

FROM MUNICH TO CHRISTCHURCH: INTERNATIONAL SPORT AND THE THREAT OF TERRORISM

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The 1972 Munich Olympic Games is remembered for the terrorist attack which resulted in 11 members of the Israeli team being killed. It highlighted that sporting events and teams can be targeted by terrorists due to the high media profile that major sporting events attract. Since this time, high level security has been an important organising consideration for the Olympic Games, something that has increased since the September 11 attacks in the United States in 2001. Other sporting teams, namely the Togo national football team and the Sri Lanka national cricket team, have likewise been targeted. The international aspect of many sports requires extensive touring to other countries, and this has resulted in various touring teams being in places that have been terrorist targets, as the New Zealand national cricket team experienced in Pakistan. New Zealand is not a region of the world prone to terrorism problems, but the March 15 attack on a Christchurch mosque could have led to loss of life amongst the touring Bangladesh national cricket team. No region or country is free from potential terrorist attacks involving sporting teams.

I INTRODUCTION

The year 2020 will always be associated with the COVID-19 pandemic, which impacted all aspects of society, including sport. However, it was also the year in which Australian-born terrorist, Brenton Tarrant, was jailed for life with no prospect of parole for his attack on a Christchurch mosque in March 2019, which killed 51 people. Its link to sport was that the Bangladesh national cricket team was in the midst of its New Zealand tour, and had just arrived at the mosque for Friday morning prayers. If the team bus had arrived a few minutes earlier, members of the team could well have been among the victims. Instead, the players were evacuated to nearby Hagley Oval where they had been scheduled to start a test match the following day. The match, however, was abandoned and the Bangladesh team returned home.

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This incident came less than two years after the Manchester Arena attack which had left 23 people dead and many more injured. While this was not a sporting event, it highlighted that stadiums and arenas, including sporting ones, are potential targets for terrorists due to the concentration of large numbers of people in a relatively small and confined space. Sporting events and teams have also been directly targeted by terrorists. The best-known example is the attack on Israeli athletes by members of the Palestinian Black September group at the 1972 Munich Olympic Games, which resulted in 11 members of the Israeli Olympic team being killed. The Boston Marathon, one of the oldest and best-known marathons, was targeted in 2013 when two home-made bombs were detonated near the finish line. Other direct attacks involving sporting teams have included the 2009 attack on the Sri Lanka national cricket team in Lahore, Pakistan, and the 2010 attack on the Togo national football team in Angola. Other sporting teams, while not being the direct target, have found themselves in situations where an indiscriminate attack has taken place, as happened to the New Zealand national cricket team in Pakistan.

This paper will examine the threat that terrorist attacks pose to various sports, including those aimed at one of the biggest sporting events in the world, the Olympic Games. It will also examine what legislation can be used to help counter the threat of terrorism at major sporting events, and the practical security measures that need to be implemented both to help prevent this threat and also to fulfil an organiser's duty of care.

II THE OLYMPIC GAMES

A The 1972 Munich Olympic Games

The Olympic Games returned to Germany in 1972 for the first time since the 1936 Berlin Olympic Games, which had given the world an insight into what lay ahead as symbols of the Nazi regime had dominated the stadium. Munich, however, was to be remembered for the attack on the Israeli Olympic team by members of the Palestinian militant group, Black September. Two of the Israelis were killed in the Athletes Village, and a further nine athletes and officials were taken hostage. An attempt made by West German police to rescue them failed, resulting in nine Israelis being killed, along with five Black September terrorists and one West German policeman. Three of the terrorists survived, but were later released by the West German government after the hijacking of a Lufthansa plane.¹ As Kennelly and Toohey note, the Munich attack "was considered successful for a number of reasons, not the least of which was the extensive and ongoing global media coverage it received".² It therefore highlighted that sporting events provided the high-profile media coverage that suited the objectives of terrorists. It also meant the Olympic movement had to factor the threat of terrorism into its operations nearly 30 years before the September 11 attacks in the United States. This was highlighted

1 Millicent Kennelly and Kristine Toohey "Terrorism and the Olympics: 'The Games Have Gone On'" (2007) 24 *Sporting Traditions* 1 at 6.

