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The Open Front Door Tourism, Border Control and National Security

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EXECUTIVE SUMMARY

- The Brigitte case has exposed a serious weakness in Australia's border control system, which terrorists could readily exploit if they wished to cause harm to Australians on Australian soil. Australia's borders are actually better protected against foreign cheese and salami than against foreign terrorists.
- The Australian 'Electronic Travel Authority' system—a local equivalent of 'visa waiver programmes' operated by many developed countries, including the United States—has done away with the paper-based application forms or face-to-face interviews through which the suspicions of an alert official about an applicant's real intentions might be aroused.
- While 'Electronic Travel Authority' applications are checked against a 'Movement Alert List', this provides no protection unless individuals with malign intentions have previously come to the attention of security or law enforcement authorities.
- The belief of immigration officials that states included in the 'Electronic Travel Authority' system are 'countries that invariably present themselves as low risk' has been outdated by recent developments in global terrorism: passport holders of such states have been implicated in some of the most dramatic terrorist outrages of our era.
- At the very least, a country should be removed from the 'Electronic Travel Authority' list the moment there is any credible evidence of terrorist cells with international objectives operating within its borders.

Introduction

Since the 'Tampa Affair' in August 2001, the issues of security and border protection have figured prominently in public debate, as they did during the 2001 election campaign.¹ At the risk of considerable international opprobrium,² the Howard Government deemed it appropriate to use devices such as its 'Pacific Solution' to ensure that asylum seekers fleeing regimes such as the Taliban's in Afghanistan and Saddam Hussein's in Iraq would not set foot on Australian territory unless they had previously been issued visas. This was accompanied by public comments from figures such as then-Defence Minister Peter Reith implying that without such strenuous measures, 'terrorists' might be able to enter Australia.³ Implicit in these remarks was the proposition that a properly-functioning visa system could prevent this from happening.

In 2003, an episode occurred which cast doubt on such optimism. On 9 October, a French national by the name of Willie (or Willy) Brigitte, who had arrived legally in Australia on 16 May, was placed in immigration detention after it was discovered that he had been working in Sydney in breach of conditions attached to his visa. He was removed from Australia on 17 October. In itself, this was not unusual, since large numbers of tourists violate the conditions of such visas (notably by remaining in Australia beyond their expiry) and thereby become subject to removal. But there was more to Mr Brigitte's case than met the eye. Upon his return to France, he was taken into custody at the instigation

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of Judge Jean-Louis Bruguière, on suspicion that he had helped obtain the false Belgian passports used by the terrorists who, on 9 September 2001, had assassinated the anti-Taliban Afghan resistance leader Ahmad Shah Massoud.⁴ It subsequently was revealed that French authorities had alerted the Australian government to their general suspicions about Mr Brigitte on 22 September, some four months after his entry to Australia, and had delivered a more precise warning on 7 October.

Commonwealth Attorney-General Philip Ruddock, speaking in the House of Representatives, cited this case to argue that the legislation empowering the Australian Security Intelligence Organisation (ASIO) to conduct interrogations was 'not just second best' but 'third and fourth best',⁵ and a lively debate then ensued over ASIO's powers. The effect, however, was to distract attention from another and more pertinent question, which Mr Ruddock as a long-serving Minister for Immigration and Multicultural and Indigenous Affairs, might equally have been pressed to address in some detail: how was it that Mr Brigitte had been able to enter Australia in the first place? The question is far from academic. Indeed, when one sets out to answer it, one confronts an alarming reality: that Australia's borders, far from being rigorously protected, actually contain a gaping hole. It is a hole through which tourists travel—but as the Brigitte case shows, others with more sinister agendas can use it to enter Australia as well. When the 'Pacific Solution' was mooted, refugee advocates observed that terrorists were far more likely to enter Australia by air, and with valid visas, than on leaky boats; after all, every one of the September 11 hijackers had entered the United States legally.⁶ The Brigitte case has vindicated the advocates' warnings. Australia's borders are actually better protected against foreign cheese and salami than against foreign terrorists.

