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FOR INTERNATIONAL POLICY

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NEW VOICES 2004

À LA CARTE SOVEREIGNTY:
AUSTRALIA'S TRANSFORMING BORDERS

"New Voices 2004"

À la carte sovereignty: Australia's transforming borders

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Organised by: Orietta Melfi and Malcolm Cook

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Introduction

OVERVIEW OF À LA CARTE SOVEREIGNTY: AUSTRALIA'S TRANSFORMING BORDERS

by Tom Switzer (The Australian)

THE great debates in recent times have centred around the clash between national sovereignty and globalisation, between nationalism and internationalism, between protectionist barriers and a level playing field, between a vertically divided world and a horizontally structured one. In short, this debate focuses around the issue of what constitutes legitimate sovereignty. For a nation like Australia, does it rest with constitutional representative government or will it increasingly be shaped by international institutions and forces outside the traditional realm of the nation state?

First, a bit of historical context. Since 1648, when the Treaty of Westphalia created the principle that sovereign states are both legally and morally absolute, the political world has been chopped up vertically into states, which have boundaries they control and defend. International politics in the modern era has been about relations between these vertically dividing states. This has been the conventional wisdom about an established practice for centuries.

But with the end of the Cold War, the collapse of Soviet Communism, the rise of transnational institutions and multinational corporations, many influential thinkers have challenged this traditional view of the world. The vertical world of nation states, the argument goes, is rapidly being replaced by a horizontally ordered one. The new decisive forces of capital, technology, information are spreading horizontally across the earth, recognising no impediments and no national limits. According to this school of thought, the frontiers of states are becoming increasingly porous and meaningless, penetrated by corporations that are truly multinational, by mass movements of peoples (legal and illegal), by news and entertainment media whose scope is global, by environmental problems that recognise no boundaries, by a web of institutions that set international rules and norms, and of course by terrorists who indiscriminately attack nations all over the globe.

This world view has been championed by many influential thinkers in academia, business and the popular press. In many ways, my boss Rupert Murdoch is a major exponent of globalisation and indeed he embodies this world view. For instance, we've all heard about his recent plans to shift his media empire News Corporation from Sydney to New York, a move that will put Australia's largest company truly on the global stage.

Now, what is one to say about this view of the world? Are nations and peoples of the world becoming so closely integrated that we are on the verge becoming a borderless world? Will sovereignty be a myth? Will the state be a fiction? And will interdependency and mutual interests and values be the overriding realities in the new era of international relations?

On the one hand, there is no question that there is a vastly greater volume of interaction between nations and people. That is a fact, and this process brings about tremendous benefits to people all over the world. On the other hand, however, it's worth bearing in mind several points.

For starters, this view of the world is hardly a novel one. Although they expressed themselves in different ways, Adam Smith -- the founder of modern-day capitalism -- and Karl Marx -- the founder of communism -- both spoke of how the internationalisation of capitalism -- which is to say globalisation -- would make national borders increasingly porous. In 1848, Marx and Friedrich Engels, writing in *The Communist Manifesto*, even predicted the "withering away of the state." Yet the state has been a long time withering and it's shown itself to be an extremely tough, durable and adaptable institution.

Second, the belief that globalisation is undermining the nation state is a very western-centred view of the world. Most of the authors of this thesis come from North America, Western Europe, and Australasia. And most of the nations that embrace this mindset are based in North America, Western Europe and Australasia. What about the rest of the world? Do Iran, Syria, Sudan, Namibia, Bolivia, Kosovo or Belarus, among scores of other nations, embrace the ideals of a borderless world? And what about Asia? Even Japan and South Korea, despite decades of dramatic economic growth, remain stubbornly opposed to free trade and a liberal immigration program. True, Asian heads of state talk the talk about zero tariffs by 2020 -- the agreement reached at an APEC summit 10 years ago -- but do they really walk the walk on a level playing field?

After all, who will forget Malaysian President Mahathir's imposition of capital controls during the 1997-98 Asian financial crisis? At the time, he was condemned by everyone from conservative *The Wall Street Journal* to the left-wing *Guardian*, from the International Monetary Fund to the World Bank, from free-market economists like Jagdish Bhagwati to Keynesians like Paul Krugman. And yet Mahathir ignored the so-called dictates of the international community and sealed off Malaysia's financial system from the rest of the world. In the process, Malaysia weathered the financial storm.

That's the non-western world. But even western governments have, in recent times, presided over relatively high levels of economic and cultural protection. Just ask the American farmers who are heavily protected by that monstrous state subsidy called the Export Enhancement Program. Just ask the French farmers or film makers who receive significantly high levels of protection from their government in Paris.

Or take Australia. Prime Minister John Howard is often depicted as a dogmatic economic rationalist or a Liberal dry. And it is certainly true that Howard, as a treasurer in the Fraser Government and as opposition leader and shadow treasurer in the 1980s, championed the economic reform agenda. These policies included floating the Aussie dollar, deregulating our financial markets, cutting tariffs and reforming the labor market. And they have transformed Australia from a heavily protected and subsidised closed shop into a high-growth, less-inflation prone, market-oriented powerhouse that *The Economist* now dubs a "miracle economy."

Yet this is a prime minister -- and this is not necessarily a criticism -- who described himself as a "cultural nationalist" when he justified the retention of local content laws for the Australian television and radio. This is a prime minister who stood up to foreign investors and rejected Shell's takeover bid of Woodside Petroleum North West Shelf in April 2001. And this is a prime minister who has shunned global institutions like the Kyoto protocol on climate change, the United Nations High Commission for Refugees and the United Nations Committee on the Elimination of Racial Discrimination.

Again, the point of this is not to pick on Howard, but to emphasise that even a so-called economic rationalist leader of a globally competitive and open nation can bow to the local forces of protectionism and parochialism. In other words, when the moment of truth arrives in a battle between national sovereignty and globalisation, any savvy politician will side with the former -- or risk paying the price at the ballot box. Think of the Tampa asylum seeker crisis in August-September 2001. In the September 4, 2001 Newspoll, only 9 per cent of Australians wanted all boats carrying asylum-seekers to enter Australia. Howard and his opponent Kim Beazley knew where their bread was buttered, and they strongly stood up to the international community on the grounds that, as Howard put it in the campaign trail: "We will decide who comes to this country and the circumstances in which they come."

Thirdly and finally, the paradox of globalisation is that it sometimes leads to a nationalist backlash among the so-called losers of globalisation. When the rules of the game appear to radically change overnight and a competition for places in the socio-economic order begins again, some folks become disoriented and angry. This is hardly surprising, as the changes, though generally desirable and advantageous to the society as a whole, naturally disadvantage some groups.

How else to explain the appeal of Pauline Hanson and her One Nation party in the late 1990s? The Queensland populist was often depicted as the reincarnation of Adolf Hitler. And it's true that One Nation, like other extremist groups in western Europe, attracted some nasty figures. But above all else, Hansonism represented a protest vote against decades of dramatic economic and social change, and Hanson herself represented a voice of an older generation that felt betrayed by globalisation.

But Hansonism was not a uniquely Australian phenomenon. After all, comparable movements have developed in New Zealand (Winston Peters), North America (Pat Buchanan) and Western Europe (Hollands's Pim Fortuyn, France's Le Pen, Danish People's Party's Pia Kjaersgaard, the right-wing Swiss People's Party, and Belgium's right-wing party Vlaams Blok), and there was nothing really surprising about its emergence in Australia. Every nation that undergoes a process of rapid change and modernisation has experienced a similar reaction to the dislocation and, as Joseph Schumpeter famously put it, creative destruction involved. Yet these movements had no answers to globalisation. The "solutions" they offered and the sentiments they encouraged -- racial divisiveness and economic isolationism -- would only have impoverished their nations culturally and materially. And now, these parties are virtually on the ash heap of history.

The aforementioned is a brief summary of the general theme of today's conference -- of the clashes between national sovereignty and globalisation. Sometimes, the appeal of globalisation is overstated and the power of the nation state is underestimated, but there is no question that globalisation is a reality. The challenge revolves around how we manage that tension.

Perhaps the best way of summarising this tension is to assess one of the controversial issues in Australian politics in recent times -- Australia's policy on border protection and detention centres. The federal Government's stance may be harsh, and it may have been correctly judged illegal by various non-government organisations like Amnesty International and international institutions like the United Nations High Commission on Refugees. Maybe all of these groups have some useful advice about how to improve Australia's treatment of refugees. But do these groups -- a face of globalisation -- have an overriding claim to moral deference from the constitutional representative government of a sovereign state? That's just one of the questions that will dominate today's conference.

Session I: Social Forces Eroding Borders

INTERNATIONAL CIVIL SOCIETY'S GLOBAL EMBEDDING

by Russell Thirgood (Amnesty International Australia)

Civil society and the respect of human rights are fundamental for a humane and civilised world. These pillars are threatened by terrorism and by an ill-conceived reaction to the terrorist threat. We must not let ourselves live in the murky shadows of the terrorist. The challenge of our lifetimes is to find peace and security through respect for human rights.

I would like to begin by exploring the concept of 'civil society'. Civil society consists of a multitude of relationships and a web of networks between people who share common ideas and hopes. It is the space where people get together, outside the formal realms of government and corporate life to share information, to engage, to dream and to work towards a different world – perhaps a more civilised world. However, it should at the outset be acknowledged that not all civil society is good or should be encouraged. For instance, the Ku Klux Klan is a part of civil society.

At the heart of civil society is a process of engagement, discussion, dialogue, debate, relationship building and the creation of networks. This process can assist the formation of good ideas which shape healthy policy. The act of engagement can also break down barriers and promote respect, understanding and tolerance. These are all characteristics of a society that most of us wish to live in. Civil society provides an essential link between citizens and the state. It is a source of trust, the key to social integration, and the basis of strong democracy. Further, a democratic government is more responsive and effective when it faces vigorous civil society.

As we know, in a democracy it is ultimately the people who make the law. The danger for any democracy is that, by its very essence, there is an opportunity for the majority to oppress the minority. That danger is reduced when there is an active civil society, where like-minded people gather and in doing so have a stronger voice to pursue the interests and needs of the powerless. Of course, in addition to a culture of human rights protection, the rule of law and an independent judiciary are bastions of a civilised nation.

Civil society recognises both the importance of the individual and of the collective – a distinction which was perhaps unhelpfully politicised during the Cold War years. Both individual and collective rights and responsibilities are important. Where civil society flourishes individuals have the freedom to associate with those with whom they identify. Values and rules of behaviour emerge either formally or informally within the organisation and in most cases are voluntarily observed. It is not surprising therefore that strategists have pointed to the need for a moderate civil society in Iraq as a precondition for a successful transition to democracy. Civil society has been described by advisors to the US government as the ultimate 'third way' of governing society.

Accordingly, a healthy democratic state has nothing to fear from a civil society which has human rights as its base and ought to be encouraging its growth.

In Australia, we live in a generous civil society, with a plethora of organisations through which we can align ourselves to work for the kind of society we want. Our civil society organisations operate independently of governments, yet work with governments, in seeking to have important interests placed on the public agenda.

An example of this process in action has been the vigorous debate involving Australia's treatment of refugees and asylum seekers. Amnesty International and a number of other like minded organisations including medical professions, law societies, churches and refugee advocates have been highly critical of mandatory detention, the Pacific Solution and the temporary protection visa

system. Australians should be proud that our democratic traditions and strong civil society, have at least, ensured that:

(a)   views have been exchanged freely (including the telling of the human stories of those the subject of the debate);

(b)   political leaders have been tested and confronted with alternative views; and

(c)   our courts have been accessed by those seeking to protect their rights.

While there have been some improvements to Australia's treatment of refugees in recent times, such as the increased number of offshore places and the granting of refugee status to the vast majority of those who were detained on Nauru since 2001, Amnesty still contends (and importantly is afforded the opportunity to contend) that much more can be done. Notwithstanding our differences, senior ministers of the Commonwealth government have always been accessible and willing to engage on these issues. On Amnesty's part we have endeavoured to work with government in a constructive way. Surely, that is a healthy process which in time will lend itself to better policies.

By enabling civil society to flourish, we build 'social capital' and a society that is compatible with our expectations of how we want ourselves and others to live, of the environment we want to live in, of the choices we want to make and of the values we want to live by.

Social capital is built by challenging the status quo, by strengthening community and by promoting trust and cooperation. Civil society concerns itself with the way in which governments, corporations and individuals work together to create the desired society.

Civil society organisations that have effectively embedded themselves globally include those concerned with human rights, HIV/AIDS and the environment– to name but a few.

A civil society organisation that embeds itself at the global level is one whose purpose transcends national borders. Human rights form the base level of civil society. HIV/AIDS threatens the lives of millions in every corner of the world and the environment threatens the future of our planet.

How then does a civil society organisation like Amnesty International become embedded at the global level?

First, the fact is that today human rights transcend a government's claim to 'national sovereignty'. National borders are no longer a protective barrier for governments to breach their international human rights obligations.

Second, Amnesty International is in itself a global civil society organisation. We are a global movement of more than one and a half million people. Our diversity is reflected in our many cultures, races, religions, languages and beliefs. Our strength is that we speak with one voice to defend human rights irrespective of national borders. We have our own internal democracy where leaders are elected to guide the organisation at international, national and local levels.

Third, Amnesty International supporters around the world share the universal goal or belief that fundamental human rights such as the right to life, shelter and freedom from torture should apply to all people, in all circumstances and in all societies.

Fourth, with a presence in more than 150 countries and territories, we are able to work independently and interdependently, across communities and national borders, to inform public attitudes and to mobilise public action to affect change at its most fundamental level – through government and corporate policy. We are able to join together with thousands of civil society organisations operating around the world on a range of human rights issues.

Fifthly, we benefit from today's global communications. Through the internet, civil society is able to engage at the global level with immediacy and with astonishing impact in defence of those in imminent danger. Last year, more than six million people worldwide sent emails, signed e-petitions and faxed letters in support of Amina Lawal, a woman sentenced to death by stoning for adultery in Nigeria. Her sentence was successfully overturned.

What then is achieved by Amnesty International through being embedded in our global society?

For over forty years Amnesty International has held governments accountable to internationally agreed human rights standards. Through our efforts, prisoners of conscience are released, death sentences are commuted, torturers are brought to justice and governments change their laws and practices.

