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Editor

I. M. Coombes

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Front Cover

*Pilot walks out to his F/A-18 Hornet while another awaits take off
in Pitch Black 2002*

Photograph by LAC Rob Mitchell

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Letters to the Editor

ADFJ January/February Edition

Dear Editor,

I was delighted to read the professional and erudite articles in the January/February edition of your journal. It was a source of pride to me that the authors were serving or retired Army officers and I know that the other Services will do their best to match them.

As a former member of Army's RODC and, in the following decade, charged with implementing many of its recommendations, I was pleased to see that review still has validity. Lieutenants Colonel Luke Carroll's highlighting of the RODC's insights into the value of tactical training for officers in preparation for warfighting pleased me, but I am saddened that these insights might still be subjugated to academic and management studies.

While the international esteem in which the Australian Army is held owes much to the fitness, teamwork and battlecraft of our troops, it would be stretching things to say that this esteem rested on the tactical ability of our officers. Luke Carroll gets to the bone in his analysis and exposes serious issues of concern to the Army. Lieutenant General Peter Leahy was with the RODC in 1978 and I am confident that he will rectify the weaknesses identified.

The Defence Act once mandated our tactical training. The DA21A assessments, such as the dreaded "Tac 5" reduced some fine soldiers to tears yet, because those tactical assessments were critical hurdles on the path to senior rank, they served to emphasise the importance of tactical

understanding. I do not suggest that the clock be put back but, if Luke Carroll's analysis is correct, much needs to be done.

The article on the "Opera" by Brigadier Nick Jans and Lieutenant Colonel David Schmidtchen is a valuable adjunct to Luke Carroll's article and flags further problem areas that need correction. The RODC also made the call for greater staff skill specialisation, which was long acknowledged but never acted upon. I admire Nick Jans' lead in progressing this tough concept. I hope that we will see "learned helplessness" eradicated from Russell Hill.

The two articles by Lieutenant Colonel Chris Field and Major Stuart McCarthy underscore another RODC recommendation – the importance of the study of military history for an officer's understanding of leadership, command, strategy and tactics. I was also pleased to see the so-called "revolution in military affairs" debunked as some new phenomenon. Military affairs are always in a state of flux as affairs in Iraq have demonstrated once again.

As National President of the RSL, I am impressed by the work of your authors. It is comforting to the veteran community and all Australians to know that we have such talent and professionalism in the ADF's officer corps.

PETER R. PHILLIPS AO MC

Major General (Retd)

NATIONAL PRESIDENT

THE RETURNED AND SERVICES

LEAGUE OF AUSTRALIA

Australian National Security Thinking

By Dr Christopher Flaherty, Department of Defence

This article identifies various aspects of National Security thinking. The challenge posed by changing world circumstances, such as the war against terrorism, and the move in US doctrine toward a homeland defence posture offers Australian thinkers fresh National Security concepts that could be tailored to meet Australian circumstances, in particular, developing new approaches to National Security. As well, developing a suitable National Security (or National Power) doctrine to help link the political and operational dimensions.

Core Concepts

Kaufmann defines National Security “to include, not only defence, but also statecraft, foreign relations, and economic policy”.¹ Edwards and Walker state that “National Security is a central component of public policy”.² In the Australian context, the updated Royal Australian Airforce doctrine *Fundamentals of Australian Aerospace Power*³ identifies that the “concept of security changed significantly in the last decade of the 20th century”.⁴ The most notable change is an extension of National Security beyond International Relations concepts⁵ to “incorporate individual security as well as the earlier ideas of national defence”.⁶

The core concepts of “National Security”, “National Power” and “Homeland Defence” have developed into partly interchangeable concepts. These ideas, can however be separated into building blocks (effectively mirroring the more traditional concepts of strategy and operations) with which to structure a methodology for the analysis of the relationship between politics, actions, deterrence and threats. Logically, the comparative relationship between “National Security”, “National Power” and “Homeland Defence” can represent a certain degree of overlap.

In the Australian context, the notion of “National Security” is defined as a “framework”⁷ concept. It is also overarching in the sense that, the notion incorporates “National Power”. From a definitional point of view, National Security can be seen as mechanism “to balance threats – which normally come from outside the state – and vulnerabilities – which are an internal factor”.⁸ In the US context, the term “Homeland

Defence” which sometimes is used interchangeably with the phrase – “Homeland Security” tends to be regarded as a development or adaptation of the notion of “National Security” into the more traditional frame of civil policing.⁹

Legislative Issues

In the Australian context, the approach to National Security is legislative. National Security overarches a suite of Acts broadly called the “National Security legislation”. In 2002, there was substantial consolidation of this legislation through the development of the “Counter-Terrorism Legislative Package”, which “comprises a number of separate pieces of legislation”.¹⁰ By way of comparison, the passing of the US Homeland Security Act of 2002 represents a radical transition between an extra-territorial notion of National Security and expansion of the concept into the civil domain. The US Homeland Security Act merged a large number of US Government agencies into one entity. This entity is not only intended to deal with the traditional defence-related areas of National Security, but also non-traditional areas such as internal US security, law enforcement and border control.

Definition of National Power

Malone identifies that the conceptual link between National Security and National Power is underdeveloped in Australia.¹¹ In the Australian context, National Power concepts are defined broadly. For instance, a review of the White Paper – *Defence 2000: Our Future Defence Force* – implicitly reveals that National Power is contained in: security and the role of the ADF; Australia’s strategic environment (its interests and objectives, international strategic

relationships and military strategy); people; capability (the Defence Capability Plan, industry and science and technology); and financial funding.¹² Australian Army doctrine provides a similar summary in terms of National Security, which “requires the coordinated interaction of all of the elements of National Power: political, economic, military, societal and environmental”.¹³ Australian Navy doctrine on National Security defines National Power in terms of:

*The nation’s ability to achieve its national objectives. The elements of National Power include the totality of a nation’s capacity for action and reaction. They are not confined to purely government functions, but also relate to the nation’s geography and natural and human resources, its industrial and scientific infrastructure and its relationships with other nation-states. The ADF provides the military capability of Australia’s National Power.*¹⁴

Royal Australian Airforce doctrine offers a qualification of National Power. The approach, however, differs between two key documents – the *Air Power Manual*,¹⁵ and the *Fundamentals of Australian Aerospace Power*.¹⁶ In the first instance, the *Air Power Manual* described “National Power as Australia’s total capability to achieve its national objectives”.¹⁷ Identified as an “array of interrelated capabilities”.¹⁸ Australian Airforce doctrine originally listed political, diplomatic, economic, social and military elements. Added to which over time these elements “may change generically and comparatively in relation to the National Power of other nations”.¹⁹ In the Royal Australian Airforce updated doctrine the *Fundamentals of Australian Aerospace Power* National Power is defined as a “collective feature of the state”.²⁰ In line with US thinking the new manual observes:

The political theory that has evolved at the start of the 21st Century states that National Power has four elements. These are diplomacy, the economy, the military, and information. The level of National Power can be determined by the way in which political decisions are made on how the four elements of National Power can be used. It is essential that national interest be the main reason for using these elements. Whatever the reason,

*the national response to any threat should always be an amalgam of all four. In the 21st Century it is likely that – depending on the situation – one of the elements will dominate.*²¹

Comparatively, in the US context, the concept of National Power has a more operative definition. For instance, Krulak defining National Power states:

*a nation is a superpower not just because of its military strength; a nation is a superpower because of five, what I call elements of National Power. One of them is the diplomatic. One is military. One is our industrial might, the strength of the industry of the nation. The fourth one is the laboratories and the academic environment that can also be brought to bear as part of the element of National Power. And the fifth, and gaining more importance all the time, is the information element of National Power.*²²

The point made by Krulak is that a country depending on strategic and operational needs mixes the elements of National Power. A fundamental aspect of National Security thinking is to firstly identify the elements of National Power, and secondly develop a philosophy teaching how to use these, as either:

- The relationship between the elements of National Power and national interest;
- How to choose, apply, mix or balance the elements of National Power; or
- How to choose, apply, mix or balance the individual elements of defence power as an expression of National Power.

Richards notes “as a former director of the Defense Intelligence Agency put it: formulating a contemporary strategy that has political, economic, cultural and functional substance, as well as a liberal amount of public understanding and support, must be the goal”.²³ Richards notes that for this approach to be successful, “requires planners to make fairly specific predictions about what these interests will be, where they will be threatened, and what type of adversary will be confronted”.²⁴ In the Australian context, Wing observes that a key component of a “National Security Theory” would be “an approach based

on two clear principles: the sharing of information and concentrated effort”.²⁵

The significance of the differing concepts of National Power – Australian and US – is more than nomenclature, it reflects a philosophical difference in thinking about the role of force in politics or international affairs. In US terms, the focus is on offensive employment of entities that produce National Power. In Australian terms, however, this is more defensive.

National Security and Constitutional Issues

Edwards and Walker state theoretically the approach to understanding the relationship between the notion of National Security and the US Constitution is:

*We center our attention on how both the Constitution and the political system it structures affect the National Security system, composed as it is of organisations, processes, and policies.*²⁶

In a broad sense, the “structure of National Security (whether US or Australian) is based upon and legitimated by the Constitution”.²⁷ The most important feature of this approach is that while:

*The parameters [of the Constitution] are broad, they nevertheless place significant constraints on the rules of the game of politics and policy making”.*²⁸

In summary, National Security classically tends to identify both constitutional relationships, and the operational matrix for these – which underpin the interrelationship of the various branches of government. Comparatively, differences between the US Constitution and the Australian Constitution focus on the distribution of power.

In the US Constitution, the “separation of powers doctrine” is based on the decentralisation of power throughout the American political system, which also necessitates a consultative system of decision-making.²⁹ In the Australian case, however, the Constitution implies a separation and consolidation of power into three groups – executive, legislature and judiciary. For instance, Defence powers (and by default the power over National Security matters) is mainly vested in the Executive-Branch of Australian Government. The main expression of this, is the

National Security Committee, which exists as a “cabinet sub-committee”, and is constituted by the Australian Prime Minister and his/hers’ executive cabinet.

Organising National Security Matters

Australian Army doctrine identifies that the Australian Government’s National Security Framework, establishes clear lines of responsibility, and command planning.³⁰

Critical of the organisation of National Security matters in Australia, Oatley observed in 2000, that “National Security policy making is centralised, cellular and reactive”.³¹ Oatley’s criticism identifies that the optimum organisational structure for National Security would be the preserve of an “apolitical organisation”.³² The reasoning being, that such an organisation would be far more suited toward objective development of National Security-type issues. However, more recent developments in this area, in particular Australia’s response to terrorism have developed stronger cooperative, coordinated and consultative relationships among Commonwealth, State and Territory governments, departments and agencies. For the Commonwealth, the Prime Minister takes the lead role for counter-terrorism policy coordination, with the Attorney-General, supported by the National Security Committee and other Ministers having responsibility for operational coordination of National Security issues. The work of the National Security Committee is supported by the Secretaries Committee on National Security, which is made up of heads of departments and agencies with responsibility for National Security issues.

Wing argues that a “critical weakness can stem from reliance on a traditional approach of separating National Security into sectors, coordinated by a system of committees”.³³ Wing observes that operationally this “administrative paradigm” translates into the:

stove-piping of information, according to perceptions of departmental and agency responsibilities. Stove-piping causes the need for the duplication of decision-making capabilities, supported by discrete information silos. This is clearly shown in the

*many watch offices and crisis rooms in Canberra.*³⁴

Comparatively, one of the key perceptions as to the failing in US National Security prior to September 11 was the US Constitutional decentralisation of power, making coordination of intelligence activities difficult. This led by necessity to the passing of the US Homeland Security Act. From a philosophical point of view, this development is not traditionally associated with the “separation of powers” within the Western liberal democracies as it links external defence with internal security. Daalder (et al.) notes in the Brookings Institute assessment of the Homeland Security Act, that the necessity for this legislation is notional due to the acceptance that:

*The issue of Homeland Security is one of the most important challenges facing our nation, and the decisions we make today about the strategy and organisation for addressing these new threats will have profound consequences for our National Security, our economy and our way of life.*³⁵

The Role of Deterrence in National Security Thinking

From a theoretical perspective, Harvey argues that “Deterrence will remain a fundamental feature of security strategies”.³⁶ As Harvey notes, underpinning Australia’s security structure is the notion that the main object of strategy is to ensure Australia’s physical integrity from armed attack.³⁷

In the Australian context, the use of force is fundamentally set within a classical formulation of Deterrence theory. Though not directly stated – it is implied by the White Paper that “at its most basic, Australia’s strategic policy aims to prevent or defeat any armed attack on Australia”.³⁸ Defining Australia’s defence posture as “essentially defensive – Australia will not use armed force except in response to the use or threat of force by others”.³⁹ The defensive character of Australian strategy can be seen in the caveat that, “in all cases where Australia’s strategic interests are at risk the use of force tends to be prefaced with careful consideration”.⁴⁰ This notion also acknowledges that:

consideration would need to balance the Australian interest at stake with the human,

*financial, political and diplomatic, and wider costs of committing military forces.*⁴¹

Comparatively, in the US context, Richards notes that one of the justifications for the use of military power is to maintain what is called:

*Pax Americana, which refers to the idea that as the sole remaining superpower, it is in the best long-term US interest to intervene militarily to ensure peace and stability anywhere around the world, and that it is better to stamp out brushfires than fight major conflagrations.*⁴²

Richards bases these conclusions on a RAND study “that we learned [in the last decade] that American economic and military strength is as important as ever and that much of the world still depends upon us to be engaged – and to lead”.⁴³

Harvey, notes that “in a specifically Australian context, while it can be argued that Deterrence has always been an aim of defence policy, there has been a reluctance to explicitly adopt a Deterrence strategy”.⁴⁴ Thus, Deterrence thinking in Australia is qualified. In particular, Royal Australian Airforce doctrine (stated in the *Air Power Manual*) relates “Deterrence – to Australia’s clear and unequivocal intention to defend itself”.⁴⁵ Harvey explains the reason for this difference of ideas, as that:

*A feature of recent Australian security policy is the apparent tension between the Deterrence of, and cooperation with, regional neighbors. This tension has come about as Australia moves from what has been seen as a “defence against Asia” to a “defence with Asia paradigm”. While there is significant interest in and writing on defence cooperation, consideration of Deterrence receives less than equal time.*⁴⁶

In the updated *Fundamentals of Australian Aerospace Power*, the link between Deterrence and National Security is less overt but resides in a methodology for what is called defining vulnerabilities.⁴⁷ The manual explains that a *vulnerability* “is an inherent weakness that could be exploited by an opponent”.⁴⁸ Thus, the role of National Security thinking is to determine how to build resilience against vulnerability. Comparatively in the US context, the “Secretary of Defense Donald Rumsfeld has noted, history

shows that weakness is provocative”.⁴⁹ The methodology proposed in the *Fundamentals of Australian Aerospace Power* lists physical vulnerabilities such as geography and resources, and social vulnerabilities such as: demography, socio-cultural issues, the political system, economy and defence.⁵⁰

Use of Force

Malone identifies the conceptual difficulty in finding a means to explain the “role of technology at the tactical and operational levels in the conduct of National Security affairs as a whole”.⁵¹ He proposes a whole-of-government (and indeed, whole-of-nation) framework, noting:

*This matter is closely related to the broader issue of an integrated and holistic approach to National Security. At present, these matters remain in their relative infancy in Australia. But in common with many other countries, these issues are presently being considered in the context of reforming National Security arrangements to meet the security challenges of the post-September 11 world.*⁵²

Australia’s theoretical predisposition to the use of force in National Security thinking is encapsulated by the “ADF model” of *Australia’s National Security Framework*.⁵³ Announced in Australia’s White Paper, “armed force will remain a key factor in international affairs”. This proposition, however, is mitigated by the qualification that “resort to force will continue to be constrained by many aspects of the international system”.⁵⁴

Royal Australian Airforce doctrine, contained in the *Fundamentals of Australian Aerospace Power*, places the contemporary Australian National Security framework within the context of a *United Nations Security Council* systems of state binding resolutions.⁵⁵ The concept, however, is subject to the caveat that “there is no international authority that has the power to make laws, to enforce them, or to resolve disputes between states”.⁵⁶ The significance of this point is that, Australian thinking tends to reflect more traditional International Relations Theory, thus maintaining a much older concept of the role of violence in politics, the heritage of which is rooted in Machiavelli and Clausewitz. This approach also tends to be ideologically pitched at

a particular ideal of international systems, namely, the Australian Government strategically:

*places a high priority on working with others, at both the regional and global level, to further minimise, and if possible to eliminate, the risk of war.*⁵⁷

Further the White Paper states as an aim the diplomatic challenge is for the Australian Government to – “strengthen peace in our region, and the commitment to work with others, both locally and globally, to build a more robust and resilient international system”.⁵⁸

Thus, from an Australian perspective, the ontological relationship between strategy and use of force “requires that strategic policy is integrated within wider diplomatic and political policies”.⁵⁹ Oatley, however, makes this same point:

*state disintegration and integration, new forms of conflict that are not yet understood, threats from non-traditional sources (e.g. environment) and issues will tend to be regional and global, rather than national. The strategic and defence paradigm that dominate Western strategic thinking for thirty years after World War Two has now ended and we are in a state of flux.*⁶⁰

In general, in the Australian context operational action falls under the auspices of national-level strategy, and are thus explicated in terms of International Relations Theory. Oatley’s challenge to the continued reliance on purist realist thinking – identifies this approach negating the true nature of National Security thinking; which is it should be conducted as an ongoing intuitive exercise. This approach, for instance, has been applied under the US Homeland Security Act. The establishment of a “Homeland Security Research Center” housed at the National Laboratories of the National Nuclear Security Administration for Homeland Security Research, allows:

*“Secretary of Homeland Security to use any Federally funded research and develop centers in the public or private sectors to support Homeland Security research and conduct independent analysis on those topics”.*⁶¹

In addition, the US legislation establishes university-based centres to assist in training first responders and conducting research in a variety of areas related to Homeland Security including bio- and agro-terrorism.