2 At 6.

by the increased security at the 1976 Montreal Olympic Games where the security was so extensive that "the Olympic Village might well have been a prison camp".³

It is also worth noting that prior to the 2012 London Olympic Games there were calls for a minute's silence to be held during the Games on the 50th anniversary of the Munich attack. A 103,000-name petition was presented to International Olympic Committee (IOC) President, Jacques Rogge, by Ankie Spitzer, whose husband, Andre, had been one of the victims in Munich. Spitzer then branded Olympic officials as "chickens and cowards" for refusing the request after the IOC stated that it was not willing to "mix sport and politics".⁴ The Munich attack has not been the last terrorist attack associated with the Olympic Games; another occurred at the 1996 Atlanta Olympic Games.

B The 1996 Atlanta Olympic Games

The attack in Atlanta took place at the opening of the Games, not in the main stadium, but at a music concert being held in Centennial Olympic Park. One of the security guards hired specifically for the Olympics, Richard Jewell, had noticed a backpack sitting under a bench. He immediately alerted his superiors, and other security officers quickly ascertained it contained a homemade pipe bomb. While the bomb detonated before it was removed, Jewell and other security staff had been able to move most people away from the danger area. As a result, only one person died, though it was clear that if Jewell had not spotted the bag and alerted his superiors, many more would have been killed. Not surprisingly, Jewell was immediately presented as a hero by the press, a status he quickly lost when he became the FBI's chief suspect. Despite protesting his innocence, Jewell was investigated and interrogated for many weeks for doing what all security officers are now trained to do – to keep an eye out for suspicious looking packages or unclaimed bags and report them.

The reason why Jewell became a suspect was that he fitted the profile of someone who would plant a bomb, and then look to be the hero for finding it. The FBI had a precedent for this as during the 1984 Los Angeles Olympic Games a police officer had found an explosive device on a Turkish team bus, but it was later revealed he had been the one who had placed it there. Jewell was never charged and while the FBI were perhaps able to reassure those attending the Olympic Games that they had a suspect, it still involved the prosecution of an innocent, and ultimately heroic, individual. A number of years later anti-abortionist campaigner, Eric Rudolph, confessed to and was convicted of the crime.

This incident in Atlanta highlighted that spectators, rather than athletes, can also be potential terrorist targets at major sporting events such as the Olympic Games. What will now be examined is

3 Martha McIntosh "Security Measures at the Summer Olympics" (PhD Thesis, University of Toronto, 1984), as quoted in Kennelly and Toohey, above n 1, at 8, n 62.

4 Rick Broadbent "Minute's silence denied by 'cowards'" *The Australian* (Australia, 25 July 2012) at 34.

the relevant security legislation and practical security measures undertaken at the 2000 Sydney Olympic Games.

C The 2000 Sydney Olympic Games

1 The relevant legislation

For the 2000 Sydney Olympic Games, a number of specific statutes were enacted, such as the Sydney Organising Committee for the Olympic Games Act 1993 (NSW) and the Olympic Co-ordination Authority Act 1995 (NSW). However, only general criminal law offences could have been used to lay charges had there been any terrorist attacks before or during the Sydney Games, since there was no specific terrorism legislation at the time.

It is worth noting that another Australian city, Brisbane, has been awarded the 2032 Olympic Games, and the Games there will have the benefit of federal anti-terrorism legislation, as after the Sydney Games the Commonwealth Parliament enacted the Anti-terrorism Act 2004 (Cth). Amendments have also been made to various Acts, such as the Crimes Act 1914 (Cth), with s 15AA of the Act for instance stating that bail is not to be granted in certain cases, including terrorism offences. Section 19AG(2) makes the minimum non-parole period a mandatory three quarters of the sentence, and if it is a life sentence, then it is 30 years. The Anti-terrorism Act sets out the procedure for actions such as interim control orders and preventative detention orders. Sedition has been added to the Criminal Code Act 1995 (Cth) by sch 7 of the Anti-Terrorism Act (No 2) 2005 (Cth).

2 The security measures

Part of Sydney's bid documents for the 2000 Olympics were guarantees from the Prime Minister of Australia, the Premier of New South Wales (NSW), and both the NSW and Federal Commissioners of Police "for a safe and secure Sydney 2000 Olympic Games".⁵ While the bid document acknowledged that Australia's "geographic, political and historic isolation from the world's major trouble spots" did reduce the risk of a terrorist attack at the Sydney Games, "a unique Olympic security model" was still developed.⁶ This began in May 1995, over five years before the Games, with the appointment of eight full-time planning officers to the Olympic Security Planning Group (OSPG), which was later renamed the Olympic Security Command Centre (OSCC) and given the status of a separate police command.⁷ The OSCC then developed a Dual Security Model to distinguish between core and non-core security-related services. Core security issues were the responsibility of the NSW Police, which relied on its own resources with assistance from other agencies, such as the Australian Defence Force (ADF). The Sydney Organising Committee for the Olympic Games (SOCOG)'s

⁵ See Sydney Organising Committee for the Olympics Games *Official Report of the XXVII Olympiad: Volume One: Preparing for the Games* (2001) at 191.