We shape policy and law through making submissions to governments and to intergovernmental organisations such as the United Nations and the European Union on human rights issues. We lobby UN Member States on the drafting of human rights resolutions – a recent success being the appointment of an Independent Expert to scrutinise the erosion of human rights in the "War against Terror".

We engage with governments at a range of international fora, including the World Conference on Racism, the World Social Forum and the World Economic Forum. We provide independent information to human rights bodies, such as the UN Committee Against Torture, which rely heavily on non-government information to get a full picture of the human rights situation in a country.

Through years of campaigning, we have influenced the development of international human rights law. Rape is now recognised and prosecuted as a weapon of war, of torture and of genocide. The creation of the International Criminal Court has ensured that a head of state is no longer able to claim impunity for war crimes. We have succeeded in having women's rights, children's rights, indigenous rights, and sexual orientation rights recognised as human rights.

Let me conclude by saying that Amnesty International's contribution to global civil society is more crucial than ever before.

Human rights are at a crossroads. In the aftermath of September 11 and the declared "War on Terror", we have witnessed an attack on human rights and civil society.

Violence by armed groups, such as Al-Qaeda, and increasing violations by governments have combined to produce a sustained attack on human rights and international humanitarian law. This has lead to a world of growing mistrust, fear and division.

In Australia, civil society has been mobilised to challenge the Government's restrictions on our civil liberties through its anti-terror legislation. We have provided country information on Afghanistan and Iraq, which contributed to the government's decision to reprocess the claims of refugees living in Australia on temporary protection visas. We continue to demand the release of all children held in immigration detention in Australia and Nauru. Our efforts are supported by our fellow Amnesty International members around the world.

Civil society is making itself heard at national and global levels. There are the millions of people around the world who marched in solidarity against the war in Iraq. Spaniards took to the streets in a display of courage and resilience after the horrific bomb attacks in Madrid. Australians joined in a range of peaceful protests to oppose the Government's treatment of refugees.

The globalisation of human rights is without doubt one of the greatest achievements of the 20th Century. An immediate challenge of the 21st Century is to strengthen the protection of human rights locally, nationally and internationally through strengthening civil society. As governments lose their moral compass, the role of civil society is more important than ever before. For it is to the people that governments are ultimately accountable.

Session I: Social Forces Eroding Borders

MARKET EXPANSION – OUTLOOK FOR AUSTRALIAN CAPITAL MARKETS IN LIGHT OF NEWS CORP'S PROPOSAL TO SHIFT ITS PRIMARY LISTING FROM THE AUSTRALIAN STOCK EXCHANGE TO THE NEW YORK STOCK EXCHANGE

by Ravi Aggarwal (Morgan Stanley)

INTRODUCTION

On April 6 2004, Rupert Murdoch announced that News Corporation Ltd ("NCP") would seek to move its place of incorporation from Australia to the USA, and migrate its primary listing from the Australian Stock Exchange ("ASX") to the New York Stock Exchange ("NYSE"). In doing so, Rupert is effectively taking his company down the same path he went down in 1985, when he surrendered his Australian citizenship and became an American citizen, in order to allow him to purchase television stations in the USA. For so long NCP has been cited as the best example in the business world of Australia "punching above its weight"; the small publishing company founded in Adelaide in the 1960's that over the past 40 years has grown to a $100bn behemoth and one of the largest and most diversified media companies in the world. And despite Rupert's assertion that NCP is not abandoning Australia and that its "roots, heart and culture are unmistakably Australian," the simple fact of the matter is that NCP's decision reflects its view that it has outgrown the Australian capital markets and sees the need to be part of a larger capital market to facilitate its future growth agenda.

Despite the remarkable growth in the Australian capital markets over the last decade, the decision of NCP highlights the challenge Australia faces in remaining relevant in an increasingly globalised financial services market. I will address four main points in this paper. Firstly I will provide an overview of the growth of the Australian equity markets and demonstrate the proposition that Australian equity market has "actively and irreversibly embraced globalisation". Secondly I will highlight the main decisions articulated by NCP for its decision to migrate its listing and place of incorporation. Thirdly I will consider the implications of NCP's decision for the Australian capital markets including a brief examination of whether Australia will follow the path of New Zealand which has seen its capital markets shrink since 1997. Finally I will suggest measures that should be considered to ensure that the Australian equity market remains relevant in a globalised environment.

OVERVIEW OF AUSTRALIAN EQUITY MARKETS

The Australian equity market has achieved remarkable growth over the last decade with the market capitalisation of domestic companies listed on the ASX increasing from $200Bn in 1992 to close to $750Bn at the end of 2003, and market turnover increasing from $62Bn to $550Bn in the same period.

Constituent Market Capitalisation and Market Turnover
1992–2003

Market Capitalisation of Domestic Companies   ——— Market Turnover (A$Bn)
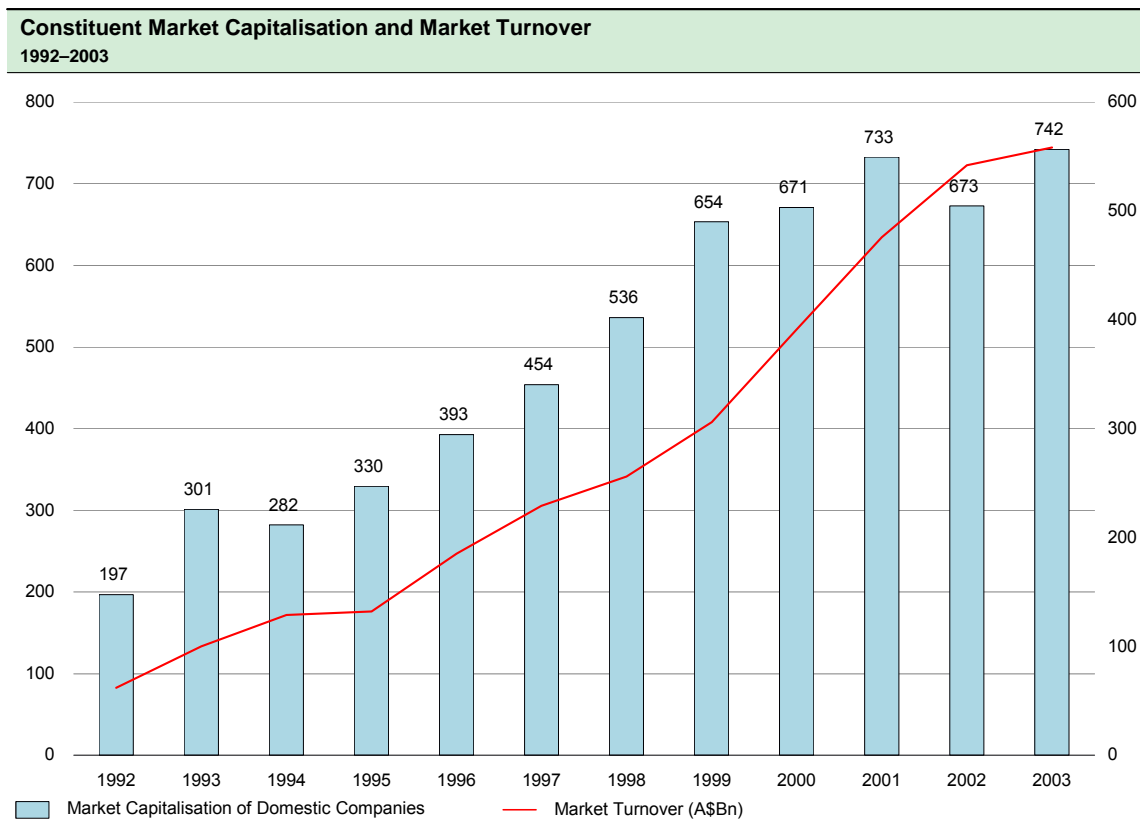
Source

ASX Fact Book, IRESS

There were a number of key drivers of the growth:

Firstly was the wave of government privatisation and de-mutualisation during the 1990's., including Telstra, Commonwealth Bank of Australia, AMP and Qantas. This resulted in a large increase in the number of listed companies and broadened share ownership amongst Australians.
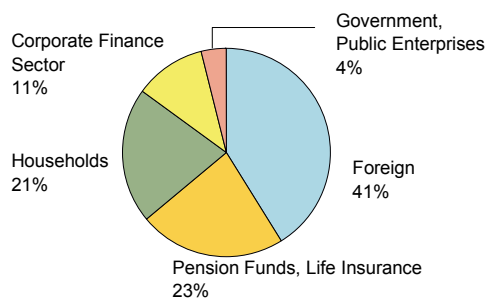
Secondly was the introduction of compulsory government superannuation which resulted in a growing pool of funds available to be invested in Australian companies.

Thirdly, was the strong economic growth environment in Australia over the last 10 years, which promoted robust earnings growth by Australian companies.

Fourthly was increased interest and investment in the Australian market by foreign investors. Advances in technology broke down barriers between international capital markets and allowed capital to flow more freely between markets. This was recognised by the Wallis Report into the Financial Services Industry in 1997 which concluded that "Australia has actively and irreversibly embraced globalisation and that competition in financial markets occurs globally rather than at national or regional levels." The increasing globalisation of the Australian equity market is demonstrated by the fact that approximately 41% of Australian equity is owned by foreign investors, whilst approximately 19% of Australian sourced funds under management are invested in overseas equities (compared to 15% in 1997)
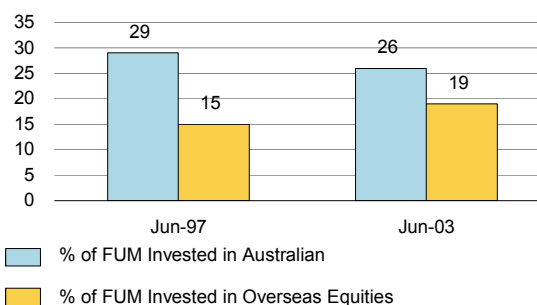
Ownership of Australian Equities
September 2003

Corporate Finance Sector 11%

Government, Public Enterprises 4%

Households 21%

Foreign 41%

Pension Funds, Life Insurance 23%

Source   SABS, Financial Accounts, Cat 5232.0

Australian Sourced FUM
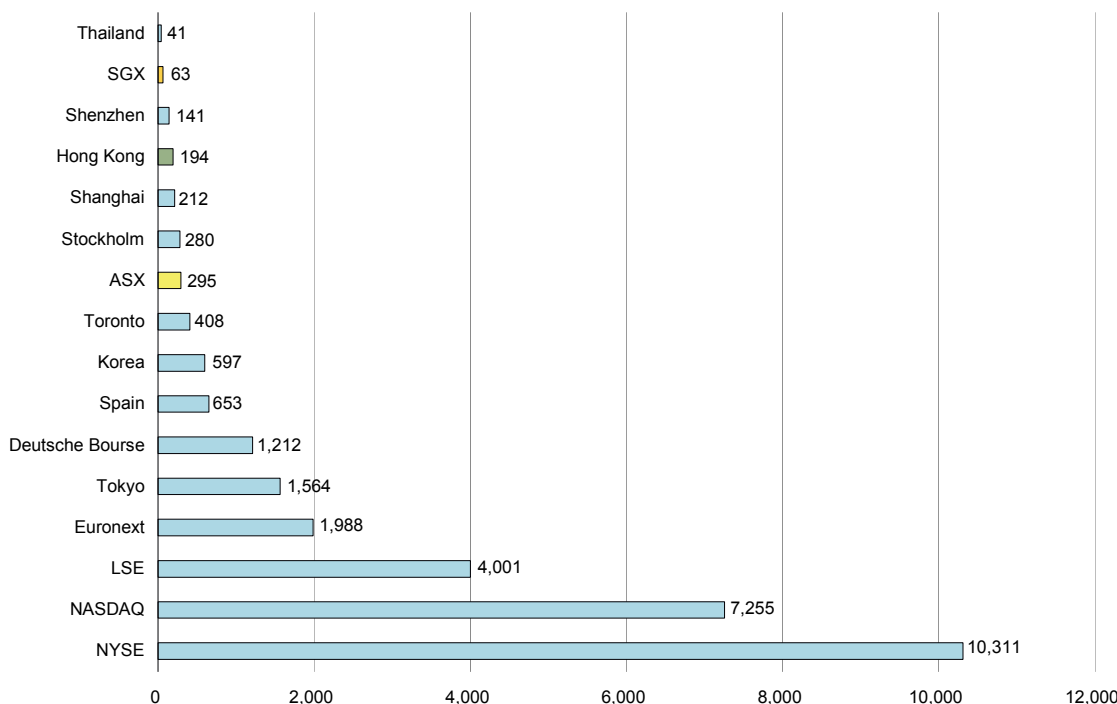%

☐ % of FUM Invested in Australian

☐ % of FUM Invested in Overseas Equities

Source   Rainmaker

However, despite the impressive growth of the Australian market over the last decade, the Australian market is still relatively small in global terms, the "small ship on the large ocean". The Australian market constitutes less than 2% of world equity markets based on annual turnover, despite being the 10th largest market in the world. The relatively small size of the Australian market has raised concerns on the long-term viability of the Australian market. Companies seek to be part of markets that deliver high turnover and liquidity, as it allows them to access larger pool of investors and raise capital more efficiently than is possible in smaller markets. Hence if some of the larger Australian companies were to form the view that the Australian market was sub-scale, they may view it as viable to migrate their primary listing from the ASX to a larger market.

Global Exchanges—2003 Annual Turnover by Value
Bn

Exchange	Value
Thailand	41
SGX	63
Shenzhen	141
Hong Kong	194
Shanghai	212
Stockholm	280
ASX	295
Toronto	408
Korea	597
Spain	653
Deutsche Bourse	1,212
Tokyo	1,564
Euronext	1,988
LSE	4,001
NASDAQ	7,255
NYSE	10,311

Source   World Exchange (December 2002)

THE NCP PROPOSAL

NCP articulated a number of reasons for why it has decided to migrate its primary listing from the ASX to NYSE:
1) Reflects current profile of company business mix. NCP generates approximately 75% of its revenues and profits from its US based businesses
2) Will facilitate the expansion of NCP's shareholders base. In particular, a US listing will eliminate the hurdle that many large US institutions currently face in holding NCP stock. This is similar to the restriction placed on many Australian fund managers with domestic mandates.
3) Enhances liquidity for all NCP shareholders. The NYSE is the most liquid equity market in the world.
4) Reduces NCP's cost of capital as a result of more liquid and efficient trading in NCP stock.