Preemption

Australian Army doctrine, states “when used pre-emptively, or with surprise, operational manoeuvre may lead to a decision without battle”.⁶² Historically, Australia’s *Strategic Review 1993* reflected a general move toward a proactive approach to meeting security needs. The White Paper explicitly “recognises that a secure Australia depends on a secure region”.⁶³ Opting for a “cooperative doctrine toward regional security, active engagement with other regional states is seen as a prevention measure against potential threats arising”.⁶⁴ The start of the world war against terrorism in 2001 signaled a move toward a more aggressive stance – more through necessity – toward halting non-state actors like al-Qaeda and militant groups such as Jemaah Islamiah.

In December of 2002, the Australian Prime Minister, Mr John Howard explained in response to a journalist’s question, in respect to the notion of preempting a move against people in another country planning an attack on Australia:

I think any Australian Prime Minister would. I mean, it stands to reason that if you believed that somebody was going to launch an attack against your country, either of a conventional kind or of a terrorist kind, and you had a capacity to stop it and there was no alternative other than to use that capacity then of course you would have to use it. Now, that situation hasn't arisen because nobody is specifically threatening to attack Australia and what I was talking about the other day was that when the United Nations Charter was written the idea of attack was defined by the history that had gone before, and that is that of an army rolling across the border of a neighbouring country, or in the case of the Japanese and Pearl Harbor bombing a base. Now, that's different now, you don't get that now. What you're getting is non-state terrorism, which is just as devastating and potentially even more so. And all I'm saying, I

*think many people are saying, is that maybe the body of international law has to catch up with that new reality, and that stands to reason.*⁶⁵

This response was predicated on the view that “any Prime Minister who had a capacity to prevent an attack against his country would be failing the most basic test of office” if he/she did not do so.⁶⁶

Preemption logically extends, what Harvey calls *Deterrence by Denial*.⁶⁷ Employed as a basic Deterrence Strategy the concept is based on articulating both an acknowledged and credible capability to defeat any threat to the physical integrity of Australia.⁶⁸ Thus, *Deterrence by Denial* can be viewed as a type of preemption-strategy. In the more complex scenario of *Asymmetric Warfare strategies*, the need to deal with non-state actors expands considerably the concept of *Deterrence by Denial*. For instance, in the case of the Bali Terrorist Attack Australian, Indonesian and international reaction to pool policing, intelligence and defence resources was partly reactive, but also constituted preemption-strategies, which worked to halt future terrorist attacks. In this context, the Australian Government’s notion of *Layered Defence*, announced in the *Australia’s National Security: a Defence Update 2003*, develops the deterrence concept recognising the need to integrate international diplomacy, legislative, financial and border controls, intelligence, policing and defence resources to defeat the terrorist threat.⁶⁹

Conclusion

The key benefit of a National Security doctrine, is that it helps bridge at the broadest possible level political dimensions and operational action, overarching the more traditional notions of strategy and operations. A comparison between Australian and US National Security notions demonstrates a divergence in thinking as to the role of National Security constitutionally. In the Australian context, use of force is made subservient to a broader strategic commitment to creating a secure international system. In the particular case of Australia, unlike US approaches, there has been little need to develop theoretical models that link application and strategy as part of a National Security

doctrine or National Power theory. The end-difference between the two paradigms is quite marked. Past uses of this approach has served policy makers well, however in the post-September 11 world, and in the wake of the Bali Terrorist Attack, a much wider integration of national resources is required. In the case of Australia, ironically the Australian Constitution is much better suited, than the US Constitution to meeting these requirements due to a “consolidated notion of separation of powers”.

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65. Interview with John Howard and Laurie Oakes, (December 1, 2002) The Channel Nine *Sunday* Program: http://sunday.ninemsn.com.au/sunday/political_transcripts/article_1192.asp.
66. Howard, op. cit.
67. Harvey, op. cit., p. 1.
68. Harvey, op. cit., p. 77.
69. *Australia's National Security: A Defence Update* 2003, p. 13.



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The Ethics of Selective Conscientious Objection

By Major Keith Joseph, RAAMC

With Australian involvement in a new Gulf conflict comes a number of significant issues with important leadership, political, legal and moral implications. One of these issues is selective conscientious objection, which can be defined as the conscientious objection by a person to participation in a particular conflict or war-like operation. It is thus distinguished from other forms of conscientious objection, particularly pacifist objections to the use of all armed force in principle. It can also be distinguished from “discretionary” conscientious objection to service in a military force that possessed certain types of armaments such as nuclear weapons,¹ although an objection to a particular operation because it involved the use of objectionable weapons would be considered selective conscientious objection.

During the Vietnam War selective conscientious objection was raised in the United States as grounds for objection to conscription in distinction to the general claim of pacificism that previously formed the only basis for claiming Conscientious Objector (CO) status.² In Australia selective conscientious objection to the Vietnam War was not recognised as a form of conscientious objection which permitted exemption from conscription.³ The reaction to this problem was the development, in the United States, of administrative mechanisms which could be used to deal with the “in-service” Selective Conscientious Objector (SCO) or other members who developed a more general conscientious objection after enlistment or appointment in the United States armed forces.⁴ In Australia, a private members bill to allow for selective conscientious objection by potential conscripts was introduced by Senator Michael Tate in 1983, and whilst it was not proceeded with at the time, the matter was considered by the Senate Standing Committee on Constitutional and Legal Affairs in 1983-84.⁵

The issue next arose during the Gulf War in 1990-91. In the United States claims of selective conscientious objection were made by serving regular and reserve members of the armed forces. Official reports indicate that in 1991 there were 131 discharges from the United States armed forces on the grounds of conscientious objection (Air Force 32, Army 44, Marines 13 and Navy 42),⁶ although these figures do not separate SCOs

from other conscientious objectors. Other sources put the number of “in-service” SCOs at between 1500 and 2000 members⁷ and the War Resisters League put the number at 2500 members.⁸ It was also reported that the mechanism for dealing with SCOs differed between the Services with the US Marine Corps, in contrast with the US Army, using disciplinary rather than administrative methods of dealing with SCOs.⁹ In Australia there was one prominent case of an SCO, with a sailor “jumping ship” in Fremantle on the way to the Gulf, and subsequently being court-martialled.¹⁰

The development of the concept of selective conscientious objection was initially in response to the use of conscription for Vietnam, and thus was originally thought of as something applicable to potential conscripts. However, as the Gulf War showed, personnel already serving in the armed forces may also develop or hold SCO beliefs in respect of a particular operation. As Australia has an all-volunteer defence force, this article will concentrate on “in-Service” selective conscientious objection rather than selective conscientious objection and draftees.

In this article selective conscientious objection will be treated as an exceptional phenomenon – that is, it is anticipated that in a liberal democracy with a volunteer defence force only a small minority of members will claim to be SCOs. It is of course possible that a large number of members – perhaps even a majority –

will claim to be SCOs. However, it is hard to conceive of an operation in which a democratic society such as Australia might be involved, which is so morally wrong as to provoke a clear and unambiguous revolt among its armed services. Accordingly, this article will deal with selective conscientious objection of serving members as an exceptional phenomenon, rather than as a common activity.¹¹

Therefore the aim of this article is to examine selective conscientious objection from an ethical perspective. Can members of armed forces claim, on moral grounds, selective conscientious objection? If they do make such a claim, are we, as civilian or military leaders, morally obliged to take account of this claim? What is the right response for us to take in regard to members of the Australian Defence Force (ADF) who might claim selective conscientious objection?

Legal, Political and Management Issues

Prior to discussing the ethical issues, there is a need to consider the associated legal, political and management issues. These issues cannot be divorced from the moral considerations that arise, and indeed will help determine the appropriate ethical response.¹² Also, there is a need to further define selective conscience objection, and to contrast the exercise of selective conscientious objection to a particular operation from a reluctance to participate in an operation on other grounds. For example, there is a need to contrast reluctance to participate in an operation on grounds of conscience, from reluctance to participate out of personal fear, concern for family welfare, concern with conditions of service, political motivation, or split loyalties caused by dual citizenship or cultural heritage.¹³

The right of individuals to claim exemption from conscription into the armed forces on the grounds of conscience has long been recognised in the laws of liberal democracies such as the United States and Australia. The concept of selective conscientious objection is somewhat more recent, and is largely coloured by memories of the Vietnam period.

Some of those who objected to conscription during the Vietnam period did so not on the grounds that they were opposed to war in general, but on the grounds that they believed the Vietnam

War to be unjust and/or immoral. Such persons could not claim that they were conscientious objectors to the use of armed force in general – rather, they selectively opposed the use of armed force in a particular instance. This was not, at the time, recognised as a legitimate ground for conscientious objection, which historically had been limited to those with a religious or philosophical opposition to war in general.

Following parliamentary consideration of the issue of selective conscientious objection in the 1980s, in 1992 the Australian Commonwealth Parliament amended the *Defence Act 1903* to allow for selective conscientious objection – but only for conscripts. Section 61A (1) provides for a number of classes of persons to be exempt from conscription, including:

- (h) persons whose conscientious beliefs do not allow them to participate in war or warlike operations;
- (i) persons whose conscientious beliefs do not allow them to participate in a particular war or particular warlike operations ...

In the extremely unlikely event of conscription being reintroduced in Australia in response to a war or warlike crisis, it would be legitimate to seek exemption on the grounds that the war for which conscription was sought was unjust or in some other way morally wrong. However, this part of the *Defence Act* is not applicable to those who are already members of the ADF.¹⁴ Therefore a person who is already a member of the Permanent or Reserve Forces cannot claim exemption from service in a particular operation on the grounds of selective conscientious objection.

Clearly, this leaves a gap, in ethical and legal terms, as it fails to address the question as to what should be done if a member has a conscientious objection to a particular operation. Defence members are required to exercise judgement on moral issues in their private lives and in their public career, and it is reasonable to expect that some of them may form a conscientious objection to a particular operation. By this, it is meant that they form in good conscience the opinion that a particular operation is wrong, either on religious or non-religious ethical

grounds. As previously mentioned, it has to be distinguished from personal concerns, such as fear or concern for the welfare of one's family. Arguable, a conscientious objection has to be "universal" in moral terms: that means that the person who has the objection believes that it applies to all persons in a similar position to themselves. In general terms, this means that the SCO believes that no member of the ADF should participate in the operation, including (but not limited to) themselves. In this way it is distinguished from individual concerns for welfare or political ambition. However, in practice some conscientious objections will stem from the peculiar circumstances of the member – for example, where the member has dual citizenship or kinship ties with potential opponents.

Thus we can come up with a workable definition of selective conscientious objection: the person concerned has to honestly conscientiously believe that it is wrong for ADF members to be involved in a particular operation. This belief has to be honestly held, capable of being expressed, and based on moral grounds which might be either religious or non-religious in nature.

These moral grounds can be in the form of a concern for intrinsic values – for example, a belief that the proposed operation does not have a just cause or intent – or can be in the form of a "consequentialist" objection, concerned with the adverse effects of the particular operation. Often these objections will be formed on the basis of some development of "Just War" theory (which has both intrinsic and consequentialist components) but they could be expressed in other ways as well.

Just war theory can give rise to several grounds on which selective conscientious objection might arise. The SCO may consider that the cause is not just – for example that the operation is part of a war of aggression rather than defence. Even if defensive, there may be objections on the grounds that the cost in terms of innocent lives likely to be lost outweighs the value of the object being defended. Alternatively, in just war theory the SCO may consider that the use of armed force is not being used as a last

resort. Even a humanitarian mission may result in a member claiming SCO status – for example, on the grounds that the mission is futile, or the economic costs far outweigh any benefits. There are many grounds that could give rise to a claim of selective conscientious objection, and it is not possible to enumerate them all here, or even to go into the permutations of just war theory and other moral responses that can give rise to them. However, the common link is that the objections are based on a moral objection which binds the conscience of the member and which renders him or her incapable of giving their assent to participation in the operation.

Now clearly the member may be alone in their beliefs. While the objections may be persuasive to the member and the member believes that they should apply to other members, others will probably not share this opinion. This still does not invalidate the objection; there are many areas of moral debate where intelligent and reasonable human beings hold differing viewpoints. In these cases our society recognises the conscientiously held viewpoints, and tries to accommodate them where possible even though society would hold the minority viewpoint to be wrong. This is the case with selective conscientious objection for conscripts, and also ought to be the case for selective conscientious objection among serving members. We may not agree with their reasoning and we may find their argument against serving in a particular operation badly flawed; but this does not invalidate the call of their conscience and our duty to respect their conscientiously held belief, and to accommodate it where reasonable to do so.

Nevertheless the exercising of selective conscientious objection by serving members will create problems for Defence, both moral and practical, and these problems need to be considered. First, the ADF should be apolitical and removed from partisan politics, and should also be responsive to the legitimate directions of the government of the day. If Defence members refuse to serve in a particular operation, especially one that is a live political issue, then they may be seen as making a political statement which may be quite significant. The media interest in such cases is likely to be high.¹⁵ Care

therefore needs to be taken to avoid any politicisation of the ADF. In particular, the ADF has to be careful to avoid intrusion into politics in its handling of SCOs.

There are also significant leadership problems. The ADF relies on its people being ready and able to serve their country without restriction. Often a crisis requiring the use of military force will arise with little notice, and ADF personnel must be able to deploy with a minimum of delay. Clearly if ADF personnel have the right to object to a particular deployment, the ability of the ADF to respond may be compromised especially if the personnel involved have critical skills or cannot be easily replaced.

Additionally, it should be remembered that the ADF is a "team of teams". The loss of a member, even if their skills can be replaced, nevertheless can upset the harmony and capability of the team. Furthermore, a Defence member who claims selective conscientious objection may be seen as shirking their responsibilities or obtaining special treatment not available to other Defence members, thus undermining morale. On the other hand, forcing a person who is conscientiously opposed to a certain operation to participate may also undermine esprit de corps and morale, and such a person cannot be expected to perform as a motivated and reliable member of the team. In a worse case they could undermine the effectiveness of the operation.

Therefore it is clear that selective conscientious objection by serving members raises management and leadership problems. There are practical steps available which may ameliorate these problems. For example, appropriate administrative action to support deploying members and their families may minimise claims for selective conscientious objection where the member's reluctance to serve contains elements of concern for the well-being of self and family rather than a conscientious objection.¹⁶ An interesting example of this problem of mixed motives is to be found in the recently reported refusal of sailors to accept anthrax vaccines.¹⁷ Is this due to medical concerns, or to a reluctance to fight in an

operation against Iraq? It would be in the interests of both the member and Defence to sort out the motivations here, so that appropriate action can be taken to meet the real concerns of both parties.

In an environment where a particular operation is subject to widespread public disquiet or political controversy, then selective conscientious objection is to be expected among members of the Defence force. ADF members are not immune from the current of public opinion or the influence of family and friends, and represent a broad cross section of community attitudes and beliefs. If the Opposition party is opposed to an operation or if there is disquiet in the churches or in the broader community then selective conscientious objection is to be expected even if higher leadership are convinced of the morality and justice of the proposed operation. This problem can be further compounded if Government and military leadership are making their decisions based on information that cannot, for reasons of security, be released to the ordinary members of the ADF or to the broader public. Unfortunate as it may be, it is reasonable to expect that in such circumstances members of the ADF may object, in good conscience, to participation in a particular warlike operation.¹⁸

If selective conscientious objection by serving members was to occur, how should it be considered in ethical terms? Clearly members of the ADF continue to be ethical beings, with the right (and indeed, the duty) to make decisions in good conscience as to that which they consider after due reflection to be the morally correct and lawful course of action. One of the principles that was clearly enunciated in law and in ethics by the Nuremburg trials was that each member of the military has an individual responsibility for their actions and cannot evade that responsibility by simply claiming to follow orders. Each individual must "own" their actions in compliance with higher duties of morality and international law, even in war when following orders from a superior.

However, there is another principle, also fundamental to military ethics and to the ethos of the defence forces of democratic and free nations. This is that the military is under the control of the

elected government, and follows the directions of that government which is elected by the people. It is anathema to the principles of modern democracy for the military to use armed force except as authorised by the civil authority. There is also an absolute expectation that when the civil authority makes the call to arms that the military will respond.¹⁹ Furthermore, there is the reasonable expectation that volunteer members of the ADF will respect the ethos of the organisation, and act in accord with the basic values of their Service. These values include loyalty and teamwork, and imply that a member has a moral obligation to respect and support their mates and maintain unit cohesiveness.

It is also reasonable to make the presumption that the Government is acting lawfully and morally in the orders it gives to its armed forces. Persons who therefore voluntarily join the ADF implicitly assent to the proposition that the democratically elected government should be presumed to be acting lawfully and morally in its disposal of the ADF and its employment on operations. Even if they have some reservations about the employment of the ADF, members should respect the presumption in favour of Government control and should carry out their duties as directed.

