

**THE RIGHT OF SELF-DEFENCE AGAINST  
IMMINENT ARMED ATTACK IN INTERNATIONAL LAW**

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## **E&OE**

### **Acknowledgments**

Thank you very much indeed Sarah. Might I also begin by acknowledging the traditional custodians of the land on which we meet, the Turrubul peoples. By acknowledging you, Professor Derrington, in your role as Dean, T C Beirne School of Law. Members of the Faculty of this Law School, of other faculties of the University of Queensland and the faculties of other law schools who I gather have come here this evening. We are honoured by the distinguished presence among us this evening of Justice Edelman of the High Court, and of Justices Greenwood, Logan and Derrington of the Federal Court, and of Dr Christopher Ward SC, the Australian President of the International Law Association. Other distinguished guests, ladies and gentlemen.

### **Introduction**

It is a great pleasure to return tonight to my old law school, be it not physically within the law school precincts. May I congratulate the Dean, Professor Derrington, and the members of the faculty, on all that they have done to propel UQ into the front rank of Australian law schools. I note that the 2017 QS ranking places this law school among the top 50 in the world – a distinction enjoyed by no other law school in Queensland and by only six others in Australia. No doubt your new policy of limiting the undergraduate intake to fewer than 200, which means that new entrants are likely to come only from a cohort students who achieve an OP 1, will reinforce its position as one of Australia's elite law schools. And that intellectual excellence has recently been complemented by a physical manifestation: the very handsome new Law Library and facilities which were opened only last month by Chief Justice Kiefel.

As a student, tutor and lecturer, my association with this law school spanned more than 15 years, from 1975 to 1991, so it is more than 25 years ago that I last gave a lecture here. That was when, for some eight years, while in my early days at the Bar, I taught a unit of the Jurisprudence course called "Recent Developments in the Theory of Justice". My focus was primarily on John Rawls, as well as such other scholars as Robert Nozick, Ronald Dworkin and Bruce Ackerman.

Tonight, however, it is not jurisprudence with which I am concerned, but international law. The topic of the paper I am about to read, is the right of self-defence against imminent armed attack in international law. I propose to address this question of the circumstances which justify the use of armed force in the face of imminent armed attack. Specifically, I want to state publicly the Australian Government's position on the principle of imminence of armed attack as a ground for the use of force justified by the principle of self-defence.

May I stress that what I am about to say does not represent a new position of the Australian Government, but a public statement and explanation of the Government's existing position. As well,

may I stress, that the remarks I am about to make are not related to the decision of the American President to deploy force against Al-Shayrat air base in Syria last week. Indeed, these remarks had been prepared before the Australian Government was given advance notice of that intervention, and nothing which follows is intended to be a commentary upon it.

As you know, Australia, currently, has defence personnel engaged in conducting operations with our international partners against ISIL in Syria, as part of Operation OKRA. The justification in international law of those operations is based upon the well-established principle, enshrined in Article 51 of the UN Charter, of individual and collective self-defence, in this case, the defence of Iraq against attack by Islamic State, or ISIL. That operation has led to much discussion, in particular among the so-called “Five Eyes” nations – Australia, the United Kingdom, New Zealand, Canada and the United States – about the operation and extent of the principle of imminence as a ground for the defensive use of force.

The observations I am making tonight complement, and reflect a similar approach to, that of the Attorney-General of the United Kingdom, the Rt Hon Jeremy Wright QC MP, who on 11 January this year delivered a landmark speech to the International Institute for Strategic Studies articulating the United Kingdom’s approach to the law of self-defence.<sup>1</sup> The Australian Government agrees with the position stated by my United Kingdom counterpart; the remarks that follow address similar issues and build upon what Mr Wright had to say on that occasion.

While we are accustomed to thinking of the law of armed conflict in relation to nation states, the rise of globalized – and militarized – terrorist networks, presents new legal issues.

What does ‘imminence’ mean when terror cells can plan an attack in one country and then go dark, perhaps until the attack is remotely triggered from abroad? How does a government decide when a violent intent expressed by a terrorist organisation online has crossed from mere aspiration to ‘imminent’ threat? Crucially, how do we protect ourselves from such threats, whilst ensuring that legitimate constraints on the use of force are not undermined?

### **Foundations of anticipatory self-defence doctrine**

The legal requirements for establishing self-defence by a State against an imminent armed attack find their modern antecedents in the *Caroline* incident of 1837. It will be recalled that the incident involved a pre-emptive attack by British forces based in Canada against an American ship, the *Caroline*. American sympathisers with the rebellion against British rule in Canada were using the ship to ferry arms to insurrectionists.