Thus NCP's rationale for seeking to migrate its primary listing essentially stems from the small size of the Australian market and concerns NCP has on the ability to be able to efficiently fund its future growth path whilst part of a smaller market. NCP indicated that it intends to retain a listing on the ASX and to be included in the S&P ASX 200, the index most domestic fund-managers use to benchmark their investment portfolios. However Standard & Poor's, the US based company that manages the index, has expressed concerns on allowing a company to be included in two country indices. Should this be the case, a number of Australian fund managers are likely seek to sell their NCP holdings, on the basis of their domestic mandates or the fact that their portfolios no longer reflect the local market index. Over time, it is likely that the majority of turnover of NCP shares will occur on the NYSE, and eventually NCP may seek to de-list from the ASX.

In considering the implications of NCP's decision, it is important to consider the structure of the Australian equity market. The Australian market is very concentrated with the top 15 stocks accounting for approximately 50% of total turnover in the market, of which turnover in NCP constituted 7.2% in 2003. Further analysis of the composition of the Australian market reveals that 32% of the turnover in the market in 2003 was in companies that have significant overseas operations. These companies are listed in the table below.

ASX LISTED COMPANIES WITH MAJOR INTERNATIONAL OPERATIONS

Company	% of ASX CY 2003 Turnover
News Corp	7.2%
NAB	6.4%
BHP Billiton	6.4%
Rio Tinto	3.5%
Fosters	1.7%
Qantas	1.6%
Brambles	1.5%
Amcor	1.1%
QBE	1.1%
Westfield	1.0%
Rinker	0.7%
Total	**32.2%**

Source   IRESS

There is a real risk that over time a number of these companies may also reach a stage where they have concerns on the depth of the Australian equity market, and like NCP seek to migrate their listings from the ASX to a larger market, in order to tap into a larger and more competitive pool of investment flows.

NEW ZEALAND CAPITAL MARKETS

As one starts to crystal ball-gaze on the future of Australian capital markets, it is interesting to consider the evolution (or demise?) of the New Zealand capital markets. The chart below demonstrates that unlike the Australian market, the New Zealand equity market has actually declined over time with the total market capitalisation of companies listed on the New Zealand Stock Exchange ("NZSE") falling from NZ$57Bn in 1997 to $44Bn in 2003.

Constituent Market Capitalisation and Market Turnover
**1993–2002**
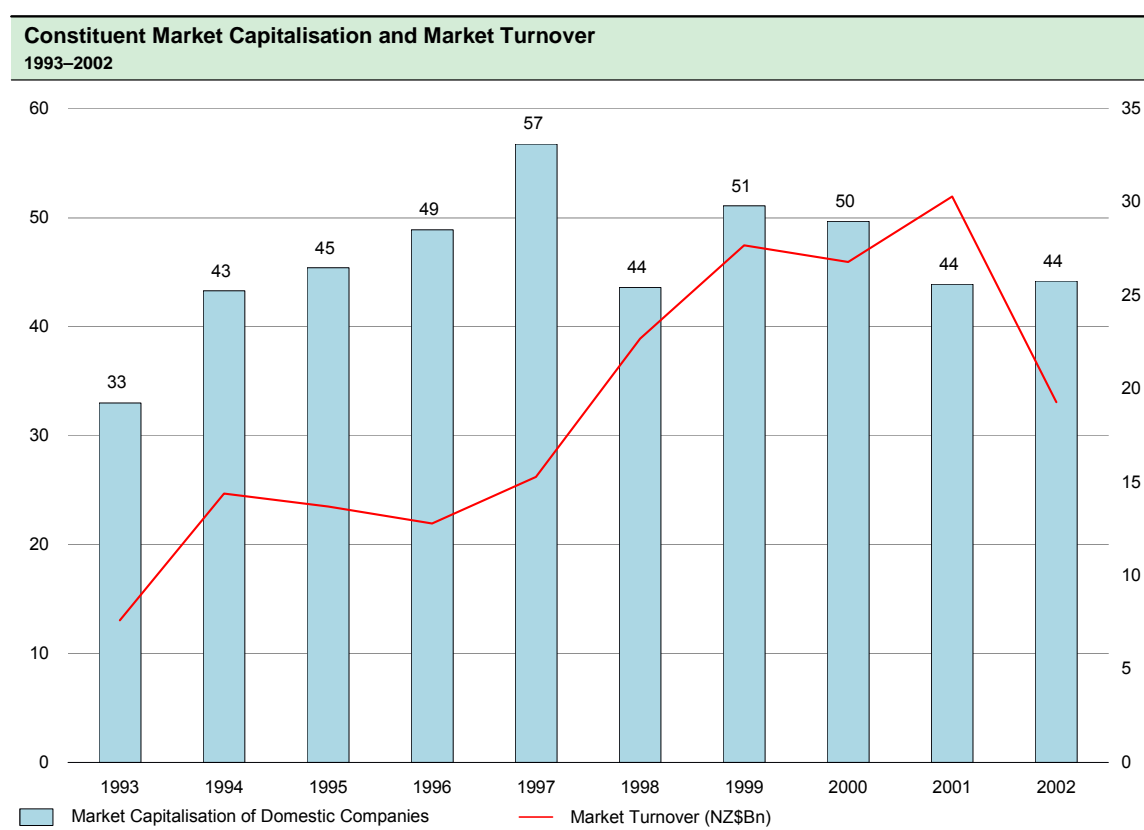
Source   New Zealand Stock Exchange

There appear to be a number of reasons for this.

Firstly there have been a number of acquisitions of New Zealand companies by foreign companies in recent years, across a number of industry sectors. The New Zealand Government has largely sought not to intervene and prohibit acquisitions on national interest grounds. Thus for example, 90% of the New Zealand banking market is "controlled" by the major Australian banks, following the acquisition of The National Bank of New Zealand (formerly owned by the UK bank, Lloyds TSB) by ANZ Banking Group in December 2003.

Secondly New Zealand has not implemented the compulsory superannuation contribution scheme, and hence has not had the growth of a large pool of funds that is available to be invested in New Zealand companies. As a result, a number of large New Zealand companies have shifted their primary listing from the NZSE to the ASX, to enable them to access a larger pool of liquidity and to broaden their investor bases.

Thirdly New Zealand has been viewed as having a lax corporate governance regime which has eroded investor confidence. The combination of this and the small nature of the New Zealand market which offers limited choice to investors has resulted in New Zealand investors shifting their investments from New Zealand companies to foreign companies. The percentage of domestic sourced funds invested in New Zealand companies by New Zealand institutional investors has fallen from 20% in 1996 to 14% 2002. In the same period, New Zealand institutional investors have increased the proportion of total funds under management invested in overseas companies from 25% to 40%

% of FUM Invested in NZ Equities %	% of FUM Invested in Overseas Equities %
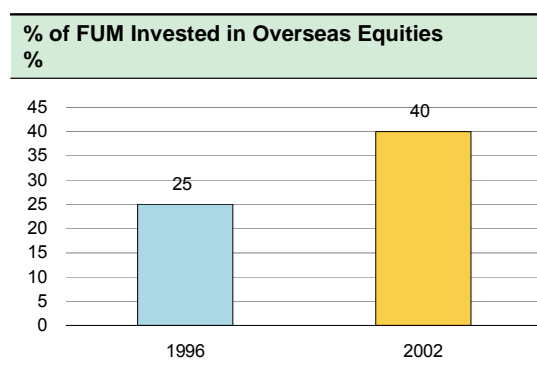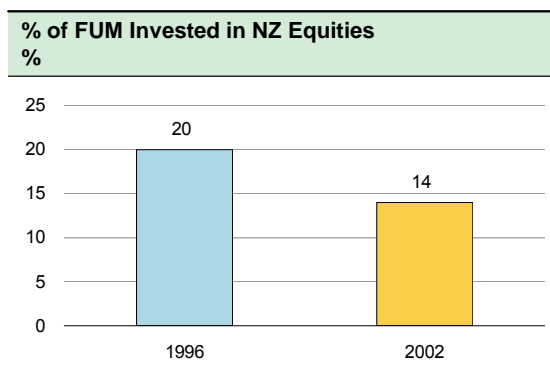
Source	New Zealand Funds Management Industry, October 2002	Source	New Zealand Funds Management Industry, October 2002

The experience of the New Zealand market demonstrates the challenges that small capital markets face in competing for investment flows and remaining relevant in a global market.

SUGGESTED MEASURES

The Australian capital market is well placed to handle future challenges arising from a globalised market. In particular, Australia has a good regulatory regime that promotes investor confidence, growing pool of superannuation funds (pool of superannuation savings expected to grow from circa $500Bn to $1,000Bn over the next 10 years), and is well connected to international markets, both through the leading edge trading platforms of the ASX and the existing presence of foreign brokers and foreign investors in the Australian markets

However the challenge is to ensure the Australian market offers sufficient scale, growth and diversity to ensure that Australian fund managers and investors continue to direct a greater proportion of incremental savings towards Australian companies rather than direct these funds to offshore companies. Similarly Australia needs to capture a greater share of foreign investments flows, rather than have foreign investors scale back their investments. Two potential responses to this challenge are as follows.

Firstly we need to be supportive of measures promoting further privatisation of government assets (such as the sell-down of the Government's remaining stake in Telstra, privatisation of NSW Electricity) and increasing the involvement of the private sector in funding future infrastructure development. This can be justified on both economic efficiency grounds and to aid further development of the Australian capital markets. As per the experience of the 1990's, further privatisation will have the effect of increasing the scale and diversity of the Australian capital market, which is likely to attract further foreign capital and provide domestic investors with greater investment opportunities. Concerns with further privatisation usually centre on deterioration of service levels and pricing, issues which are often elevated to the political forum. Whilst these concerns are valid and need to be addressed in any proposed reform, they should not necessarily represent a road-block to further privatisation. For example regulatory bodies can be given increased powers to ensure public interests are adequately addressed.

Secondly Australian investors need to be more supportive of Australian companies seeking to expand offshore. In recent years, Australian investors have focused on the risk associated with offshore expansion. Of course adopting such a mentality has not been difficult given high profile examples of Australian companies destroying significant shareholder value from offshore expansion such as AMP losing $6Bn from its UK businesses and NAB losing close to $4Bn from its US business Homeside in 2001.

As a result, the management and the board of directors of many of Australia's companies are reluctant to pursue international expansion, as they are concerned about the immediate impact of pursuing such a strategy on their share price. Whilst we should not ignore the risks, Australian investors do need to take more of a longer term perspective and be more accommodating of Australian companies who are looking to pursue international expansion opportunities that that may enhance their long term strategic positioning and future growth options.

International expansion by Australian companies, if successful has the scope to attract more foreign investors to Australian companies. Australian companies will build a higher profile in the markets in which they expand and foreign investors will view Australian companies as providing higher growth opportunities rather than merely providing a steady dividend flow. Foreign investors do not receive the benefits of franking and are thus more inclined to invest in Australian companies that have growth, rather than yield characteristics

CONCLUSION

The planned migration of Newscorp to NYSE does not signal the imminent demise of the Australian equity markets. However it is a timely reminder of the challenges Australia as a relatively small economy and small capital market faces in an increasingly globalised financial services market. Having a strong capital market which facilitates future growth of Australian companies and continues to attract higher foreign investment is essential for the future prosperity and growth of the Australian economy. Australia is well placed to continue to punch above its weight and remain globally relevant. However we need to actively pursue and support measures that facilitate the growth of our capital markets and companies. Further privatisation and supporting international expansion by Australian companies are two such measures.

Session II: State Choices Eroding Borders

HUMANITARIAN INTERVENTION, SOVEREIGNTY AND INTERNATIONAL ORDER

by Nick Bisley (Deakin University)

I   INTRODUCTION

The twin notions of sovereignty and non-interference are the foundations of the modern international system. From their origins in the Peace of Westphalia, the linked ideas that a specific body should be endowed with final and absolute authority over a territory and hence that no one has any right to interfere with matters of domestic jurisdiction, have come to be central principles enshrined in the sacred text of the current international order, the UN Charter. As the system of sovereign states has become truly globalised, the forces which have propelled a European concept of political authority have contributed to undermining these very ideas. Reports of the death, or at least imminent demise, of sovereignty in an era of interdependence and globalisation abound.[1] As states are drawn ever closer by webs of trade, investment and cultural transactions, as political power is ceded up to international organisations such as the WTO and the EU, sovereignty appears to make less and less sense. While these, at times prosaic, arguments matter, beyond them, there is a more pointed and more immediate question about sovereignty and the ideas which govern international relations: to what extent is a state's treatment of its own citizens always a domestic matter?

In the orthodox view, what a state does, or fails to do, to its citizens is its own concern. In most circumstances, this is a reasonable position. But as the events of the 1990s remind us, there are times when states act in such a barbaric fashion that it is hard to argue that others should simply stand by and allow the butchery to occur. Sometimes, the slaughter demands a response, a response which not only breaks fundamental tenets of the international system—to do with the use of force, interference in the affairs of other states and notions of sovereign equality—but also threatens to undermine efforts to build a rules-governed international system.

In the first years of the twenty-first century it appears that the longer-run norm of sovereignty and non-interference is butting up against a newly emerging sense that states are not free to act in any way that they please. For some, not only is the international system now governed by a norm which stipulates a minimum code of conduct (often referred to as 'the provision of basic human rights'), but that a failure to do so justifies, and in some instances demands, a forcible response by others to rectify that failure. This paper is a reflection on the current status of humanitarian intervention and the changing character of sovereignty. Its underlying aim is to provide a sense of what is happening to the most fundamental principle of the modern international system. There is an increasingly discernible sense that the idea of sovereignty provides a shield behind which some can act with impunity and that this is no longer tolerable; the extent to which this sense is shared by those outside the comfortable seminar rooms of Brussels, Washington, London and Canberra, is, however, less clear. Moreover, reordering the principles of the international system is a risky business; is the cost of such a move, opening as it does intervention to be used as a cloak for old fashioned power politics, outweighed by the possible benefits?

