



Stop utopian idiocy not cluster munitions

The Senate Standing Committee on Foreign Affairs, Defence and Trade recently concluded its inquiry into the draft Cluster Munitions (Prohibition) Bill 2006 put up by Australian Democrats leader, Senator Lyn Allison. The committee recommended the bill not be passed.

The Committee, chaired by Senator Marise Payne, is thankfully dominated by moderates on both sides of politics with most members also taking an informed interest in defence matters. The integrity, morality and logic of their decision is unassailable – not that this stopped some silly criticism from the usual utopian sources. The bill had far too wide a definition of cluster munitions (it would have meant, for example that even parachute flares were banned) and would have needlessly endangered ADF personnel in future wars and any civilians under their protection.

The ADF does not currently use cluster munitions although it intends procuring some for training in defence against them. But we should not close off the option of using them in future to help make up for our permanent strategic and tactical disadvantages such as relatively small forces. The use of self-neutralising cluster munitions, with numerous safeguards and in full compliance with international humanitarian law (IHL), is obviously a more justifiable, measurable and defensible stance than inchoate fears about the limited risk that our cluster munitions might, sometimes, accidentally, kill some civilians (but no more than other types of weapons unfortunately do).

The fundamental problem with trying to ban weapons capable of indiscriminate use is that such bans are generally only obeyed by those who do not use them indiscriminately. The limited success of the anti-personnel land mine ban is a case in point.

Thug countries and terrorist groups just carry on ignoring IHL regardless. In fact, they often regard our compliance with it as a vulnerability to be ruthlessly exploited in warfare with, for example, random mine-laying, reprisal killings, suicide bombings in markets and schools, and the torture, beheading and post-mortem mutilation of captives.

Indiscriminate bans simply punish the defence forces of democracies that abide by IHL in their prosecution of conflict but reward other belligerents who do not. You cannot ban war. You cannot minimise or prevent the horrors of war unless there are rewards for compliance with IHL and sanctions for those who disregard it. Utopian bans are simply counter-productive.●

Employer support for ADF reservists

Seven ACT employers were recently trumpeted by Defence as receiving Defence Reserves Support Council awards for supporting their employees who were ADF reservists. But on reading the press release three were parts of the Department of Defence, two were other federal or ACT agencies and only two were real private-sector employers.

Highlights:

- Yes to cluster munitions for the ADF
- Private-sector support for ADF reservist employees
- Don't bother gagging David Hicks
- No complaints by diggers in Iraq and Afghanistan
- Blaming the ADF for the war in Iraq is wrong
- The problems with 'arresting' Japanese whalers
- Irony Corner: Paul Dibb and Ian McPhedran

Let us hope that there are more private-sector employers in the States who can see the benefit of having employees who are reservists, rather than not hiring them in the first place or not keeping them on once they find out. It might also encourage private-sector companies in the ACT if Defence agencies were excluded from such awards in future – or perhaps there were no more private-sector employers to be commended this time? ●

Gagging at Hicks

Confusion continues following David Hicks' release from detention as a captured belligerent at Guantanamo Bay, and his transfer to Australia to serve the sentence awarded following his separate criminal trial by a US Military Commission. Too many commentators are fixated on doubts (however justified) about the validity and fairness of the Military Commission process. Many also misunderstand the nature of his detention after capture in the continuing war in Afghanistan. They wrongly ignore his fundamental status as a captured belligerent under the Laws of Armed Conflict (LOAC) – as affirmed by the US Supreme court in June 2006 when it quashed the original military commissions primarily because they violated the LOAC protections of those detained at Guantanamo Bay. His detention was never a case of habeas corpus.

The mechanics of Hicks' release from detention under LOAC is also separate to his criminal trial and sentence. His release follows a determination by a tribunal, convened under the authority of the Geneva Conventions, that Hicks no longer poses a risk of resuming hostilities as a belligerent and therefore can be released on parole (as happened with most Italian prisoners-of-war in Australia during World War II). Hicks' plea bargain and associated undertakings in his separate criminal trial by Military Commission no doubt helped establish this.