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<sup>1</sup> Speech by UK Attorney-General, the Rt Hon Jeremy Wright QC MP, on ‘The modern law of self-defence’ at the International Institute for Strategic Studies, 11 January 2017:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583171/170111\\_Imminence\\_Speech\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583171/170111_Imminence_Speech_.pdf)

Since the date they were penned in 1841, the words of the then US Secretary of State Daniel Webster to his British counterpart Lord Ashburton have become canonical.

Secretary Webster wrote that a State claiming self-defence would have to show that the:

*'necessity of self-defence was instant, overwhelming, leaving no choice of means, and no moment of deliberation ..., and that the [State's] force, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.'*<sup>2</sup>

The *Caroline* incident preceded the first international elucidation of the prohibition on the use of force, in Articles I and II of the Kellogg-Briand Pact of 1928, by some 50 years. It preceded the modern prohibition, found in Article 2(4) of the UN Charter, and the principle of individual and collective self-defence, now enshrined in Article 51, by some hundred years.

There is little doubt that Webster's formulation has played a central role in cementing the requirements of necessity and proportionality as limits on the use of force in self-defence.

It is also clear, however, that technology and the nature of national security threats have been revolutionised; they would be utterly unrecognisable to Secretary Webster and Lord Ashburton.

### **Australian and global security context**

Today's threats to Australia's national security are real, they are evolving, and they are global.

There are several particular factors requiring us to be innovative in our approaches to protecting Australia and its interests from the threat of terrorism and politically-motivated violence:

First, there is the increasing speed of radicalisation, facilitated, in particular, by the internet. Once it was months, but now it can take as little as a few weeks for someone to develop an intent to perpetrate an act of terrorist violence. While the internet is one of the most powerful drivers of innovation and commerce in human history, it is also fertile ground for recruiters to extremist ideologies.

Secondly, there is the speed with which people, money, information, and misinformation move across borders so that conflicts, and the ideologies that fuel them, are rarely contained within one State or between two belligerent States. They can reverberate with spill-over effects in France, in Germany, in India, in Indonesia, in Australia. Since 12 September 2014, Australia has experienced four domestic

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<sup>2</sup> Extract from note of 24 April 1841: [http://avalon.law.yale.edu/19th\\_century/br-1842d.asp](http://avalon.law.yale.edu/19th_century/br-1842d.asp)

terror-related attacks; three of them lethal and one resulting in serious injury. In the same period, our law enforcement and security agencies have disrupted another 12 imminent attacks within Australia.

And third, we are faced with the phenomenon of access by criminal and terrorist groups to weapons that allow them to spread violence on a scale previously reserved to States. No longer can it be said, as was for centuries the assumption of international law and the law of war, that States have a monopoly on the tools of war.

### **Australia's response and the rule of law**

How does Australia respond?

The highest priority for any government is of course the security of its people.

As the Prime Minister told Parliament in his national security statement on 1 September last year, "*the Government is resolutely committed to ensuring Australians remain safe, secure and free*".<sup>3</sup>

Even in the face of today's evolving threats, the rule of law and our commitment to upholding an international rules-based order must remain foundational. And the need for clear legal principles is nowhere more apparent than when it comes to the justification of the use of force.

Now, it goes without saying that Australia regards the use of force always as a last resort. Where a threat is not an actual or imminent 'armed attack', as that term is understood in international law, Australia responds in a variety of other ways. These include domestic law enforcement, as well as collaboration with the justice and security agencies of other countries.

But where a threat *does* give rise to a right of self-defence under international law, Australia is firmly of the view that clear rules must be in place to delimit the bounds of the use of that force, and to avoid its abuse. That remains true even as we grapple with entirely novel security threats. The challenge is to ensure that our understanding of international legal principles adapts to those threats in a manner which does not leave States hamstrung in the defence of their people.

### **The historical right to act in self-defence**

As I have said, some manifestations of terrorist threats are appropriately handled only by law enforcement agencies, but others are of sufficient gravity to constitute an imminent or actual armed attack. My focus tonight is on the latter.

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<sup>3</sup> Prime Minister, The Hon Malcolm Turnbull MP, 'National Security Statement on Counter-Terrorism', 1 September 2016: <https://www.pm.gov.au/media/2016-09-01/national-security-statement-counter-terrorism>

Let me return, then, to the fundamental questions of the *jus ad bellum*: when is it lawful for a State to use force in self-defence, and what is the scope of a State's right to respond to imminent threat?