The paper will be in three parts; it will first consider humanitarian intervention, its nature, frequency, motives and justifications. Second, it will then examine the character of sovereignty and highlight its complex, malleable and changing nature and consider differing ways in which sovereignty and humanitarian intervention can be reconciled. The paper will conclude with a consideration of international order. Order is dictated by the norms of the system and the extent to

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[1] For example, Joseph Camilleri and Jim Falk, *The End of Sovereignty* Aldershot, 1992.

which states feel compelled to adhere to them; changes in sovereignty and claims about a right to intervene have profound implications for the functioning of this order which warrant examination.

II   THE STATE OF HUMANITARIAN INTERVENTION

Humanitarian intervention flies in the face of the international norm proscribing the use of force as legitimate tool of foreign policy; the universal acceptance of which is one of the more striking recent developments in international relations. Interventionists argue that its aims—the cessation and prevention of massive violations of basic human rights—justify this departure from the rules governing when states can take coercive action. Thus what one means by humanitarian intervention matters significantly. Perhaps the most comprehensive definition is provided by Holzgrefe who notes that humanitarian intervention is the 'use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.'[2] Thus humanitarian intervention has three key components which distinguish it as a particular kind of action: (1) the use of force by a state or states in a third party's sovereign territory; (2) its aims are to prevent *grave* violations of fundamental rights occurring on this territory; and (3) the action does not have the permission of the home state. Its challenge to orthodox practices of sovereignty and international law is clear: under particular conditions borders are no longer sacrosanct, force is permitted and action is justified in terms directly related to matters of domestic jurisdiction; that is how a state acts in relation to its citizens.

It has come to be an article of faith that, since the early 1990s, humanitarian intervention has been on the rise and that it has become an ever more common feature of the international system. An authoritative study notes that since the end of the Cold War there have been nine military interventions with self-conscious humanitarian motivations: Liberia, 1990-1997; Northern Iraq 1991-2003; Former Yugoslavia, 1992-; Somalia, 1992-93; Rwanda and Eastern Zaire, 1994-96; Haiti, 1994-97; Sierra Leone, 1997-; Kosovo, 1999-; East Timor 1999-2001.[3] These are all military interventions which satisfy the three criteria noted above. In the fourteen years since the fall of the Berlin Wall, only nine times have states conducted humanitarian interventions. One might argue against including East Timor here as formal permission was granted by Jakarta, yet many argue that such was the pressure put upon the Habibie government that it ranks as outright coercion. Also, it might surprise some to see Rwanda making the grade as the genocide marked the manifest failure of the international community to live up to its own standards. Yet French troops were deployed in the late summer and played a key role in stabilising the political situation and bringing the horror to an end, but not before some 800,000 Tutsis and Hutu moderates had been killed.

Compared with the Cold War period, there has been a considerable jump in the incidence of humanitarian intervention, but the scale, scope and often limited success of those that have occurred, when put alongside those humanitarian disasters where nothing happened, such as in Angola, Afghanistan, Zaire and republics in the former Soviet Union, should temper any over-exuberant judgements about humanitarian intervention as a common and positive force in international affairs.

Our purpose here is not to analyse each case but to consider them as a whole and to reflect on the ways in which the motivations behind, justifications for and the outcomes of these interventions can help us determine the extent to which humanitarian intervention is changing the character of the international system. While some theorists have argued that motives are not as

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[2] J.L. Holzgrefe, 'The Humanitarian Intervention Debate' in J.L. Hozgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* Cambridge University Press, 2003, p. 18. See also, Adam Roberts, 'The So-Called 'Right' of Humanitarian intervention' in *Yearbook of International humanitarian Law, 2001* (The Hague: TMC Asser, 2002).

[3] Thomas G. Weiss and Don Hubert, 'Interventions After the Cold War' in International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Vol. II, Research, Bibliography and Background* Ottawa: IDRC, 2001, pp. 79-126

important as outcomes when judging these interventions,[4] one common feature of the nine cases listed above is that, in almost all circumstances, security considerations were vital both in mobilising the political will to take arms and in justifying action. There are some exceptions; the British deployment of paratroopers to Sierra Leone is perhaps the clearest cut, but in the vast majority of cases the humanitarian action required more than just concerns about human welfare, no matter how dire, to get states to act. For example, in Kosovo, factors which induced military action included concerns about continued instability in the Balkans, the security implications of large-scale refugee exodus, the need to ensure NATO unity and credibility after threatening force at Rambouillet, as well as a desire to prevent a repeat of the killings in Bosnia, Croatia and Serbia in the early 1990s. In Timor, action again came not only due to humanitarian concerns but from fears about instability in Indonesia and regional security, residual guilt from the 1975 Indonesian annexation and concerns about UN credibility.

The mixed character of motivations is matched by the uneven results of the intervention of the 1990s. As humanitarian intervention seeks to prevent or stop abuse the question of timing is always significant. In all cases, with the exception of Kosovo, intervention in the post-Cold War period has always come too late to aid civilians. From the most glaring example, Rwanda, to Timor, the use of force has always been applied later than necessary. That is not to say it has been pointless, in most cases intervention has improved matters, but the large scale brutality has more often than not taken place by the time troops arrive. The notable exception to this was Kosovo, but even there, in the first instance, NATO bombings resulted in an acceleration of the killings. The results of the interventions of the 1990s has been marginal and always arguable. One clear position taken by those critical of military force argue that there is nothing humanitarian about a bomb. Taken further by those who have made careers out of pious carping have argued that intervention should always be guided by the Hippocratic principle that one should 'first do no harm'.[5] Yet this is a deeply impractical response to the realities of a world in which doing *no* harm is almost always impossible. If gangs of thugs are butchering civilians and they refuse to be talked around, if one is to respond, then force is often the only choice; it is unrealistic to insist on doing no harm. Indeed one may argue that to talk and not to fight in such an instance is to do more harm.

When seeking to evaluate the efficacy of interventions one can be taken up with the immediate concern of whether the violence was prevented or stopped. While important, one must also remember to consider what happens subsequent to the intervention. It is argued that a successful intervention is dependent not only on the cessation of violence but on the efforts to establish political structures to ensure longer term prevention of the fundamental abuse.[6] Again here the interventions of the 1990s have produced uneven results. Bosnia and Kosovo remain in effect UN protectorates, Rwanda's political stabilisation is uncertain and what stability does exists derives from domestic sources, Liberia continued to be a mess long after 1997, Iraqi safe havens were precarious until 2003, and Haiti was a clear failure. Perhaps only Timor stands as a tentative success, but even there, questions about the structures which the UN erected remain.[7]

In contrast to the patchy results of the self-styled humanitarian interventions of the post-Cold War period, there were three interventions during the Cold War which had unambiguous humanitarian benefits. India's intervention in East Pakistan in 1971, Vietnam's intervention in Cambodia in 1978 and Tanzania's intervention in Uganda in 1979 were the three standouts of the Cold War period. Each could have been presented as humanitarian actions, but were, in each case, motivated and justified primarily by concerns about peace and security.[8] India's halting of wholesale slaughter, Tanzania's removal of Idi Amin from power and Vietnam's unseating of Pol Pot's murderous Khmer Rouge were humanitarian interventions in so much as the effects of their action was the long term cessation of large scale brutality and murder even though military force had been used to achieve political and security related goals.

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[4] e.g. Chris Brown, *Sovereignty, Rights and Justice* Cambridge: Polity, 2002, pp. 137-8.

[5] Noam Chomsky has popularised this unrealistic approach to the question of intervention.

[6] E.g. Robert O. Keohane, 'Political Activity after Intervention: Gradations in Sovereignty' in Holzgrefe and Keohane (eds), *Humanitarian Intervention*, pp. 275-98.

[7] Simon Chesterman, *East Timor in Transition: From Conflict Prevention to State-Building* IPA Research Report, 2001.

[8] On which see N.J. Wheeler, *Saving Strangers* Oxford University Press, 2000.

Although the post-Cold War interventions have not been unambiguous successes, it is clear that, through the 1990s, the language of humanitarian intervention has become an increasingly legitimate means of justifying the use of force. While in the Cold War a humanitarian cause was simply not an acceptable means for justifying force, since 1990 humanitarianism has begun to take important weight in the political and diplomatic language about the use of force. Although the nine interventions mentioned above were motivated largely, although not exclusively, by humanitarian concerns, the language used to acquire permission, primarily through the Security Council of the UN, was often that of traditional security concerns.[9] This was certainly the case in the early 1990s, but by 1999, in Kosovo, states were actively using the language of humanitarianism as both a motive and justification for their actions.[10] This development begs the question whether or not humanitarian intervention has developed as a new international norm, for if it has, then it follows that states then have a *right* to intervene, a development of great ethical and political significance. Further, it would be a development that requires us to consider the costs alongside the benefits of such a move.

In a widely cited speech in 1999 Kofi Annan noted that the development of a new norm in favour of intervention would 'in some quarters, be met with distrust, scepticism, even hostility.'[11] This distrust derives in part from those many states whose experiences with the European empires were less than humane yet often dressed up in the language of civilisation and humanity. But we have seen more recently the kind of action that critics of humanitarian intervention have warned against, that is the retrospective attempt by the US-led coalition to justify their intervention in Iraq on humanitarian grounds. This is precisely the kind of action which demonstrates the possibilities for abuse by the powerful of norms which justify intervention.

But is there indeed such a norm, and what does it involve? At the very least humanitarian intervention really implies three new normative developments that, if accepted, would require dramatic changes in international law and practice. Humanitarian intervention implies: (1) in specific circumstances states are no longer entitled to total independence and non-interference; (2) that the use of force is legitimate to pursue specific moral ends; and (3) that if gross human rights violations can justify intervention, they can also *mandate* action and produce a duty to intervene.

The relative infrequency of intervention, at least measured against the frequency of situations that warrant a humanitarian response, might be leveled as an argument against the acceptance of such a norm. Yet it is not that states are not undertaking military action due to high-minded concerns about sovereignty and humanitarian intervention's moral appropriateness. Rather, for many the moral rightness of taking military action to prevent or stop humanitarian disaster's is clear cut and widely accepted[12]—and here one might reasonably argue that there is, at the very least, a developing norm and shift in the character of sovereignty—but intervention is still constrained by cruder calculations of interest, both security and economic, and pragmatic concerns to do with the ability to make a sufficient impact.

In short, after the experiences of the 1990s we can reach a number of tentative conclusions about the state of humanitarian intervention. First, the will to act is often lacking. The failures of Rwanda and Somalia were not due to respect for sovereignty but the result of political timidity and a manifest lack of leadership. Second, there is clearly not a settled norm regarding humanitarian intervention and its legality under international law is certainly questionable. Third, the ideas of humanitarian intervention have a profound and widespread resonance in international society. The belief that states have a duty to citizens beyond their borders is gaining greater currency; the days in which humanitarian concerns would not come before the Security Council, as they were not relevant to questions of international security, are gone. While the notions underlying humanitarian

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[9] Wheeler, *Saving Strangers*.

[10] The best example was Tony Blair's 'Doctrine of the International Community Speech' to the Economic Club of Chicago, in April 1999, a speech given while the Kosovo air campaign was underway. Available at http://www.number-10.gov.uk/output/Page1297.asp.

[11] Secretary General's Annual Report to the General Assembly, 1999, Press Release SG/SM7136.

[12] Although some argue that it is not widely enough accepted to claim that there exists a genuine international consensus among states on the matter.

intervention have a resonance, we must recognise that intervention is still at the mercy of questions of interest and security understood in an old-fashioned sense. These questions are still the *ne plus ultra* of international affairs, although humanitarian intervention is making some headway, any assessment of its place in international society must recognise this reality.

III   SOVEREIGNTY AND NON-INTERFERENCE IN THE 21ST CENTURY

Any assessment of the significance of humanitarian intervention for international politics must confront the thorny issue of sovereignty, the idea which is the bedrock of international affairs. In its traditional guise sovereignty refers to the attribute of formal political independence from others. More precisely, sovereignty is the idea that final and absolute authority lies in a specific institution and nowhere else.[13] In this sense, sovereignty refers to formal attributes of autonomy, to the idea of *authority* and not to the substance of whether states can act independently. The two most obvious norms of the international system which derive from sovereignty are (1) legal equality and (2) non-interference. If the principle of sovereignty holds that absolute authority over a specific territory lies in one body and nowhere else, it follows that other territories will be governed by bodies which have the same attributes and hence these bodies should be accorded equal treatment. More obviously, absolute authority implies that no one has the right to interfere in the affairs of others.

International legal scholars argue that sovereignty entails more than just formal autonomy and that it refers to basic levels of competence to do with a functioning government, established borders and so on.[14] Our concern here is less to do with subtle debates about the 'real' character of sovereignty, rather it is argued that humanitarian intervention is changing the nature of sovereignty, and hence the rules of the international game, and to evaluate this claim we need to consider what sovereignty is and how it affects the policies states adopt.

Some of the more strident claims made about sovereignty, usually bemoaning its loss to some foreign force, tend to make the basic error that sovereignty exists in some absolute fashion. Seeing sovereignty as something you either do or do not have, rather like gold, fails to recognise sovereignty for what it really is, that is, a complex principle which has always been subject to constraints and which is constantly being shaped by economic, political and social forces. Stephen Krasner provides a useful way of thinking about the complex and multifaceted nature of sovereignty. He argues that there are four attributes of modern states which the term sovereignty covers: (1) authority over the domestic population; (2) control over and regulation of borders; (3) international recognition and personality; and (4) independence of external authorities in decision-making.[15] Even the most cursory examination of these four aspects of sovereignty reveals that it is very rare for states to enjoy a completely 'sovereign' existence. Whether one is influenced by membership of an international organisation, such as the WTO, or one has handed over aspects of border control in a customs union, sovereignty in the absolutist sense that many tend to think of it simply does not exist. This is all a means of saying that sovereignty is divisible and that humanitarian intervention does not present the kind of fundamental challenge to sovereignty as is sometimes imagined.

