release of chemical nerve agent sarin in a Tokyo subway which killed 12 persons and injured 5500 others
- in 1996 the Tamil separatist bombing in central Colombo which killed 90 persons and injured 1400 others;
- in 1997 the killing of 58 foreign tourists at Luxor in Egypt;
- in 1998 the bombings of the US Embassy in Nairobi, Kenya which resulted in the deaths of 291 persons and 5000 wounded; and of the US Embassy in Dar es Salaam in which 10 persons were killed and 77 wounded.

Added to these are the almost daily terrorist attacks in Israel and Palestine in recent months which have also resulted in a significant loss of life.

Since 1968, when the US State Department first commence keeping statistics, more than 7000 terrorist bombings have occurred world wide.[4]

The Origins and Sources of Terrorism

I have noted already that terrorism as a phenomenon goes back far into human history.

A brief and not exhaustive list of terrorist groups which have operated over the last fifty years illustrates the variety of the causes I referred to earlier.

- the Provisional IRA (and their Protestant extremist counterparts) which have operated principally in Northern Island and other parts of the United Kingdom over the past 40 years.
- the Tamil Tigers in Sri Lanka;
- the Basque Separatists;
- the OAS during the independence struggles in Algeria;
- the Mau Mau in Kenya
- the EOKA in Cyprus;
- the Hezbollah in Lebanon and elsewhere;
- the Hamas in Palestine and Israel;
- the Zionist Stern Gang which operated in Palestine in the 1950s
- the Baader-Meinhof Gang in Germany and the Red Brigades in Italy.

The list could go on and on, but we must add finally Usama Bin Ladin and the al-Qaida.

Australia has been relatively untroubled by terrorist attacks over the years but news reports over recent days of statements that we may be the subject of a jihad removes any sense of complacency.

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[4] *Patterns of Global Terrorism* 1999, Washington DC, US Department of State, p2.

Justice Hope's Protective Security Review in 1979[5] has identified a number of terrorists incidents in the 1960s and 1970s. These included

- the killing of three persons and injury to 16 others when a bomb exploded in a street rubbish bin outside the Hilton Hotel during a GHOGM meeting in 1978;
- The kidnapping and stabbing of an Indian Military Attaché in Canberra in 1978;
- The detonation of a bomb at the Yugoslav Trade and Tourist Centre in Sydney which injured 16 persons.

Interestingly, the Review Report also refers to two Queensland Premier's Department employees who were injured by the detonation of a letter bomb in 1975. It is not clear who caused the bomb to be placed there.

It is important to note that the causes of these terrorist groups are not confined to one part of the political spectrum but what they do share are beliefs which are extremist and fanatical. Often the terrorist group is an extreme fringe of a wider political or religious movement which in many cases is a legitimate struggle. They also share a dubious moral principle, namely, the end justifies the means.

It takes a particularly fanatical mindset to fly a plane into a building – to kill yourself, all those on board the plane and thousands of persons in the building. I will give two examples of this mindset.

Yigal Amir the young Jewish extremist who assassinated Israeli Prime Minister Yitzak Rabin in November 1995 said:

> *I acted alone on orders from God. I have no regrets.*

Tim Pat Coogan in his book "The Troubles" [6]in Northern Ireland records the following anecdote:

> When O'Neill took over (as Prime Minister of Northern Ireland following the 1965 Stormont elections) every member of the Northern Ireland Parliament was also a member of the Orange Order, as was every Westminster MP. He had to become one himself, joining the Ahogill, County Antrim, branch, which was considered so staunch that it gave rise to the parable of the apocryphal Sammy Mc Fetridge. Sammy had been a fine upstanding bigot all his life, but on his deathbed the dreadful rumour swept the village that he was turning pape. Fearing that Ahogill was in danger of losing its place amidst the Nations of the Earth, a delegation of elders visited the dying man to enquire how the rumour had spread. With his dying breath, Sammy gasped out: "It's no rumour. It's the truth – it's better that one of them goes than one of us."

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[5] Parliamentary Paper 397/1979.

