



**ATTORNEY-GENERAL**

**HON ROBERT McCLELLAND MP**

**HUMAN RIGHTS: A MORAL COMPASS**

**SPEECH TO THE LOWY INSTITUTE FOR  
INTERNATIONAL POLICY**

**SYDNEY**

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First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.

At the outset can I acknowledge the distinguished service of Allan Gyngell who is retiring as the Director of the Lowy Institute to become Director at the Office of National Assessments (ONA).

Can I also congratulate Professor Michael Wesley on his appointment as Allan's successor.

Allan has made an outstanding contribution. Unquestionably, his drive and leadership have made the Lowy Institute one of Australia's pre-eminent international policy think tanks focussing, among other things, on issues of national and international security.

So why then do I intend to talk to you today about an important issue of human rights? Because respect for fundamental human rights and security are inter-related.

The modern international human rights framework was born out of the atrocities and devastation of World War II.

In 1941, US President Truman and British Prime Minister Churchill met on a US battleship in the mid-Atlantic and mapped their vision of the principles on which they would base their hopes for a better future for the world.

Among those principles, they agreed they would respect the right of all people to choose the government under which they live and the right of all people to live their lives in freedom from fear and want.<sup>1</sup>

These principles were not forgotten.

After the war the international community recognised that the failure to protect basic rights and values had contributed to the war and its devastation. The international community also recognised that the protection and promotion of human rights would be fundamental to peace.

The creation of the United Nations in 1945 provided a new forum for this dialogue between nations.

As pledged in the Charter, the United Nations reaffirmed

*"the faith in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".<sup>2</sup>*

In 1948, under the presidency of the Hon H.V. 'Doc' Evatt, the United Nations General Assembly adopted the Universal Declaration of Human Rights.

The Declaration remains today an inspiring proclamation of human values.

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<sup>1</sup> Joint Statement by President Roosevelt and Prime Minister Churchill, 14 August 1941 (known as the 'Atlantic Charter').

Since the Declaration was adopted, the international community has agreed upon and adopted a set of comprehensive human rights conventions which together uphold the dignity and rights of all peoples.

These core human rights reflect shared human values and constitute what I may call a 'common conscience' of people everywhere.

Human rights are more than a set of legal obligations—they reflect core moral values.

And these moral values should guide governments both in how they treat their own citizens and in how they treat other nations.

As former President Truman said in New York at the laying of the United Nations Building cornerstone in 1949:<sup>3</sup>

*"The member nations have learned from bitter experience that regard for human rights is indispensable to political, economic and social progress. They have learned that disregard of human rights is the beginning of tyranny and, too often, the beginning of war."*

While I consider that the international desire to recognise and protect fundamental human rights was heightened as a result of the events of World War II – a war between State actors – recognising these core moral principles is just as important in addressing the modern security threat, including acts of terrorism.

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<sup>2</sup> Charter of the United Nations, preamble.

We must establish a moral counterpoint to the immorality of terrorism which constitutes ruthless violence against innocent civilians as the target of choice.

The late UN High Commissioner for Human Rights and Special Representative for Iraq, Sergio Vieira de Mello, when addressing the UN Counter Terrorism Committee in 2002 said:<sup>4</sup>

*"the best - the only - strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law."*

Maintaining a vibrant and functioning democracy underpinned by the rule of law – in all its concepts – is in my view unquestionably our major strength in the present and the long term fight against terrorism.

## **Convention Against Torture**

The prohibition of torture is one of those core, universal human rights which forms part of the common conscience of humanity.

The prohibition on torture has been recognised as a 'jus cogens' norm of international law.

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<sup>3</sup> President Truman, Address in New York City at the Cornerstone Laying of the United Nations Building, 24 October 1949.

<sup>4</sup> High Commissioner Sergio Vieira de Mello, statement to the Counter-Terrorism Committee of the United Nations Security Council, 21 October 2002.

It is a rule which may not be set aside in any circumstances.

Torture is prohibited in the International Covenant on Civil and Political Rights and in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

As stated in the Convention against Torture:<sup>5</sup>

*"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability, or any other public emergency, may be invoked as a justification of torture."*

Nothing justifies torture - and nothing justifies a State's use of it.

