

demonstration of international resolve needed to further effective diplomacy. North Korean criticism of the exercise was to be expected and can be ignored.

The Korean Peninsula is the last serious flashpoint left over from another era. There are other leftovers from the 1947–1989 Cold War between democracy and totalitarian communism, such as the China–Taiwan dispute, but they are generally not as serious.

Any war on the Korean Peninsula would, of course, be catastrophic unless North Korea imploded quickly with the effort. No matter how catastrophic, however, Australia would be involved. We are a signatory to the 1953 armistice and our alliance with the USA, Japan and South Korea, and our international reputation generally, would be severely damaged if we tried to opt out of our responsibilities.

North Korean threats to use nuclear weapons in its defence continue. No one outside North Korea really knows if that country has nuclear weapons and if so how many. No nuclear explosions have ever been detected and it might all still be bluff. Public estimates by the CIA put the figure at two weapons at most. Other estimates believe it might be higher. The difference is that one or two would constitute a last resort capability only while half a dozen would allow some ability to strike and then counter-strike. No one really knows how much plutonium the North possesses, either processed at its Yongbyon reactor or perhaps smuggled in from overseas.

The most reliable public estimates state that North Korea has about 14.8 kilograms of plutonium derived from Yongbyon in the early 1980s and, on International Atomic Energy Agency (IAEA) figures, at least 8000 spent fuel rods. If (or when) reprocessed, and it's a big 'if' (and even bigger 'when'), the 8000 rods might allow five or six nuclear weapons depending on the state of North Korea's nuclear engineering technology (another little understood subject).

The North's ability to actually deliver a nuclear weapon is also uncertain. While its bombers have some limited capacity to deliver a bomb of such physical dimensions, the technology gap in airpower compared with the US and South Korea mean the chances of this occurring, except through complete surprise attack, must be considered negligible. Similar criteria and the paranoia of the regime make the covert deployment of a nuclear weapon, on a ship for example, relatively unlikely.

North Korea's longest range missile considered capable of carrying a nuclear weapon payload can reach all of South Korea and most of Japan. In 1998 North Korea actually test fired a 'Taepodong' missile over Japan into the North Pacific Ocean.

The recent deployment by the US of a Patriot Advanced Capability missile battery to South Korea is a prudent step in helping contain the North Korean problem. The North, of course, has described it as a 'provocative action to complete US preparations for war', but as Christine Keeler famously said in another context, 'they would wouldn't they'.

The whole problem of North Korea will go away one day. The real problem is that it might not go away soon enough or that its going away through the inevitable collapse of the regime might be very messy. ♦

## Weighing the Balance of Terror

As the first anniversary of the terrorist attack in Bali approaches the recent convictions in Indonesian courts of leading perpetrators of the attacks give some confidence for the future.

Since the attacks in New York and Washington in September 2001, all major terrorist attacks have occurred against soft targets in the 'Third World'. This is not to say that Western countries are safe from such attack as the probability is that we will again be surprised at some time. It does indicate, however, that the ability of transnational Islamic terrorist groups to strike at the 'West' with impunity is not as great as first feared, and will remain so if we do not let our guard down.

As argued in the last *Defender*, the strategic centre of gravity of these groups is their ability to recruit. The civilised world must continue to remove the ignorance that the terrorist's bigotry thrives on, and the 'causes', both real and imagined, that motivate their extremism.

The struggle against transnational terror by Islamic extremists requires us to carry the fight, both physical and socio-economic, to the terrorists and the societies that breed and nurture them. The struggle will not be won if we sit behind our military, social and economic ramparts and cede the initiative to the terrorists. ♦

## The Road to International Legal Limbo is Paved with Good Conventions

The provisions of international law usually tend to lag well behind the practice. Determining the status, treatment and duration of detention of those detained at the US-administered terrorist prison at Guantanamo Bay in Cuba are a case in point.

The US has agreed to provide the detainees with conditions not less than they would be entitled to if they qualified as Prisoners of War (PW) under the Geneva Conventions. This, at least, largely solves the treatment issue.

Few seem to doubt that the overall status of those detained has outrun the provisions of international law. With the possible exception of some wholly Taliban members, especially Afghan ones, they cannot be classified as soldiers fighting for a lawful belligerent as defined by the Conventions. Nor, as armed belligerents, do they fall under the protection of the Conventions as civilians caught up in the fighting.

International law is fairly clear on what those detained at Guantanamo Bay are not. It is much less clear on what they are. The term unlawful combatant is uncertain in

international law, not least because the word combatant is interpreted by some as bestowing undeserved credibility to perpetrators of terrorist actions. Whatever their status ends up being under international law, it is unlikely to be resolved in the short term.