The open front door

To understand the nature of Australia's 'open front door' problem, it is necessary to appreciate first of all that Mr Brigitte did not enter Australia through some failure in the *mechanics* of the visa system. Had he received his visa through an oversight on the part of a negligent official, an appropriate response would focus on improved training for staff so that the mistake would not be repeated. Unfortunately, this was not the case. Mr Brigitte entered Australia because the system for the issue of visitors' visas is designed so that the likes of Mr Brigitte can receive visas promptly and with minimal inconvenience. He penetrated Australia's borders not because the system 'failed', but because the system 'worked'.

Mr Brigitte entered Australia with what is known as an 'Electronic Travel Authority' (ETA). This is the equivalent of a paper-based visa for short-term tourist or business entry, but it can be obtained through certain travel agents or via the Internet. In its website the Australian Tourist Commission advises that 'To make things easy for you the Australian Government has made it possible to arrange an ETA via the Internet—no application form and no contact with an Australian visa office is necessary'. At present, ETAs are available to persons with 'ETA-eligible passports': these are currently passports of Andorra, Austria, Belgium, Brunei, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxemburg, Malaysia, Malta, Monaco, The Netherlands, Norway, Portugal, the Republic of San Marino, Singapore, South Korea, Spain, Sweden, Switzerland, Taiwan, the United Kingdom—British Citizen, the United Kingdom, British National (Overseas)—and the Vatican City. France became eligible for ETA issue in 1997. In testimony before the Senate Legal and Constitutional Legislation Committee on 4 November 2003, the Deputy Secretary of the Department of Immigration and Multicultural and Indigenous Affairs, Mr Ed Killesteyn, described ETA access as the equivalent of 'visa-free access for Australian citizens' to other countries.⁷

This system—which allows very large numbers of people to enter Australia each year without even having met an Australian official⁸—is not the only one which could be employed. Indeed, in many countries, potential short-term tourist or business entrants are much more intrusively scrutinised by Australian Embassy or High Commission officers before visas are issued. In his 4 November 2003 testimony, Mr Killesteyn described the alternative approach: 'In non-ETA countries, where there is a paper based application, the decision maker will turn their mind to the bona fides of the visit. That will include a range of factors, such as the identity of the person. There will be an opportunity to examine the passport. There will be questions about intention: do they have the necessary financial facilities to maintain their stay in Australia; do they have return tickets to their home country; are there any other incentives that would bring them back to their home country? All of those things, I believe, go to the bona fides and security of the visit, ultimately.' He conceded that none of these things applied to an ETA country.⁹

What the ETA system does embody is the checking of a person's name and details against a database operated by the Department of Immigration and Multicultural and Indigenous Affairs and known as the Movement Alert List (MAL). The Movement Alert List includes a 'Person Alert List' and a 'Document Alert List'. As of late December 2003, there were more than 267,450 'people entries' on the Movement Alert List.¹⁰ Of these, some 29% were in the 'high risk' category, which includes 'national security' and organised immigration fraud, but not surprisingly, the data on such persons are not as good as those relating to 'medium risk' (health and criminal convictions) or 'low risk' (overstayers and persons with debts to the Commonwealth).

The Movement Alert List has gone through various stages of refinement. A major embarrassment occurred under the Keating Government when a senior official of the Afghan communist secret police (KhAD) was given a visa to enter Australia even though he had an entry in the publicly-available *Biographical Dictionary of Contemporary Afghanistan*. The then-Deputy Secretary of the Department of Immigration and Ethnic Affairs explained to a Senate Committee that 'there was clearly a breakdown in our procedures',¹¹ which did not recognise that certain letters in the Persian alphabet could be transliterated into English in more than one way. In its more recent variants, the Movement Alert List uses phonetic derivation of names, and in the 2003-2004 Budget, funds were provided for a task force to determine the optimum means of implementing a new generation of the Movement Alert List.

