

Australian court quashes convictions of protesters for entering US spy base

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In a little-reported judgment, three judges of the Northern Territory Court of Criminal Appeal unanimously overturned the convictions of four Christian pacifists for entering the top secret US-Australian spy satellite base at Pine Gap in central Australia. They also rejected an application by the Director of Public Prosecutions, representing the Rudd government, for a retrial.

Handing down their reasons last month, the judges said the case had been a “substantial miscarriage of justice” because the four protesters had been denied the right to argue their main defence: that the Pine Gap base was being used to conduct a war of aggression in Iraq. Chief Justice Brian Martin said there was “little community interest to be served by requiring the defendants to undergo a further trial”.

The decision reflects the growth of opposition among ordinary people, and the legal profession, to the use of the “war on terror” to trample over basic democratic and legal rights. At the same time, the Rudd government’s response highlights its commitment to maintaining the military and diplomatic alliance with Washington, and to retaining the Pine Gap base, which is playing a significant role in the occupations of Iraq and Afghanistan, and also in the aggressive new US global missile system.

Many protests have been held against the base, some 20 kilometres from Alice Springs, since it was established in 1967 at the height of the Vietnam War and the Cold War for use against the Soviet Union, China, Vietnam and other countries regarded as threats to the US and its allies. While large contingents of police have been mobilised to block demonstrators, no serious charges have been laid previously. In 1986, on the 20th anniversary of the Pine Gap Treaty that authorised the construction of the base, more than 300 women were arrested and released without charge after entering the facility. In 2002, about 500 people protested at its gates, objecting to its use in the impending invasion of Iraq, and a few were arrested after a scuffle with police.

Four members of “Christians Against All Terrorism”—Donna Mulhearn, Jim Dowling, Adele Goldie and Bryan Law—entered the base in December 2005 in a bid to conduct a “citizens’ inspection” of its operations. The aim of the “inspection”, which was announced to the authorities and the media well in advance, was to highlight the facility’s role in enabling the targeting of missiles and other bombing attacks on the people of Afghanistan and Iraq. The group said the base and the Australian government were involved in “crimes against humanity” because data from Pine Gap was being used for lethal purposes, right down to the Apache helicopter gunships that attack homes in Baghdad and other Iraqi cities.

After the four were arrested, the Howard government’s attorney-general Philip Ruddock personally authorised a prosecution under a previously unused 50-year-old law—the 1952 Defence (Special

Undertaking) Act. The four faced jail for up to seven years for entering a “prohibited area” and another seven years for taking photographs in the area without authority. They also faced Commonwealth Crimes Act charges of trespass and damage.

The 1952 Act was introduced by the conservative Menzies government, with the backing of the Labor Party, to prevent protests against British nuclear testing at Montebello Islands, off the Western Australian coast, and Maralinga, in central Australia. It gives the defence minister sweeping powers, including to declare any area of land or water a prohibited zone “if it is necessary for the purposes of the defence of the Commonwealth to do so”. In 1992, on behalf of the Keating Labor government, defence minister Robert Ray renewed the declaration of Pine Gap under the Act, in the wake of the first Gulf War, in which the base also played a key missile-targeting role.

Officially called a Joint Defence Facility, Pine Gap has grown from two antennae in 1967 to 14 giant white domes and 12 other antennae, and its staff levels from about 400 to more than 800. Its US and Australian personnel include senior officers from the US Central Intelligence Agency (CIA) and National Security Agency, which intercepts and analyses signals, and the US National Reconnaissance Office, which operates intelligence satellites. According to experts, it is one of three similar facilities around the globe, with the other two at Buckley Air Force Base, Colorado and Menwith Hill in Britain.

Pine Gap’s precise functions are shrouded in mystery. The Howard government refused to give a parliamentary committee any details when the 1967 treaty was renewed in 2000. Professor Des Ball of the Australian National University told the committee that the facility served ground control and information processing functions for four categories of signals: telemetry from weapons such as ballistic missiles; signals from anti-missile and anti-aircraft radars; communications satellite transmissions; and microwave emissions, such as long distance telephone calls.

Last September, on the occasion of the base’s 40th anniversary, the Howard government’s last defence minister, Brendan Nelson, told parliament it was part of the US ballistic missile early warning program and could supply information to the Bush administration’s provocative anti-missile shield project, which is proceeding despite strenuous opposition from Russia and China. Nelson also emphasised Pine Gap’s part in helping reinforce the “intelligence relationship” with the United States since 2001. “This cooperation, which borders on seamless, has seen an increase in information exchange, technical cooperation and embedded liaison officers.”