⁶ At 191.

⁷ At 191.

Spectator Services Program then had responsibilities for crowd management, ticket checking and any other non-core security functions.⁸

Five documents were created for the planning of the security, namely the Security Concept of Operations, the Security Strategic Plan, the Preferred Security Position, the OSCC Business Plan, and one setting out the Dual Model of Security. These outlined the principles guiding the planning of the security and included: appropriate background checks for all accredited persons; restricting sensitive areas to accredited persons; checking of all venues for explosives with other random screening procedures to be carried out on spectators under the supervision of NSW police officers; and imposing strict controls on the entry of vehicles into Olympic venues and sites.⁹

It was noted that "a basic tenet" of the security framework was "the integration of all Olympic Security personnel under the command of the NSW Police Service with the Commissioner for Police in operational control".¹⁰ Around 11,500 security personnel, comprised of police officers, members of the ADF, private security officers and volunteers, were available when needed. It was estimated that 5.5 million security access checks were carried out on visitors to Sydney Olympic Park during the Games,¹¹ while the 5,000 strong ADF contingent maintained 24 vehicle checkpoints 24 hours a day, performing around 250,000 vehicle searches.¹² The cost of the security for the Sydney Games was stated to be around AUD 170,000,000, with SOCOG contributing AUD 40,000,000.¹³ This figure did not include the cost of the ADF involvement, nor the salary costs of the 5,000 NSW police officers who were employed at the various venues and sites during the period of the Games.¹⁴

Despite the potential problems, it was acknowledged in the official IOC report on the Sydney Olympic Games that the security planning worked perfectly, with no reported incidents and the police, military and other security personnel providing a visible, yet unobtrusive, presence throughout the period of the Games, one that was "in keeping with community expectations".¹⁵ Greater potential security problems for future Olympic Games soon arose following the September 11 attacks the following year.

8 At 192.

9 At 192.

10 At 193.

11 At 193.

12 At 195.

13 At 193.

14 At 193.

15 At 191.

D The 2004 Athens Olympic Games

The IOC had put Athens on "amber alert" due its lack of progress in getting its facilities completed, and Sydney was asked to keep its facilities operational after the 2000 Games. The IOC later gave Athens the green light to host the 2004 Games, but the events in the United States three years earlier meant it faced the prospect of having to provide far greater security than any previous Olympic Games. A total of 34,737 staff were needed to secure venues and provide protection to those attending, with the cost being estimated to have been €1 billion.¹⁶ Security, which had been high ever since the Munich attack, was now an even higher priority for any host city.

E The 2012 London Olympic Games

1 The legislation

After London was awarded the 2012 Olympic Games, the London Olympic Games and Paralympic Games Act 2006 (UK) was enacted, its long title stating that it was "[a]n Act to make provision in connection with the Olympic Games and Paralympic Games". It covered areas such as transport, advertising and trading, with security being covered by just one section, s 6. Section 6(1) stated that the Olympic Delivery Authority (ODA) was to have regard to the importance of ensuring: (a) the safety of individuals, and (b) the security of property. Section 6(2) meanwhile stated that the ODA was to have consultations with: (a) the Commissioner of Police of the Metropolis, and (b) the chief constable, for any area in which a London Olympic event was to take place. The London Olympic Games and Paralympic Games (Amendment) Act 2011 (UK) was later enacted, though no mention of security was made.

New anti-terrorism legislation, however, was enacted the year before the Olympic Games and it is evident that this was to provide the legal basis for any security measures needed for the Games. The most significant was the Terrorism Prevention and Investigation Measures Act 2011 (UK), s 1 of which repealed the Prevention of Terrorism Act 2005 (UK). Its long title stated it was "[a]n Act to abolish control orders and make provision for the imposition of terrorism prevention and investigation measures". No section specifically mentions the Olympic Games, but it is clear that the more general provisions would have applied to any terrorist-related problem before or during the Games. Section 10, for instance, would have allowed for criminal investigations into a terrorism-related activity. Section 2 allowed for the imposition of terrorism prevention and investigation measures.¹⁷

¹⁶ Kennelly and Toohey, above n 1, at 13.