Nevertheless it is possible that a member of the ADF may form a conscientious objection to a proposed operation or to an operation that is currently under way, particularly if there is substantial opposition within the community to that operation. If a member forms a sincere and conscientious objection, then they need to decide if they can participate in that operation. The ADF then needs to consider how they respond to the serving member who claims selective conscientious objection.

Clearly one option available both to the member and to the ADF is for the member concerned to resign or retire from the ADF. This is an honourable option, which recognises both the conscience of the member and the need of the ADF to ensure that it continues to comply with the directions of Government and the principle that its members should be unrestricted in their ability to provide service. The former member is free to enter the political arena to challenge the

Government's actions, and is released from the specific obligations of military service.

However, the option of retirement or resignation may not be available for legal or management reasons. The member may have a return of service obligation or not have completed their minimum period of engagement. Alternatively, the ADF may refuse to accept their resignation – for example, if they have a critical skill. For some members there may be critical financial problems if they separate from the Service at the wrong moment, which could adversely affect their families. Thus the ADF is likely to have to deal with the problem of serving SCOs who remain in the ADF.

If the number of SCOs is small, and they are not compromising the apolitical status of the ADF, then the Services may use administrative measures to deal with the problem and minimise the adverse impact on the ADF. For example, the SCO may be transferred to a posting not involved with the operation or stood down on long service leave. This is a reasonable response, particularly if the SCO is agreeable to the proposed administrative action and there are no significant adverse effects on the ADF. The SCO may be agreeable to being involved in non-combatant duties associated with the operation, such as the provision of medical logistic support. However, this type of pragmatic response is unlikely to work if there is a significant number of SCOs, if the individual objects to the proposed administrative solution, or if the SCO holds a key posting necessary to the success of the operation. What action then?

It has been suggested that some form of quasi-judicial system of tribunals be set up to deal with SCOs.²⁰ There is merit in the idea, as it provides a system that seems less arbitrary than administrative decision making and by application of judicial processes depoliticises the process of dealing with SCOs. However, such a system may also be quite cumbersome, and might be difficult to apply where an operation is mounted at quick notice. Rather, the approach suggested here is to rely on administrative measures which have the benefit of flexibility and a quick response time, but to back this up by a process of quick and effective appeal to a non-

adversarial tribunal. Whilst like all quasi-judicial tribunals there would need to be appeals to the court system, it does offer a medium between the arbitrary nature of administrative decisions and the intrusion on military effectiveness which a legalistic approach implies.

However, the real key to resolving this problem, or at least minimising this problem if it occurs, is forethought and prior reasoning. It is unfair to Defence and to the team if a person decides at short notice to just refuse to serve. It undermines morale and unit cohesion, and also leaves the suspicion that the SCO is acting on whim, is a coward, or has political motivations in which they seek to ensure maximum impact and exposure for their actions. If a person refuses duty at short notice – for example, whilst in the field or just before a ship is to sail – then Defence has little option but to employ the rather blunt implement of military law to deal with the SCO.²¹ Clearly, for the sake of the Service and the SCO this type of resolution is not desirable. What, then, are the moral obligations of the ADF and the potential SCO?

The member who thinks that they may have a conscientious objection to an operation needs to think long and hard about this matter as soon as they are aware of the possibility of becoming an SCO. They need to discuss this matter with suitable persons, such as chaplains or other independent counsellors. Above all, they need to make an informed decision in accord with their values as early as possible, and then they need to notify their superiors so that further appropriate action can take place, such as discharge or transfer.

The ADF has a responsibility to take the claim of SCOs seriously, and where notified by a member that the member is an SCO needs to ensure that the member has access to information and persons who can assist them to make an informed decision. This is not the same as condoning their decision – rather, it is a practical acknowledgement that a member with serious moral concerns who does not resolve them and is in a position of moral ambiguity is likely to be dangerous to themselves and to others when put to the test. Essentially, the member should be treated the same as any other member offering

restricted service rather than unrestricted service. There are a number of grounds on which a member may be deemed to be offering restricted service: health restrictions, personal circumstances necessitating a compassionate posting, or the limitations imposed by close proximity to retirement. Selective conscientious objection might be viewed as another form of restricted service, in which the normal remedies for restricted service are appropriate – termination, resignation, or alternative postings. Clearly, however, for such a system to work the SCO needs to make the decision to offer restricted service carefully and with much consideration, and in full knowledge of the adverse consequences.

Could such a system be abused by persons who simply wish to gain early discharge or avoid a return of service obligation (ROSO), or who simply are cowards wishing to avoid active service? Quite possibly – but only in the same way that such persons could utilise existing avenues for early discharge by mimicking physical or psychological illness or by becoming an administrative liability. In practice, it is unlikely that many people will sacrifice their military careers on a whim: it is reasonable to expect that most claims of SCO will be founded on a genuine motivation, not whimsy. Further, a person who is determined to escape from the military is not, in present circumstances, likely to be a person that the ADF will want to retain.

Therefore, an administrative mechanism for dealing with SCOs as members offering restricted service has much to commend it, both from a management and from an ethical perspective. From a management perspective, it allows for dealing with an SCO with the least fuss and disruption to the Defence organisation. From an ethical perspective, this approach recognises the individual's right to make autonomous choices on matters of great moral importance, and avoids criminalising the behaviour and choice of the SCO. However, it also recognises the moral right of Defence to ensure that all members of a volunteer defence force are offering unrestricted service and not

impacting adversely on group cohesion and the imperative to follow the orders of the civil authority.

Conclusion

Where there is widespread opposition and moral concern about participation in an operation, it is reasonable to expect that members of a volunteer defence force drawn from the community will reflect that moral concern. In this case, selective conscientious objection becomes a possibility, which the defence force will need to deal with. This needs to be done in such a way as to ensure the continued loyalty of the defence force to the civilian government and the continued effectiveness of the uniformed Services. However, the issue also needs to be dealt with in a way that recognises the seriousness of the concerns being expressed by the SCO about their possible employment as a member of the ADF.

The good conscience and intent of the SCO must be recognised and given respect. However, there are other moral imperatives that are also important. The SCO, when joining the ADF, undertook to respect certain moral values such as loyalty and support for others. The ADF must remain apolitical, and subject to the lawful commands of the democratically elected government. Clearly all these values can be in conflict where a member becomes an SCO.

This conflict of values places obligations on both the SCOs and on the ADF. The SCOs must reach their decision as to their conscientious objection with thought and in such a way as to minimise the hurt to the values that they undertook to support when they joined the ADF. Therefore they should make their decision so as to minimise disruption to their unit and to the cohesiveness of the ADF, and should not politicise the ADF by their behaviour. The ADF also has a responsibility to respect the conscientious objection of the member and not to utilise inappropriate disciplinary action where administrative action may succeed.

It is important not to criminalise the behaviour of the SCO for both moral and pragmatic reasons. Morally, the right of the

member to follow their conscience must be respected. Pragmatically, the use of disciplinary action is likely to result in politicisation of the ADF and force publicity on the issue which may be against the interests of both the Service and the member.

In the current Australian context, the best way of dealing with this issue is to treat the claim of selective conscientious objection as an administrative issue. The SCO should be considered to be a member offering restricted service, and dealt with in the way that any member offering restricted service is treated. The responsibility of the ADF is to ensure choice is informed and free, and to facilitate separation where desirable. The SCO should not be subject to undue pressure, but should be made aware of the relevant facts and the necessity for appropriate administrative action.

The responsibility of the member is to make an informed and timely choice as to whether or not they are a SCO. They also have a moral responsibility not to politicise their actions, but leave any political comment until such time as they are free of the constraints imposed by membership of the ADF. If the member attempts to politicise the issue, or acts in other ways which would jeopardise the effectiveness and cohesiveness of the ADF (for example, by desertion) then disciplinary rather than administrative measures may be more appropriate. In turn, the ADF must recognise that serving members may develop an objection to a particular warlike operation in good conscience, and must respect the moral claims of the member to selective conscientious objection.

NOTES

1. C. Charles Moskos and John Whiteclay Chambers II, *The New Conscientious Objection: from Sacred to Secular Resistance*, Oxford University Press 1993, p. 5.
2. James Finn (ed), *A Conflict of Loyalties: The Case for Selective Conscientious Objection*, Pegasus, New York, 1968.
3. Hugh Smith, "Conscientious Objection to Particular Wars: Australia's Experience during the Vietnam War 1965-1972", *War & Society*, Vol. 8, No. 1 (1990), pp. 118-134.

4. Edward F. Sherman, "In-Service Conscientious Objection", in Michael F. Noone Jnr (ed), *Selective Conscientious Objection: Accommodating Conscience and Security*, Westview Press, 1989, pp. 117-127. It should be noted that the mechanism is discretionary rather than mandatory, and a member who is not granted discharge may find themselves liable to disciplinary action.
5. Hugh Smith, *Conscientious Objection to Particular Wars: the Australian Approach*, Working Paper No. 116, Strategic and Defence Study Centre, Australian National University, 1986.
6. Moskos and Chambers, op. cit., Table 15-4, p. 193.
7. Moskos and Chambers, op. cit., p. 44.
8. Michael Hovey and Gordon C. Zahn, "Ethics of Conscientious Objection", in *Encyclopedia of Violence, Peace and Conflict*, Academic Press, 1999, Vol. 1, pp. 441-448.
9. Moskos and Chambers, op. cit., p. 44.
10. Lieutenant Colonel Ian Wing, "Selective Conscientious Objection and the Australian Defence Force", *Australian Defence Force Journal*, No. 137 (July/August 1999), pp. 31-40, at p. 34.
11. In his 1999 article Ian Wing (op. cit.) considers this possibility, and recommends that a system of tribunals be set up to deal with the problem if there is a large number of SCO or if key personnel object. However, as Wing also acknowledges, there are significant factors which would tend to reduce the number of SCO's, such as peer pressure and "institutionalised opposition". Therefore the existence of a large number of SCO would be an extraordinary situation and one which would require resolution by action of a political or social nature that are probably beyond the ability of the ADF to provide. Therefore this article will concentrate on selective conscientious objection as an exceptional phenomena rather than as something that is likely to be widespread within the ADF, and will look at apolitical means to resolve problems rather than social or political solutions.
12. This is because the appropriate ethical response must take into account the good and bad consequences of our actions, including deleterious and positive effects on the common good as reflected by the impact on the ADF.
13. Political motivation and issues of conscience may be mixed, and much will depend on the intention of the member. For example, a member who refused to serve because they were a member of a political party and wanted to embarrass the Government by making a public show of refusal to serve is not operating with a good conscientious objection. On the other hand, a person who agreed with the stance of a political party that a particular operation was unlawful in international law may object in good conscience. Another problem arises with members who have dual citizenship or family links to a country that is to be subject to attack. In philosophical terms it could be argued that this is not selective conscientious objection but a more simple conflict of interests. Nevertheless, in practice it might be better to treat them as SCO's, as their concerns are such as to render them incapable of effectively participating in the operation against their other country of loyalty.
14. Sect 61 (c).
15. The recent interest in members refusing Anthrax vaccines (Feb 03) is a case in point. If there is media interest in such a relatively small issue, a member claiming to be an SCO and making a principled stand against an operation is likely to attract even more interest, and may become an icon for groups opposing the operation.
16. Clearly, a member's motives for claiming selective conscientious objection may be mixed. By sorting out the motivations and eliminating confusing factors such as concern for family, it is possible to minimise claims for selective conscientious objection and ensure that those who do claim selective conscientious objection do so for sound reasons of conscience, not for other motivations.
17. "More Sailors Refuse Anthrax Vaccine", *The Australian*, 13 Feb 2003, p. 1.
18. Of course, a member may object when there is no community or church opposition to an operation. However, selective conscientious objection is far more likely in practice when there is opposition, if only because members become aware of the various ethical objections being publicly debated. For example, an active member of the Christian churches in Australia could hardly fail to be aware of the current debate among the leaders of the church as to whether or not operations against Iraq fall into the category of a just war. See, for example, *Market-Place: A Newspaper for Australian Anglicans*, 12 Feb 2003.
19. It may be that the military can achieve the ends of the civil authority without actually using force – for example by a display of force. Nevertheless, if

required they must be prepared to use armed force to meet the ends set by competent civil authority.

20. Wing, op. cit., p. 38.

21. This does lead to the interesting scenario of an SCO in this situation claiming that an order to

deploy was unlawful because the operation was unlawful in terms of international law. One suspects that this argument would probably not succeed, but I am happy to leave this issue to my legal colleagues.



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Lawful Dissent and the Modern Australian Defence Force

By Rhonda M. Wheate* and Lieutenant Nial J. Wheate, RAN

Orders, whether they are oral or written directives, remain an everyday occurrence in the Australian Defence Force and strict obedience is required for the effective running of a unit. But what happens when, for one reason or another, an unlawful order is given? Would a subordinate mindlessly follow such direction, or refuse to execute it? Are they even capable of telling the difference between a lawful and unlawful order? Whilst it was not practical to study all members of the Australian Defence Force, it was possible to conduct a small survey of the officer cadets and midshipmen (cadets) being trained at the Australian Defence Force Academy. These cadets were recruited by the military for their intelligence, leadership skills and potential for becoming officers in the Royal Australian Air Force, the Australian Army and the Royal Australian Navy.¹ The graduating class of 2001 (218 third-year cadets) were surveyed to determine how they conceive of their rights and obligations in the area of superior orders and lawful dissent from orders. Given that when they graduate they will be required to issue orders to their subordinates and receive orders from their (more experienced) superiors, their knowledge about superior orders and lawful dissent is particularly interesting.

Members of the Australian Defence Force are subject to a number of national and international laws regulating their conduct, particularly in times of war. The *Defence Force Discipline Act 1982* (Cth)² is the primary national instrument and is accompanied by an explanatory *Manual*.³ Together these instruments provide that although only *lawful* commands need to be obeyed;⁴ that “a person given an order requiring the performance of a military duty *may infer it to be lawful* and disobeys it at [their] peril”;⁵ and that disobedience of a lawful command is punishable by up to two years’ imprisonment.⁶ In addition, the “defence of superior orders”⁷ is available,⁸ where:

1. the act or omission was in execution of the law; or
2. was in obedience to:
 - a. a lawful order; or
 - b. an unlawful order that the person did not know, and could not reasonably be expected to have known, was unlawful.

These formal provisions clearly tilt the balance in favour of obedience. However their effect needed to be empirically studied, so that

their meaning in reality, in the Australian Defence Force, could be determined.

In order to prepare cadets as junior officers, they are formally instructed in military law by the Academy Sergeant Major, as part of their Common Military Training program. This subject is taught for up to six hours per week during the academic teaching period and in “blocks” at the beginning and end of each year.⁹ The Common Military Training program places “significant emphasis on creating experience-based leadership opportunities in the training activities”¹⁰ and the Military Law component “introduces [midshipman and officer cadets] to the *DFDA* and the *Geneva Conventions*” whilst equipping midshipman and officer cadets to handle “more detailed training . . . nearer the time of their commissioning.”¹¹ Thus the training at ADFA is a combination of lectures, case scenarios, workshops and multi-media exercises,¹² culminating in an exam on military law.¹³ Overall, the Academy seeks to provide military training which *inter alia* “develops [the midshipmen and officer cadets’] professional abilities and the qualities of character and leadership that are appropriate to officers of the Defence Force”.¹⁴

Cadets are also exposed to military law and its practical implications in other forums. For

example, the Academy chaplains conduct Character Guidance and Character Development workshops as part of the Military Training Program.¹⁵ These workshops consider the concepts of obedience; responsibility to orders; responsibility to subordinates; and personal morality.¹⁶ Cadets are presented with hypothetical scenarios in which they are asked to consider what they would do, why they would do it and whether their actions are justified in a military, legal and moral context. There are several points worth noting about this form of training.

When cadets are asked to imagine themselves in the position of Platoon Commander; Company Commander; Battalion Commander; Brigade Commander; Chief of the Defence Force; Defence Minister; and Governor-General (i.e. ranks of increasing responsibility and authority),¹⁷ they are encouraged to think about the source of their authority, the legitimacy of their actions, the limits on their behaviour and the responsibility they hold for the actions of their subordinates. These exercises emphasise that all levels of the hierarchy have responsibility for ensuring that orders issued and actions taken are in keeping with the rules of engagement and the laws of war. Whilst dealing with these issues from a moral standpoint, these lessons subtly reinforce the view that military behaviour should “reflect the legal and moral standards and values of society . . . and the standards of the *Geneva Conventions*”.¹⁸

The Chaplains’ lessons also examine the impetus to follow orders. In particular they note the words of an officer’s commission:¹⁹

I (name of Governor-General) . . . Charge and Command you faithfully to discharge your duty as an officer and observe and execute *all such orders* as you may receive from your superior officers . . .²⁰

Cadets are reminded that although the commission appears to command obedience to *all* orders (lawful or otherwise), and s 14 of the *DFDA* does allow the defence of superior orders in some circumstances, all ranks must endeavour to obey the rules of engagement and fulfil their duties under the *Geneva Conventions*.²¹ That is, only *lawful* orders are to be made and followed

and that “much more is expected now than in the past”.²²

Against this background, the empirical study was designed to determine the extent and depth of knowledge held by third-year midshipman and officer cadets about:

1. the defence of superior orders;
2. the meaning and availability of lawful dissent; and
3. the circumstances which have in the past led to the commission of war crimes and the resulting use of the defence of superior orders.