Pine Gap collects intelligence from satellites that eavesdrop on the Middle East, Russia, China, South East Asia and the Pacific, and has the capacity to monitor phone calls from within Australia as well. The

base underwent a major technological upgrade in the lead-up to the invasions of Afghanistan and Iraq, designed to enable the gathering of intelligence, identification of targets and direction of the firing of missiles. With the closure of the nearby US base at Nurrungar in 1999, its functions also expanded.

At the original trial last year, the “Pine Gap Four” argued that the precise wording of the 1952 Act required the prosecution to prove that the declaration of Pine Gap as a prohibited zone was “necessary for the purposes of the defence of the Commonwealth”. They said the base was used for the commission of wars of aggression, not defence. The declaration was therefore also unconstitutional, because it exceeded the “defence power” of the federal government.

Justice Sally Thomas refused to allow these arguments to be heard or put before the jury, insisting they were irrelevant because the defence minister only had to be satisfied that the base was involved in national defence. The defendants were convicted and the Howard government, through the prosecution, called for their imprisonment for endangering national security. Instead, Thomas fined them between \$450 and \$1,350 each, a total of some \$3,500. The four refused to pay the fines and served time in custody for nonpayment.

Not satisfied, the Howard government appealed against the leniency of the sentences, and the defendants then counter-appealed against the convictions.

The appeal judges ruled that Thomas had committed a fundamental and obvious legal error by interpreting the Act as if the words “where the minister is satisfied” were inserted. Chief Justice Martin quoted a previous ruling, which said: “The proposition that a court can introduce words into an Act of Parliament offends a fundamental principle of our constitutional law. It is no part of the function of any judge to amend legislation.”

Counsel for the accused, former Federal Court judge Ron Merkel QC, pointed out to the appellate court that the 1952 Act was passed just a few months after the Australian High Court barred the Menzies government from using the defence power to ban the Communist Party. In that case, the High Court stated that no government could simply assert that such a political act was necessary for national defence—it was an objective constitutional question that the courts had to decide. Merkel said it was therefore not surprising that the Act specified that the declaration of a prohibited zone had to be necessary for defence, rather than a matter of ministerial discretion.

The three appeal judges said that because Thomas misinterpreted the legislation, she also wrongly rejected the defendants’ applications for the production of secret documents and the calling of expert evidence about the base’s functions. Furthermore, she improperly dismissed the constitutional question, incorrectly refused to allow evidence of the defendants’ states of mind and misdirected the jury. The miscarriage of justice was compounded because the judge allowed the prosecution to call the deputy chief of the facility to testify that the base was used for defence, but prevented the accused from testing and challenging that evidence.

Nevertheless, the appeal judges were careful to limit the implications of their ruling. They emphasised that Pine Gap remains a validly declared prohibited zone and it is still an offence to enter without a permit. Anyone charged would still have to prove that the base is not used for defence purposes. The judges also insisted that their decision must not be seen as a vindication of the defendants’ “social and political protest and stance against the Facility”.

Members of the Christian group have announced that they will stage another citizens’ inspection of Pine Gap on April 26, which is

ANZAC Day, a public holiday to commemorate previous wars involving Australia and New Zealand. Speaking on the ABC radio “Law Report” on April 1, Bryan Law said they would challenge the Rudd government to charge them under the 1952 Act, allowing the group to once again apply to see the documents about the base’s functions and providing a platform to discuss and debate Pine Gap’s role. Law predicted that the government would “back down”. It would not use the 1952 Act and “we’ll be charged under the Crimes Act with minor offences, and let off with fines”.

It would be dangerous, however, to underestimate the extent to which the Labor government, like the Howard government, will go to protect the base’s secrets and the US alliance. Last September, after Brendan Nelson addressed parliament on the base’s 40th anniversary, Labor’s spokesman, Joel Fitzgibbon, now defence minister, was given time to deliver a bipartisan response. He noted that together with Rudd and former defence minister Kim Beazley, he was one of only a few people who had been permitted to visit Pine Gap.

Fitzgibbon declared: “We have seen Australians and Americans working together, side by side, in a joint determination to maintain peace and global order. Their work has never been more important. Big shifts in the distribution of global power, conflicts in Afghanistan and the Middle East, tensions on the Korean peninsula and in the Taiwan Strait and the rise of radical Islamism are combining to make the work of the joint facility more critical than ever before.”

In other words, Labor is fully committed to maintaining the “seamless” military and intelligence relationship with Washington. This has nothing to do with world peace. On the contrary, the US has resorted to criminal military aggression in the resource-rich Middle East and Central Asia, and could do the same in eastern Asia, to fight off challenges from its rivals, particularly in Europe, Russia and China. Pine Gap’s operations remain a major threat to ordinary people in Australia—where it carries out domestic electronic surveillance—and internationally, where it plays a critical role in the escalation of US militarism and war.



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