[6] Tim Pat Coogan *The Troubles Ireland's Ordeal 1966-1995 and the Search for Peace*, London, Hutchison,1995, p 35.

It is not surprising, therefore, that the perpetrators of terrorism define the activity in different terms to those who are victims of terrorism.

Sergei Stepniak, a Russian revolutionary, once said:

> *The terrorist is noble, intrepid and irresistibly fascinating, for he combines the two types of human greatness: martyr and hero.*[7]

More colloquially it is often said that one state's terrorist is another state's freedom fighter.

This dichotomy lies at the heart of the difficulties in dealing with the problem of terrorism. While terrorism manifests itself as political, military and law enforcement issue; at its most fundamental, it is a moral issue. Right minded people and civilized societies accept that there must be some limits on human action which pursues causes whether they be political, religious or ethnic. It is no accident that, commencing with Grotius's *De Jure Belli ac Pacis* in 1625, international law has strived to develop structures and mechanisms to settle conflicts and disputes peaceably and to develop humanitarian principles to govern the conduct of war.

The international law response

I turn now to the main part of this address – the response of international law to the terrorist problem. This response has followed the conventional path of negotiating and agreeing of international (principally United Nation's) conventions, of nations becoming signatories to such conventions, the implementation of domestic legislation giving effect to the convention and finally ratification or accession to the convention.

Over the last forty years there have been a number of conventions which have been developed to deal with terrorism. The main conventions have been:

- the 1963 *Convention on Offences and Certain Other Acts Committed on Board Aircraft*. This Convention known as the *Tokyo Convention* was developed by the International Civil Aviation Organisation (ICAO) and now has 172 States parties.

- the 1970 *Convention for the Suppression of Unlawful Seizure of Aircraft.* This Convention known as the *Hague Convention* was also developed by ICAO and has 174 parties.
- the 1971 *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.* This Convention known as the *Montreal Convention* also has 175 parties.

[7] Roland Gaucher *The Terrorists from Tsarist Russia to the OAS*, London, Secker and Warburg, 1968, p1.

- the 1973 *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents.* This Convention known as the *New York Convention* has 108 parties.
- the 1979 *Convention against the Taking of Hostages* has 97 parties.
- the 1980 *Convention on the Physical Protection of Nuclear Material* has 69 parties.
- the 1988 *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* has 56 parties.
- the 1991 *Convention on the Marking of Plastic Explosives for the Purpose of Detection* has 69 parties.
- the 1997 *Convention for the Suppression of Terrorist Bombings* has 29 parties.
- the 1999 *Convention for the Suppression of the Financing of Terrorism* has 5 parties.

There are also two additional protocols relevant to terrorism. The first was in 1988 and extends the *Montreal Convention* to encompass terrorist acts at airports serving international aviation. The second was also in 1988 and relates to terrorist acts on fixed platforms located on the continental shelf.

Australia is party to all these conventions and protocols except for the last three conventions (1991, 1997 and 1999). Regarding the 1991 convention (*Marking of Plastic Explosives for the Purpose of Detection*) Australia is not a party because it is not a manufacturer or supplier of plastic explosives. Australia is in the process of becoming a party to the 1997 (*Terrorist Bombings)* and the 1999 *(Financing of Terrorism) Conventions.* In the case of the 1999 Convention, one step Australia will have to take to comply with the Convention is to change the basis of its proceeds of crime laws from conviction-based forfeiture to civil forfeiture at least so far as the offences the subject of the 1999 Convention are concerned. This change to proceeds of crime laws is long overdue.

Each of these conventions have a number of common features, including the criminalisation of particular acts of terrorism and the provision of extradition of persons accused of committing these crimes.[8] Relatively few persons have been prosecuted for terrorist offences particularly where a necessary prerequisite of prosecution is the extradition of a fugitive. The most notable was the recent trial in the Netherlands of the two persons accused of the Lockerbie bombing. The conviction in that case is still subject to appeal. It is also worth mentioning this trial required special bilateral agreements between the United Kingdom and the Netherlands to enable the trial to take place on a proper jurisdictional foundation. This represents a modest but significant beginning to effective implementation of international conventions against terrorism.