Methodology

The entire class of third-year cadets at the Australian Defence Force Academy was issued with a written survey form, consisting of a series of open- and closed-ended questions and two factual scenarios.

The open-ended questions were designed to give respondents the maximum opportunity to demonstrate their knowledge. The questions were worded in general terms, allowing some scope for informal, frank answers reflecting the honest opinions of the respondents.

The factual scenarios were based on the circumstances of two infamous massacres that occurred during the Vietnam War: Son Thang and My Lai.^{23,24} Although both incidents involved American personnel, they are instructive for a number of reasons. First, American soldiers had received little training in the laws of war.²⁵ They received a *one hour* class prior to being deployed in Vietnam and once there, were given wallet-cards^{26,27} reminding them that “[the] mistreatment of any captive is a criminal offence.”²⁸ This training was ineffective, poorly remembered and viewed by some of the hierarchy as “an unnecessary, unrealistic restraining device inhibiting the combat commander”.^{29,30}

Secondly, the circumstances and repercussions of the murder of civilians at My Lai and Son Thang are well known in military literature.³¹ However it was an aim of this survey to determine how cadets who are about to graduate as junior officers in the Australian Defence Force, and who might not recognise the incidents by name, think that they would react in similar circumstances. Would their not-

insubstantial training in military law at ADFA produce different results?

It is recognised that “[w]ar is not a series of case studies that can be scrutinised with objectivity . . . War is the suffering and death of people you know, set against a background of suffering and death of people you do not.”³² That is, the survey results are limited in some respects because they are a “result on paper”; the cadets were not physically or mentally in the conditions experienced in Vietnam in the 1970s. However there is merit in having them consider those conditions anyway, whilst they do have the time to make considered, rational judgements.³³ Furthermore, unlawful orders can occur in all contexts, not just in the heat of battle. Also there will presumably be times in the life of every subordinate, where in the course of day-to-day duties he or she is confronted by a possibly unlawful order. In such circumstances he or she may well have time to consider their response, just as the responses to this survey were considered.

Results

Responses were received from 77 out of 218 third-year cadets at the Australian Defence Force Academy. This equates to a response rate of 35 per cent, which may have reflected the voluntary nature of the survey (in accordance with ANU

Human Research Ethics Committee guidelines). Over 90 per cent of respondents were serving in the Army (n=45) and Air Force (n=45); the small Navy proportion (n=9) reflects the lower number of Navy midshipmen and officer cadets in third-year at ADFA at that time.

A Presumption of Lawfulness?

It was noted in the introduction to this chapter that although only *lawful* commands need to be obeyed,³⁴ “a person given an order requiring the performance of a military duty *may infer it to be lawful*”.³⁵ However, the results in Figure 1 indicate that almost three quarters of the respondents are *not* prepared to presume that the orders they are given are lawful. Also, comments received on this part of the survey strongly indicated that even respondents who *were* prepared to assume orders were lawful, recognised that “thought and common sense should be applied to all your actions” and that “although in most cases you can presume [that orders are lawful], you need to decide for yourself”. This cautious response reflects the changes that have occurred in military education. Lessons on personal responsibility and responsible leadership (rather than emphasis on blind obedience and unconditional acceptance of orders), seemed to have prepared the respondents at ADFA to critically assess their orders.

Can you presume that orders are “Lawful”?

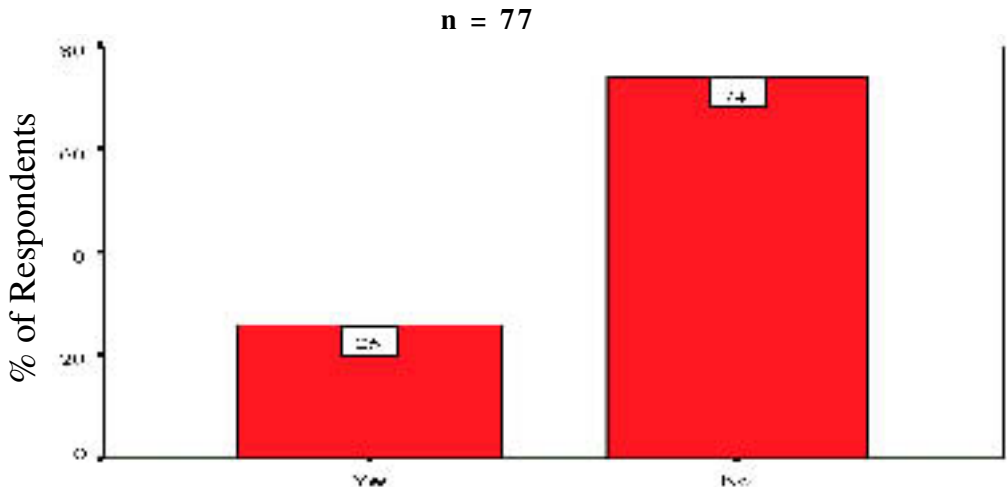


Figure 1.

What Happens if you Disobey a <i>Lawful Order</i> ?	% of Respondents (n = 77)
You are charged (e.g. with disobeying a lawful general order). Must justify your disobedience “or there’s trouble”	35
Depends on the nature of the order: more serious order results in more serious consequences	12
Disciplinary action is taken, depending on the results of an investigation	10
May be demoted	10
You appear before a court-martial	8
Not sure. Charged under <i>DFDA</i> ?	8
No response	6
Your disobedience may kill others including your peers	6
Discharged from the military (may be dishonourably discharged)	4

Figure 2.

Nevertheless, respondents recognised a range of penalties which could apply when a *lawful order* is disobeyed (Figure 2). The most common response was that the offender would be charged with disobeying a lawful general order (35 *per cent*), although several respondents (6 *per cent*) noted that depending on the circumstances, failure to obey an order could result in others (including their peers) being killed.

This raises the point that if cadets are prepared to think about whether an order is lawful or unlawful, and are aware of the repercussions if they incorrectly identify an order, *how* do they tell the difference between lawful and unlawful orders? Are their choices well informed? Do they comply with the definitions given in the *DFDA* and *Manual*? Figure 3 shows

the range of definitions given by respondents when asked: “What is a lawful order?”

A large group of respondents (39 *per cent*) defined a lawful order as one which “abides by all laws” including “military, civilian and international laws”. A variety of examples of each kind of law were given by respondents, including the *DFDA*, the *Geneva* and *Hague Conventions* and the *Laws of Armed Conflict*. A small proportion of cadets (6 *per cent*) defined lawful orders as those which did not order the commission of something unlawful. One respondent made the point that “if [the order] is to do something illegal, it’s unlawful. If you reasonably know it’s illegal but still follow it, you are breaking the law.” In contrast, a significant number of respondents did not look beyond the

What is a <i>Lawful Order</i> ? One that . . .	% of Respondents (n = 77)
Abides by all laws (Military, civilian and international: <i>Geneva Conventions</i> , <i>DFDA</i> , <i>Rules of Engagement</i> , <i>Laws of Armed Conflict</i>)	39
Is “correct” or “right”	17
Is given by an authorised superior	10
Unsure	10
Complies with all “rules and regulations” (unspecified)	9
Complies with military law	8
Is not obviously unlawful or illegal	6

Figure 3.

How can you tell when an order is “Unlawful”?

n = 77

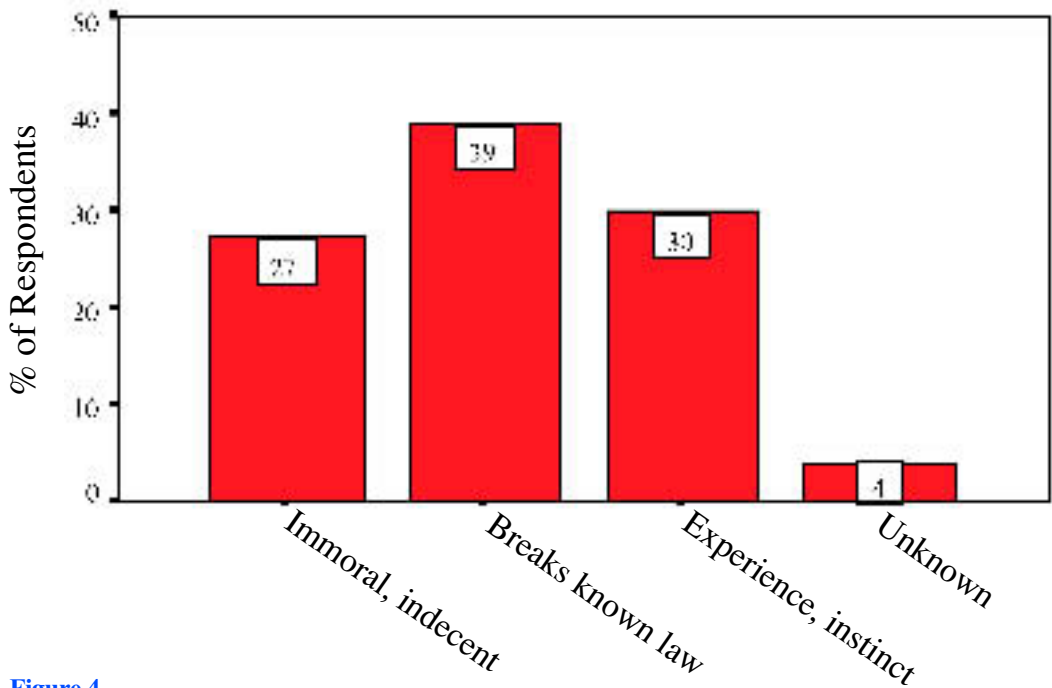


Figure 4.

military realm for orders to be lawful: provided orders were issued by a superior who had the authority to do so (10 *per cent*), or the orders were in compliance with military law (8 *per cent*), these respondents were satisfied that the orders fulfilled the definition of “lawful”.

Collectively, these responses are more comprehensive and detailed than the definitions of “lawful order” provided for in Australian military law: The *DFDA Manual* definition of “lawful command” requires only that the order relate to military duty and be one which the superior officer has the authority, in the circumstances, to give.³⁶ It appears to be a reflection of the training received at the Academy that the respondents were able to define “lawful orders” within the broader context of international law.

What is an Unlawful Order?

When asked to define an “unlawful” order (Figure 4), a large proportion of cadets (39 *per*

cent) again used the known law as the yardstick: An order was unlawful if the recipient knew that it broke an international, military or civilian law. A significant number of respondents noted that “as soon as [you] suspect an order is unlawful, [you] should look it up”.

What is interesting about the responses defining lawful and unlawful orders however, is the use of the respondents’ internal perspective to help with the definition. When defining a “lawful” order (Figure 3), only 17 *per cent* of cadets referred to their own sense of what is “right”, or “correct”. However, when asked to define an “unlawful” order (Figure 4), 27 *per cent* of respondents referred directly to their own “morality”, sense of “humanity” and sense of “what is decent”, and another large group (30 *per cent*), said that they would recognise an unlawful order by using their “common sense”, their “experience” and their “gut instinct” about what an unlawful order would be. Examples of such

orders (provided by respondents) included orders to “rape and pillage” or “kill animals for no good reason”.

Perhaps this gives us a clue as to why unlawful orders may be so difficult to disobey, especially in times of conflict. For when subordinates think about “lawful” orders, they have an external, objective measure to refer to: the law. The military, civilian and international law provides an externally validated source of authority for what is lawful.

In contrast, these survey results suggest that when subordinates think about defining an “unlawful” order, they refer to their *internal* sources (their own sense of morality, decency and humanity), to make the decision. In a situation of war, when everyone is under stress and copies of the *Geneva Conventions* or the *DFDA* are not easy to come by, it may be very difficult for a subordinate to disobey what they think is an unlawful order, because their only immediately available justification is *an internal feeling* that the order is not right, humane, moral or decent. One thoughtful respondent recognised this when they said “if I thought I would need moral

courage to disobey an order, then that’s probably a good sign the order is unlawful”. In this vein, several respondents mentioned the need for “moral courage” when faced with unlawful orders.

When Can I Disobey?

In order to probe the point at which cadets think they are allowed to disobey orders, a series of specific questions were designed which only let them give yes/no answers (Figures 5-7). These questions did not ask “when *would* you disobey your superior?”, as the responses might not represent what would happen in reality. Rather, the questions were framed objectively, to ask “when *can* you disobey?”. This was meant to give respondents the feeling that there may or may not be times when it is perfectly legitimate and acceptable to disobey superior orders, irrespective of any personal qualms they may have about doing so.

As Figure 5 shows, more than three-quarters of respondents believe that they are entitled to disobey an order which they *think* is unlawful.³⁷ This conforms with what is taught (if only implicitly) in the Military Training Program and

Can you disobey an order you *think* is “Unlawful”?

n = 77

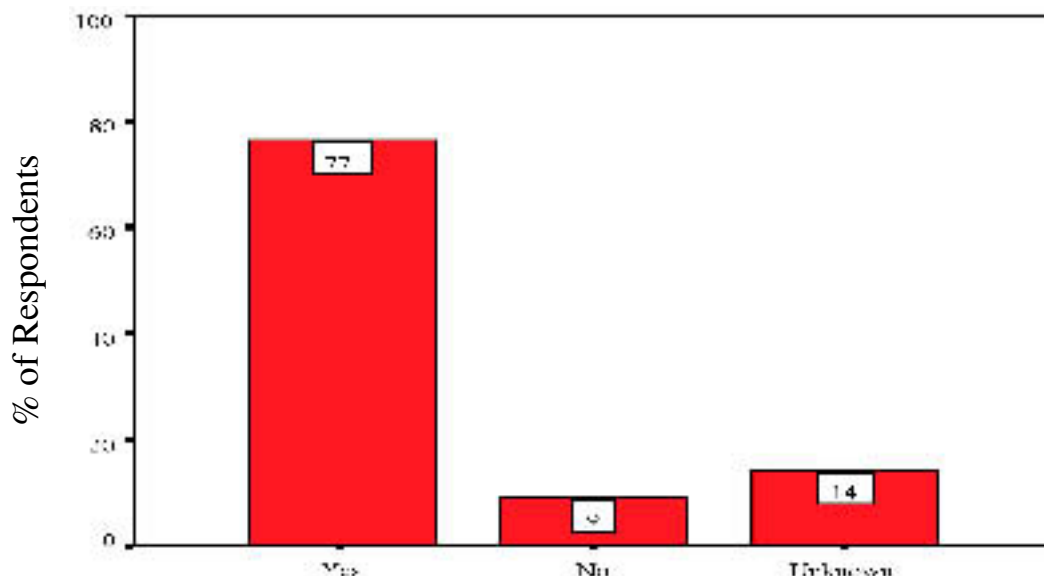


Figure 5.

Can you disobey an order you *know* is “Unlawful”?

n = 77

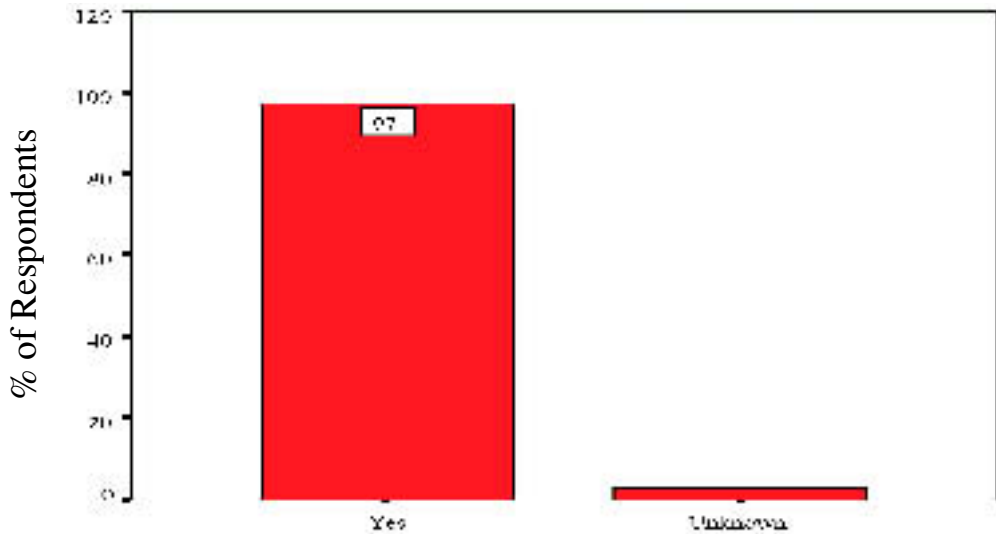


Figure 6.

chaplains' workshops, where individual moral courage, to do the honourable thing in the face of adversity, is emphasised.

But what of those who did *not* think the order could be disobeyed in these circumstances? Interestingly, *all* members of this group had earlier said that they could *not* presume all orders were lawful. On its face, this means that although they wouldn't presume an order was lawful, they wouldn't necessarily disobey it even if they *thought* it was *unlawful*. Unfortunately the small sample size for this group does not allow the conclusion to be drawn any more firmly than this.

Any such doubts about obedience to clearly unlawful orders is dispelled by the results in Figure 6. All but two midshipman and officer cadets (3 *per cent*) attested that they would feel entitled to disobey an order which they *knew* to be unlawful. This bodes well for the minimisation of atrocities committed under orders, in cases where those orders were clearly and unmistakably unlawful.

What About Morality?