The duration of their detention under international law depends on their status being decided. Few critics of their detention seem to appreciate this. In general terms they would appear to be detainees and not prisoners, although the distinction may appear arcane to some. They are not prisoners because they are not either PW or convicted criminals serving a prison sentence.

US Defense Secretary, Donald Rumsfeld, stated recently that many of the detainees might have to remain there until the 'war on terror' was over—in other words just as if they were actually PW. The statement re-ignited debate about the situation of those detained. One of the few points not in disagreement on both sides of the debate is that the war on terror might last a very long time.

It appears that many critics of Guantanamo Bay want to have it both ways. They claim that the detainees should be accorded Prisoner of War status under the Geneva Conventions. They then object, however, that their detention should not be indefinite (until the relevant war ends), and that those detained still have the right to a criminal trial of some sort. Few critics appear to notice the contradictions inherent in their claims. No truly viable alternatives to the status quo have been proposed and so the situation, in legal terms, remains quite static.

If the detainees could achieve the status of PW they could be held until hostilities cease or until repatriated under Red Cross auspices to the territory of the belligerent for whom they were fighting. In the case of Al Qa'eda the repatriation provisions cannot be applied because it is not a country or indeed any form of legitimate international actor under international law.

Some Australian PW in World War II were held for nearly five years. Several US PW from the Korean War were held for decades. The longest serving US PW in the Vietnam War who was ever released was held for three weeks short of nine years. In the 1980–88 war between Iran and Iraq many PW on both sides were held for well over a decade. Many Kuwaiti PW from the 1991 Gulf War were never returned to Kuwait and are presumed murdered by the Saddam Hussein regime.

In the case of those detained at Guantanamo Bay, it is surely premature to agitate for their release on the grounds that they are PW. The longest serving of them is still under the two-year mark. International law will probably catch up with their situation well before they risk setting any new records for length of incarceration.

The cases of the two Australians detained at Guantanamo Bay, David Hicks and Mamdouh Habib, appear to have significant differences. Habib was apparently not captured when fighting—either as a legal or illegal combatant. The situation of Hicks on the other hand, who was captured fighting in Afghanistan as at least a combatant of some sort, would appear to differ little

from most other Guantanamo Bay detainees.

Assuming criminal charges for terrorism are not applied under some as yet unspecified or unresolved jurisdiction, continuously evolving international law is therefore likely to free Habib before Hicks. If one, or both, of them is eventually tried (as their proponents demand) their current status as unlawful combatants not covered by the Geneva Conventions could actually shorten their imprisonment (compared with if they were classified as PW). This would be especially so if they are as innocent as some claim and they can prove it at their trial.

This is an emerging area of international law and patience and a sense of perspective need to be maintained. This is especially so as the nature of the judicial and penal processes to be used, and sentencing options applicable, are still evolving. High-level Australian negotiations with the US Government have at least resulted in agreement that any trial that might take place under US auspices would not be much different in form, substance and fairness from Courts Martial conducted in Australia.

Both men are clearly in an unenviable position of international legal limbo, but one for which they are themselves primarily responsible.

It is also worth noting that if tried, both Hicks and Habib will receive a far fairer hearing than the arbitrary methods used by terrorist organisations to select, punish and kill their victims. ♦

## Back on the Rails at Last

The completion of the \$1.3 billion, 1420 kilometre, standard gauge railway linking Darwin to Alice Springs and hence the mainland State capitals is of considerable strategic significance.

The inevitable increased use of Darwin as a port of import and export rather than ports further south has more than just economic, national development and national sovereignty implications. Being able to transport products by rail to and from northern Australia lessens our potential vulnerability to the interdiction of coastal and transoceanic shipping and, to some extent, simplifies our sea control problems during times of crisis.

The railway also provides a speedy and secure alternative when supplying bulk fuel to military and civilian needs in northern Australia. Finally, the railway allows bulk stores and munitions, and the army's armoured, mechanised and heavy construction units, to be deployed around most of the country without needing to rely on sea or long-haul road transport.

Rail links are, of course, somewhat vulnerable to interdiction by sabotage, airstrike and ground attack. But so are highways and shipping. Rail links are, in fact, relatively hard to sever for lengthy periods and very hard to deny permanently. There are few modern infrastructure developments that simplify defence planning. The linking by rail of RAAF Base Tindal, and the navy, army and air force bases in Darwin, to the rest of the country are a noteworthy exception.