Before leaving the international responsive to terrorism it is important to mention the passing of the United Nations Security Council Resolution 1373 which was passed on 28 September 2001.

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[8] An exception is the *Convention on the marking of Plastic Explosives for the Purpose of Detection* which is directed at administrative measures.

Resolution 1373, amongst other things, calls on all States:

- to prevent and suppress terrorism (but does not define terrorism);
- to criminalise acts which provide financial support to terrorist activity;
- to deny safe haven to those who finance, plan, support or commit terrorist acts or provide safe havens.

This is a particularly important resolution because in its own terms it is a resolution under Chapter VII of the UN Charter and is binding on all UN members. It should provide considerable impetus to further anti-terrorist activity.

The Domestic Response to Terrorism

Australia has legislation giving effect to the terrorism conventions except in the case of the last two, where it is in the process of doing so.

The government has recently announced a number of measures to combat terrorism but their implementation will depend on the outcome of the federal election tomorrow. It is fair to say however that, whichever party forms government, there are going to be further anti-terrorist measures. The measures announced by the government include:

- new anti-hoax legislation;
- extending ASIOs warrant powers to obtain information and documents relating to terrorist activity;
- the introduction of new general anti-terrorist legislation based on the UK Terrorism Act 2000.

On measure particularly worthy of note is the coming into force of the *Charter of the United Nations (Anti-Terrorism Measures) Regulations* 2001 on 8 October 2001. These regulations give effect to particular aspects of Security Council Resolution 1373. These regulations empower the relevant Minister to proscribe persons and entities for the purposes of the
regulations with the consequence that assets of such persons and entities may be frozen. The regulations also provide offences for dealing in such assets and for providing assets to proscribed persons or identities.

Further Issues to be Considered

I mentioned in my introduction that I wanted to discuss a number of issues which will need to be addressed if the international community is going to grapple effectively with the terrorist problem. I want to turn now to these issues.

A number of issues arise from the development and operation of the terrorism conventions.

The first issue which emerges is the piecemeal nature of these Conventions. They have developed over the years primarily in response to particular terrorist

incidents and each deal with a particular aspect of the terrorist problem. Consequently they lack overall coherence. It is of course easy to have the wisdom of hindsight but the whole area cries out for a more comprehensive approach.

An indication of the problems flowing from the piecemeal approach is that it is at least arguable that the conduct constituting the 11 September attacks does not constitute a crime as described in the Conventions. This proposition requires some explanation and elaboration.

The first convention – the 1963 *Convention on Offences committed on Board Aircraft* -does not enumerate any offences as such but deals with jurisdictional, control and cooperative mechanisms for offences which are assumed to be part of domestic law.

The second convention – the 1970 *Convention on Hijacking* - only applies to enumerated offences on aircraft which have landed or taken off outside the territory of registration of the aircraft. As I understand it, all aircraft involved in the events of 11 September were registered in the United States and took off and landed in that country – if landing is a proper explanation of what happened on that day.

The same problem applies to the third convention – the 1971 *Convention for the suppression of Unlawful Acts against Civil Aviation.* It applies only to relevant acts where take off or landing is outside the territory of the State of registration of the aircraft.

The fourth convention (1973) concerns crimes against internationally protected persons. There were government officials among the victims of the 11 September attacks (particularly the attack upon the Pentagon) but this is not an adequate characterization of what occurred nor do these particular crimes adequately cover the extent and nature of the attacks which occurred.

In relation the fifth convention (1979) concerning the taking of hostages similar considerations arise. Although there was an element of hostage taking in relation to the passengers on aircraft involved in the terrorist attacks, again it is not an adequate or proper characterization of what occurred.

The sixth convention – the 1980 *Convention on the Physical Protection of Nuclear Material* – is not relevant to the 11 September attacks.

The seventh convention (1988) concerns unlawful acts against the safety of maritime navigation. On its face this convention has no relevance to the 11 September attacks. Similarly, the application of the eight convention – the marking of plastic explosives for the purpose of detection – has no application.