In contrast, the results shown in Figure 7 represent the difficulty faced by subordinates grappling with their internal perspective on what is “right” and the place of this perspective in a

broader military context. For even when the respondents thought an order was *immoral*, just over half of them did not think they were entitled to disobey it (n = 41, 53 *per cent*). Perhaps this is a direct recognition of the fact that “in war, there is a close resemblance between soldier's acts of legitimate violence and unlawful acts . . . often distinguishable only by the respective mental states of those performing them.”³⁸ These respondents may be acknowledging that fulfilment of their military duty, the agreement under which they were commissioned, may require them to put aside their own moral judgements and obey orders to the extent of performing acts which they would consider to be immoral in other contexts.

Conversely, 32 different respondents (42 *per cent*) would not obey an order they considered to be immoral. This is in keeping with a view of martial honour,³⁹ which says that “obedience ends where knowledge, conscience and responsibility would prohibit the execution of an [immoral] order”.⁴⁰ On this view, it is the subordinate's own sense of morality which justifies their refusal to obey what they perceive to be an immoral, (and thus, in their view, *unlawful*) order.⁴¹

Can you disobey an order you think is immoral?

n = 77

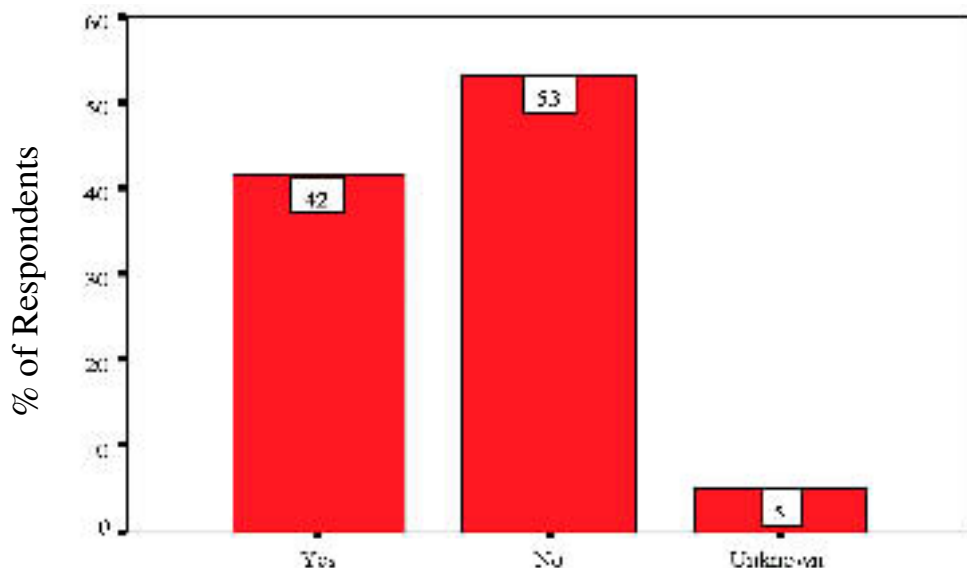


Figure 7.

How can these two views be reconciled? The answer may lie in what *all* of the respondents said they would do if faced with an apparently unlawful order. Except for 4 respondents (5 per cent) who did not answer this question, all others said that they would double check the order, discuss it with their superior, and, if still not satisfied about its lawfulness, would refuse to obey. This was consistent, despite some differences as to the manner of approach. For example:

I would approach my superior and courteously see if they were sure the order was lawful.

[I would] argue the point with my superior until I was sure the order was legal.

Until my superior could convince me the order was lawful, I would refuse to obey it.

In addition, some respondents suggested that they would seek the advice of a legal officer (n = 9, 12 per cent), their peers (n = 7, 10 per cent), or of other officers higher in the chain of command (n = 15, 21 per cent) to determine whether the order was lawful. Some also thought

that they would consult the “rule book”, the *DFDA* or the Laws of Armed Conflict to determine whether the order might be unlawful (n = 8, 11 per cent).

Most respondents attested that their rank and the rank of their superior would not influence the course of their action (n = 40, 55 per cent), except to the extent that it:

[M]ight make [them] check the rule book more carefully before questioning the order; or

[M]ight make [them] more careful about approaching their superior.

A few respondents noted that the higher the rank of their superior, “the more pressure there would be to conform”. However, additional comments seemed to indicate that rank would only change the nature of the approach, not the intent on finding out whether an order was lawful or not. Others noted that “lives could be at stake”, so questioning the lawfulness of the order was very important, irrespective of rank.

Factual Scenarios

The first ten questions of this empirical study were deliberately devoid of context and designed

to elicit simple answers, which would show the respondents' "theoretical" view of what is and is not lawful; what they would and would not do; and what they know (or did not know) about international law. In contrast, the final two questions of the survey involved scenarios that set a factually complex, and deliberately emotive, context. The list of factors were those which surrounded the massacres in My Lai and Son Thang during the Vietnam War.

Son Thang

Respondents were given the following list of facts, which was compiled from various sources reporting the massacre at Son Thang on February 19, 1970.⁴²

- Your unit is sent to a foreign conflict after 3 months training together.
- Casualties in other units in the area have been very high.
- Most casualties have come from sniper fire.
- All other casualties have come from ambushes and booby traps.
- It is hard to distinguish between the enemy and ordinary civilians.
- Your unit is under pressure to kill as many enemy soldiers as possible.
- Other units have a much higher tally of kills.
- Your unit is sent on a night reconnaissance and ambush mission.
- You stumble across a small building in the dark, with an unidentified number of people in it.
- Your patrol leader orders them out of the building.
- Your patrol leader suddenly shouts "Shoot them! Shoot them! Kill them! Quick!".

What do you do?

Since this question was open-ended, many respondents (n = 74) put a combination of responses which fall into several of the categories discussed below. At one extreme were 10 respondents (14 *per cent*) who said that they would probably fire upon the orders of their patrol leader, if they:

[T]rust[ed] [their] patrol leader; or

[T]rust[ed] that [their] patrol leader knew more about the enemy than [the respondent] did.

Most of this group insisted that they would only obey the order to fire, if they were confident that their leader was trustworthy and had in the past made good decisions. At the other extreme were a large group of respondents (n = 64, 86 *per cent*) who would not fire and would immediately disobey the order so that they could:

Confirm whether the suspects were civilian or military (n = 19, 26 *per cent*)

Personally assess the threat, including seeking extra intelligence information (n = 10, 14 *per cent*)

Challenge the prisoners to prove that they were not combatants (n = 7, 9 *per cent*)

Talk to the patrol leader to determine whether the order is lawful (n = 9, 12 *per cent*).

Some respondents noted that they "could not imagine the emotional and physical stress the soldiers were under" and that they "might shoot" although "it would depend on a range of factors".

My Lai

The other factual scenario was as follows:⁴³

- Your unit is sent to an area that is a stronghold for the enemy.
- The local people resent your presence and are not friendly. They may be helping the enemy.
- Other units have been rewarded for large numbers of enemy kills.
- Yesterday an enemy booby-trap killed your best friend. It also blinded another soldier and injured several others.
- Your mission is to enter a small village, engage the enemy and destroy them, thus securing the area.
- All civilian villagers are expected to be at the markets, away from the village. Large numbers of enemy soldiers have been seen in the village.
- You arrive just after dawn, with support from assault helicopters.
- You round up a small number of women and children.
- Your platoon commander says "You know what I want you to do with them", then later he says "Haven't you got rid of them yet? I

want them dead. Waste them!” He begins to shoot them, and others in your group join in.

What do you do?

This factual scenario presented a more obvious example of an unlawful order, and this was duly reflected in the responses. All respondents (n = 70) said that they would refuse to follow the order to shoot, although a few expressed concerns about the impact of the situation in reality:

All of these things are what I HOPE I would do! But combat does strange things (so I've heard) and I might well join in the shooting. Who can tell?

Nevertheless, *all* responses included a refusal to obey the order, followed by a range of other actions including:

Convincing the others to stop shooting, if necessary by physically restraining them (n = 27, 39 per cent)

Having the moral courage to refuse to shoot and also to physically protect the innocent civilians (n = 16, 23 per cent)

Assessing the mood of the group and deciding that action could not safely be taken against the perpetrators until they returned to base (n = 16, 23 per cent)

Immediately seeking assistance from superiors higher in the chain of command than the platoon leader (n = 5, 7 per cent)

Confronting the platoon leader and seeking confirmation of the order (n = 4, 8 per cent)

Some respondents noted that the written scenario presented such a shocking scene that they could not predict what they would do in real life (n = 2, 3 per cent), but “imagined that it would all be over very quickly”.

Conclusions

Given the small sample size on which these survey results are based, it is difficult to draw firm conclusions about the perception of lawful dissent within the Australian Defence Force. In addition, it is emphasised that the survey was completed by junior members of the forces, none

of whom have seen active combat. This may account for the perhaps surprising percentage of respondents who reported that they can *not* presume orders are lawful. Nevertheless, it is an interesting and worthwhile exercise to reflect upon the training given to new recruits and the impact this may have on their future roles within the Defence Force and within the broader context of international law.

These results suggest that the teaching methods employed at ADFA have satisfactorily enabled midshipman and officer cadets to recognise that under international law, it will be no defence to plead “I was just following orders”, if those orders were unlawful. Most respondents were keen to appraise orders before following them (even if they only *thought*, rather than *knew* that the orders were unlawful) but they nevertheless appreciated the practical effects of disobeying orders. The divided opinion on whether potentially immoral orders should be followed also reflects a difficult and longstanding dilemma for military subordinates everywhere. Overall, the results of this small study were encouraging, not least because the officer cadets and midshipmen were prepared to contemplate disobeying *unlawful* orders, safe in the knowledge that they are justified and able to do so, within the Australian Defence Force.

The authors wish to thank the Australian Defence Force Academy staff and students who enabled this project to go ahead.

* This information was originally prepared by Rhonda Wheate in 2001, as part of her Honours Thesis in Law at the Australian National University under the supervision of Professor Andrew Byrnes. The thesis is available at both ADFA and ANU libraries.

NOTES

1. October 10 2001, “Australian Defence Force Selection Procedures” <http://defencejobs.defence.gov.au/ADDInfoframe.html>.
2. Henceforth “DFDA”.
3. Australian Defence Force Publication 201 *Australian Defence Force Discipline Act 1982 Manual* Vols 1-2, Canberra, Australian Defence Force. (Henceforth “DFDA Manual”).
4. DFDA s 27; *DFDA Manual* “Commentary on Part III – Offences” pp. 4-33.
5. *DFDA Manual* pp. 4-33.

6. *DFDA* s 27; *DFDA Manual* pp. 4-32.
7. This defence exculpates subordinates who “were just following orders”.
8. *DFDA* s 14.
9. Australian Defence Force Academy *Australian Defence Force Academy Handbook 2001* ADFA Document Production Centre, Canberra, 2001, 28. (Henceforth “*ADFA Handbook*”).
10. *ibid.*
11. *ibid.*
12. For example, the “Military Operations and the Law” CD-ROM program, which combines illustrated dissertations on the law with short quizzes and “real-life” scenarios.
13. In 2001, 52 out of 218 third-year midshipmen and officer cadets received 100% on this exam. (Personal communication from Academy Sergeant Major Michael Wilson, Warrant Officer Naval Police Coxswain 25.09.01).
14. *ADFA Handbook supra* n 9 at 25.
15. *ADFA Handbook supra* n 9 at 31.
16. MacKenzie, T. *Morality and the Military* Powerpoint slides, Canberra, Australian Defence Force Academy, Chaplain (Army) (2001) 2, 3.
17. *id* at 4-11.
18. MacKenzie *supra* n 16 at 9.
19. MacKenzie *supra* n 16 at 14.
20. This is a typical Australian Regular Army Officer’s commission. The Royal Australian Navy and Royal Australian Air Force versions are very similar.
21. MacKenzie *supra* n 16 at 16.
22. MacKenzie *supra* n 16 at 4.
23. G.D. Solis, *Son Thang: An American War Crime* Annapolis MD, Naval Institute Press, 1997; Parks, H. (1997) “May There be no More US War Crimes” (1997) 123 (11) *United States Naval Institute Proceedings – Editorial* 4, 6.
24. *United States v Calley* (1973) 22 USCMA 543 at 543; Olson, J.S. and Roberts, R. *My Lai: A Brief History with Documents* Boston, Bedford Books, 1998; SD Danyluk (2000) 84 (6) *Marine Corps Gazette* 36.
25. Training was “zero” in the experience of many in Vietnam: Solis *supra* n 24 at 58.
26. General William Westmoreland (1970) quoted in Olson and Roberts *supra* n 24 at 35.
27. Olson and Roberts *supra* n 24 at 35.
28. Military Assistance Command, Vietnam, *Pocket Cards: Nine Rules, The Enemy in Your Hands, Guidance for Commanders in Vietnam* United States of America, (1967), http://www.law.unkc.edu/faculty/projects/ftrials/mylai/My1_wmac.htm, accessed 16 July 2001.
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31. J.S. Berry, *Those Gallant Men: On Trial in Vietnam* Presidio Press, California, 1984; Chase, R.H. “Grist for a Unit Seminar” (1998) 82 (12) *Marine Corps Gazette*; McDonough, J.R. *Platoon Leader* Bantam Books, New York, 1985; Parks *supra* n 24.
32. McDonough *supra* n 31 at 139.
33. Chase *supra* n 31 at 61.
34. *DFDA* s 27; *DFDA Manual* “Commentary on Part III – Offences” pp, 4-33.
35. *DFDA Manual* pp. 4 - 33.
36. *DFDA Manual* “Commentary on Part III - Offences” pp. 4-29, 4-38.
37. Cf Figure 7 which asks about orders they *know* are unlawful.
38. M.J. Osiel, *Obeying Orders: Atrocity, Military Discipline and the Law of War* Transaction Publishers, New Jersey, 1999, 67.
39. U. Zwygart, “Integrity & Moral Courage: Beck, Tresckow and Stauffenberg” (1994) 74 *Military Review*, 5, 11.
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41. Osiel *supra* n 38 at 25, 26.
42. Chase *supra* n 31; Solis *supra* n 24; Stacewicz, R. *Winter Soldiers: An oral history of the Vietnam veterans against the war* Twayne Publishers, New York, 1997; Taylor, T. *Nuremberg and Vietnam: An American Tragedy* Bantam Books Inc, New York, 1971.
43. Based on Anderson, D.L. “Facing My Lai: What Really Happened?” in D.L. Anderson (Ed) *Facing My Lai: Moving Beyond the Massacre* University Press of Kansas, Kansas, 1998; *Calley v Callaway* (1975) 519 F.2d 184 (5th Cir. 1975), 425 US 911 (1975) (Federal (US)); Chase *supra* n 32; Democratic Republic of Vietnam Commission for Investigation of the American Imperialists’ War Crimes in Vietnam *American Crimes in Vietnam* Democratic Republic of Vietnam, Democratic Republic of Vietnam, 1966; Hammer, R. *The Court-Martial of Lt Calley* Coward, McCann and Geoghegan Inc, New York, 1971; Herman, E.S. *Atrocities in Vietnam* United Church Press, Philadelphia, 1970; Olson *supra* n 24; Parks *supra* n 23; Taylor *supra* n 42.

Legal Considerations for the Introduction of Drug and Alcohol Testing in the Defence Workplace

By Colonel Ross Boyd

The level of illicit drug use among Defence members and employees is unknown, however in the broader Australian community a study has found that in 1998, 22.8 per cent of Australians over the age of 14 had used an illicit drug in the previous 12 months.¹

With respect to alcohol, Defence research in 1999 found that alcohol abuse across the entire Australian Defence Force (ADF) population could be as high as 17 per cent and observed that if broader community levels applied, between 1 and 5 per cent of its members might have serious alcohol dependency problems.² More recently, of all ADF members screened three months after returning from operations in East Timor in 2001, 36.9 per cent indicated some evidence of alcohol abuse.³ In addition to this research, there is a large body of anecdotal evidence that suggests the abuse of alcohol in particular, has been a significant factor in a number of tragic accidents and a significant number of incidents of unacceptable behaviour involving ADF members.⁴

A number of Australian police services, defence forces overseas and some companies in the Australian mining and transport sector, already have drug and alcohol testing regimes in place.⁵ These can include voluntary, targeted, random and post critical incident testing. It is perhaps not surprising that in recent years there have been frequent calls for Defence to adopt a program of testing, similar to those being conducted elsewhere.

Defence has indicated an inclination to also adopt such testing however, to date, apart from targeted testing, where reasonable suspicion exists, no other testing occurs. Legal concerns over privacy considerations, the complexity arising from different employment frameworks and the extent to which sanctions might be applied, have been the major stumbling blocks to date.

Employment Frameworks

The Department of Defence is among the largest employers in Australia. It comprises some 50,000 permanent and 25,000 part-time members of the Australian Defence Force (ADF) and a further 17,000 Australian Public Service (APS) employees.

The ADF and APS operate under entirely different employment frameworks. ADF members are not employees at law. Their employment is governed by the notion of service at Her Majesty's pleasure. Provisions for employment are detailed in the *Defence Act* (1903) and regulations thereunder. Section 13

provisions specifically prevent the Defence Forces from creating a civil contract between the Crown and the member. In addition to meeting all civil laws, ADF members are also required to comply with the disciplinary (criminal) provisions of the *Defence Force Discipline Act* (1982).