¹⁷ Note there was also the Terrorist Asset-Freezing etc. Act 2010 (UK), the long title of which stated it was "[a]n Act to make provision for imposing financial restrictions on, and in relation to, certain persons believed or suspected to be, or to have been, involved in terrorist activities; to amend Schedule 7 to the Counter-Terrorism Act 2008; and for connected purposes."

Thus, in comparison with the 2000 Sydney Olympic Games, London was able to rely on specific anti-terrorism legislation rather than just general criminal law provisions. This reflects the fact that these Olympic Games were held post-September 11.

2 *The security measures*

A feature of the 2012 London Olympic Games was the outsourcing of the security arrangements to a private company, G4S Ltd (G4S). As part of its £284,000,000 contract the company was expected to provide 10,400 trained security guards in time for the games.¹⁸ However, just weeks before the games were due to commence, it became clear the company would be around 3,500 personnel short of its required target.¹⁹ To make up the shortfall, extra military personnel were placed on standby after G4S admitted it would not have sufficient security guards available for the opening ceremony.²⁰ This brought the total number of military personnel involved in the Olympic Games to 17,000, who, while not armed, were involved in procedures like searching bags at entry gates. This extra presence did raise concerns about the "militarisation" of the Olympics.²¹ It can, however, be considered a logical move, given the problem G4S had with training and obtaining security clearances for enough recruits to fulfil its contracts, and that neither was a problem with military personnel.

Legal action was also taken by a group of London residents after they had been informed that surface-to-air missiles were to be installed on their apartment block in order to counter potential airborne terrorist attacks during the Olympic Games. A defence spokesperson stated that "[g]round-based air defence systems could be deployed as part of a multi-layered air security plan for the Olympics, including fast jets and helicopters".²² The action by the residents was unsuccessful,²³ and allowed for the deployment of the missiles on the roof of the apartment, which was described as having an "excellent view of the ... sky above the Olympic Park".²⁴

Like the Sydney Olympics, the 2012 London Olympic Games were highly successful, in regard to both the performances of the participants and the overall organisation. Since there were no security problems, it is clear the measures taken were successful in creating a deterrence, and while these may

18 Deborah Haynes, Richard Ford and Sean O'Neill "More troops to help cover security fiasco" *The Australian* (Australia, 19 July 2012) at 9.

19 Peter Wilson "Olympics security firm admits it's a shambles" *The Australian* (Australia, 18 July 2012) at 9.

20 Peter Wilson "Troops to fill Olympics security gap" *The Australian* (Australia, 13 July 2012) at 10.

21 At 10.

22 "Ministry to train sights on missile defence of Olympic skies" *The Australian* (Australia, 30 April 2012) at 10.

23 Wilson, above n 20, at 10.

24 Above n 22, at 10.

have infringed on private rights at times, such as installing missiles on private residences, it is suggested that the public need for security outweighed these concerns.

III INTERNATIONAL CRICKET AND THE THREAT OF TERRORISM

Unlike the Olympic Games, cricket has not had one of its premier world cup events targeted by terrorists. However, it is a sport that has seen a team directly targeted, and other teams have been in the vicinity of attacks.

A The Cricketing World

Cricket is a game that evolved in rural England as a form of recreation for shepherds, which later developed into a sport with defined rules in the mid-18th century. It was then "exported" around the British Empire. There are now 12 teams with full test playing rights: Australia, Afghanistan, Bangladesh, England, India, Ireland, New Zealand, Pakistan, South Africa, Sri Lanka, the West Indies and Zimbabwe. It is a list of countries with strong Commonwealth connections, though the game is played in some non-Commonwealth countries, such as the Netherlands. The list also indicates that cricket is not only an international game, but one played in some of the major terrorist trouble spots, which is why it is not surprising that it has had issues in regard to terrorism. Before examining these terrorist incidents, it is worth briefly examining the rise of Afghanistan to test status. An unexpected outcome of the conflict in that country has been its emergence as a cricketing nation.