However, the Movement Alert List provides no protection against people whose names are not on it, and this was the case with Mr Brigitte. Mr Killesteyn on 4 November described the system as 'one of the best systems in the world for checking visitor visas from countries that invariably present themselves as low risk'.¹² This begs the question of the exact meaning of 'low risk'. The ETA countries—for the most part wealthy, developed countries—may be 'low risk' from a narrowly 'Immigration' perspective, since it is unlikely that nationals of those states will seek to obtain refugee status in Australia. But it is not at all clear that they are 'low risk' *from the post-September 11 perspective of security from terrorism*. Singapore and Malaysia, for example, have had significant extremist cells operating in their territory,¹³ as have countries such as the United Kingdom, France and the United States.¹⁴ Unless members of these cells have already come to the attention of security services which forward information to Australia, their names will in all probability not be included in the Movement Alert List.

It is here that the absence of any face-to-face dealings between a visa applicant and the Australian authorities is a weakness rather than a strength of the system. An applicant with suspect motives might well arouse the suspicions of an alert, properly-trained and well-briefed interviewer, but as the system is configured, this will not occur for applicants with ETA-approved passports. It is notable that the US requirement from 5 January 2004 that the US Government obtain biometric data from visa holders entering the United States but not from entrants under the US 'Visa Waiver Program' equally provides a window of opportunity that entrants with suspect backgrounds (but not recorded on the US 'Watch List') could exploit—although by October 2004 this is to be augmented by a requirement that new 'Visa Waiver' country passports be machine-readable and contain appropriate records of biometric indicators.¹⁵

What is to be done?

Is all this a problem? If it were simply a matter of 'risk management', arguably not. As Chris Leithner has pointed out, relative to the major killers of Australians, the terrorism threat is 'miniscule';¹⁶ vastly more Australians and Americans die each year as a result of the automobile or tobacco than as a result of terrorism. Furthermore, as the Bali Bombing showed, terrorists intent on killing Australians will easily find Australians abroad to target, and the resources spent on enhanced 'border protection' may be better spent elsewhere. Finally, the tourism industry would almost certainly react with consternation to proposals for more elaborate evaluation of potential tourists' *bona fides*.

However, an approach based purely on risk management overlooks a key feature of terrorism, namely that it is designed to produce psychological effects which are out of proportion to its purely physical consequences.¹⁷ Only an exceptionally brave politician would assume that if an ETA entrant were to commit a major act of terrorism, it could easily be explained away to a frantic electorate. It is also the case that the Government has been prepared to commit very substantial sums elsewhere to 'protect' the public against the 'security' threat posed by unauthorised arrivals, even though it is highly unlikely that any serious terrorist group would expose a top operative to the perils of the high seas. In 2001-2002 ASIO issued 2,281 security assessments in respect of unauthorised arrivals; it issued a further 173 security assessments in respect of unauthorised arrivals in 2002-2003. Not a single prejudicial assessment was issued,¹⁸ which suggests that even if protection against terrorist threats is a priority, funds may be disbursed more strategically than they have been to date.

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The path to follow is not simply an enhancement of the Movement Alert List, for this on its own will not detect the Brigittes of this world. Rather, what is required is a reassessment of what should be classed as 'low risk' countries in the post-September 11 era, and a willingness to divert resources to scrutinise a wider range of short-term tourist or business entry applicants through face-to-face interviews. No government can deliver absolute security, but there is considerable scope for reform of the ETA system. At the very least, a country should be removed from the ETA list the moment there is *any* credible evidence of terrorist cells with international objectives operating within its borders. The current system operates more effectively to exclude the poor than the wicked. These priorities need to be reversed.

The burden of these steps could be considerable, not least if other states responded by imposing visa requirements on Australian visitors. Furthermore, in the hands of poorly-trained or insensitive officers, the power to refuse a visa 'on suspicion' could cause unnecessary offence to innocent applicants, as happens quite frequently at present in non-ETA countries. However, the potential mayhem which a terrorist could inflict on innocent Australians should not be underestimated. Nor should we underestimate the urgency of the matter. How many other 'Brigittes' are out there in our midst—right now? No one knows the answer, and herein lies our peril.