The ninth convention - the 1997 *Convention on the Suppression of Terrorist Bombings* – focuses on the use of explosive or other lethal devices with intent to cause death or bodily injury. The relevant definition is in terms of weapons or devices that are designed or have the capability to cause death or injury.

Whether an unarmed civilian airliner falls within this definition is a question that would excite the minds of defence lawyers.

The tenth convention is based upon the crimes enumerated in the conventions already mentioned and takes the concept of predicate terrorism no further than those conventions.

The 1988 protocols relate respectively to terrorist acts at airports serving international airports and to terrorist acts against fixed platforms on the continental shelf. Again neither of these protocols seem to have any application to the events of 11 September. There may have been some acts at the relevant airports but they were not central to the criminality which occurred.

Perhaps the biggest difficulty associated with the application of the anti-terrorist conventions to the events of 11 September is that all the direct perpetrators are dead from suicide. This highlights the need to ensure in any future comprehensive convention that those who organise, finance and incite acts of terrorism are covered. In saying this I am conscious that most of the terrorist conventions provide for inchoate offenses such as attempts, and participation as an accomplice. Care needs to be taken to ensure that those who incite, organise, and finance any form of terrorist attack are adequately covered.

I hope I have not raised any undue alarm in noting the deficiencies of these conventions. It shouldn't be forgotten that the ordinary criminal law has coverage of many of these offences. A murder is a murder irrespective of how many people are killed or the manner of killing. I am sure that if any of the persons associated with the attacks are brought to justice US criminal law will have adequate coverage.

The lack of a comprehensive terrorism convention is being addressed as I speak. Meetings, under the auspices of the United Nations, have been taking place over the last twelve months to develop a consensus for a comprehensive anti-terrorism convention. This work has accelerated considerably following the events of 11 September.

But there are a number of problems to be resolved. The major ones are to develop a definition of terrorism which is acceptable to the international community and to draw an appropriate line between legitimate military activity and terrorist activity.

The second issue concerning the existing terrorist conventions is the declining number of signatories to these conventions. As already noted, there are over 170 parties to the first Convention and the number progressively declines to only 5 parties to the latest Convention. Part of this is simply a question of time as individual countries study the conventions and deal with issues of implementation into domestic law. But it may also represent a narrowing consensus in the international community as to what constitutes terrorism. The test of this proposition will be how quickly the new comprehensive convention is agreed and how many States sign and ratify the convention. Only time will

tell and one can only hope that the tragic events of 11 September may provide the catalyst for effective action.

I should mention that the signatories and parties to the 1997 and 1999 Conventions are being added to daily and I would expect the low numbers to increase considerably in the near future.

History however shows that progress in this area has been glacially slow.

The third issue is a more general problem. International law (and the international community generally) has yet to come to grips with the problem of effective implementation of international conventions in particular the development of mechanisms to monitor effective action under domestic law particularly with the development of enforcement mechanisms and the allocation of appropriate resources. If this is not done there is the real risk that international conventions become nothing more than a collection of symbols on paper.

There are some working models on effective implementation which are now operating in the international arena. During my time as Chairman of the National Crime Authority I was privileged to be elected President of a Paris-based G7 group known as the *Financial Action Task Force on Money Laundering* (FATF).

FATF was established in 1989 following the then G7 Summit in Paris that year. The G7 leaders called for comprehensive measures to combat global money laundering. The membership of FATF was originally confined to members of the G7 but it was quickly realised that action by the G7 alone would not be sufficient to deal with the problem. Membership was quickly extended to other countries and Australia was one of the first non-G7 nations invited to join the group. During my Presidency in 1992/3 FATF membership consisted of all the OECD members plus Hong Kong and Singapore.

An important feature of FATF was its multi disciplinary nature. Delegates of member countries were drawn from the ministries and other organisations covering the law, law enforcement, treasury/finance and banking regulators. This was in recognition of the fact that the money laundering problem was not confined to one area of government responsibility. Indeed responsibility extended beyond government particularly in the banking and finance sector. Similar considerations apply to terrorism.