Cricket in Afghanistan did not arise, as it did in many countries, as a by-product of English colonial rule, but in the Afghan refugee camps in neighbouring Pakistan during the late 1980s. When the former occupants of these camps returned home, they took the game back with them. The country won the International Cricket Council's (ICC's) Division Five in 2006, and just six years later qualified for its first ever world cup.²⁵ The success of the national team has made cricket the number one sport in the country,²⁶ and has brought benefits such as ICC funding which, amongst other things, has been used to purpose build a 15,000 seat stadium in Kabul.²⁷ Public donations from England, meanwhile, have allowed concrete pitches to be built in Afghan schools, and the Marylebone Cricket Club has funded training camps for coaches.²⁸

25 Scyld Berry "Amazing journey takes Afghans from refugees to the world stage" *The Daily Telegraph* (United Kingdom, 23 March 2012) at S15.

26 Ivar Andersen "A land of concrete pitches and fragile dreams" *The Guardian* (United Kingdom, 22 March 2012) at 41.

27 Berry, above n 25, at S15.

28 Andersen, above n 26, at 41.

Away from the schools and purpose-built stadiums, Andersen reports that it is played on almost every street, often with improvised equipment, such as plastic bottles as bats.²⁹ This, it is suggested, represents a throwback to the very origins of cricket itself, where shepherds used whatever was available in order to play the game. Indeed the word "cricket" is thought to be derived from the Anglo-Saxon word "cricce" meaning "something not quite straight", a reflection of the fact that these early bats were simply broken off branches.³⁰ While Afghan cricket may, unwittingly, have connections to the sport's past, a more pertinent issue is what it may do for the future of the country. Cricket may help in the building of a common national identity for Afghanistan.³¹ However, the recent retaking of power by the Taliban leaves cricket in Afghanistan with an unknown future.

B Early Terrorism Attacks

Since 2000, international cricketers have found themselves in a number of situations where there has been an imminent threat of a terrorist attack, or where tours have been cancelled because of known or perceived attacks. New Zealand cancelled a tour of Pakistan in September 2001 following the September 11 attacks, and when it did tour in May 2002, a suicide bomber killed 14 people in the hotel they were staying at in Karachi. No New Zealand player was injured, but all had to evacuate the hotel. In 2008, Australia cancelled its tour of Pakistan after the assassination of Benazir Bhutto led to 100 people being killed in two subsequent suicide bomb attacks. Five months later, the ICC postponed the Champions Trophy scheduled for Pakistan to the following year, moving it to South Africa. The West Indies also cancelled its 2008 tour of Pakistan, and in November of that year attacks in Mumbai saw the England team leave India in the middle of a one-day series. The same attacks led to the postponement of the Champions League Twenty20 tournament.³² Despite the seriousness of these events, it was the ambush attack on the Sri Lankan team during the second test against Pakistan in Lahore in 2009 that sent shock waves through the cricketing world.

C The 2009 Attack in Lahore

The incident in Lahore occurred before the third day's play of the second test, when buses carrying players and officials to the ground were attacked by 12 masked gunmen, who opened fire despite the

29 At 41.

30 Rudolph Brasch *How Did Sports Begin?: A Look into the Origins of Man at Play* (Longman, Melbourne, 1971) at 56. The term "stump" meanwhile appears to reflect its early days being played in the forest, while having a wicket indicates a connection to pastoral life since sheep pens had an entrance usually consisting of a small hurdle with two uprights, and a moveable crossbar, the "bail". The word "wicket" in Anglo-Saxon, meanwhile, means "to yield, to offer a way through".

31 Andersen, above n 26, at 41.

32 Malcolm Conn and Stephen Lunn "Attack tears the game asunder—Subcontinental World Cup plans thrown into chaos" *The Australian* (Australia, 4 March 2009) at 18.

presence of an armed escort.³³ The suspects were thought to be Islamic terrorists, with the attack bearing similarities to the one carried out in Mumbai the previous year. They were described as having travelled "by rickshaw and taxi", and were "armed with Kalashnikov rifles, rocket launchers and grenades".³⁴ After the attack, two Sri Lankan players required surgery to remove shrapnel and gunshot wounds while four other players sustained minor injuries.³⁵ The driver of the bus transporting the officials, including Australian umpires Simon Taufel and Steve Davis, was not so lucky; he died of a bullet wound to the stomach.³⁶ Both Taufel and Davis witnessed the death of the driver and both were lucky to escape with their own lives. Two other Australians, David Dwyer, the Pakistan team trainer, and Trevor Bayliss, the Sri Lankan coach, were also present on the buses but did not suffer any serious injury.³⁷

