

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.