The first step FATF had to take in 1989 was to agree a set of operating principles to combat global money laundering which became known as the Forty Recommendations. The recommendations covered such matters as the criminalising money laundering, eliminating bank secrecy where it disguises money laundering, and authenticating bank accounts. The Australian system of producing sufficient identification to establish bank accounts flows directly from this work.

At this point you might say "so what" - is the process any different from developing a multilateral convention? To this point there probably isn't any difference. Except the members of FATF took less than six months to agree the 40 Recommendations.

But the next steps took the process of effective implementation much further. FATF then established a mechanism called "mutual evaluations" which involved evaluation teams drawn from different disciplines visiting each FATF member in turn to evaluate and report back on the performance of each member in implementing the recommendations.

During this process I was struck by the real pressure member countries felt to implement the recommendations prior to the arrival of the mutual evaluation team. Laws were passed, administrative structures were established, and banking and finance sectors were also heavily involved. This process has moved on in the intervening years to assess the effectiveness of those laws and structures in their actual operation. Peer pressure can be a wonderful thing!

In addition, FATF engaged in dialogue with non-member countries and assisted the establishment of anti money laundering regimes in regions around the world. Australia made a significant contribution to this effort in the Asia Pacific region to the point where it was readily given a leadership role.

Work also developed in placing pressure on countries which operated secret banking regimes and considerable progress was made.

The process is not perfect but the world's financial systems are now in a much better shape to deal with the problem than they were back in the 1980s.

The lesson of the FATF experience is that much more is required in international affairs than merely agreeing multilateral conventions and then leaving it to individual countries to implement them in whatever manner they think fit. Conventions are important but they are only the first step in the process.

A general anti-terrorist convention will require similar processes if it is to become effective.

I should point out that the FATF processes are now being extended into other areas. The work of the Dublin Group (the G7 *Task Force on Precursor Chemicals for Narcotics Production*) also follows similar processes.

Another area which has to be addressed is more effective extradition and mutual assistence arrangements between countries. Extradition and mutual assistance treaties (mostly of a bilateral nature) underpin all anti terrorist conventions and are an important part of their effective implementation.

During the 1980s Australia was instrumental in introducing new arrangements to make extradition arrangements more effective, particularly between common law and non common law countries. We were the first country to abolish the

prima facie rule in extradition which was the cause of much friction in extradition arrangements between common law and non common law countries. The Australian initiative was so important that its model extradition treaty was adopted by the UN as a world standard. But there are still problems.

Many common law judges take a pedantic approach to extradition requests and turn the extradition hearing into a mini-trial of the offence itself. Australia is part of this problem. It is important to appreciate that when an extradition request is made, it is for the requesting country to try the person not the requested country. Some judges take an almost xenophobic approach to the prospect of a trial in other countries. If we don't respect the legal system of another country we shouldn't have an extradition treaty with them. It is not difficult to see how important that consideration is when dealing with the extradition of terrorists.

If I can digress here for a moment. I sense there is considerable ignorance (and even prejudice) amongst lawyers in common law countries in relation to other legal systems. Part of this is due to language problems. But there is more to it than language. Many of our lawyers think the common law is the sole font of all legal wisdom. It shouldn't be forgotten that, for example, European legal systems are the result of centuries of civilized experience.

If I can give a simple example. In common law countries, we have the jury of 12 specially picked and empanelled for each trial. The Swiss equivalent is two lay assessors who are elected by the canton for a period of twelve months and they sit continuously on trials over that period. Furthermore, they sit on the bench with the judge, not corralled in a pen on the other side of the court room.

Back to terrorism

Another issue which needs to be addressed is the lack of provision for an international witness subpoena in modern mutual assistance arrangements. There is commonly provision for making witnesses available on a voluntary basis and mutual assistance treaties generally provide protection for such persons. I recognise that, all another things being equal, a voluntary witness is better that one who is forced to give evidence. But if we make provision for witness subpoenas in domestic trials, why don't we make them available where international evidence is required? I know of only one mutual assistance treaty which provides for the subpoena of witnesses between countries and that is the mutual assistence treaty between Italy and the United States.