What alarmed cricket authorities was the fact that, for the first time, an international team had been directly targeted and attacked by a terrorist group, rather than simply being in the wrong place at the wrong time. Equally disconcerting was the fact that it was another team from the Indian subcontinent that was targeted, rather than a country such as England, South Africa or Australia. It is suggested a Pakistan-based terrorist organisation would be expected to have had a stronger ideological opposition to teams from these countries. This perhaps indicates there was an element of randomness about the attack, Sri Lanka simply being the unlucky team next to tour Pakistan. It is also suggested that the attack had similarities with the attack on the Togo football team prior to the 2010 African Cup of Nations. The team had been travelling from a training camp in Brazzaville, Congo and had just entered the exclave of Cabinda in Angola. A separatist group, the Front for the Liberation of the Enclave of Cabinda (FLEC) then ambushed the team bus. Three non-players were killed: the Angolan bus-driver; an assistant coach; and a media spokesperson.³⁸ Again, it appears Togo was simply the first team that came along, rather than it being deliberately targeted.

In the aftermath of the Lahore attack it was Pakistan that was the most affected, as it was forced to play its "home" matches in places like Dubai and England for many years. There were obvious financial effects, but even three months before the 2009 attack the Pakistan Cricket Board had informed the ICC it was in financial trouble due to little or no touring by other cricketing countries

33 At 18.

34 Amanda Hodge and Peter Kogoy "Cricket attack opens new terror front" *The Australian* (Australia, 4 March 2009) at 1.

35 At 1.

36 "Our bus driver was hit in the stomach and died on the spot" *The Australian* (Australia, 4 March 2009) at 18.

37 Hodge and Kogoy, above n 34, at 1.

38 "Three dead after gun attack on Togo football team" *BBC News* (online ed, London, 9 January 2010); and David Smith "Emmanuel Adebayor on Togo football team bus ambushed by Angola gunmen" *The Guardian* (online ed, London, 9 January 2010).

because of terrorist incidents. Pakistan has therefore been heavily dependent on money from the ICC for over a decade.

IV THE BOSTON MARATHON

It was two bomb blasts, detonated 16 seconds and approximately 100 metres from each other, that caused the devastating scenes near the finish line of the 2013 Boston Marathon. Three people were killed in the attack.³⁹ Over 170 people were meanwhile reported to be injured, at least 13 of whom lost limbs.⁴⁰ The bombs themselves were found to be ordinary pressure cookers, containing nails and ball bearings, and were clearly designed to maim people.⁴¹ It was later established that information on how to make such homemade bombs had been published in an issue of *Inspire*, al-Qa'ida's English language magazine.⁴² What was also immediately evident was the timing of the attack, as the two bombs were detonated nearly two hours after the winner had crossed the finish line, indicating the mass participation stage of the race had been targeted, rather than the elite runners.⁴³

Immediately following the attack, the FBI began sifting through over 2,000 videos and photographs taken from the area before and during the attack, some of which helped to identify a man seen dropping off a backpack at the scene.⁴⁴ This investigation led the authorities to two brothers, Dzhokhar and Tamerlan Tsarnaev.⁴⁵ The question that then needed to be answered was what the reasons were behind the seemingly unprovoked attack.

Interviews with Dzhokhar, together with further investigations, indicated the brothers may have had at least some connections with radical elements of Islam, while their family's Chechen background was from the "centuries-old, patriarchal Caucasian tradition of mountain warriors".⁴⁶ Investigators also believed the brothers had at least some bomb-making training, though they were

39 Cameron Stewart and Carmel Melouney "Perfect spring day ripped apart by fireballs" *The Australian* (Australia, 17 April 2013) at 1; and Cameron Stewart "Boston bombs designed to maim" *The Australian* (Australia, 18 April 2013) at 1.

40 Stewart and Melouney, above n 39, at 1; and "Battlefield injuries lead to burst eardrums and 13 amputations" *The Australian* (Australia, 18 April 2013) at 8.

41 Cameron Stewart "FBI wants to question a man seen on video dropping a backpack" *The Australian* (Australia, 19 April 2013) at 8.

42 Paul Maley "Bomb recipe in al-Qa'ida magazine" *The Australian* (Australia, 18 April 2013) at 8.

43 Chip Le Grand and others "Attack timed for masses: Aussies" *The Australian* (Australia, 17 April 2013) at 1.

44 Stewart, above n 41, at 8.

45 "Officers grill wounded suspect" *The Australian* (Australia, 23 April 2013) at 10.