Absent consent, international law recognises at least two exceptions to the prohibition on the use of force against the territorial integrity or political independence of another State:

- a clear and formal authorisation by the UN Security Council; and
- the inherent right of individual or collective self-defence, which does not rely upon UN Security Council authorisation.

Of course, international law is capable of, and must be permitted to, evolve in light of the development of State practice and changing circumstances. International legal principles need to be interpreted in light of contemporary challenges. And customary international law is sufficiently flexible to allow this to occur.

For instance, let us recall that historically, self-defence only applied in response to armed attack from another State. But, following the 9/11 attacks against the United States of America in 2001, the UN Security Council passed resolution 1368, which implicitly affirmed the right of self-defence against non-State actors for the first time.

And more significantly for this evening's purposes, it is now recognised that customary international law permits self-defence not only against an armed attack that has occurred but also against one that is imminent.<sup>4</sup>

It has certainly been the long-held Australian position that acting in self-defence does not require a State passively to await attack.

That view is shared by the United Kingdom, the United States, and other like-minded countries.

In their letters to the UN Security Council notifying the exercise of self-defence in relation to the use of force in Syria (as required by Article 51 of the Charter), Australia, the United States, Canada, Turkey, and the United Kingdom all cited the individual or collective right of self-defence to respond to imminent armed attacks, or threats of armed attacks, from ISIL.<sup>5</sup>

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<sup>4</sup> UN High Level Panel Report, *In Larger Freedom: Towards development, security and human rights for all*, UN Doc A/59/2005, [124]-[125].

<sup>5</sup> Australia (9 September 2015, S/2015/693), United States (23 September 2014, S/2014/695), Canada (31 March 2015, S/2015/221), Turkey (24 July 2015, S/2015/563), United Kingdom (7 September 2015 and 3 December 2015, S/2015/688 and S/2015/928).

## Applying the law on imminence

An important issue which requires careful consideration is the scope of the notion of imminence. It is all well and good to permit the use of force in self-defence against an imminent armed attack. But what counts as 'imminence' in this context?

The concept has been the subject of longstanding historical debate and differing interpretations by States and by scholars.<sup>6</sup>

Secretary Webster, of course, thought the use of force would not be permissible unless its necessity was "instant, overwhelming, and leaving no choice of means, and no moment of deliberation". How might this formulation be adapted to the realities of the threats we face in the 21<sup>st</sup> century?

How, in other words, will customary international law play its traditional role of flexibly accommodating the facts as they evolve?

Allow me to state the Australian Government's position on the question of imminence. In broad terms, Australia agrees with the criteria outlined in 2012 by Sir Daniel Bethlehem QC in his article in the *American Journal of International Law*, with which those present tonight, and scholars in this field would be familiar.<sup>7</sup>

Sir Daniel's formulation – which is one of twelve rules which have quickly acquired near to doctrinal status as "the Bethlehem principles" – states that whether an armed attack is imminent will fall to be assessed by reference to all relevant circumstances, including:

*the nature and immediacy of the threat;*

*the probability of an attack;*

*whether the anticipated attack is part of a concerted pattern of continuing armed activity;*

*the likely scale of the attack and the injury, loss, or damage likely to result therefrom in the absence of a mitigating action; and*

*the likelihood that there will be other opportunities to undertake effective action in self-defence that may be expected to cause less serious collateral injury, loss or damage.*

Australia agrees with and adopts that formulation.

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<sup>6</sup> See, for example, former US Legal Adviser Harold Koh's comments on the Obama Administration's policy of self-defence against a "continuing imminent threat" based on an "elongated" notion of imminence, in a speech delivered on 12 February 2016 ([http://law.emory.edu/elj/\\_documents/volumes/66/3/koh.pdf](http://law.emory.edu/elj/_documents/volumes/66/3/koh.pdf)).

<sup>7</sup> Sir Daniel Bethlehem KCMG QC, 'Principles Relevant to the Scope of a State's Right of Self-Defense Against an Imminent or Actual Armed Attack by Non-State Actors' (2012) 106 *American Journal of International Law* 769.

In Australia's view, the factors adumbrated by Sir Daniel Bethlehem provide an appropriate — if non-exhaustive — framework to assess whether an attack is imminent.