Endnotes

- ¹ Ian McAllister, 'Border Protection, the 2001 Australian Election and the Coalition Victory', *Australian Journal of Political Science* 38:3 (2003), 445-463.
- ² William Maley, 'Asylum-seekers in Australia's International Relations', *Australian Journal of International Affairs* 57:1 (2003), 187-202.
- ³ David Marr and Marian Wilkinson, *Dark Victory* (Sydney: Allen & Unwin, 2003), 151.
- ⁴ Piotr Smolar, 'Un Combattant Islamiste Français Expulsé Par l'Australie', *Le Monde* (29 October 2003). On the Massoud assassination, see William Maley, *The Afghanistan Wars* (London: Palgrave Macmillan, 2002), 251.
- ⁵ *House of Representatives Official Hansard* 17 (3 November 2003), 21727.
- ⁶ Steven A. Camarota, *The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001*, Center Paper 21 (Washington DC: Center for Immigration Studies, 2002), 11.
- ⁷ *Senate Legal and Constitutional Legislation Committee Hansard* (4 November 2003), L & C 51.
- ⁸ In 2002-2003, 3.233 million visitor visas were issued. There are more than 2.5 million ETA applications a year (see *Senate Legal and Constitutional Legislation Committee Hansard*, 4 November 2003, L & C 48, 52, testimony of Mr Rizvi and Mr Killesteyn). In 2002-2003, 98% of all visitor visa applications were approved: *Annual Report 2002-2003* (Canberra: Department of Immigration and Multicultural and Indigenous Affairs, 2003). During 2002-2003, ASIO conducted 27,534 'visa security assessments' in respect of temporary visa applications; five applicants 'were refused entry to Australia because of their assessed involvement in terrorist activities': Australian Security Intelligence Organisation, *Report to Parliament 2002-2003* (Canberra: ASIO, 2003), 24.
- ⁹ *Senate Legal and Constitutional Legislation Committee Hansard* (4 November 2003), L & C 51.
- ¹⁰ *The Movement Alert List*, Fact Sheet no.77 (Canberra: Department of Immigration and Multicultural and Indigenous Affairs, 19 December 2003).
- ¹¹ *Senate Hansard*, Estimates Committee F (23 June 1994), F 231.
- ¹² *Senate Legal and Constitutional Legislation Committee Hansard* (4 November 2003), L & C 53.
- ¹³ Daniel Benjamin and Steven Simon, *The Age of Sacred Terror* (New York: Random House, 2002), 208-211.
- ¹⁴ A number of very prominent terrorists or suspected terrorists have been nationals of countries which issue 'ETA-eligible passports': El Sayyid Nosair, Nidal Ayyad, Ali Mohammed and Wadiah el Hage (US) and Zacarias Moussaoui (France) come to mind. Omar Saeed Sheikh, responsible for the murder of the *Wall Street Journal* correspondent Daniel Pearl, was born in London and studied at the London School of Economics and Political Science: see Jason Burke, *Al-Qaeda: Casting a Shadow of Terror* (London: I.B. Tauris, 2003), 82. According to a US Department of State 'Weekly South Asia Activity Report' dated 4 November 1994 and released to the National Security Archive at George Washington University under the provisions of the US Freedom of Information Act of 1966, Sheikh (described in the cable by his pseudonym 'Rohit Sharma') also held a British passport.
- ¹⁵ The following countries are covered by the US Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, the Netherlands, and the United Kingdom.
- ¹⁶ Chris Leithner, 'The Terror Trap', *Policy* 19:1 (2003), 34-36 at 35.
- ¹⁷ See Raymond Aron, *Paix et Guerre Entre les Nations* (Paris: Calmann-Lévy, 1984), 176.
- ¹⁸ Australian Security Intelligence Organisation, *Report to Parliament 2002-2003*, 25.

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