A second important, although often overlooked, aspect of this question is the relative novelty of the universal application of a firm non-interference principle. Until the period of decolonisation in the post 1945 period there were two systems in action. Among the European powers there was a strict adherence to the rule of non-interference, but in European relations with non- Europeans then the rule was not held to apply. The crude justification for this was what was known as the 'standards of civilisation' whereby Europeans did not extend the privilege of the norms of their Westphalian system (although they did believe it to be universal) to those societies

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[13] A classic statement of sovereignty is F.H. Hinsley, *Sovereignty* London: Watts, 1966.
[14] This international legal view of sovereignty is codified in the 1933 Montevideo Convention.
[15] Stephen D. Krasner, *Sovereignty: Organised Hypocrisy* Princeton University Press, 1999.

they felt did not meet their standards.[16] International society, it was felt, had certain standards, those who fell short were not deemed to be members and thus action towards them was not to be constrained by the rules that governed relations between members. In short, a firm non-intervention principle did not exist globally until the post 1945 period. As such, the idea that non-intervention is a fundamental and non-negotiable part of the Westphalian order does not quite get the story right.

Humanitarian intervention clearly breaches the idea of non-intervention. Those societies who were affected by the failure to extend the Westphalian principles to their political authorities are, unsurprisingly, those which are most wary of claims that seek to water down the non-interference principle. As such, some see humanitarian intervention as a new form of imperialism. Yet these genuine concerns not withstanding, the rules and norms which regulate international life, and which seek to provide some basic sense of order in a system of juridically equal bodies in which there are massive discrepancies in capabilities, are mutable. They change to reflect the preferences and practices of states and the value, both instrumental and ethical, that people believe them to have.

Reflecting this, a recent effort has been undertaken to reconcile the emerging interventionism with the principles of international order. Taking its mandate from Kofi Annan's direct question 'if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that affect every precept of our common humanity?'[17], the International Commission on Intervention and State Sovereignty (ICISS) was established, initiated by the Canadian government, to try to find some common ground in this contentious debate. While the report that the Commission produced dwells on the range of aspects of humanitarian intervention including justifications in international law, priorities, and operational principles, its most significant development was its reconceptualisation of sovereignty. Usually one ought to be wary when academics and others attempt to reconceptualise complex matters, but in this case the ICISS report is deliberately designed for the policy world.[18]

The Commission's conclusion is that sovereignty, like international law, evolves. While as a principle of the international system, it is fundamental, they argue that sovereignty does not entail a right to unfettered action within a state's domestic sphere. Rather they conclude that sovereignty involves both rights and responsibilities. Just as sovereignty involves a right to independent action in a range of spheres, the Commission argues that it entails two key responsibilities: (1) the responsibility to respect the sovereignty of other states; and (2) the responsibility to respect the basic rights of its citizens. For the Commission, the primary responsibility of a sovereign state is to protect its people from serious harm. Following from this, when a state fails in this responsibility, then the principle of non-intervention yields to what they refer to as the 'international responsibility to protect.' In moving the meaning sovereignty away from questions about control to questions about responsibility they attempt to reconcile existing international law with a desire to prevent atrocities. The second crucial move that they make is to argue that there is no right to intervention, rather there is a responsibility to protect and act. This is a highly solidarist project and one which has some unsatisfying aspects, but this is to be expected in such a international project. For example, it is far from clear how these principles will energise the international community when its members do not feel they have compelling reason to take the necessary action. The ongoing failure to act in the Durfur region of Sudan is a case in point.

That said, the ICISS report is a significant development that provides a meaningful policy framework for states who believe that our common humanity brings with it certain obligations that override the political limits of the modern international system. Indeed, as an articulation of the liberal belief that there are times when we owe a duty to other human beings who do not share our

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[16] See Edward Keene, *Beyond the Anarchical Society* Cambridge University Press, 2002.

[17] Secretary General's Annual Report to the General Assembly, 2000, A/55/1:
http://www.un.org/documents/sg/report00/a551e.pdf

[18] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect, Vol. I* Ottawa: IDRC, 2001

citizenship, the Commission's report is an excellent representation. Moreover, it represents something like a nascent international consensus on this question.

Sovereignty changes to reflect the practices of states, their preferences and the changing social, economic and political circumstances they find themselves in. In the past 15 or so years a liberal consensus has begun to emerge that an understanding of sovereignty which sees the principle's adherence as more important than the prevention of mass murder as unacceptable. It is less clear, however, how we should act and, more importantly, how we can motivate states to act when they do not feel any more compelling reason than disgust.

IV   INTERVENTION AND INTERNATIONAL ORDER

Given the emergence of humanitarian intervention as a specific form of the use of force, what conclusions can one draw about the character of international order, and the mechanisms which induce and regulate it,? Humanitarian intervention throws up contention at all points, is it effective, is it legal, is it moral and what impact is it having on the international system? Kosovo was perhaps the most complex example—serious doubts exist about its legality, efficacy and consequences—and generated something of a cottage industry of comment and interpretation. From all this one can draw two clear conclusions: there is no clear and unambiguous consensus of a norm of humanitarian intervention; and there is a genuine concern that such efforts to establish norms that allow for intervention will be used by the powerful to justify acts which are in breach of international law. It is this tension between the rules that govern international order and the moral requirement to act when horrors are being committed that illustrates the diverging forces in the world today.

The inviolability of borders, sovereign equality and non-interference are the foundational ideas on which the modern international system is built. The interactions among states are governed by a complex network of rules, norms and laws which take as their starting point the protection of these ideas. Yet norms develop to reflect changing circumstances and practices and we find ourselves at a point when it appears that there is a widespread, but by no means universally accepted, sense that if a state abuses the basic rights of its citizens then its sovereignty should no longer be respected. How this sense can be integrated into a system where the rules and norms are set in the opposite direction is far from clear. Humanitarian intervention exists as an exception to the rules of the international system, a legitimate one, but one that lacks sufficient support to warrant a reformulation of the international legal regime. Is this really enough?

One pragmatic proposition lies in marrying up humanitarian concerns with those issues which are traditionally more accepting of the use of force. Thus states can see a compatibility between advancing interests, promoting international law and protecting basic human rights.[19] Here arguments about rethinking security in terms that include more than state-based military threats to territorial integrity can begin to have some purchase. Such an approach has a number of shortcomings, states can easily claim interests are not being threatened in far-off corners of the world, and that human rights abuses are not a sufficient threat to security to justify risking one's own troops.   A second response to this challenge is to question the extent to which humanitarian intervention poses a threat to international order. There can be no doubt that a loose norm of intervention would be a dangerous thing. Without explicit rules and criteria then interventionism would produce at best a well intentioned vigilantism with those involved determining the rules on an ad hoc basis, at worst, it would provide a blank cheque for states to interfere in the affairs of others in the name of a high-minded ideal. If humanitarian intervention were guided by clear and strict criteria and if states are genuine in their commitment to the prevention of barbarism—two big ifs—then there is no reason intervention cannot sit within an evolving international legal framework.

Here it is worth considering the report of the ICISS once again. In arguing that sovereignty has a basic ethical content—to do with the treatment of one's citizens—and that the principle of

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[19] Wheeler makes this one aspect of his 'solidarist' argument in *Saving Strangers*.

non-intervention yields when this content is not enforced or respected, they find legal and normative scope for intervention. The report recognises that intervention is an exceptional measure and not to be undertaken lightly or without necessary justification. To that end they argue that military intervention must satisfy: (1) a just cause criterion, where military action is only warranted when there is a large scale loss of life due to state action (or inaction), or large scale ethnic cleansing; (2) respect the following precautionary principles that the action must have the intention of halting and averting human suffering, that military force is the last resort, that the use of force is proportionate and that there must be reasonable prospects for success; and (3) and be undertaken with appropriate authority, ideally by the UN Security Council, if not then via the General Assembly or through regional organisations under Chapter VIII of the Charter.[20]

While a not utterly unproblematic project, the ICISS demonstrates how intervention can fit, with some adjustments, within the normative and legal framework of the international system. Humanitarian intervention, when properly carried out with correct intentions, does not provide the kind of profound shock to the Westphalian system that some may fear. It is right to be cautious about a dramatic realignment of the international legal system to allow for intervention, it is an imperfect system but it is the only system of rule and not power that we have and it is worth protecting.[21] But the use of force for humanitarian ends can be more than just some form of exceptional illegality in international law. Provided strict criteria for action are adhered to and that action is limited and basic principles, such as *uti possedeitis juris*, are respected there is scope to incorporate the sense that we owe a duty to save the lives of others when we can into a rules-based international system.

The problem really is not one to do with law, norms, sovereignty and other abstract concepts, but is one of political will. Failures in Haiti, Somalia and Rwanda derived from an absence or severe shortage of a desire to act. Indeed, if one is concerned that humanitarian intervention is eroding sovereignty or undermining the meaning of borders, then one should equally be concerned about the emerging Bush Doctrine and its interventionism which is couched in a semi-humanitarian language. The National Security Statement of 2002 is clear, for the US, states are no longer equal—some are allowed to pursue certain kinds of weapon programmes for their self-defence while others are not—and sovereignty is often simply a shield behind which terrorists and other 'enemies of freedom' can hide. As such it is to be ignored, and the US, and its allies, will determine, with no reference to international law, what action is appropriate to remedy the situation. Indeed, in February 2003 Richard Perle took to the airwaves in Europe to argue that the UN Security Council was a less legitimate body than NATO's North Atlantic Council as the latter was made up of democracies, an interjection that was a disastrous diplomatically as it was revolutionary in its rejection of core principles of international law. It is the careless actions of the Bush administration and its belief that it knows best, and can and should take military action wherever it sees fit, which have and will continue to have a far more immediate and pressing challenge to the practice of sovereignty and the structures of international order, both normative and descriptive, than the kind of challenges posed by military interventions for humanitarian goals.

The question of intervention is at root a question about our duties and obligations to strangers. That we live in a world in which obligations to those whose citizenship we share, whether they too are strangers to us, are more important than those we owe to others is clear. The circumstances of humanitarian intervention most clearly and acutely expose the moral poverty of this position. Indeed, the emergence of a growing sense that not only should we act to prevent barbarism, but that we should rethink the basis of international order to reflect this is evidence that the rules which govern the relations between states should have some content which reflects how it is we think states should treat their citizens. The last ten years of the twentieth century brought this sense out into the world, yet it is far from clear whether these years will be an aberration to

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[20] ICISS, *Responsibility to Protect.*
[21] On this see Michael Byers and Simon Chesterman, 'Changing the rules about rules? Unilateral humanitarian intervention and the future of international law' in Holzgrefe and Keohane (eds), *Humanitarian Intervention*, pp. 177-203.

which we look fondly back as a period of utopian optimism or whether momentum has decisively shifted so that the international order is shaped by a basic sense of what states owe their citizens.

Session II: State Choices Eroding Borders

À LA CARTE SOVEREIGNTY: REWRITING THE MENU

by Fleur E. Johns* (University of Sydney)

The question put to me by the conference organisers – whether international law's expansion is eroding state borders – invokes a familiar narrative. This narrative relates the inexorable march of convergence and interdependence, punctuated by periodic bouts of intransigence and parochialism on the part of sovereign States. In relating this narrative, my appointed role as an international legal academic is to laud the inauguration of the latest international legal institutions and treaty regimes. I am, at the same time, expected to rail against the persistent short-sightedness of States, including Australia, in approaching these institutions and regimes.

I do, on occasion, indulge in some version of this narrative of opposition and trade-off between international law and State sovereignty. It does not, however, particularly entrance me, nor do I find that it has much purchase as a critique of policies and practices that I oppose. Accordingly, today, I wish instead to question the premise of this conventional frame. The sovereignty-international law opposition, I put to you, simply does not hold.

To take perhaps the most trite of grounds for approaching this antagonism with suspicion, consider the extent to which the discipline of international law *needs* sovereignty to retain its meaning (and, crucially, its self-understanding) as a benevolent force for mediating conflict between discrete yet interconnected sovereign States. International law *needs* sovereignty and it propagates and affirms it at every turn. As such, the notion that the flourishing of international law necessarily entails the erosion of State borders is, I think, somewhat misguided.

To be clear, I regard the notion that international law is eroding State borders as misguided not because States' regulatory powers remain, in every sense, as strong as ever. Nor do I consider this proposition misguided because international law is *really* a play of State politics: a mere façade of false consciousness, behind which States continue, consciously, to scheme and deal. Rather, I am simply not persuaded that understanding contemporary events or recent history in this oppositional mode captures much of what seems to be going on, or what is at stake, in those events and histories.

To illustrate and develop this argument, let me turn to a specific example suggested to me by the conference program – the International Criminal Court.

Australia's ratification of the Rome Statute of the International Criminal Court as of 1 July 2002, simultaneous with that Statute's entry into force, has been understood to represent an expansion of international law and a commensurate retraction of Australia's and other States parties' territorial and political competence. In some respects, this sounds like an accurate assessment. For instance, the Statute calls for heads of state and others representing States in an official capacity to forfeit the immunities from prosecution that they are traditionally afforded under customary international law. In other respects, however, the Statute negotiates this apparent tension by affirming or deferring to State sovereignty. Its admissibility clauses, for example, give priority to States' national investigation and prosecution of crimes within the International Criminal Court's purview.

The inconclusiveness of the International Criminal Court Statute in this regard moves me to consider a specific scenario. Does the submission of a State's nationals to the International Criminal Court necessarily have the effect of strengthening "the international" and weakening "the national"? What if the perpetrators of the alleged violations of international humanitarian law at Abu Ghraib were tried before the International Criminal Court? Would the effect of this be to weaken U.S. sovereignty?

Let us set aside, for purposes of considering this scenario, the improbability of the U.S. availing itself of the opportunity (contemplated by the International Criminal Court Statute) of accepting the jurisdiction of the Court on an ad hoc basis. Let us suspend too the question whether the war crimes alleged to have taken place at Abu Ghraib are of sufficient gravity to trigger the jurisdiction of the Court. Let us engage, at this moment, in a thought experiment: imagining an International Criminal Court trial of the Abu Ghraib tormenters; evaluating the account of international law's institutionalisation eroding State borders in this light.