It follows that imminence is not simply a question of timing. The temporal aspect is unquestionably relevant, but it is by no means the sole relevant factor. All the circumstances, including those factors identified by Sir Daniel in particular, may be relevant.

Though it is unsettled, I do not think this proposition is controversial. The same approach was adopted by the prominent group of experts who developed the Tallinn Manual – the first fully elaborated statement on the international law applicable to cyber warfare. The Tallinn Manual clearly rejected a strict temporal approach to the question of imminence.

The position was also affirmed by some of the most eminent international jurists in the 2005 *Chatham House Principles on the Use of Force in Self-Defence*,<sup>8</sup> which emphasise the importance of reflecting the wider circumstances of the threat, not simply the temporal criterion.

### **The last window of opportunity**

In today's world, the precise timing of a threatened attack is often unclear or unknown. In Australia's view, then, the appropriate question to ask when it comes to assessing imminence is: "What is the last feasible window of opportunity to act against the threatened armed attack?"

Put another way, a State may act in anticipatory self-defence against an armed attack when the attacker is clearly committed to launching an armed attack, in circumstances where the victim will lose its last opportunity to effectively defend itself unless it acts.

This standard reflects the nature of contemporary threats, as well as the means of attack that hostile parties might deploy.

Consider, for example, a threatened armed attack in the form of an offensive cyber operation (and, of course, when I say 'armed attack', I mean that term in the strict sense of Article 51 of the Charter). The cyber operation could cause large-scale loss of human life and damage to critical infrastructure. Such an attack might be launched in a split-second. Is it seriously to be suggested that a State has no right to take action before that split-second?

By what standard, though, is a Government to judge when the last window to act in self-defence against an imminent armed attack will close? The question, of course, is not a simple one.

Allow me to illustrate why that is so with another hypothetical scenario.

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<sup>8</sup> Chatham House, *Principles of International Law on the Use of Force by States in Self-Defence*, ILP WP 05/01. The experts included Judge Sir Christopher Greenwood CMG QC, Sir Daniel Bethlehem KCMG QC, Sir Michael Wood KCMG, Professor Vaughan Lowe QC, Sir Adam Roberts KCMG FBA and Professor Malcolm Shaw QC.

Assume a Government is certain that a terrorist group has planted explosive devices within its jurisdiction, but does not know the precise locations. The devices may be detonated instantaneously, and they may be detonated remotely, from abroad. But it is not clear when that is planned to occur. Now assume that mobile phone chatter between group members is known generally to cease at some unspecified point prior to a detonation attempt. And mobile phone chatter has indeed just ceased. Do we, here, face an imminent attack? What if no other information is available? Is this now the last window of opportunity to take action?

Remember: the State does not know how long before a detonation attempt the group's mobile phone chatter generally ceases. On a strict temporal approach to imminence, then, the State would have no right to take action, notwithstanding the clear threat to human life.

Consider another example.

The Tallinn Manual cites a scenario where a 'logic bomb', or malicious code, is inserted into software, with the conditions for activation being likely to occur.<sup>9</sup> It is certain that activation of the 'logic bomb', when those conditions arise, will cause significant harm and will constitute an armed attack within the meaning of Article 51. Does insertion of the 'logic bomb' herald an imminent attack? Must it be known precisely when that 'logic bomb' will be activated? What is the last feasible window of opportunity to take action?

As I have said, such questions are fraught, and it would be unwise to venture answers in the abstract.

I can, however, state the standard that Australia applies to such questions. Australia's longstanding view is that there must be a reasonable and objective basis for determining that an attack is imminent. And this view can only be formed on the basis of all available evidence when the assessment is made.

Of course, to state Australia's understanding of the applicable standard is not to diminish the difficulty of the task of making the assessment.

Nevertheless, it is an assessment which must be carried out in "*good faith and on the basis of sound evidence*", the standard reflected in the Chatham House Principles. Nothing less will establish a sufficient level of confidence to justify the use of force in self-defence against an imminent armed attack.

I return to the point I made earlier: this is not a mere theoretical exercise. Governments have to weigh the consequences not only of action but equally the consequences of inaction, in light of the harm that can follow. Charged with the responsibility to ensure the safety of the community, Governments

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<sup>9</sup> *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (Cambridge University Press, 2017), p 352.

cannot be expected to watch helplessly as the shutter comes down on the last window of opportunity to prevent an attack.