APS employees on the other hand, are employed under the *Public Service Act* (Cth) (1999). Their conditions of employment are determined in accordance with extant industrial law. The Defence Employees Certified Agreement 2002-2003 has been negotiated under the provisions of the *Workplace Relations Act* (Cth) (1996).⁶

Existing Drug and Alcohol Testing Provisions

Currently there are no legislated provisions or policy to conduct drug or alcohol testing of any type for APS Defence employees, however for ADF members; some disciplinary and administrative provisions already exist.

Under s101Q of the *Defence Force Discipline Act* (1982) the taking of a sample for

the purposes of drug testing is allowed, where there is a reasonable suspicion that a member has used illicit drugs. There are also sanctions available under s37 of this Act for a member being drunk on duty, however, in this case no testing is necessary. A member is guilty of this offence if, a superior has reasonable cause to believe the member is intoxicated and deems the person to be so impaired as to be unfit for duty.

In 1999, the *Defence Act* was amended to include Part VIIIA provisions, allowing urinalysis for illicit drugs. However, to date no supporting regulations for urinalysis have been developed and therefore no testing under these provisions has occurred. There have been several reasons for the delay:

- The complexity of the provisions and the fact that they lock in a relatively invasive and outdated technology (the provision of a urine sample).
- A concern that urinalysis is unable to detect the use of many illicit drugs unless the person has used them in the previous few hours.
- The mandatory use of medical staff, some of whom see an ethical conflict in being involved as medical practitioners in a procedure that is focused primarily on taking adverse administrative action against the member, rather than providing treatment.

For the above reasons, it may be desirable for Defence to seek the repeal of this legislation and to replace it with provisions similar to the much simpler model provided in the *Australian Federal Police Act* (1979) (s40M – s 40Q, s70(i)).

Desirability of Legislation

Whether Defence chooses to enact legislation or simply rely on administrative policy rests with the fundamental question as to the purpose of the testing. If, as in most civilian workplaces, the purpose is purely to assist the employer and employee to meet their common law and statutory occupational health and safety duties by detecting workers who may be impaired, then administrative policy is probably adequate. This purpose should largely be the case for Defence APS employees.

Clearly though, there is an added dimension for the ADF. Members of the ADF are engaged in a very distinctive form of public service and

are entrusted with the defence of the nation. Loyalty, obedience and discipline are essential elements of discharging this service and are manifest on oaths of allegiance and statutory and common law duties to obey orders.

Like police, as members of a disciplined force, members of the ADF also “voluntarily undertake the curtailment of freedoms which they would otherwise enjoy”.⁷ It is reasonable, therefore, to expect a higher obligation on ADF members not to use illicit drugs or abuse alcohol than exists for the community at large. Under these circumstances, it may be justifiable to conduct testing with a focus that is broader than purely meeting the employer’s safety obligations and indeed for any adverse administrative consequences, to be more severe than in a civilian workplace. This remains untested, however and for this reason it may be desirable to enact additional legislation to specifically authorise drug and alcohol testing for ADF members, even for administrative purposes. This would strengthen the Defence case against any appeals made on privacy or other grounds, particularly where the tests are given to members not involved in safety critical duties or where severe adverse administrative sanctions may result.

As to the question of disciplinary sanctions, the Government has already shown its disposition not to support such legislation. The *Defence Act* (1903) Part VIIIA, allowing urinalysis, made clear the Government’s intent. The sanctions arising from testing under this regime are administrative rather than disciplinary in nature. s108 specifically excludes the urinalysis test findings from being admissible in any proceeding against a member for an offence under either the *Defence Force Discipline Act* (1982) or the *Crimes Act* (1914).

Given the more socially accepted status of alcohol in our society, it is even more unlikely that the Government would agree to legislation that provides disciplinary sanctions against a member for the use or abuse of alcohol, however this matter is moot.

If the Government were to agree to disciplinary sanctions, then amendment to the *Defence Force Discipline Act* would certainly be required. Evidence gained as a result of testing

under the authority of an administrative instrument is not admissible as evidence in any subsequent disciplinary or criminal proceeding.

The remainder of this article examines the legal considerations that apply to drug and alcohol testing in the workplace and should be considered in the framing of any policy or legislation.

Obligation to Obey

Before examining whether there is an obligation on a member or employee to obey a direction, in this case to provide a sample for the purpose of testing, it is necessary to first confirm the anterior matter of whether there is power to give such a direction. Where the direction has statutory authority and is being directed by an “authorised officer” under the Act, there are likely to be few doubts as to the duty to obey, provided the correct procedures have been followed.

The source of power for a direction under the authority of a policy is slightly more complex.

- In the military, s9A of the *Defence Act* authorises the Chief of the Defence Force and Secretary of the Department, to issue Defence Instructions for the proper administration of the ADF. s29 of the *Defence Force Discipline Act* makes it an offence for a Defence member not to comply with a general order.
- In the case of APS employees, the common law master/servant relationship obliges the employee to obey provided the command is lawful. In the ordinary employer-employee context, the test of the lawfulness of a direction for common law purposes is as follows:

*If a command relates to the subject matter of the employment and involves no illegality, the obligation of the servant to obey it depends at common law upon its being reasonable. In other words, the lawful commands of an employer which an employee must obey are those which fall within the scope of the contract of service and are reasonable.*⁸

To ensure that there is no doubt that testing falls within the “scope of the contract of service”, it is appropriate that the policy of testing be included in any Australian Workplace Agreement or Certified Agreement between the employee

and employer. Whether a direction is “reasonable” is discussed below.

Reasonableness

The concept of reasonableness is central to whether a direction to provide a biological sample for the purposes of drug testing is lawful. In assessing the “reasonableness” of requiring an employee to undertake a drug or alcohol test, it is necessary to weigh the adverse consequences of doing so against the justification.

Adverse Consequences. Potentially, testing is likely to have two major adverse consequences. The first is the invasion of a person’s privacy and associated impairment on the person’s human dignity. The second, is the adverse administrative action that might be taken against the person for returning a positive sample.

Privacy concerns generally fall into three main areas:

- that a person normally has no free consent to the tests;
- that there is an intrusion on the physical privacy of the person and hence an attack on their dignity, from having to provide a biological sample (for example, of hair, saliva, urine or blood); and
- the threat to information privacy represented by the collection and use of test data.⁹

With respect to adverse administrative consequences, typically these could range from informal supervisor reprimand through to summary dismissal.

The case *BHP v CMETSWU* illustrated the courts’ likely thinking on these matters. When weighed against the justification, the extent to which the above adverse consequences can be minimised, the more likely the tests will be seen by employees and found by the courts to be reasonable. Thus, in terms of policy and supporting procedures, the following might be considered:

- To reduce the degree of intrusiveness, tests that use a breath, saliva or a hair sample, for example, would be preferable to those requiring a urine or blood sample.
- Persons providing samples should be allowed to do so unobserved and in private, preferably under the supervision of a medically trained person.

- The levels at which drugs or alcohol are declared to constitute a positive sample should be set at levels that minimise disruption to the out of work lives of the employees.
- The results of tests and subsequent adverse administrative action should be a private matter between the employer and employee.
- Records should be tightly secured and retained for the minimum period necessary.
- Any adverse administrative action should be proportional to the offence and accord with the primary purpose of the testing. There are numerous examples where this has not been followed in unfair dismissal cases before the AIRC, resulting in reinstatement or lesser penalties.¹¹

In administration of any follow-up action, the rules of natural justice must be followed and these will be discussed later.

Justification. What justification might reasonably outweigh the adverse consequences detailed above?

There is both a common law and statutory obligation on employers to exercise a duty of care towards the safety of their employees.¹² Under common law it is now accepted that this goes to the extent of expecting the employer “to take positive steps towards accident prevention” and potentially,¹³ of holding the employer vicariously liable for the wrongful conduct of employees.¹⁴

The *Occupational Health and Safety (Commonwealth Employment) Act* (1991) s16 (1) requires the employer to take all reasonable practical steps to protect the health and safety at work of the employer’s employees. Breaches of this statutory liability can result in severe penalties.

In the BHP case cited previously, the Western Australia, Australian Industrial Relations Commission (WAAIRC) found that:

*...the current standards and expectations of the community concerning health and safety in the workplace as evidenced by legislative prescription and judgements of courts and industrial tribunals are such that there will, of necessity, be some constraint on the civil liberties at times and, in particular, an intrusion into the privacy of employees.*¹⁵

The Occupational Health and Safety (OH&S) obligations on an employer appear to provide a firm basis on which an employer could conduct testing. However, if justification regarding membership of a disciplined force is put aside, as would be the case for APS employees, it also creates certain policy constraints that must be considered in the policy aspects and procedural conduct of testing. In addition to the steps to reduce the adverse consequences already discussed, these additional policy considerations are detailed below.

Other Policy Matters

Education. Any testing program justified by health and safety reasons should operate alongside a range of other activities that educate, persuade and subsequently assist employees with drug and alcohol problems.¹⁶ Any disciplinary or adverse administrative consequences of a policy should be seen to be complementary to these alternative approaches.

Impairment. The presence of an illicit substance in a person is no certain measure of that person’s impairment and therefore an unreliable indicator of the person’s ability to perform their duties safely. To a lesser extent the same applies to alcohol though a lot more is known about this.¹⁷ Until a reliable test of impairment is developed, it is reasonable to assume that the presence of drugs and alcohol “could” cause impairment and therefore is reasonable.¹⁸

Clearly however, there is recognition also that there is a level for both alcohol and drugs where there is little or no likelihood of impairment and where traces of the drug can be found as a result of incidental exposure. For alcohol, the accepted limit for safety critical areas is .02 mg/L.¹⁹ For cannabis, the most easily and frequently detected drug, the commonly accepted limit is 50ug/L, though under Defence policy a positive reading in excess of 20ug/L is sufficient to warrant disciplinary action.²⁰ There has been some discussion, that 100ug/L may be a more appropriate indicator of impairment and therefore preferred, if the test is for safety reasons alone.²¹ The lower the level that is set, the more difficult it will be to justify the test as being for safety purposes.

When is a member/employee “on duty”?

In order to preserve a person’s privacy it is reasonable that a test only be carried out while the person is “on duty”. Any policy should define what is meant by this term. Is, for example, a person “on duty” whilst participating in an employer funded social event or whilst on an employer’s premises prior to formally beginning a shift? A complication for the ADF is that many of its members actually reside in barracks on Defence property. An alternative policy construct may be to only test employees while they are “performing an assigned task or duty” regardless of the time or location.

Definition of Safety Critical. If the testing is to occur for the purposes of safety, it follows that the testing should be confined to work areas where safety is a critical factor. For example, it would be more reasonable to conduct testing on persons operating vehicles or firearms compared to an office worker in a relatively benign environment. Tasks, activities and areas deemed to be “safety critical” should be clearly defined in policy and known to all. A person in a non-safety critical area who is tasked without notice to immediately perform such a task, should be given the opportunity to declare whether or not they might be over the prescribed drug or alcohol limits.

Combat and Combat Related? In the case of urinalysis testing under Part VIIIA of the *Defence Act*, provides for testing of persons in combat and combat related positions.²² The recent case *Williams v Commonwealth of Australia*,²³ applied a more narrow interpretation of these terms than had been in use previously. The matter is currently subject to appeal. Until the matter is concluded, it would be prudent for Defence to confine urinalysis testing to the group of members as more narrowly defined in this case.

Consultation and Promulgation. A case could be made that testing be imposed regardless of the acceptance or otherwise by the workforce, purely on the basis of the employer’s safety obligations. Nonetheless, a stronger case can be made, as occurred in the BHP case, if extensive consultation is undertaken with the aim of achieving consensus on the matter.²⁴ This would

also clearly establish that testing is within the terms of the employment contract.

Needless to say, the policy must be well understood by all those who are likely to be subject to testing. Unfair dismissal cases have been won by employees, on the basis that they were unaware of aspects of the policy.²⁵ To safeguard against this, it may be appropriate for all new and existing employees to receive a copy of the policy and make a written acknowledgement of understanding its contents, when the policy is approved.

Procedural Fairness. Any testing and adverse administrative actions that may follow must follow the normal rules of procedural fairness and natural justice. That the policy is known by all concerned has already been mentioned. Employees should also be given written advice of any test results and be advised in writing of any administrative follow-up actions the employer intends. The employee should then be given the chance to respond and the employer should weigh this response and all other relevant factors, before making a decision on what action is proposed.

In the case of employees, the *Workplace Relations Act 1996* (Cth) s170CG(3) details procedures that must be followed in cases involving the termination of service.

Conclusion

Members of the Australian Defence Force and Australian Public Servants in the Department of Defence are employed under different employment frameworks. Existing provisions in the *Defence Act* (1903) already allow a form of drug testing, albeit with certain limitations.

This article has found that widespread drug and alcohol testing for both ADF members and APS employees could be implemented on the basis of policy alone, where the sole purpose of the testing is in support of health and safety objectives alone.

Where the purpose of testing goes beyond detecting possible impairment, for example, to test for drug use even during off-duty hours, then additional legislation would be required. If disciplinary rather than administrative sanctions for ADF members are intended, then legislative

amendment to the *Defence Force Discipline Act* would also be required.

Assuming that the purpose of testing is to meet the employer's common law and statutory obligations regarding safety, a number of constraints apply, that should be considered in the formulation of testing policy and supporting procedures.

NOTES

1. M. Miller, and Draper, G. (2000) Statistics on Drug Use in Australia 2000, Drug Statistics Series No. 8, (Australian Institute of Health and Welfare, Canberra) May 2001, 17 at <http://www.aihw.gov.au/publications/phe/sdua00/sdua00.pdf>
2. Defence Personnel Executive, *Sobering Facts: Options for an Alcohol Management Program*, Tri-Service Working Party Report, 18 April 2000, p. 3.
3. I. Johnson, (2001) *The Psychological Impact of Peacekeeping Deployment*, Australian Defence Force Psychology Organisation, Department of Defence, Canberra, p. 7.
4. See for example, Parnell, S. "Booze Floors Armed Forces", *Courier Mail*, 8 Aug 01, p. 1 and "Sailor Drinking Before Loss at Sea", *The Australian*, 6 Jun 02, 3.
5. These include, for example, armed forces of the USA, the NSW Police Service, Australian Federal Police, a number of BHP Mines and QANTAS.
6. Department of Defence, *Defence Employees Certified Agreement 2002-2003*, DPSNOV016/01, Canberra.
7. *Police Services Board v Morris* (1985) 156 CLR 397 at 409 in *Anderson v Sullivan and Ors* [1997] 1008 FCA (24 September 1997) 18 at <http://www.austlii.edu.au/cgibin/disp.pl/au/cases/cth/federal%5fct/1997/1008.html>
8. *Dixon J in R v Darling Island Stevedoring and Litterage Co Ltd*; Ex parte Halliday and Sullivan (1938) 60 CLR 601 at 621-2 in *Anderson v Sullivan* *ibid.*, 19.
9. The Privacy Committee of New South Wales (1994), *Drug Testing in the Workplace*, Paper No 64, October 1992, pp.12-14 at <http://www.lawlink.nsw.gov.au/pc.nsf/>
10. *BHP Iron Ore Pty Ltd v Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia – Western Australia Branch* (1998) 130 WAIRC 7 at <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/wa/WAIRCComm/1998/130.html>
11. See for example, *Debono v Trans Adelaide* AIRC 50251 (1998) at <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/IRCommA/1999/988.html>
12. *O'Connor v Commissioner for Government Transport* (1959) 100 CLR 225 at 229 in Macken, J., O'Grady, P., Sappideen, C. and Warburton, G. (2002), *The Law of Employment*, (Lawbook Co, Pymont), p. 118.
13. *McLean v Tedman* (1985) 155 CLR 306 at 313 in Macken et al, *ibid.*
14. Macken et al, *ibid.*, pp. 119-120.
15. *BHP v CMETSWU*, above
16. *ibid.*, p. 6.
17. *Australian Railway Union of Workers, Western Australian Branch and Others and Western Australian Government Railways Commission* CR257 of 1998 [1999] WAIRCComm 14 at <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/wa/WAIRCComm/1999/14.html>
18. *ibid.*, p. 15.
19. This limit is used by the NSW Police Service and Australian Federal Police. It is also the minimum level set in Australian Standard 4305-1995.
20. Defence Instruction (General) Personnel 15-2, *Involvement of Members of the Australian Defence Force with Illegal Drugs*, 28 November 1994, p. 4 17.
21. In the Railways Union case 15 above, the Commissioner Beech expressed "considerable reservation about a cut-off level of 50ug/L for cannabinoids" compared to a level of 100ug/L, proposed in the BHP case. 50ug/L was accepted on the basis of the particular wording in the underpinning *Rail Safety Act* (WA) (1998) s31 and in anticipation that more reliable tests of impairment will be developed in due course.
22. "Combat" and "combat related" have specific meaning and are defined in the *Defence Act* (1903) s93.
23. *Williams v Commonwealth of Australia* [2002] FMCA 89 (7 June 2002) 154 at <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/FMCA/2002/89.html>
24. *BHP v CMETSWU*, above, p. 8.
25. See *Debono v Trans Adelaide*, above, 6:45

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**EDITED TRANSCRIPTS OF W/T SIGNALS SENT TO NAVAL HQ DARWIN
BY CASTLEMAINE, ARMIDALE AND KURU**