Under the leadership of the Hawke Labor Government, Australia became a party to the Convention against Torture in 1989.

Becoming a party to the Convention demonstrated Australia's stance against torture. It sent a clear message to the international community that we view torture as deplorable wherever and whenever it occurs.

## **Changing Environment**

Much has changed since Australia became a party to the Torture Convention in 1989.

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<sup>5</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, Article 2(3).

Not least, the international community has faced the challenges of combating a resurgent threat of terrorism since the attacks of 11 September 2001.

Indeed, President Obama said in a press conference marking his 100th day in office when commenting on his decision to ban torture without exception that

*“you start taking short-cuts, over time, that corrodes what's best in a people. It corrodes the character of a country.”<sup>6</sup>*

There are complex issues involved.

Above all, I believe that government decisions that take into account fundamental human rights and the need to protect a nation's security and its interests – only make a nation, and its democracy, stronger.

Importantly, they make us more – not less – secure.

The prohibition of torture must remain a constant point on the moral compass that guides any civilised nation state.

On this basis, Australia's commitment to the prohibition of torture must remain clear, even as we face new and emerging challenges.

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<sup>6</sup> President Obama, news conference, 29 April 2009.

Torture compromises a nation's moral leadership and this jeopardises a nation's capacity to combat terrorism and counter extremism.

Torture is an extreme expression of violence and cannot be condoned. It destroys exactly what countries are claiming to defend - the dignity and freedom of human beings.

### **Optional Protocol to the Convention Against Torture**

The Rudd Government believes as part of our commitment to re-engagement with the international human rights community, it is important that Australia also demonstrates its leadership on this issue.

Accordingly, I am pleased to announce today that the Rudd Government has signed the Optional Protocol to the Convention against Torture.

This is a significant development.

The Optional Protocol obliges parties to allow periodic international inspections of its places of detention, and to establish formal mechanisms to enable regular examination of the treatment of persons in places of detention.

We should not be afraid of international accountability in this regard.

Having signed the Optional Protocol, we have signalled our genuine intention to become party to it, joining the United Kingdom, Germany, France, New Zealand and many other countries.

I have been pleased with the initial support of the States and Territories during consultations on the Optional Protocol. I hope we can build on this support as we take the necessary steps to become a party.

In consultation with the States and Territories, mechanisms will be established, as required under the Protocol, to regularly examine at the domestic level the treatment of persons in places of detention.

This will include ensuring that all of our prisons and detention facilities are subject to the monitoring and reporting regimes under the Protocol.

While these steps can't happen overnight, the Government is committed to getting the framework right. And this will complement our existing robust arrangements to ensure all people are treated humanely and in accordance with internationally accepted standards.

## **Torture Offence**

The Government also thinks that there is more that can be done now to strengthen our domestic laws prohibiting torture.

Australia's domestic criminal laws already contain provisions which, collectively, outlaw all acts that could constitute torture.

However, currently there is no single comprehensive Commonwealth offence that criminalises torture.

The United Nations Committee Against Torture has called upon all nations to enact a specific torture offence.

Last year, I wrote to the States and Territories, to consult with them on the development of Commonwealth legislation to prohibit torture.

Following these consultations, I am pleased to announce that the Government will introduce legislation to create a specific torture offence in Commonwealth law.

And we are contemplating giving the offence extraterritorial application to make torture an offence with respect to acts both within and outside Australia.

## **Conclusion**

Today I have announced two significant steps that the Government is taking to give effect to the Government's abiding commitment to the prohibition of torture.

These steps are important because actions, in this area, speak louder than words.

Signing the Optional Protocol to the Convention against Torture, reaffirms Australia's long standing commitment to human rights in relation to the prevention of torture.

And by enacting a specific offence of torture, the Government will ensure that torture is prohibited under Commonwealth law.

Taking these steps demonstrates our fundamental opposition to an act that is contrary to basic human values.

Governments around the world will continue to face new and unexpected challenges in future years.

In the same way that September 11 changed the face of the world in 2001, so too will other, as yet unknown and unpredicted, events change the world in years to come.

Governments will have complex decisions to make in addressing these new challenges.

But while the challenges may be new, basic human values will not change.

Core human rights standards will remain an indispensable moral compass for governments as they navigate these challenges.

Thank you.