As my United Kingdom counterpart Jeremy Wright put it:

“In a world where a small number of committed plotters may be seeking to inspire, enable and direct attacks around the world, and indeed have a proven track record of doing so, we will not always know where and when an attack will take place, or the precise nature of the attack. But where the evidence supports an assessment that an attack is imminent it cannot be right that a state is prevented from meeting its first duty of protecting its citizens without nailing down the specific target and timing of an attack. Apart from anything else, our enemies will not always have fixed plans. They are often opportunists.”

### **Necessity and proportionality**

It should not be thought that in saying what I have said I am supporting an overly expansive view of the notion of self-defence — a loose test that may be open to abuse by States. There is penetrating insight in a passage from the Roman scholar Aulus Gellius, cited by Grotius: “When a Gladiator prepares to enter the lists for combat, such is his lot that he must either kill his adversary, or be killed himself. But the life of man cannot be circumscribed by the hard terms of such an over-ruling necessity, as to oblige him to do an injury to prevent him from receiving one.”<sup>10</sup>

In the law of self-defence, the touchstones of necessity and proportionality ground us in the principle of legality. What I have said does not give a State a free pass to act unrestrained.

Australia applies the twin requirements of necessity and proportionality to any use of force in self-defence against an imminent armed attack. They are essential checks on the exercise of anticipatory self-defence. What does that mean in practice?

The requirement of necessity means that the State must have no other reasonably available option in the circumstances to protect itself from the imminent attack, other than to use force in self-defence.

This is not a new criterion. You will recall that the concept of necessity found voice in Secretary Webster’s 1841 letter from which I have quoted. The requirement of military necessity, and the balance which must be struck with the principle of humanity, finds early roots in the Lieber Code of 1863, that body of 157 articles drafted by Dr Francis Lieber at the request of President Lincoln during the American Civil War. Indeed, we may go back further to Grotius, who spoke of the lawfulness of killing an aggressor if the danger to one’s life “*cannot otherwise be avoided*.”<sup>11</sup>

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<sup>10</sup> Hugo Grotius, *The Rights of War and Peace: Book II, Chapter 1* (New York: M Walter Dunne, 1901) p 78.

<sup>11</sup> Hugo Grotius, *The Rights of War and Peace: Book II, Chapter 1* (New York: M Walter Dunne, 1901) p 76.

Proportionality, meanwhile, acts as a restraint to ensure that any use of force in self-defence corresponds to the gravity of the imminent attack sought to be repelled. Like necessity, proportionality is “fundamental to legitimising any claim of self-defence”.<sup>12</sup> Importantly, it ensures that an imminent armed attack cannot be used as a pretext to engage in a wider act of aggression. Again, you will recall that this requirement was also articulated in Webster’s correspondence; the State using force in self-defence, Webster opined, must do “nothing unreasonable or excessive, since the act justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it.”

### **Anticipation and pre-emption**

Before turning briefly to the role of States in articulating international legal principles, I want to make myself very clear about one such important principle. It is the distinction between ‘anticipatory’ and ‘pre-emptive’ self-defence.

Anticipatory self-defence refers to the resort to force in response to an imminent (rather than an actual) armed attack. As I have already said, Australia regards anticipatory self-defence as a right of States under customary international law.

Australia, however, does *not* adhere to any doctrine of so-called ‘pre-emptive’ self-defence. Pre-emptive use of force is an entirely different thing from the use of force in anticipation of an imminent threat. The former is not an accepted application of the principle of self-defence; the latter, for the reasons I’ve explained, clearly is. Australia’s view, maintained over a long period, is that States are not permitted to use force to respond to threats which have not yet crystallised but which might materialise in the future. As Livy wrote, “Men, to guard against their alarms, make themselves objects of terror; averting the danger from their own heads, by imposing upon others the necessity of either doing or suffering the evil which they themselves fear.”<sup>13</sup>

The Australian Government maintains this important distinction between anticipatory self-defence and pre-emptive self-defence.

### **States are the key proponents in the articulation and development of international law**

In closing, let me pose the question: why is it so important to articulate, as I have sought to do this evening, Australia’s position on the international law of self-defence, and in particular our understanding of the principle of imminence?

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<sup>12</sup> Noam Lubell, ‘The Problem of Imminence in an Uncertain World’ in Marc Weller (ed), *The Oxford Handbook on the Use of Force in International Law* (Oxford University Press, 2015) pp 697, 699.

<sup>13</sup> Hugo Grotius, *The Rights of War and Peace: Book II, Chapter 1* (New York: M Walter Dunne, 1901) p 78.