<i>Castlemaine</i>	30 November	0945	One aircraft..... height 5000ft		
		0958	Attack still in progress		
		1029	Attack ceased		
		1255	Am being attacked		
		1302	Cancel my 1255/30		
		1402	Am being bombed		
		1432	Attack still on. Four enemy aircraft 7000ft		
		1445	Attack ceased		
		1831	Am being attacked by enemy fighter		
		1855	Nine aircraft , height 5000ft		
		2000	Attack ceased		
		01 December	0930	Single enemy aircraft low level bombing <i>Castlemaine</i> position 10deg 14' S, 126deg 02' E Course 164deg, 12 knots	
		<i>Armidale</i>	01 December	1115	<i>Armidale</i> position: 10deg 45' S, 126deg 08' E Course 028deg, 12 knots
				1254	Enemy aircraft bombing at 10deg 35' S, 126deg 16'E,
1337	Attack ceased... Large formations of enemy being used				
1430	9 enemy aircraft bombing at 10deg 16' S, 126deg 28' E,				
1458	9 bombers , 4 fighters				
<i>Kuru</i>	01 December	1228	Reports 10 aircraft at 5000ft, <i>Kuru</i> position 10deg 15' S, 126deg 45' E, 9 knots		
		1235	Being attacked		
		1309	Being attacked <i>Kuru</i> position: 10deg 15' S, 126deg 45' E, 10 knots		
		1445	Being attacked. Unable to continue operation on schedule owing to bombing. Returning to Darwin		
		1551	Being attacked <i>Kuru</i> position: 10deg S, 127deg E, Course 135deg, 9 knots		
		1826	9 aircraft height 5000ft. Am being attacked		
		1842	Being attacked <i>Kuru</i> position: 10deg 40' S, 127deg 04' E, Course 140deg, 10 knots		

“A New Factor in These Waters” – The Loss of HMAS *ARMIDALE*

By John Bradford

*Valour and Innocence
Have latterly gone hence
To certain death
by certain shame attended*

Rudyard Kipling (1865 -1936)¹

On 1 December 1942, the corvette, HMAS Armidale, [Commanding Officer (CO): LCDR D.H. Richards, RANR(S)] was sunk off the south coast of (then) Portugese Timor while engaged in an operation to land Netherlands East Indies (NEI) army personnel at Betano. Attacked by an overwhelming force of torpedo bombers, dive-bombers and fighters, Armidale had sunk within minutes, with an eventual loss of 100 lives. Those fortunate enough to survive the attack subsequently found varying degrees of refuge in a motor boat, a whaler, a Carley float, and a makeshift raft. Men in the motor boat and whaler were rescued some days later; tragically RAN personnel on the raft and NEI Army personnel in the Carley float were not saved. A Board of Inquiry convened immediately following Armidale’s loss deemed the operation to have been a “justifiable war risk” but obvious flaws in the planning of the operation and subsequent search-and-rescue efforts drew little, if any, criticism.

National Archives hold records of wireless telegraph (W/T) signals sent between Naval Officers in Command (NOIC), Darwin, [CDRE C. J. Pope, RAN], and *Armidale* and the other two ships involved in the operation, HMAS *Castlemaine* [CO: LCDR P.J. Sullivan, RANR(S)] and the Northern Territory (NT) patrol vessel, HMAS *Kuru*, [CO: LEUT J. A. Grant, RANVR]. A recent examination of these records suggests there was an alarming and woeful lack of attention to detail in the planning of this operation – codenamed Operation *Hamburger* – shortcomings that were ultimately responsible for much of the heavy loss of life.

These records show:

1. Aircraft types (i.e. whether level, dive or torpedo bombers) were never specified in any of the attacks;
2. *Kuru*’s enemy report procedures differed from those of *Castlemaine* and *Armidale*;
3. A failure to anticipate or adequately prepare for operational contingencies.

Operation *Hamburger* began with *Kuru* sailing independently from Darwin on 28 November. With her maximum speed about half

that of the corvettes, she had left Darwin a day ahead of the corvettes. The plan called for *Kuru* to rendezvous with the two corvettes at Betano during the evening of 30 November/1 December. However, en route to Betano, the two corvettes had encountered air attacks and, forced to deviate from their intended course, missed their rendezvous with *Kuru* by about two hours.

Kuru picked up about 70 Portugese civilians for the return journey to Darwin and followed a pre-arranged course away from Betano Bay, which *Armidale* and *Castlemaine* later took. Overhauling *Kuru* shortly after dawn on 1 December, these civilians were transferred to *Castlemaine*. Shortly after, *Armidale* and *Kuru* were ordered to return to Betano to disembark the NEI soldiers. There is some dispute about the course *Kuru* actually set, but *Armidale* and *Castlemaine* initially headed away from Timor and parted company at 1100hrs. *Castlemaine* headed for Darwin, while *Armidale* turned back toward the Timor coast – in broad daylight and steering towards an enemy, obviously aware of her presence. At 1254 *Armidale* reported she was under attack from “enemy aircraft”, at 1430

under attack from “nine enemy aircraft”, and half an hour later “nine bombers, four fighters”. In this last attack, *Armidale* was hit by two out of three torpedoes and quickly sank. One torpedo struck the radio room, giving her W/T operators no chance to inform naval Headquarters (HQ) in Darwin of her crew being about to abandon ship. Shortly before *Armidale* was attacked, *Kuru* had also been attacked, the severity of this attack convincing Grant he had no option but to return to Darwin.

On *Armidale*, many lives were lost, principally NEI soldiers billeted close to where the other torpedo had struck and men who were machine-gunned in the water by Zero fighters. It was here, after the “abandon ship” order had been given, that the already wounded Ordinary Seaman Teddy Sheean, the 18-year-old Tasmanian, elected to fight back rather than take his chances with those in the water. Strapping himself into his Oerlikon gun harness, he single-handedly defended his shipmates and was responsible for shooting down at least one aircraft. In unhesitatingly sacrificing his own life, he had shown the sort of selfless and inspirational heroism which many believe should have seen him awarded a posthumous Victoria Cross, not the posthumous Mention in Despatches his gallantry was finally accorded.

Over the years, various accounts of *Armidale*'s action and its tragic aftermath have been published, the most graphic and moving of these being Frank Walker's *HMAS Armidale – the Ship that had to Die*, (1990). Walker recounted many of the ordeals faced by motor boat and whaler survivors alike; significantly he also included as Appendices records of W/T signals transmitted during the operation and transcripts of the 1942 Board of Inquiry.

These records show that:

1. All enemy reports transmitted by *Armidale*, *Castlemaine* and *Kuru*, classified threats as either “bombers”, “fighters” or “enemy aircraft”. Based on height information Pope received in the earliest attacks, he correctly assumed these were level-bombing attacks. *Armidale*'s reports during the 1 December attacks specified neither aircraft height nor type –

a fatal oversight as later events were to prove.

2. When under attack, all three ships broke radio silence to transmit enemy reports, both corvettes signalling “attack ceased” to indicate they had come through the earlier attacks safely. Inexplicably, *Kuru* never sent this signal. Had *Kuru* done so, *Armidale* would have stood out as the only ship not to close an enemy report in this fashion after being attacked – an omission the consequences of which Pope could scarcely have ignored. Instead, his over-optimistic belief that *Armidale* had come through unscathed was again to cost survivors dearly.
3. There were major errors in *Kuru*'s reported positions for 1 December. Based on *Kuru*'s known maximum speed of 8-10 knots, she was probably within 15nm of *Armidale* when she sank – far closer than the “30 to 40 miles” quoted by the Naval Board in post-war correspondence to the father of one of the men lost on the raft. The timing and the strength of the attack on *Kuru* at 1440/1445 (Grant reported “nine others [presumably bombers – author's note] arrived with five two-seater fighters”)² makes it highly likely she was attacked by the same aircraft that sank *Armidale*.
4. *Kuru*'s reported course of 135deg (or south-east) in the afternoon/early evening of 1 December is at odds with that shown in Volume II of Hermon Gill's *Official History*, (1967), Figure 1.³ A figure showing respective courses for the three ships, has *Kuru* to the south of *Armidale* in the morning and early afternoon of 1 December; whereas she was to her north. After *Armidale* sank, *Kuru* is shown as steering in an easterly direction for several hours. Figure 2, based on actual W/T records, is a reconstruction of ship positions at given times.⁴ Also shown are point-to-point average speeds – some of which were clearly beyond *Kuru*'s capacity to achieve.

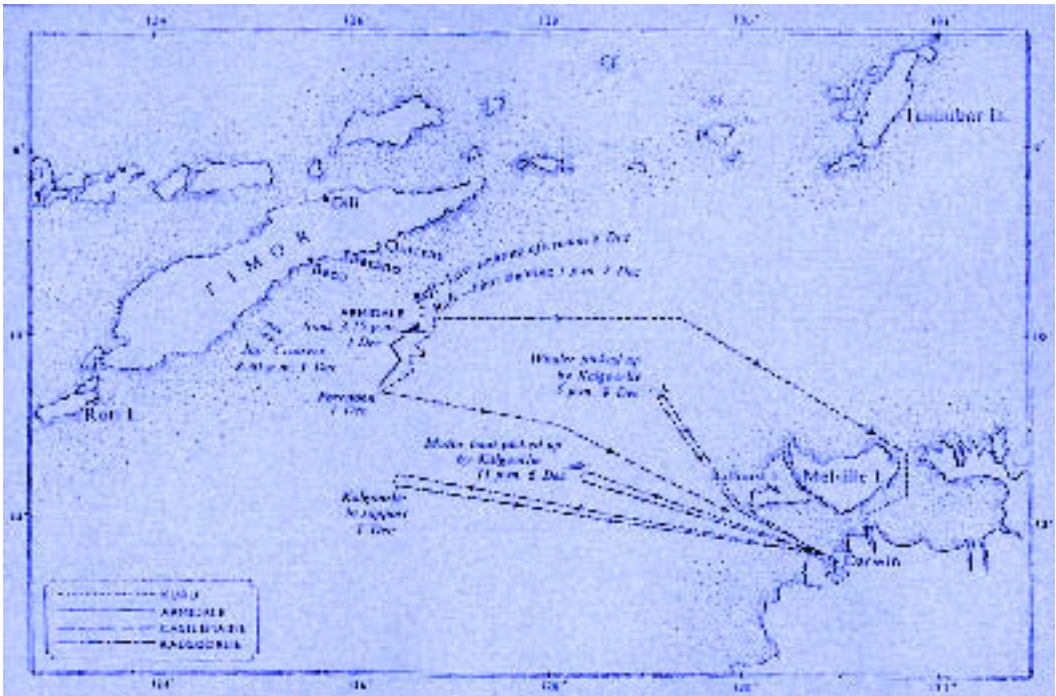


Figure 1.
Recorded positions of Castlemaine, Kuru and Armidale during 1 December 1942

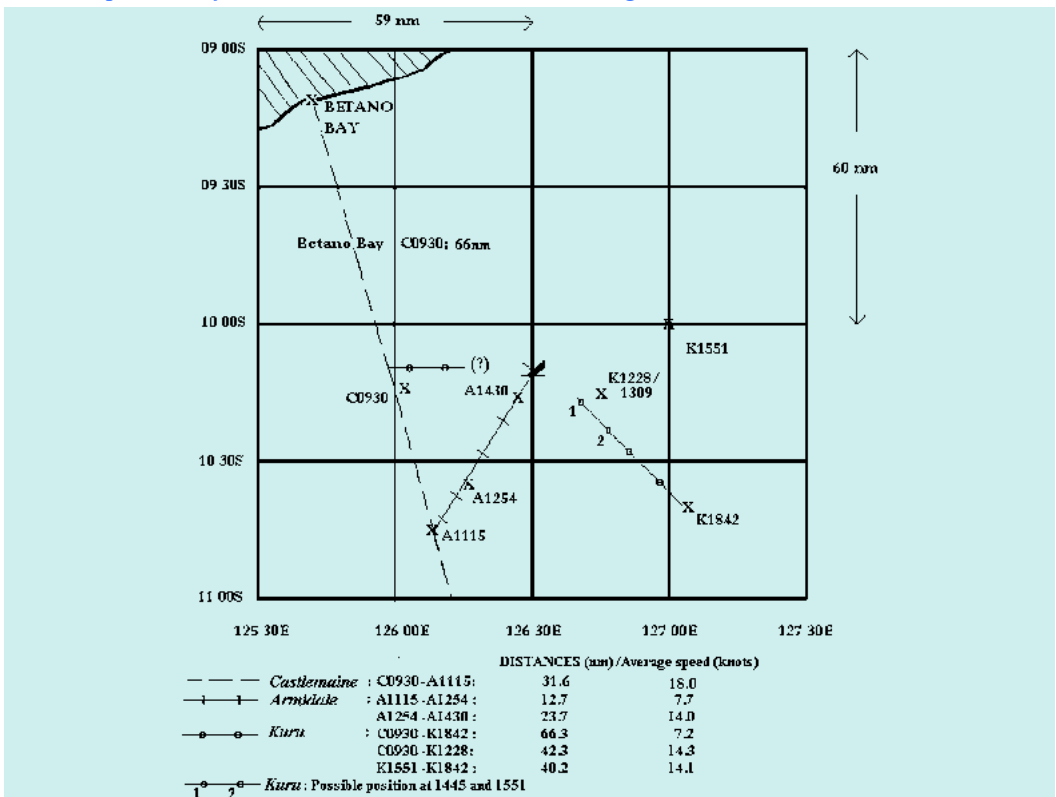


Figure 2.

5. Walker was particularly scathing of Pope's signal to *Armidale* and *Kuru*, issued 1½ hours after *Armidale* had sunk. In repeating his earlier order for these two ships to return to Betano, Pope had signalled "Air attack is to be accepted as ordinary routine secondary warfare". This, in hindsight, was clearly a most embarrassing and damaging signal, but in Pope's defence, he was clearly labouring under the impression that all reported attacks were by high level bombers, an impression further sustained by the number of bombers (nine) actually signalled by Sullivan, Richards and Grant.

The Japanese tactic of bombers flying level, and in arrowhead formations of either nine or five aircraft, had been observed in a number of past raids: the 16 February, 1942 attack on the US/Australian convoy which, bound for Koepang, had been forced to return to Darwin; the initial strike on Darwin of 19 February, 1942 and attacks on the cruiser, HMAS *Hobart*, where, in the days following the fall of Singapore, she was reportedly missed by a total of 260 bombs. Indeed, the attack *Castlemaine* had reported the previous day as, "nine aircraft, 5000 feet", matched precisely that which had been observed many times before.

In sending his signal, Pope clearly believed the only danger his ships faced was a continuation of level-bombing attacks which, based on past experience, had generally proved survivable. Added to this, in the latter half of 1942, naval command in Darwin had become far too complacent over the air threat corvettes and small ships might face on missions to Timor. Not since the first air raid on Darwin of 19 February 1942 had the Japanese resorted to dive bombers in attacks on Darwin (significantly, torpedo bombers were not used in the first raid either), and apart from HMAS *Voyager* incident, the air attacks appear to have been conspicuously absent in Timor operations. The change in Japanese tactics and weapons for the final attack on *Armidale* had clearly brought all such thinking undone.

Later, on 14 December, when Pope presented a report to the Naval Board in Melbourne

detailing events surrounding the loss of *Armidale* and its aftermath, he had noted:

*I naturally hoped that these small, manoeuvrable and (as against low level attacks below Oerlikon range) fairly well armed vessels would escape serious damage. Unfortunately this was not the case and Armidale was finally sunk by a heavy and well coordinated attack which included torpedo bombers, a new factor in these waters (author's bold), without which the ships would probably have escaped serious damage. This is also the view of the CO Armidale, expressed to me verbally.*⁵

However, while Richards must take some responsibility for not informing Pope that "dive bombers" were used in the 1254 attack on *Armidale*, the timing of Pope's "secondary warfare" signal clearly indicated it had completely escaped his notice that *Armidale* had not signalled "attack ceased" after the final attack.

At 1900 on 2 December, Pope issued instructions for *Armidale* to break radio silence at 0230 on 3 December – almost a day and a half after she had slipped below the waters of the Timor Sea! Only on that morning did the dreadful realisation finally sheet home that *Armidale* was lost, Pope reporting to the Naval Board that Darwin-based RAAF Lockheed Hudson bombers of No 2 Squadron and No 13 Squadron had already begun a search for survivors.

The motor boat was the first to be sighted and 17 men were picked up by the corvette, HMAS *Kalgoorlie*, at 2300 on 6 December. Arising from this rescue a clearer, but still incomplete picture emerged of the perilous state of the other survivors. At 1050 on 7 December, Pope sent a signal to the Naval Board and Commander South West Pacific requesting an RAAF Catalina flying boat from No 11 Squadron join the search. At 1507 news was received of three RAAF Hudsons having located about 40 personnel marooned on a raft almost 29nm from where *Armidale* was presumed to have sunk.

Why Pope allowed the search to go into its fifth day before requesting the Catalina – and then only after the first group of survivors had been found and rescued – defies explanation. In

terms of search-and-rescue, the Catalina was far superior to the Hudson. With endurance about double that of the Hudson, a top speed of 190mph – approximately 30mph lower than the Hudson’s cruising speed – and an ability to loiter at 120mph for long periods while searching, the Catalina was ideal for such a role. And, as an added bonus, if sea-state conditions allowed, it could alight on the sea to complete a rescue. But with the squadron stationed at Cairns – over 2000 km from where *Armidale* had sunk – this meant that a Catalina could not go “on task” until the morning of 8 December – almost a week after *Armidale* had sunk.