The very nature of international terrorism means that evidence will be drawn from a number of countries. In the Locherbie trial the Crown listed 1160 witnesses and called 227 to give evidence; the defence listed 121 and called three. The witnesses came from the UK, the USA, Libya, Japan, Germany, Malta, Switzerland, Slovenia, Sweden, the Czech Republic, India, France and Singapore.[9] I am not suggesting here that the lack of an international subpoena

[9] Paper presented by Rt Hon Colin Boyd QC, Lord Advocate of Scotland "The Locherbie Trial" at a workshop held in the course of the 15th International

caused any particular problem. But it should be noted that Pan Am Flight 103 was attacked on 21 September 1988 and the trial commenced in the Hague on 3 May 2000.

Law Enforcement Issues

During the media coverage of the aftermath of the 11 September attacks I vividly remember a television interview with a very harassed US immigration official at a crossing on the US/Canada border. This border is very porous with large numbers of persons crossing at a large number of entry points.

The official was making the point that he had to run checks on six different databases. He also made the point that there were a number of crucial data bases of other US agencies to which he had no access.

There are two issues here that are related. The first is that law enforcement in many Western countries is highly fragmented. In Australia we have the National Crime Authority, the AFP, and Customs with substantial law enforcement responsibilities but there are other federal bodies as well. In addition, each State and Territory has a police force and other law enforcement bodies. In Australia, as in other countries, this fragmentation arises from constitutional divisions of power.

The United Kingdom has over 40 separate police forces. The number of police forces in the United States has been estimated at over 30.000 because much of the responsibility for law enforcement in that country is at the county level.

The related problem is the difficulty of effective cooperation particularly in the sharing of intelligence. The sharing of intelligence is vital to law enforcement operations whether those operations are against organised crime or terrorists. The fragmentation contributes to this problem but organisational rivalry contributes as well.

When we take the law enforcement effort to the international level the problems and complexities increase markedly. If effective law enforcement effort is to be made against international terrorism then the world community is going to have to develop cooperative structures that do not exist at the moment. INTERPOL is a research and information dissemination body. It does not have any operational experience or expertise. The United Nations similarly lacks operational experience and expertise.

In my experience there has been much useful cooperation between law enforcement in and between a variety of countries but it tends to be *ad hoc* and confined to particular operations. Sustained effort against terrorist groups will require strategic structures capably of conducting operations in an integrated manner and over a considerable period of time. Such structures do not presently exist, at least to my knowledge.

The International Criminal Court (ICC)

I should mention the ICC, as it is an important recent development in international criminal law. The Rome Statute of the ICC is not yet in force because it requires ratification, acceptance, approval or accession from 60 countries. To date, only 45 countries have complied with this requirement. However the process is well under way. There are two major problems with the ICC. The first is that the United States has not complied with the requirements and there is no prospect of it doing so in the foreseeable future. The United States has concerns with the possible jurisdiction of the ICC over its military personnel in the area of war crimes.

The second problem is that the ICC has no jurisdiction over terrorism. This problem may need to be addressed in future reviews which are provided for in the ICC Charter.

CONCLUSION

I hope I have not painted too grim a picture of the state of play against terrorism. Clearly much good work is going on and the international community has been energized by the events of 11 September, 2001. But we have to understand the problems and the difficulties before we can address them.

I conclude with these observations.

There are many tensions to be resolved in the fight against terrorism. The first of these is the tension between national sovereignty and the need for the world community to act together. The second tension is the ideological one between the legitimate pursuit of causes such as self determination and freedom of oppressed ethnic groups and proper limits on what can be done in pursuit of those causes. A third tension is freedom of the individual and protection of community interests. All of these tensions will require difficult multilateral negotiations and balanced compromise before proper solutions can be found.

As Edmund Burke once said:

All government, indeed every human benefit and enjoyment, every virtue, and every prudent act, is founded on compromise and barter.[10]

[10] Edmund Burke, "Speech on Reconciliation with America" quoted in Selth, *supra* n.2 at 131.