The American Legal Adviser Brian Egan termed this kind of public discussion 'legal diplomacy'.<sup>14</sup> His predecessor, Harold Koh, made reference in a 2016 article to the 'Legal Adviser's Duty to Explain'.<sup>15</sup> Egan said — and I agree — that legal diplomacy allows us to navigate and possibly bridge the inevitable gaps between States' international legal obligations, and their differing interpretations of common obligations.

I would take this further. Since customary international law places State practice at the heart of the law's development, we have a responsibility to proactively engage in debate, including public statement of the positions of governments. Where possible, as I have sought to do tonight, we must articulate and explain our legal reasoning.

It is vital that States (and their international legal advisers) have the courage to explain and defend their legal positions.

Because, it is in this way that we ensure that States maintain control over the development of international law. We should not abandon the elaboration of legal doctrine to the realm of academia, unmoored from an appreciation of the operational realities confronting executive governments. Indeed, it was something like this concern that led Sir Daniel Bethlehem to articulate his principles governing the use of anticipatory self-defence.

And there is another reason for a State like Australia to articulate its reasoning on important questions of international law. Applying Koh's 'Duty to Explain' or Egan's 'legal diplomacy' will strengthen within Australia what the late South African Professor Etienne Mureinik termed the 'culture of justification'.<sup>16</sup> It will make our legal deliberations more transparent, so that decisions are understood and respected — by Australians as well as by the international community.

Earlier I endorsed the requirement that assessments of risk to Australia must be carried out in "good faith and on the basis of sound evidence". Plainly, classified information is rarely made public. However, military force should only ever be used in a principled way. That is why we must make clear the principles (such as the Bethlehem Principles) upon which we intend to act, against which the decisions of government, in deciding to use force, may be judged.

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<sup>14</sup> Brian Egan, Legal Adviser, US Department of State, 'International Law, Legal Diplomacy, and the Counter-ISIL Campaign: Some Observations' (2016) *International Law Studies*, Vol 92, 235: <http://stockton.usnwc.edu/cgi/viewcontent.cgi?article=1668&context=ils>

<sup>15</sup> Harold Hongju Koh, 'The Legal Adviser's Duty to Explain' (2016) *Yale Journal of International Law*, Vol 41, Issue 1, p 189: <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1294&context=yjil>

<sup>16</sup> Étienne Mureinik, 'A Bridge to Where? Introducing the Interim Bill of Rights' (1994) 10 *South African Journal on Human Rights*, 31 at 32.

## Conclusion

As the First Law Officer, I am acutely aware that the use of lethal force by Australia must occur only as a last resort, only in the direct protection of human life, and only in accordance with international law.

As is, I think, widely acknowledged, in ISIL we face an enemy with no discernible conception of the rule of law, certainly no conception of international humanitarian law.

That is what makes Australia's determination to uphold these norms all the more important. Our steadfast adherence to the rule of law, our willingness to explain, articulate and defend the international legal principles according to which our decisions are made and will be judged, are among the things that differentiate us from our enemy. They are among the things which imbue our cause with moral strength, as well as legal authority.

International law should not be characterised merely as a set of constraints upon State action. It is more than that. When we hold firmly to an international rules-based order, the law's "wise restraints" (in the words of Professor John MacArthur Maguire) provide legitimacy to States' conduct. They do so because when we adhere to them, and we do so explicitly, for reasons we are prepared to articulate, explain and defend, we demonstrate that our conduct on the international stage is principled. And it is only when we behave in a principled fashion that we can hope our conduct will be respected and regarded as lawful and legitimate. That legitimacy is all the more important to Western liberal democracies such as ours.

Respect for an international rules-based order, however, does not mean adherence to static norms, in blithe disregard of the evolving facts on the ground. We must be particularly sensitive to rapid changes in the means and methods of warfare, in the application of those rules and norms.

As I've said, not all security threats raise questions of armed force and self-defence. We in Australia continue to work with our partners' law enforcement and security agencies to counter foreign threats in ways far removed from questions of *jus ad bellum*. Australia will use lethal force against an imminent or actual armed attack when we must do so, and as a last resort.

And when we reach that moment of last resort, when lives are imperilled and when we have no choice but to take up arms, we do so from a position of legal authority and moral strength. For all around us towers the great edifice of the international legal order: an edifice that we have done so much to build — a legal order to which, this evening, I restate the Australian Government's deep and enduring commitment, and I thank the University of Queensland Law School for its hospitality in providing me with this occasion to do so.