On its first flight, the Catalina made the second sighting of the (by now) estimated 18 *Armidale* personnel on the raft, but sea-state conditions prevented any rescue. The Catalina also located 29 men in the whaler who were later picked up, again by *Kalgoorlie*. The men on the raft were never sighted again.

The subsequent Board of Inquiry failed to address two issues responsible for the unnecessary loss of life on the raft: delays due to the misinterpretation of *Armidale*’s “radio silence” and the piecemeal nature of the search operation.

Soon after the war, the father of one of those who had perished on the raft requested a fresh Board of Inquiry investigate these and other issues. His concerns – and those of 27 bereaved families – were taken up by his Federal MP. The Naval Board refused this request.

The Naval Board’s obvious reluctance to re-open the *Armidale* issue at this time may be gauged from some April 1946 correspondence on behalf of five parents to the Minister for the Navy, A. S. Drakeford:

No department may understand the anguish of bereaved parents, but we have found that the same casualness and indifference that withheld the search for eight days is being extended to us in the Department of the Navy’s attitude in winding up the affairs of our sons and the ignoring of our individual correspondence, thereby assuming the very despotism our sons were called upon to fight and adding to our anguish, a bitterness

*that neither time nor circumstances can eradicate.*⁵

On 31 October 1946, Drakeford, acting on advice received from the Naval Board, responded to the letter. With respect to the issue of radio silence, he wrote:

*Had Armidale survived the air attack and been in the process of evading a possible impending one, there would have been an understandable reluctance on Armidale’s part to break wireless silence and thus give away her position. The fact that Armidale’s wireless was not again heard, was by no means evidence that the ship had been sunk.*⁷

As noted earlier, the first torpedo to hit *Armidale* had smashed into the radio office, closing-off any chance of her communicating with the outside world. With *Armidale*’s position obviously known to the enemy, even had she survived and radioed Darwin ten minutes after the raid had finished, little of substance would have been given away. The consequences of *Armidale* failing to signal “attack ceased” was not addressed.

The Naval Board’s explanation for the excessive delays in beginning the search-and-rescue operation was scarcely any more convincing:

*On 1st, 2nd and 3rd December, aircraft specially detailed to search for HMAS Armidale or her survivors were despatched. On 4th December, though several searches were carried out over the Timor Sea, local bad weather restricted air activity to about one third of normal. More searches continued as detailed in a previous letter to you, until the evening of the 13th, the only interruption to these being by reason of the weather. There is no justification whatever for accusing NOIC Darwin of disinterest or lethargy.*⁸

A more misleading, disingenuous reply from a political head can scarcely be imagined. Since *Armidale* was still assumed afloat on 1 and 2 December, all operations conducted by Beaufighters on these days would surely have been flown in a “support” capacity. In no way could they be described as “search” operations “for HMAS *Armidale* or her survivors”.

Had a fresh Board of Inquiry been convened, there were other issues, apart from radio silence and “search delays” which the Naval Board would have been hard-pressed to explain. For example:

1. Why, once it was known *Castlemaine* and *Armidale* had been detected and attacked on 30 November and might therefore be at some risk, was not a Catalina placed on “standby” at Cairns or, even as a temporary measure, at Darwin?
2. The Naval Board claimed *Kuru* was unaware of *Armidale* being sunk, opening up the possibility that enemy reports transmitted by *Armidale* and *Castlemaine* were not received by *Kuru* either. This was confirmed in recent correspondence, between the author and *Kuru*’s W/T operator, in which he wrote: “we kept a listening watch on one frequency (i.e. naval HQ in Darwin) and transmitted on another frequency.”
3. How much could a. *Armidale*’s failure to classify the 1254 attack as by “dive bombers”, and b. *Kuru*’s failure to signal “attack ceased” in the hours following, be attributed to inadequacies in the planning of the operation? (Had Pope known *Armidale* was being subjected to dive bomber attack – a far greater threat than that posed by level bombers – this might well have led him to call off the operation. He had acted so a few hours later when informed by the RAAF of the presence of two Japanese cruisers off the south coast

of Timor. Calling off the operation might not have prevented *Armidale* from being sunk two hours later, but her failure to send an “attack ceased” signal should have been capable of only one interpretation – all the more so had *Kuru*’s enemy reports conformed with those of the other two ships during the critical hours of 1 December.)

Even so, the absolute tragedy is that, notwithstanding delays in requesting the Catalina, the rescue of the remaining survivors on the raft must have seemed close at hand on the afternoon of 8 December. That these desperately unlucky men were not rescued, that fate would play one last, cruel hand, dashing all hopes of safety when seemingly so close, makes the loss of the *Armidale* one of the most painful and bitter episodes in the history of the RAN.

NOTES

1. Rudyard Kipling, *The Two Cousins*.
2. Walker, Frank, *HMAS Armidale – the Ship that had to Die*, Kingfisher Press, 1990, p. 162.
3. G. Hermon Gill, *Royal Australian Navy – 1942-45*, Australian War Memorial, 1968, p. 217.
4. Bradford, John, *In the Highest Traditions – RAN Heroism, Darwin 19 February 1942*, p. 145.
5. *ibid.*, p. 106.
6. Allan Powell, *The Shadow’s Edge*, Melbourne University Press, 1988, p. 128.
7. National Archives, Series No. MP!51/1, Item No. 429/201/943.
8. *ibid.*



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Reviews

THE ROYAL AUSTRALIAN NAVY, *THE AUSTRALIAN CENTENARY HISTORY OF DEFENCE, VOLUME III*, edited by David Stevens, Oxford University Press, South Melbourne, 2001, 336 pages, price \$69.95.

Reviewed by M. Fogarty



2001 was a big year for Australia, and so too for the RAN. It started with its participation in the Australian Centenary of Federation celebrations held in Sydney and elsewhere. For the Navy, it eked out its year as every other – on watch as others celebrated New Year’s Eve. Service at sea, on land, or in the air, home and away, still protecting Australia and its people. From sea to shining sea the RAN abides. Whilst some would discount that Service a decade short it matters little as the Navy has much to celebrate. This book is typically celebratory too.

Edited by Commander David Stevens, RANR, the Director of Naval Historical Studies, the book surveys the genesis, development and recent state of the RAN as it grew in increasing maturity with Australia itself in its first century as a nation. The book also surmises on the extent to which the Navy will continue to influence future events impacting on the prevailing security environment. The editor is joined by other naval officers, past and present, by name of Cooper, Goldrick, Jones, Sears and Spurling. All have made important contributions to its success.

Furthermore, the book shares some confluence with an influential article on naval historiography. See *Doing Naval History: Essays Toward Improvement*, edited by John B. Hattendorf, Naval War College, 1995. In *Strategic Review*, Summer, 1996, Edward Rhodes writes that “... it is, Hattendorf notes, necessary to understand the ‘essential nature of navies’, to explore them as ‘instruments of

government’ that ‘operate as highly technological organisations within the context of both domestic and foreign politics, finance, technology and bureaucracy’”. Dr Stevens and his fellow contributors have fully met this remit.

In pursuance of the above sentiments, the editor adjures that “... this volume explores the effects of changing strategic circumstance, technological innovation and differing needs and expectations. Reviewing Australia’s naval involvement in operations that have ranged from global war through to peacekeeping and natural disasters, the authors explain how the Senior Service developed from a collection of colonial gunboats into a vital element in today’s national defence”.

Four years ago, who could have imagined that Australia would later be at war in Timor, Afghanistan and Iraq. But this is no less the mission of our seagoing forces, preparing in peacetime in readiness for a potential war. Once again, capably led and crewed, the men and women of the RAN were able to respond to imminent threats having worked their ships and weapons to the operational capacity demanded by such changing and dramatic circumstances.

Why Navy? That answer should be left to one who chose maritime warfare as his professional career. In 1979, Admiral Sir Terence Lewin, spoke of that notion with his authority as the First Sea Lord, Royal Navy. “This dependence on the sea makes us vulnerable and so we must have the ability to defend ourselves against any threat from any quarter. The cost of maintaining that navy is a premium we must pay for an insurance we hope we shall never need, but the cost is smaller compared to the loss we might suffer if we have no such insurance.” (Mike Critchley, *British Warships and Auxiliaries*).

During his tenure, Admiral Lewin would also have noted the change in the symbiotic relationship – as the RAN shed its dependence on the RN and looked towards the USN – an inevitable outcome of service together in

Vietnam from 1967. The relationship with the RN peaked during the Confrontation period, which had ended a year earlier in 1966. "For many years, Australia had based its defence planning on a sizeable British presence in the region but, by 1967, the British were proposing complete withdrawal from Malaysia and Singapore by 1975". The region was changing, becoming a much safer place, and the RAN was a force for good in that process. In 1971, the Far East Strategic Reserve was supplanted by the ANZUK force, which dovetailed an interim regional security capability until the end of the Vietnam War.

Despite the strength of the Australian-American alliance, the RAN still sought greater self-reliance. "For the RAN, the focus on self-reliance in a climate of uncertainty demanded a flexible and balanced fleet and, in 1973, the Navy pressed for an improved power projection capability." The RAN pressed for two small aircraft carriers. Less than a decade later, it would have none. The RAN had lost its fixed wing capacity at sea. An incremental component of maritime power was surrendered.

In an affirmation of that renewed self-reliance in the eighties, Australia looked to its west – to the incipient threat of instability in the North West Indian Ocean and beyond. In a response to changing strategic circumstances, the book details the emerging significance of an energised naval presence in Western Australia. Some commentators saw this recrudescence in terms of "one nation, two navies". Although, considering the demands of the prevailing operational tempo, many sailors would have gladly settled for a third.

Australia's ongoing naval presence in several oceans has contributed much to regional security overall. The publisher's note that "... illustrated in this book is the use of the navy as a flexible diplomatic instrument in support of political objectives and foreign policy". As events unfold, the book remains topical in that it also includes reference to the early Timor operations of 1999 and refers to the origins of the continuing unrest in Guadalcanal. This review is written in the

week the Azores summit concluded. One day from it, the world holds its breath waiting for the anticipated outcome.

The introduction observes "... Australians are more comfortable within the limited perspective of the ANZAC legend, the confines of a two-dimensional battlefield, and lasting memorials to the fallen". Vice Admiral Sir Hastings Harrington, a former RAN Chief of Naval Staff, lent a more pointed construction to that nostalgia. In his 1965 "haul down" report he argued, "... History has moved on past the era when we can hope to be allowed to live to celebrate unsuccessful campaigns, however glorious". Encouraged by those insights, the introduction concludes that "... this book represents a small step towards redressing the collective neglect of its naval past by a nation that owes its birth, protection and continued sustenance to sea power".

Throughout the book, mission statements regularly appear at chapter headings in a muffled coda. Maps, figures, tables and time-lines add to our comprehension. At once, the book has closed the gap between knowledge and understanding. Photographs are thoughtfully selected and in some cases they are correctly sourced with Australian War Memorial negative numbers. As expected, naval acronyms stud the text and some are fully described in the abbreviations list. In such a book, this is to be expected.

The foldouts of ships' diagrams are particularly instructive in describing a potted history of many ships – in and out of service. Well illustrated, the drawings reveal the secret lives of ships as their anatomy is shown without excessive detail. The cut-out of HMAS *Sydney* (III) is revealing. Other ships receive similar scrutiny.

Dint of space ensures that the themes chosen are necessarily compressed. The book coverage includes: gunnery; submarines, anti-submarine warfare, engineering, ship organisation, communications, aviation, logistics, replenishment and mine warfare. Command and control diagrams attenuate the paradigm from 1932 to 1991 and elsewhere.

As stated, the photographs support the text in an informed and imaginative way, more than words can convey. Just as well. The respective authors know their brief and were not defeated by assigned publishing lengths. For this reason, the prose is often breathless but not lifeless. Boutique anniversary editions demand a particular rigour and as disciplined writers they achieve the requirements. They get the message out. One suspects a few authors have some empathy with the writings of the late Senator Henry Cabot Lodge. In Anne Blair's excellent study on him, she notes, "... he had set out the classic Republican stance that government should be small, save for ensuring a strong navy to defend the coastline".

In short, the authors handle the facts competently and their conclusions are soundly based. Intellectually, their analysis has met the demands that Hattendorf and others would have set them – being more naval historiography than hagiography. It talks and walks. They are alive to the current environment producing credible scholarship within the confines of a "sponsored" project.

These are intelligent essays as they account for strategic shifts and naval force developments implemented to contain them. It is a multi-dimensional study as the authors expand on various themes as much as episodic events allow. Certainly, ships capabilities were tested over successive conflicts and here the book explains to what extent those roles were met in their integration with other allied navies. After all, when diplomacy fails, it is often left to the military to resume the dialogue on the battlefield – in a language all protagonists acknowledge as politics by other means.

Certainly, the work devotes sufficient attention to ship construction, modernisation and re-equipment with new classes of ships. To their credit, the writers explore the human dimensions – the continuing quest to both recruit and retain skilled personnel who would keep our ships at sea. Harrington had his own

thoughts on the officer corps. Again, on "hauling down", he stressed "... the navy still gets some very good officers indeed: it does not get enough of them. We are getting very good men in numbers which stretch our training capacities. Good ratings demand better petty officers and officers ... because intelligent young men inadequately handled can become very bad indeed".

In response to an overall shortage of executive branch officers, a supplementary list of seaman midshipmen was introduced in 1964 – augmenting the regular aircrew intakes. Despite their lack of relative experience, compared to RANC general list graduates under longer training, SL officers received the same benefits of operational experience once in the fleet. Whilst serving at Fleet Headquarters in 1969, the fleet gunnery officer, Lieutenant Commander R. G. Harris observed, "... We are short of officers. We are proposing to accept any SLEX who applies for GLEX ... we are short of seamen watch keepers in the fleet". One such junior officer under contention, a 1966 entrant, would later rise to become Chief of Navy, his appointment to the top job providing assurance to his peers that being a former short service commission officer was not necessarily a handicap.

The book's conclusion brings it all together in an accomplished way. Individual Service politics have given way to cooperation at the joint level. Within that framework, the authors argue the strength of the naval case based on its inherent doctrine. The RAN remains an equal partner with the Australian Army and RAAF who similarly justified their individual cause in the other Defence series volumes I and II respectively. As such, all books should be read and understood within the total context of the Defence mission. The three individual Services perform at complementary doctrinal levels yet integrate as one sharing responsibility for applying discrete applications of force in the defence of Australia.

AUSTRALIA'S BOER WAR: THE WAR IN SOUTH AFRICA 1899-1902 by C. Wilcox, published by OUP, RRP: \$65.00.

Reviewed by Air Commodore Mark Lax



Apart from a few small imperial escapades in the mid 1800s under a British flag, Australia's first contribution in any strength to an international military engagement was our involvement in the South African Boer War.

It was during the war that Australia became a nation, so it can rightly also be called the first time Australians as such took up arms. It would be the beginning of a proud military tradition of volunteer service that continues today.

When we think of the Boer War, many think of "Breaker" Morant and his trial so vividly portrayed in the 1980 Bruce Beresford film of the same name. Some perhaps think of the Boer struggle for independent life from the colonial powers. Yet others may regard it as a lost and unknown part of our now ancient history. Few would be familiar with the heroes and villains, perhaps fewer with the names of the central characters. Captain Neville House may be remembered as our first VC winner, but Trooper Victor Stanley Jones, the first casualty (p. 63) is now long forgotten. The war was also about mobility and firepower, about camouflage and deception, a trench war, a concentration camp war and one where disease would claim more casualties than Boer bullets. Such is the fading of memory with the passage of time.

Now if you are looking for a broad coverage of the Boer uprising and the British attempts to secure her South African territories, then this is not the publication for you. Some would argue the war began in the 1880s, but this publication concentrates only on the work and fighting of the Australian contingent from 1899 until its conclusion in 1902. The politics, media view and attitudes back home are also covered. For a fuller

coverage of the war, perhaps the reader should first turn to *The Boer War* by Thomas Pakenham, or another such study of the conflict before reading this volume. A broader picture of the war and its causes will emerge and the reader may get a clearer picture of why so many Australians took up arms and sailed away.

Coming on the back of the successful OUP ADF Centenary of Federation series, the volume is an attempt by the author and publishers to fill a void in the official histories, and hopefully capture a missing part of the Australian military history market. I would have to say it is well presented, although only 368 pages of the 541 in total are text, the remainder being copious appendices, bibliography and index. Granted the Boer War set the scene for the formation of the Australian Army, but this coverage is somewhat padded and could have been condensed in parts, but I will let the reader be the judge. The volume is well illustrated with maps and photos and is a delight to the eye with that all-important fresh print smell to capture the senses.

Author Craig Wilcox has obviously had unrestricted access to the extensive resources of the Australian War Memorial to produce this volume, which has been a long time in coming. As one of the nationalist school of historians, Wilcox takes the view that Australians went out on these escapades out of national pride and because of a sense of adventure - not at the beck and call of Imperial masters. However, other authors (for example Dr John Mordike in *An Army For a Nation*) will disagree. I only caution that the jury is still out on this, so Willcox's slant should be considered and the reader should remain open minded. It is a readable volume, but the war needs to be understood in its entirety, which this volume does not provide. However, in conjunction with other histories, the book is worth the read, especially if you are interested in early Australian military expeditions. Recommended.