In some senses, such a trial *would* seem to entail an erosion of State borders through a voluntary relinquishment of U.S. State sovereignty. The hand-over of U.S. nationals to a non-US judicial institution for trial over acts allegedly performed in connection with their official military duties would have considerable symbolic resonance. It would imply direct submission, on the part of the U.S., to the reasoning and rulings of judges drawn from other legal systems, deciding according to international legal doctrine. It would subject the operations and infrastructure of the U.S. military to rigorous extra-national scrutiny under the rubric of that doctrine.

In other senses, however, such a trial might occasion the buttressing of U.S. State sovereignty, rather than its erosion. "Cleansing" the events of Abu Ghraib through international legal handling could work to strengthen the authority and perceived legitimacy of the U.S., at least across some constituencies. Such a case would likely direct critical attention towards that which would be framed as an exceptional infraction of the laws of war. In doing so, attention would be drawn away from the merits and demerits of the main contentious event: the ongoing military operation in Iraq. Furthermore, those decision-makers who would be ruling on such a case belong to a judicial milieu the members of which are acculturated (as their national counterparts) to stand apart from the political, economic or social fray. In this respect, the role prescribed for the members of the International Criminal Court bench affirms the very distinction upon which the notion of State sovereignty rests: the distinction between public authority and private power.

Are relationships between sovereign States and international legal institutions usefully thought of, then, in terms of the retreat of the bordered and the swell of the borderless? If, as I have suggested, this is not a particularly illuminating frame, how else might one approach the apparent proliferation of international legal institutions and norms?

One approach would be to conceive of this phenomenon as a stylistic or discursive shift. Preference is thus being given to that which we understand as "judicial" modes of negotiating conflict over that which we understand as "political" modes of negotiation. Further investment is being made in the symbolic capital of judicial institutions; an investment already made and realised (with interest) in many other settings.

Another way of comprehending the propagation of international legal institutions is as a re-allocation of resources between elites. The expanded potential for jurisdictional shift from national courts and tribunals to the International Criminal Court might, for example, be construed as a transfer of authority from one technocratic elite to another such elite. The former elite is comprised of those understanding and defining themselves primarily (although not exclusively) by reference to nationality; the latter, of those understanding and defining themselves primarily (although not exclusively) by reference to pragmatic cosmopolitanism.

A third way of reading the spread of international legal institutions is as the outcome of negotiation between poles located at places *other* than State capitals. Accumulations of opinion and resources in large urban centres, for instance, might have more to do with this phenomenon than national governments' policy choices. Hence that rather hackneyed observation that residents of Sydney are likely to have more in common with, say, residents of Toronto or Mumbai, than with residents of Jerilderie, Broome or, for that matter, Canberra.

Some combination of these accounts seems to get closer to an appreciation of the cross-cutting allegiances and divergences out of which the relationships that we commonly seek to understand in terms of sovereignty-versus-international-law are constituted. These relationships only

contingently map onto a diagram of bordered States and borderless international legalism. For one, the placement and reach of any one border on such a map is perpetually in contention. Accordingly, there is much to be said for approaching this taken-for-granted model of international relations with scepticism.

Reflecting upon the much anticipated (and, on occasions, much feared) shift from State sovereignty to international legal cooperation, there may be cause to strike a more tragic note than that struck by my colleagues on this morning's panel. One might read the latest accounts of the expansion and institutionalisation of international law as disturbingly acquiescent in an entrenchment of power along relatively traditional lines; lines reminiscent of that particular, conservative vision of "civil society" projected by such eighteenth century writers as Edmund Burke and William Blackstone. The aristocracy of those accounts has been supplanted, perhaps, by a technocracy of experts, proffering advice on all matter of topics from finance to health. The church might have given way to the secular basilicas of international human rights law. The military may have been superseded by a melange of public and private security forces, both licit and illicit. Could the lines linking and dividing these sites of authority be the "transforming borders" of the conference title?

Session III: State Choices Reinforcing Borders

MAINTAINING AUSTRALIA'S BORDER: AN OPEN AND SHUT CASE?

by Michael Tempany
(Dept of Immigration and Multicultural and Indigenous Affairs)

INTRODUCTION

Today I would like to speak on the role of border control, the myth of free movement, and dilemmas states face in dealing with unauthorised arrivals.

Along the way I hope to impress that current immigration policies are both reinforcing the border and lowering entry barriers for honest people willing to comply with our terms of entry, and that measures to streamline entry processes and pathways are benefiting Australia.

BORDER CONTROL

Our venue today provides a neat analogy for my first point. We are inside a library that I understand contains some 4.7 million items. It is different, however, to a regular library in that nothing can be borrowed.

Consider then a regular library – maybe even your local public library. Thousands of dog-eared books with missing pages, scratched CDs and out of date reference volumes sit on the shelves. Members of the public are able to borrow from the collection if they have a valid library card.

To obtain a library card, members of the public need to satisfy certain criteria, such as residence in the jurisdiction the library is located in. Once issued a library card, members of the public may borrow a limited number of items, usually for a month.

If the items are not returned before the month elapses, penalties may start to apply to the borrower. They might incur a fine that increases for every day the items are overdue, or they might lose their borrowing privileges for a period. This is only fair.

All of these movements and events are tracked through systems, which know at any given moment what items are on the shelves, and what items are held by borrowers and when they are due to be returned. These systems, and a hardcore group of aged pensioners, are crucial to the ongoing existence of the library.

What would happen to our library if these systems were not in place? I suspect that first, disorder and chaos would reign on a greater scale than is already the case, and second, over time, fewer items would be returned. Eventually the library would have to close due to a lack of resources.

Compare the library to Australia's border. In 2002-03, there were over 17 million arrivals and departures. Non-citizens are able cross our border if they have a valid travel authority, usually in the form of a visa.

Just like a library card, to obtain a visa non-citizen's need to satisfy certain criteria, which vary depending on the type of visa applied for. Once issued a visa, non-citizens may enter and remain in Australia for the duration of that visa, subject to certain conditions.

Like a library user, if a non-citizen breaches their visa conditions, or overstays their visa, or tries to enter without a visa, penalties may apply. They might be asked to leave Australia immediately;

they might be banned from entering again; or they might be detained until their details can be established. This also, is only fair.

Like a library but on a larger and more sophisticated scale, all of these movements and events are tracked through systems that are crucial to the ongoing integrity of Australia's border, and ultimately, the well-being of all Australians.

What would happen to Australia's border if these systems were not in place? What would happen to an Australia without border control?

FREE MOVEMENT

Some might argue that an Australia without border control would be an Australia with free movement, where people are able to cross our border at will and unconditionally gain access to all the rights and privileges associated with Australian citizenship.

Such an arrangement already exists in the European Union (EU), where free movement is enshrined in law and EU citizens are able to enter and work freely in most member states while accessing all the benefits enjoyed by locals.

This, however, is not a true free movement system. Why not? Because barriers to free movement still exist. Barriers like the cost of travelling to a new country and establishing a home. Barriers associated with speaking a foreign language. Barriers to do with finding employment. Barriers such as the absence of relatives and close friends, and the support they provide. The law cannot touch these barriers.

There is one other barrier in the EU that the law can touch, but which states have chosen not to: member states can still refuse entry to EU-citizens on grounds of public order, security and health. Even in a free movement system, mechanisms for controlling entry still exist.

Most states have similar mechanisms in place, and whilst they differ from country to country, they generally exist to protect citizens from things such as disease, terrorism, cheap labour, and in the case of Singapore several years ago, men with long hair. This is a state's sovereign right. Australia is no exception.

Until states are able to address, tolerate or eradicate these concerns and other barriers, real free movement devoid of barriers might just be a grand ideal for some time.

UNAUTHORISED ARRIVALS

So far, we have established that systems need to be in place to manage and control the border, and that true free movement might be idealistic for the time being.

Which brings us to this question – how should a system respond to a person trying to enter a state as if there was a free movement system in place? In other words, what should a state do when a person arrives at the border without authorisation or a valid visa?

The logical thing would be to return them to their own country. This happened on over 900 occasions at the Australian border in 2002-03.

What, however, if the person arrives without any documentation? We have no idea about what country they originate from, their health, their character, or their history. How should a state respond in this situation?

If the response is to allow the person into the community until their details can be established, what is the probability that they will disappear into the community and not be found? If they manage this, where do they live? How do they survive on a daily basis?

Are they able to find someone who will employ them illegally? If so, do any workers rights protect them? What if they are injured on the job and unable to work again? What might be their impact on existing workers or job seekers?

What if the person suffers from a medical condition? Can they receive medical assistance? What if they have an infectious disease? Are they a risk to the community?

What if the person wants to marry? Purchase a home? Register a car? Open a bank account? Travel overseas?

Down the track, should the person be entitled to receive an aged pension if they have never contributed taxes or contributed only for a short time? In the meantime, should they be entitled to welfare assistance?

What are the options or solutions available to the state?

One possible option might be to grant the person unquestioned permanent residency on arrival, giving them access to all the rights and benefits associated with living in that country, including welfare support.

This might be feasible provided the number of persons arriving was relatively small. However, what would happen as word got out about how easy it was to get in? What would happen as the group became larger?

What would be the impact of this on wages and the labour market? The welfare and public health systems? The economy and fiscal sustainability? The community?

Another possible option might be to detain the person until health, character and other checks have been completed. This is Australia's approach, and increasingly the approach taken by other countries.

BORDER SYSTEM DELIVERING BENEFITS

We are fortunate in that only a small number of unauthorised arrivals have arrived here in recent times, and that we have a relatively small and static number of illegal non-citizens residing here - around 60,000. Our problem is manageable.

In contrast, consider the United States. Just under 300,000 unauthorised arrivals cross the US border every year, adding to the 12 million illegals already living in the country. If, like the United States, four per cent of our population were illegal non-citizens, our 60,000 illegals problem would be 800,000.

There are two reasons why our problem is much smaller than the United States. First, we are an island nation surrounded by cold, shark-infested waters. Second, Australia has a world-leading border management system.

I do not have time to explain this system - if you are after some excitement following drinks this afternoon I suggest you visit the DIMIA website. The point I do wish to drive home here, however, is that Australia's border management system does two things very well.

First, it helps protect Australia from threats to public order, security and health, but not in a xenophobic way.

Second, it is actually helping to lower barriers and open pathways to entry, for non-citizens who respect and abide by the system.

Indeed, the process has never been so streamlined. If you wish to double your excitement this evening, look up Electronic Travel Authorities (ETAs) and eVisas on the DIMIA website. These initiatives are creating clear and open pathways for visitors willing to comply with our conditions of entry.

The upshot of these initiatives is improved demographic and economic outcomes for Australia. For example, if migration were to cease tomorrow, the size of our working age population would start to decline around 2015. Thanks to migration, our working age population will grow for some time.

Furthermore, continuation of the current Migration Program compared to no Program is estimated to deliver an increase in living standards by 2020-21 equivalent to the effect of a $21 billion tax cut.

CONCLUSION

And that is the point. If we were to take away the controls and systems that regulate our border, and embrace a system of unconditional free movement, we would likely jeopardise the benefits we currently receive from considered and balanced immigration policies.

A time may come when free movement may become a reality, and it could be a good thing. Until then, however, states will continue to implement policies to protect their citizens. Immigration detention is an expression of this responsibility, not the result of raising barriers. It is not the main issue in this debate, however.

The main issue, and the point I wish to impress, is that Australia's border has never been lower, and the pathway clearer, for those who comply with the immigration system. The border has never been higher and more difficult to scale, however, for latent abusers of that system.

Session III: State Choices Reinforcing Borders

TERRORISM IN AUSTRALIA – FROM WHERE THE RISK?

by Christopher Michaelsen (Australian National University)

Many thanks to the Lowy Institute for inviting me to this conference; it is a great pleasure to be here. I have been asked to talk about the 'war on terror' and national security. Rather than dealing with Australian responses to the threat from international terrorism, I am going to concentrate on the question of whether or not it is likely that we shall witness a large-scale terrorist attack in Australia in the near future. I would like to start, however, by addressing six issues which I believe have significant implications on the present terrorism debate in Australia and which in my view influence quite considerably current threat assessments. I shall then present my own five-point threat assessment and conclude with some thoughts on what I believe is a major terrorism-related risk in Australia today.

Let me begin by making a few observations on the state of current threat assessments and the public debate on international terrorism and Australia's national security. First, the term 'terrorism' is now being used by governments and the media to describe all kinds of different forms of violence, regardless of whether they are politically motivated or not. Indeed, I read an article the other day about 'terror-chimps' in Uganda abducting little children left behind in the shade of trees by their parents (while the parents are out working on the fields).[22] Now that the term 'terrorism' has been introduced into the animal world, I guess it is just a matter of time until we see 'terrorism' taking over in sports ('terror foul') or as an offence in the area of traffic regulations ('terror driver'). The 'terror-chimp case' is, of course, but one illustrative example of a recent trend to use the term 'terrorism' in a very broad sense in order to attract widespread public attention. 'Terrorism' has always been an amorphous concept and a deeply political classification. However, the recent 'over-usage' of 'terrorism' has undoubtedly resulted in the term losing its value as analytical tool.

Second, before 9/11 and Bali, Australia had very little or no experience of terrorism. While the Sydney Hilton bombing of 1978 probably qualifies as an act of terrorism, Australia has never witnessed a sustained terrorist campaign comparable to the series of attacks in other Western democracies, especially in Europe. The United Kingdom, for instance, has been repeatedly confronted with terrorism by the IRA and the Provisional IRA. Similarly, Spain has a long history of 'separatist' terrorism mainly perpetrated by ETA. Germany and Italy both had serious troubles with left-wing terrorism in the 1970s and 1980s (Red Army Faction / Red Brigades). This kind of politically motivated violence is unknown to Australia. As a consequence it is more difficult for the Australian Government and the population in general to put the extent of the current terrorist threat into perspective.

Third, there are currently very few or no detailed threat assessments available, at least as far as non-classified or open source material is concerned. It seems to me that since 9/11 and Bali there is this general assumption in Australia that the country is subject to a serious terror threat. This view is promoted by several so-called terrorism experts whose scholarly credentials and/or background knowledge are often questionable. Indeed, I have the impression that many of the current commentators turned terrorism experts on 11 September and that the number of these experts is probably higher now than the number of actual terrorists.