46 Alan Cullison and Paul Sonne "Islam a mother's hope for troubled teen" *The Australian* (Australia, 23 April 2013) at 10.

uncertain as to whether it had been with someone from Chechnya or within the United States.⁴⁷ It was also established during the interviews that Dzhokhar and his brother had another target in mind, Time Square, New York City,⁴⁸ which explained why police found half a dozen explosives with them after the shootout.⁴⁹

Thus, the Boston Marathon attack was one which had an element of randomness about it in the sense that it was an event that just happened to be in the wrong place, at the wrong time. However, it also appears that it was targeted because it was seen as an "event" and an attack would therefore attract world-wide publicity, which it did. Perhaps disconcertingly it appears to have been carried out by two individuals not directly linked to any terrorist organisation with a political agenda, but simply interested in random violence.

V DISCUSSION

Sport has relied on general criminal and terrorism legislation to provide the legal basis for any security measures needed to protect both participants and spectators at sporting events. It is suggested that this has, so far, proven sufficient and it is perhaps questionable whether additional security legislation made specifically for events like the Olympic Games would provide any further protection. Such legislation would need to be enacted by legislatures and is therefore out of the control of the organisers of sporting events. However, there is no doubt that organisers of sporting events owe a duty of care to both participants and spectators,⁵⁰ and this includes ensuring reasonable security measures are implemented. *Haris v Bulldogs Rugby League Club Ltd* did not involve any terrorist acts, but it did involve a spectator at a National Rugby League match being hit by a discharged flare which resulted in the loss of sight in one eye.⁵¹ The flare had been smuggled into the ground, despite the presence of security guards to check the bags of spectators as they entered. The case therefore provides judicial comment on the adequacy of the security measures in relation to the searching of spectators and their bags which, it is suggested, could also apply to the measures needed to combat the risk of terrorist attacks.

The plaintiff, Samar Haris, had arrived at the ground about five to 10 minutes after the game had commenced with a friend, Ms Rangihuna, who became a witness for Haris. The evidence of both

47 "Boston bombers 'had training'" *The Australian* (Australia, 30 April 2013) at 7.

48 "Boston brothers made spontaneous decision to target New York" *The Weekend Australian* (Australia, 27 April 2013) at 10.

49 Devlin Barrett and Pervaiz Shallwani "Tsarnaev 'calm' as brother's bomb rocked Boylston Street" *The Australian* (Australia, 24 April 2013) at 10.

50 *Woods v Multi-Sport Holdings Pty Ltd* (2002) 186 ALR 145 (HCA); and *Haris v Bulldogs Rugby League Club Ltd* [2006] NSWCA 53, (2006) 81 Aust Torts Reports 838 at [2].

51 *Haris v Bulldogs Rugby League Club Ltd*, above n 50, at [2].

Haris and Rangihuna was that they observed no bag searches at the time they arrived.⁵² This testimony, however, was rejected by the Court of Appeal, with Santow JA (with whom Mason P and Ipp JA agreed) referring to what the trial judge had stated, namely that:⁵³

The defendant's witnesses said that the bag searches continued for as long as patrons were being admitted to the game. They generally started with two tables, increasing to at least four for the hour before the commencement of the main game when the majority of patrons entered, with the numbers reducing as the crowds dwindled.

Santow JA affirmed the findings of the trial judge, who was "not persuaded ... that the defendant's security system on the gate had either broken down completely or ceased, despite the fact" that when Haris arrived "the game had been in progress for about ten minutes".⁵⁴ Testimonial evidence was accepted from Garry York, Business Development Officer at WorkForce which provided the security guards for the game, that there were "no exceptions, every person with [a] bag – will be opened and searched".⁵⁵ York's evidence established the limitations "of [the] legal entitlements so far as searching bags were concerned".⁵⁶ These were that the security guards had to ask the person to place the bag on the table, then stand back and allow the person concerned to move, if necessary, any items in that bag. Security guards were not allowed to put their hands into the bag, nor were they entitled "to pat people down", place their hands into a spectator's pockets or "demand that they empty their pockets".⁵⁷ York also testified that after WorkForce had successfully tendered for its services, a security procedure was developed with Bulldogs Rugby League Club Ltd (Bulldogs) in conjunction with the operators of the stadium, the Royal Agricultural Society of New South Wales.⁵⁸

In regard to the duty of care issue, Santow JA noted that:⁵⁹

... there is undoubtedly the possibility that harm could occur from fireworks, which could not be said to be insignificant. That said, the likelihood of serious harm would be relatively rare, though not so rare as to obviate the need for reasonable precautions.