To my surprise, think tanks have not provided any detailed assessments either. On the contrary, reports such as the Australian Strategic Policy Institute's (ASPI) "Beyond Bali" (November 2002) or "Beyond Baghdad" (May 2004) contain only a few weak paragraphs on the terror threat to Australia and provide no in-depth analysis at all. Equally alarming, in many of the comments made on terrorism no distinction is drawn between the threat to Australian interests overseas and the threat in Australia itself. As far as the Federal Government is concerned, it strikes me that no major

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[22] "Uganda: Angriff der Killeraffen", *Der Spiegel* 19/2004 (3 May 2004).

terrorism-related document has been released yet. While DFAT has announced the publication of a terrorism White Paper for late July 2004, this comes nearly three (!) years after 9/11 and two years after Bali. This is not what I would regard as speedy strategic response to the allegedly greatest threat and challenge Australia has faced in recent history.

Fourth, and as a direct consequence of the lack of detailed assessment, the debate in Australia on the threat from international terrorism is very much opinion and policy driven. 'Terrorism' and 'National Security" are seen as election winning issues for 2004. As a consequence, the terror threat has to fit within one-phrase policy-slogans. Prime Minister John Howard, for instance, pointed out on 16 March 2004 that "[w]e are essentially a target for terrorists because of who we are rather than what we've done."[23] Similarly, Attorney General Philip Ruddock declared on 21 April 2004 that "[i]t's important to recognise the threats we face are graver than ever before (…). I think it's a high probability [of a terror attack]"[24].

Unfortunately, this sort of debate is fuelled by similar generalised statements from representatives of the intelligence community and academia. ASIO Director-General Dennis Richardson, for example, observed on 19 March 2004 that "Australia is a terrorist target for its values (…). We are a target because we are who we are".[25] According to ASPI's "Beyond Bali", for instance, "[w]e should now rate the risk of terrorist attack on Australia (…) as High." However, detailed and convincing explanations on *why* we are targets, *why* we are targets for our *values* (indeed I'm wondering what these values are) or *why* the threat should be regarded as 'high' are nowhere to be found.

Fifth, it seems to me that the current public debate (especially in the media) is affected by a significant 'terminology confusion'. In many of the comments on terrorism the terms 'risk' and 'threat' have frequently been used interchangeably. However, 'risk' is a product of likelihood and consequence. 'Threat' is an indication of evil to come. 'Threat' therefore seems to be the main short term variable that affects the likelihood of an attack occurring. Other factors could include the accessibility of a potential target, the likely number of casualties that would result from the attack, and the capability of a terrorist group to carry out an attack successfully. I have the impression that the term "risk" on the whole is very poorly understood. As a consequence, the level of actual risk is often overstated. I believe this is a real danger with many of the assessments being made at the moment by those who do not break things down into small subjective judgements and run the reality meter over their assessments.

Finally, since 9/11 there is, of course, a huge general pressure on intelligence analysts. The agencies have undoubtedly become very sensitive regarding any kind of terrorism-related information. As ASIO Director-General Dennis Richardson pointed out '[t]here has been a further lowering of the risk tolerance threshold. That means, all agencies will be responding to more information more often and there is likely to be more alerts. Some of those alerts will be generalised in nature."[26]

The lowering of the risk tolerance threshold has significant implications for the assessments of individual analysts. Obviously it is much safer to issue a warning one too many times than bear responsibility for neglecting intelligence that turns out to be related to a major attack. In other words, especially in the interest of your career you do not want to be the guy who missed a hint or misjudged the value of specific information. The tendency to prefer to err on the safe side of things is certainly understandable. However, I believe that this may also lead to an exaggeration of the overall risk, particularly in circumstances where individual analysts rely heavily on intelligence data without taking into account 'the bigger picture'.

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[23] ABC, "The World Target – Government argues against increased terror threat", (16 March 2004), http://www.abc.net.au/worldtoday/content/2004/s1066853.htm
[24] "'High probability' of Australia terror attack", *Reuters* (21 April 2004).
[25] Dennis Richardson, "Australia is a target for its values, not for its foreign policy", *Sydney Morning Herald*, (19 March 2004).
[26] ABC 7:30 Report, "ASIO raids continue", (31 October 2002), http://www.abc.net.au/7.30/content/2002/s716146.htm

Also, I think it is important to recognise that the intelligence agencies themselves have a vested interest in keeping 'terrorism' on the political agenda. In the aftermath of 9/11 the intelligence community has rightly enjoyed an unprecedented increase of funding. In Australia, the Federal Government has committed a total of $A 3.1 billion to the 'war on terror'. According to the 2004 Budget, $A 755 million will be spent for Australia's defences against terrorism over five years. The intelligence agencies will receive $A 228 million to improve counter-terrorism capabilities. ASIO, the main recipient of the new funding, will receive $A 127 million.[27]

Taken together, it seems to me that these six broad issues I have just outlined have created a general climate of paranoia and fear. People appear to have the impression that nowhere is safe, not anymore, not even down under. Indeed, according to an opinion poll conducted in April 2004 a large majority of Australians believe that a devastating terrorist attack on Australia is just a matter of time. 68 % of Australians expect that terrorists will "strike [Australia] before too long".[28] However, I strongly believe that the likelihood of a large-scale terrorist attack occurring in Australia is very LOW (again I would like to emphasise that a distinction has to be made between Australian interests overseas and Australia itself). Why is the likelihood of a terrorist attack in Australia very low? Let me offer you five reasons for my current assessment.

First, I support the general argument that has been put forward by a number of reputable commentators who regard chemical-biological-radiological (CBR) terrorism attacks as unlikely, at least as far as the immediate future is concerned.[29] These scholars rightly point to the technical difficulties of creating, let alone weaponising CBR materials. To this day, there is no compelling evidence that terrorists have come close to creating a "dirty bomb". The claim that Jose Padilla, an alleged al-Qaeda operative arrested in the United States in 2002, had intended to deploy a dirty bomb has been largely discounted - it was an aspiration rather than a practical plan. Similarly, while Islamic militants and other groups appear to have attempted developing a basic chemical or biological arsenal, to date their efforts have been largely unsuccessful due to technical reasons. A good example of the technical difficulties of employing chemical agents is the 1995 sarin gas attack in Tokyo by Aum Shinrikyo which failed to cause mass casualties.

The successful use of biological agents is equally problematic. Earlier this month, the *Weekend Australian* ran a story entitled "Secret bio-terror defence plan" which claimed that Canberra was secretly planning for the possibility of a horrific attack in which suicide terrorists infect themselves with deadly germs and then spread the disease through the population.[30] However, attacks by so-called "suicide-sneezers" are very unlikely for a number of reasons. As bio-security specialist Christian Enemark has noted, initiating an epidemic is not as straightforward as it sounds.[31] Suicide bio-terrorists might be too debilitated to travel; they are easily detectable by immigration officials or they may simply fail to pass on the disease. Furthermore, suicide bio-terrorism seems to be much less heroic than suicide bombing because it carries the unattractive risk of an undignified and prolonged death. Indeed, a "suicide-sneezer" may not even achieve martyrdom if the disease proves to be non-fatal or medical intervention occurs in time to save him/her.

My second argument relates to the terror risk in this country specifically. I am quite convinced that 'Target Australia' is of very little value to al-Qaeda or Jemaah Islamiyah (JI). Before explaining this argument further I would like to make two quick comments setting the context. First, I believe that al-Qaeda is more an ideology than a global terrorist organisation.[32] Nonetheless, for the purposes of this paper I will treat al-Qaeda as terrorist group. Second, contrary to common belief, JI is not a

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[27] Cynthia Banham, "National concerns push spies into vogue", *Sydney Morning Herald* (12 May 2004).

[28] "Australians expect terrorist strike", *Sydney Morning Herald* (21 April 2004)

[29] See e.g. Andrew O'Neil, "Terrorist Use of Weapons of Mass Destruction: How Serious is the Threat?", *Australian Journal of International Affairs*, Vol 57 (1) (2003), pp. 99-112.

[30] Ean Higgins and Cameron Stewart, "Secret bio-terror defence plan", *Weekend Australian* (1 May 2004)

[31] Christian Enemark, *Letter to Robert McClelland MP*, (1 May 2004); [on file with the author].

[32] See also Jason Burke, "Think Again: Al Qaeda", *Foreign Policy*, Iss. 142 (May/June 2004), pp. 18-26.

branch office of al-Qaeda. Their relationship rather resembles that of an NGO with a funding agency.[33]

As far as al-Qaeda is concerned, there is no question that the main enemy is not Australia. The main enemies are the United States, then Israel, and to a lesser extent the United Kingdom. Al-Qaeda's primary goal is to take the "war" to the United States' homeland. If this is not possible United States interests must be attacked elsewhere, preferably in a way that attracts extensive publicity, causes a high number of casualties and has disruptive effects on the "crusaders' economy". There is no doubt that an attack on Australia would certainly 'fulfil' these three criteria to a certain extent. Nevertheless, I would argue that an attack on the United States' homeland or even in Europe (especially London, Paris or Berlin) would attract much more global attention than an attack on Canberra, Sydney or Melbourne. In addition, I guess an attack on the United States or Europe would have more severe consequences for the economy of the 'hated West' than an attack on an Australian target.

There are two questions that I get asked frequently in this context: What about the bin Laden statements specifically mentioning Australia as target? And what about Australia's involvement in the Iraq war? Has this not increased this country's profile as terrorism target?

It is true that bin Laden has mentioned Australia as a preferable target for terrorist attacks. Nevertheless, Norway, a country not usually regarded as a suitable target, has been named on Al-Qaeda's hitting list as well, probably by accident.[34] Australia's listing is most likely not accidental. However, it is important to note that in the statements in which bin Laden referred to Australia, he only did so after mentioning the United States, Britain, France, Italy, Canada, Germany and, at times, Japan.[35] I believe it is significant that Australia was placed last on bin Laden's list. It is "only" his eighth choice among Western countries. Given that al-Qaeda's planning and operational capabilities are severely constrained, it is thus unlikely that the organisation would "waste" its limited resources on an attack on a rather low-profile target like Australia.

Regarding the second question, it is quite plausible that Australia's contribution to the US-led war in Iraq has slightly increased its target profile. However, one should not overestimate the extent to which this country's role in Iraq has been acknowledged by the rest of the world. Australia's military involvement in the Iraq campaign did not feature prominently in the European and American press. Even most Arabic newspapers hardly reported about the Australian contribution. Indeed, in my view the whole "Iraq/terror target" debate in Australia is rather absurd and it reminds me very much of the Cold War controversy about Pine Gap. It used to be argued that the Australian-US satellite ground station was going to make Australia a nuclear target for the Soviet Union. After the end of the Cold War, however, former Soviet officials confirmed that Pine Gap did not play any part in Moscow's military planning.

As far as JI is concerned, an attack on homeland Australia is highly unlikely because it would not fit their agenda. JI's principal goals are the establishment of a fundamentalist Islamic government in Indonesia, followed by the formation of a unified Islamic state or "caliphate" in the South East Asian region. This state would stretch from southern Thailand, through the Malay Peninsula (including Singapore), across the Indonesian archipelago and into the southern Philippines. Claims that JI aspires to include parts of Northern Australia in the "caliphate" remain unproven and have been largely discounted. While attacks on Australian interests in Indonesia and elsewhere in South-East Asia may appear "beneficial" because they could be regarded as chasing Western "infidels" from "Islamic soil", I cannot see how an attack inside Australia would produce similar "profits".

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[33] International Crisis Group, Asia *Report No 63, Jeemaah Islamiyah in South East Asia: damaged but still dangerous*, (26 August 2003), p. 30.

[34] It is likely that the authors of the statement meant Denmark rather than Norway. In contrast to Norway, Denmark sent combat troops to Iraq in 2003.

[35] See e.g. Bin Laden statement in November 2002, "Full text: 'Bin Laden's message", *BBC News* (12 November 2002), http://news.bbc.co.uk/2/hi/middle_east/2455845.stm

My third argument is closely related to the second. Australia is not only a bad strategic choice, but it also lacks significant symbolic targets on the ground. Symbolism and ideology play a crucial role in a terrorist group's target selection. Ideology supplies terrorists with an initial motive for action and provides a prism through which they view events and the actions of other people. It also allows them to justify their violence by displacing the responsibility onto either their victims or other actors, whom in ideological terms they hold responsible for the state of affairs which the terrorists claim led them to adopt violence.[36]

The 9/11 attacks, the Bali bombings, and the Madrid atrocities are all cases in point. The World Trade Center (WTC) was chosen as a symbol of America's economic power; New York City is the financial capital of the world and is seen by most Islamic fundamentalists as a major Jewish city; the Pentagon in Washington stands for American military domination. Similarly, symbolism played an important role in the Bali bombings. The nightclubs in Bali, a Hindu-dominated part of Indonesia, were regarded as places of "immoral behaviour" for Western tourists. What is more, Balinese tourism is seen as major source of revenue for the "corrupt" government in Jakarta.

While the Madrid commuter trains did not represent any specific symbol themselves, Spain as a country did. It was in Spain that the greatest contest between Christianity and Islam was fought. In fact, Muslims were longer in Spain than they have been out. This historical context of the clash of religions was expressly referred to in a note received by Arabic newspaper *Al-Quds al-Arabi*. Claiming responsibility for the bombing in the name of al-Qaeda, a terrorist group called Brigade of Abu Hafs al-Masri stated that the attacks were "part of settling old accounts with Spain".[37]

In contrast, Australia does not have a comparable historical past, nor does it possess WTC-like symbols. It has often been speculated that the Sydney Opera House or the Harbour Bridge would be obvious targets of a terrorism attack. However, I do not see any compelling reason why terrorists would want to attack these sites which have no symbolic value and, since 9/11, are fairly well monitored by the security agencies. Hence, I guess the sites with the highest target profile in Australia are the United States and Israeli embassies and consulates and the United Kingdom High Commission.