52 At [76].

53 At [76].

54 At [76].

55 At [85].

56 At [86].

57 At [86]–[87].

58 At [85].

59 At [97].

It was then held that:⁶⁰

... the burden of taking the precaution of a body search in *every* case, even if legally permissible, is not what a reasonable person would do by way of response to that risk.

Santow JA then referred to evidence given by Chief Inspector Ashton at the trial that "physically it would be impossible to search all persons".⁶¹ It was therefore held that Bulldogs had not breached its duty of care.⁶²

It is suggested that this judgment provides an outline of what is expected at sporting grounds in regard to fulfilling a duty of care for a potential terrorist-related incident. This is to do what is reasonable and practical in response to that potential threat. It includes undertaking bag inspections and personal searches, but only within what the relevant law allows. Since *Haris* is a 2006 decision, it is suggested that this includes what is now required post-9/11. The question that then needs to be asked is whether these requirements for stadiums and arenas have further increased since the Manchester Arena attack.

On 22 May 2017, as spectators were leaving a concert at the Manchester Arena, a bomb was detonated in the foyer, killing 22 people and injuring many more. It was an attack that highlighted the vulnerability of these types of venues used for entertainment and sporting events. It is the author's observation that sporting venues' responses were immediate. For instance, just three days after the bombing there was a noticeable increase in security at the members' entrance to the Sydney Cricket Ground (SCG) for the Australian Football League (AFL) match between the Sydney Swans and Hawthorn. Bags had been routinely checked for many years, but extra security had been employed to carry out random body scans using hand-held scanners. Driver Avenue, which runs alongside the SCG, was always closed to traffic before and after matches. However, there is now the extra security measure of its being physically blocked off some 600 metres before the first gate, with this area being patrolled by police. The reason for this measure is to ensure that a potential terrorist cannot drive a car into the crowd that is entering or leaving the ground.

A feature of the SCG and of the Melbourne Cricket Ground is that they are both surrounded by park land despite being close to the Central Business District (CBD) of their respective cities. Other sporting stadiums, however, are built much closer to a CBD or residential area where an exploding bomb could impact more than just the stadium. Examples of this include Eden Park in Auckland, New Zealand, and the Principality Stadium in Cardiff, Wales, which is built in the CBD, with some of its roof supports reaching to within a few metres of the surrounding office blocks. The Principality Stadium is a ground where security is crucial, with everyone now being scanned as well as having

60 At [97].

61 At [97].

62 At [128].

their bags checked before being able to move through the gates. It is suggested that it is hard to see what these grounds can do to increase security before matches, other than to use airport standard body and bag scanners, something that is costly and therefore not something that is presently reasonable in regard to actual risk.

However, a problem with all sporting stadiums and arenas is that, despite extensive security measures prior to the match, there is little or no security after the end of the matches. This is further exacerbated by the fact that, unlike the start of matches, most of the crowd leaves at the same time. It should also be kept in mind that the Manchester Arena attack took place at the end of the concert; a sporting venue could be similarly targeted. This raises the question whether more should be done to ensure that an attack does not take place at the end of a sporting event. One possible solution would be to stagger departure to ensure that spectators do not provide such a large target for a potential terrorist attack. This would involve only spectators from certain parts of the ground being allowed to leave at any one time, and is something that is already done at some English football games to ensure rival fans are kept apart. It is suggested that such a staggered departure is presently beyond what is needed at sporting events, but even one Manchester Arena-type attack on a sporting stadium may force sporting event organisers to give thought to such an idea. If such a move is ever needed, it is also suggested that staggered departure should itself be staggered for competitions that are run over a season and where many people sit in the same seat for each game. Thus, if different sections of the ground leave first after each match, this would ensure that it is not the same people who have the longest wait.

VI CONCLUSION

The fact that major sporting events like the Olympic Games represent ideal targets for terrorists was highlighted as early as 1972. Since the September 11 attacks, there is no doubt that the threat of terrorism is known to security forces, and with it, increased surveillance of groups who may carry out such attacks. Present day security intelligence means it is unlikely a terrorist group could carry out a 1972 Olympic Games-style attack. What still poses a threat to sporting events is lone terrorists, such as Eric Rudolph and Brenton Tarrant, as it can be much more difficult for intelligence services to track them down and prevent their attacks.

The threat of terrorism will remain for all major sports. Sporting events like the Olympic Games will invariably need the support of national security services in order to conduct their events safely. Security will also remain a necessity for all sporting venues, with organisers owing a duty of care to ensure the safety of players, officials and spectators.