Nevertheless, as with the Opera House and the Harbour Bridge, these diplomatic missions are now extremely well protected and it is thus highly unlikely that a suicide bomber or even a roadside blast could cause major damage to the buildings and, as a consequence, harm diplomatic staff. A last point that I would like to make in this regard: some of the aforementioned terrorism "experts" have warned against an oil tanker or other commercial vessel packed with explosive sailing into Sydney harbour and then causing a major havoc. Although not attracting much attention from the media, ASIO has released an assessment in April 2004 stating that the threat to Australia's shipping and port facilities is low or very low.[38]

My fourth argument is that Australia does not have a terrorist 'human infrastructure'. There is very little evidence to suggest that Australia is host to "al-Qaeda cells" or any other group capable of launching a mass-casualty attack similar to the 9/11 or Bali massacres.[39] Nor is there any evidence of a significant radical Islamic faction within Australia's relatively small Muslim community (assuming the threat mainly stems from militant Islamists). Again, I think it is necessary to put things into perspective. Australia's Muslim population numbers around 280,000.

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[36] C.J.M. Drake, "The Role of Ideology in Terrorists' Target Selection", *Terrorism and Political Violence*, Vol. 10 (2) (1998), pp. 53-85.

[37] "Al-Qaeda linked to Madrid train bombings", *Sydney Morning Herald* (12 March 2004). In this context it is also noteworthy that Moroccan nationalists have been demanding the return of the Spanish enclaves, Ceuta and Melilla, for quite some time. Some even openly talked about reconquering Andalusia. To appease the pious, a large and spectacular mosque has been built in Casablanca

[38] The Hon John Anderson MP, "Release of Maritime Threat Assessment: Australia's shipping and port infrastructure", http://www.ministers.dotars.gov.au/ja/releases/2004/April/Joint2_2004.htm (30 April 2004).

[39] See also David Wright-Neville, "Searching for the truth about the terror threat", *Age* (26 March 2003).

In contrast, according to figures by the United States Department of State, France is home to 4.2 million Muslims, Germany to 3.2 million and the United Kingdom to 1.6 million. Indeed Muslim North Africans make up a large proportion of the underclass youth in countries like France, Belgium, the Netherlands and Germany. While poverty may not necessarily be a root cause for terrorism, degradation and humiliation undoubtedly are. Hence, it would not surprise me if many of these underprivileged children will end up seeking refuge in radical religious and militant enclaves in the ghetto-like suburbs of several European cities. There is a real danger that these closed communities will turn into a fertile "breeding ground" for Islamist terrorists.[40] There are, however, no indications of any similar development in Australia.

Fifth and last, I would argue that a terrorism attack in Australia is highly unlikely due to this country's geographical isolation and its extremely effective system of border and immigration control. A simplistic but still noteworthy argument in this context is Australia's time zone. Brian Jenkins, a pioneer of terrorism studies, observed in 1975: 'Terrorists want a lot of people watching and a lot of people listening and not a lot of people dead).'[41] Nowadays, terrorists want a lot of people watching *and* a lot of people dead. While a large-scale terrorism attack in Australia could result in a lot of people dead, nobody would be watching as the rest of the world is asleep. Both the 9/11 attacks and the Madrid bombing took place in the morning. This meant that it was breaking news at noon and fully covered by the evening news, both in Europe and the United States. While I acknowledge that this is not the most compelling argument of my paper, it is quite significant nonetheless.

More important, however, Australia does not have porous borders. Pretty much the only way to get to Australia is by aeroplane. In contrast, in Europe you would be able to travel by car, coach oder train through seven different countries within less than 24 hours without being stopped and controlled even once. Furthermore, thousands of people, cars and trucks pass between Morocco and Spain in what is known as the "paso del estrecho" (passage of the strait at Gibraltar) each day. The possibility of people and explosives, etc. being smuggled into Europe from both Northern Africa and Eastern Europe is very real. Because of its geographical isolation Australia does not have any similar problems.

In addition, Australia's boarder protection is excellent. While Prime Minister John Howard was of the opinion that "Australia had no way to be certain terrorists or people with terrorist links were not among asylum seekers trying to enter the country by boat from Indonesia", this view had, of course, no credible basis. Referring to the Prime Minister's statement, Senator Robert Ray asked Dennis Richardson the following question during a 2002 hearing of the Parliamentary Joint Committee on ASIO, ASIS and DSD:

Has there been any occasion over the last nine months that the powers to be conferred in this proposed legislation [ASIO Act] would have been invoked to detain or question any asylum seeker seeking residence in Australia?

The ASIO Director-General's answer was clear and simple: "No".[42]

So then, what is the greatest terrorism-related risk in Australia? Let me conclude by saying that in my view the greatest terrorism-related risk in this country lies in the alienation and marginalisation of Australia's Muslim community. Ill-conceived legislation like the ASIO Act and Hollywood-style ASIO raids (bashing front doors, pointing gun to head, handcuffs) on Australian Muslims in Perth,

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[40] Interestingly, in recent times there has been an increase in demonstrations in these countries with some protesters carrying banners with slogans like "Islam -our religion today, your religion tomorrow."

[41] Brian Michael Jenkins, "International Terrorism: A New Mode of Conflict" in David Carlton and Carlo Schaerf (eds.), *International Terrorism and World Security* (London: Croom Helm, 1975), p. 15.

[42] Parliamentary Joint Committee on ASIO, ASIS and DSD, Review of the ASIO Legislation Amendment (Terrorism) Bill 2002, Official Committee Hansard (30 April 2002), p. 26.

Sydney and elsewhere may lead to the emergence of suspicion or guilt by association.[43] Perceived as repressive and discriminatory such measures might lead to an inflamed sense of grievance and injustice, particularly among the Muslim community. This in turn could further alienate and isolate even so-called moderates and thus foster sympathy and support for religious fanatics. Given recent domestic legislative developments and political rhetoric, it seems to me that Australia is on the verge of creating a threat to its homeland security that may turn out to be much higher than the current threat of international terrorism itself.

Ladies and Gentleman, thank you very much for your attention.

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[43] See also Christopher Michaelsen, "International Human Rights on Trial – The United Kingdom's and Australia's Legal Response to 9/11", *Sydney Law Review* Vol 25 (3) (2003), pp. 275-303.

Session IV: Summing Up

À LA CARTE SOVEREIGNTY: REFLECTING ON THE FEAST

by Malcolm Cook (Lowy Institute for International Policy)

'*New Voices 2004*' successfully brought together 54 participants from various backgrounds to address the wide-ranging questions of how Australian sovereignty is being redefined and how our borders – physical, economic and even psychic – are transforming. I am now left with the difficult task of trying to draw out some general themes, not conclusions, from the day's free-flowing and dynamic discussion. The day spanned from discussions of normative discourse and international legal theory to detailed questions on specific Australian state policies and initiatives. It covered "hot-button" issues like the occupation of Iraq and RAMSI[*] and slow-burning issues like the viability of Australian equity markets and Australia's diffuse diaspora.

As with the conference itself, alas, my comments will necessarily leave out more than they include. At the global level, much of the day's discussion revolved around the malleable and political nature of international institutions and on historical periods and their dominant rationales for state action. Narrowing in on Australia, concerns with challenges to Australian sovereignty from within and from outside drove much of the discussion, often turning it into debate. Standing outside the individual sessions looking in, I will offer some insights into each of these general themes drawing from the individual speakers, moderators and general discussion.

THE SOVEREIGN STATE AT THE CENTRE

One of few points of consensus reached during the day was that international institutions are really much more inter-state than global or international in nature. The conference reinforced the common-sensical but often overlooked fact that these institutions are created by and for states that also, largely, implement their agreements. Hence, the traditional representation of these institutions – either concrete bodies like the WTO or international law more generally – as international forces undermining individual state sovereignty and borders is questionable.

Fleur Johns' presentation on the International Criminal Court (ICC) effectively turned this traditional representation on its head. Fleur noted how the transfer of cases to the ICC may act to 'cleanse' the issue by transferring it from an overtly political and public forum demanding quick action to a long, legal process. Such a transfer also shifts the focus from the general and normative elements of the issue under question to specific and technical ones, often removing the issue from the public consciousness at the same time. As the ICC is still in its infancy, the counter-intuitive, sovereignty-supporting nature of the ICC has yet to be fully tested. It certainly does, however, cast a new and questioning light on America's strong aversion to the ICC, which is framed in protection of sovereignty terms.

In the last, open plenary session, Pru Gordon from the University of Melbourne offered another current example of how international (inter-state) institutions support state sovereignty. Looking at the World Trade Organization (WTO), Pru noted how, especially in the Uruguay Round, member states used the WTO negotiations to strengthen themselves in relation to non-state actors, especially global firms. Certainly the thrust behind the Uruguay Round's negotiations on the protection of intellectual property rights was to raise new barriers to patent abuse and patent arbitrage. Equally, new inter-state bodies aimed at cracking down on organised crime and terrorists' ability to evade national laws and punishment such as the Financial Action Task Force (FATF) are proliferating.

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[*] RAMSI stands for the Regional Assistance Mission to the Solomon Islands launched on 24 July, 2003.

CHANGING POLITICAL RATIONALES

Humanitarian intervention sparked the most discussion and brought it to its most abstract level. Both Nick Bisley in his presentation and Gavin Mount from UNSW @ ADFA suggested that humanitarian intervention may have had its day in the sun during the 1990s and the early days of the post-Cold War era. While interventions are likely to continue, their impetus and the way they are sold to domestic and international audiences is changing.

During the 1990s, interventions such as Somalia were framed in humanitarian terms and the normative requirements of states. Liberal internationalism and the need for states to uphold a minimum level of human dignity reigned rhetorically even if this required intervening, unsolicited, in sovereign states. However, Nick argues that the 1990s and its promotion of humanitarian intervention may be looked back on as a unique historical "moment". In contrast to the 1990s, interventions into sovereign states by outside powers are now being framed internationally and especially domestically in more realpolitik national security terms.

Gavin, picking up on recent debates in Australia and New Zealand about 'failed' states in the Pacific, argued that a new rationale for intervention is developing based on expanding policing functions to neighbouring states. States justify interventions in neighbouring countries through presenting these countries as potential "harbours" for international crime and terrorism threatening the intervening state. Certainly, the initial rationale for the War on Iraq ran along these lines. Similarly both RAMSI and Australia's stalled Enhanced Cooperation Program for Papua New Guinea have been framed publicly, if not officially, in such terms

Finally, participants clearly stated the dangers and fallacy of presenting RAMSI as an example of humanitarian intervention carried out by Australia. One must be careful to distinguish between public commentary and official rationales. The Solomon Islands' government repeatedly solicited regional help in dealing with its endemic law & order problems in the run-up to RAMSI. Also, RAMSI is not simply an Australian initiative but a regional one through the Pacific Islands Forum.

AUSTRALIA'S TRANSFORMING BORDERS

When the discussion narrowed in on Australian sovereignty and borders, actions by individuals acting in concert both from within Australia and beyond Australia were seen both to support Australia's present borders and place in the world, and throw them into question. The day produced a similar Janus-faced view of present Australian policy. In both cases, differences between policy areas and thus types of borders were emphasised. Economic policies from trade diplomacy to privatisation and border control policies from mandatory detention to our response to terrorism dominated this conference theme.

While the first session featuring Ravi Aggarwal from Morgan Stanley and Russell Thirgood from Amnesty International was the most disparate and hardest to moderate, it produced a common theme underpinning the discussion of Australia. Ravi's presentation clearly shows the global nature of capital and the millions of individual decisions behind its movement. Likewise, Russell notes the global nature of human rights and the millions of people whose actions support them. For both capital and human rights, the individual and the global are fused.

Ravi's paper also indicates how the Australian equity market is benefiting from growing foreign interest. The foreign share of Australian equities and daily trading volumes are increasing. However, Australian investors, especially fund managers, and major corporations like News Corp are increasingly looking overseas for new investment opportunities and capital. Australia may have grown too small to satisfy the expanding needs and choices of its largest firms and institutional investors. Will Australian equity markets follow the path of New Zealand to a future of shrinking market capitalisation and few market leaders?

On a similar note, Elizabeth Thurbon from UNSW in the final plenary session raised the constraints Australian trade diplomacy is placing on our country's sovereignty. She criticised the Australian-US free trade agreement and the Australian state. The agreement limits the state's future policy alternatives and locks it into following existing American policy. Australia has agreed to limit its sovereignty in return for harmonising economic policy with the United States. Like Ravi, Elizabeth underlined the creative tension between economic interests in market access and national sovereignty.

The session after lunch did not turn into a slumber but was the most spirited of the day. The session focussed on challenges to Australia's territorial borders and physical security and the suitability of the Australian state's responses. Michael Tempany from DIMIA presents a nuanced argument focussing on the need for Australia to control who crosses our borders and how such controls support Australia's planned migration programs. Susan Harris Rimmer, the moderator, accepted the generosity of the planned migration programs but questioned the link between the nature of our policy on asylum seekers and this generosity. As with the discussions on intervention, Michael's paper touched on the conflict between the normative and humanitarian versus pragmatic security concerns.

Christopher Michaelsen picks up on this theme by questioning whether Australia's responses to the new wave of global terrorism since 11 September 2001 have been pragmatic and necessary. Christopher argues that Australian policy has been over-reactive. Homeland Australia faces a much lower risk than western Europe. Yet, our state has expanded the powers of our security services even at the cost of fundamental civil rights. Australia has strengthened its defences against external threat too much, at too high a cost. Many in the audience felt uncomfortable (insecure) with Christopher's analysis, reinforcing the ambiguous nature and thus adequate responses to new threats. Anthony Bubalo from the Lowy Institute captured this uncertainty by saying that each one of us has to ask ourselves how far we are willing to limit our own civil rights and to strengthen state power in the interests of greater security against an unquantifiable threat.

'*New Voices 2004*' exceeded all of our expectations at the Lowy Institute. While not coming up with clear answers to the huge questions that organised the day, we successfully added depth and perspective to our approach to them. We also smoothly navigated from abstract global questions to concrete Australian policies and back. I think the best measure of a conference is when you feel that you have learned much and that some of your preconceptions are no longer so comfortably held. I hope that the conference has fostered many new professional relationships and friendships and that everyone invited will stay involved with the Lowy Institute.

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Mr Ravi Aggarwal	Morgan Stanley
Ms Cynthia Banham	Sydney Morning Herald
Mr Nicholas Bender	Mallesons Stephen Jacques
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Mr Christian Enemark	Australian National Univerwity (Strategic and Defence Studies)
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Mr Jason Gellert	Morgan Stanley Dean Witter Australia
Mr Tony Goldner	Freehills
Ms Pru Gordon	Melbourne University
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