That his separate seven-year sentence for criminal offences was largely suspended is a logical and humane decision. The period of his detention as a captured combatant under the Laws of Armed Conflict (LOAC) was not 'time-served' in some form of remand and, strictly speaking, did not have to be taken into account. This is a useful and logical precedent in an area of evolving international law. But all these issues can only be properly addressed in the longer term by the negotiation of a Fifth Geneva Convention – to cover captured belligerents who do not qualify for prisoner-of-war status under the Third Geneva Convention, particularly where detainees may also have committed criminal offences under wider international law.

The point of the gag order Hicks agreed to as a condition of his plea bargain is uncertain even if you accept the suggestion that it was a matter of political expedience in an Australian election year. As the ADA has noted for some time following the example of Mamdouh Habib, the sooner Hicks is allowed to speak the sooner most Australians will make appropriate judgements whether he is worth listening to or not.

The legality of the gag order under Australian law is also questionable if it was only part of the plea bargain before the US Military Commission. If it was also a condition of his release on captured belligerent parole it is probably enforceable under LOAC – a point that is continually overlooked by those Australian lawyers who pontificate about Hicks as if his detention at Guantanamo Bay was only a domestic or international criminal matter rather than an issue primarily covered by LOAC.●

Digger views heard loud and clear

Late last month ADA executive director, Neil James, visited many of the ADF contingents in the Middle East. The trip was necessarily undertaken in co-operation with the ADF because some locations were not otherwise accessible. Except for obvious operational limitations, the defence force placed no restrictions on the visits and readily facilitated unsupervised consultations with personnel of all ranks. The ADA thanks all those involved with arranging and supporting the visits. The Association met all travel expenses except for in-theatre flights on scheduled ADF aircraft on a space-available basis.

Morale in all contingents was very good. In both Iraq and Afghanistan personnel of all ranks could see the worth of their efforts and believed in the task. With one very minor exception, there were no complaints about equipment and logistic support. The infantry and cavalry soldiers in particular had full faith in their vehicles, weapons and personal kit. The one minor exception related to the quality of the elastic in some anti-flash hoods and was already being fixed.

The ADA is again satisfied that the claims being peddled by some in Australia about allegedly deficient kit, and soldiers having to buy their own equipment, are fanciful. Not one digger interviewed used other than issued kit except, where through normal individual choice, a few had bought small personal items such as different sunshades for their ballistic goggles. ●

Support for all our diggers needs to be loud and clear too

The only concern stemming from the visit relates to the obviously widening gap between public opinion in Australia on one side, and the views of the troops on the ground on the other, about the rationale and prospects of the deployment in Iraq. To some extent this gap is due to those deployed there needing to believe in the cause in order to believe in risking their lives accordingly. To a much larger extent it is because they have a greater awareness of the day-to-day situation in that country, and the views of Iraqis, than what Australians at home can gain from often problematic media coverage of the war. To some extent it is also because diggers usually approach the issues involved from a neutral political viewpoint, stemming from either the apolitical professional culture of the ADF or because they simply do not care much for party politics.

The ADA is concerned that a wide and prolonged divergence in views between the defence force and the broader Australian community could lead to damaging tensions between them. During the Vietnam War, for example, such a divergence led to several quite unhealthy political and social trends. It was then commonplace for those opposed to the Vietnam War to blame the military instead of the Government for Australia's Vietnam commitment. More extreme forms of this mistaken belief later included the vicious abuse and physical harassment of ADF personnel and their families, the vandalism and sabotage of defence facilities and equipment, and unfair industrial action by unions (later formally regretted by the ACTU). There was also a nasty and indefensible belief by some that ADF casualties were somehow not deserving of sympathy or compassion, supposedly because the diggers involved 'deserved' to be killed or wounded because 'the war was immoral'. This despicable opinion is beginning to raise its ugly head again concerning Iraq.

Our defence force serves and defends all Australians equally and necessarily follows the lawful orders of the elected government. The alternative does not bear thinking about. Disagreement and dissent with Government decisions does not entitle Australians to take out their political passions or personal prejudices on the members of our defence force.

Consequently, Governments and indeed Oppositions have a responsibility to ensure that the morale and operations of our defence force are not undermined by a loss of public confidence in the causes for which the ADF fights on behalf of all Australians. Governments also have a particular duty to prevent acts or omissions by Australians that deliberately or recklessly endanger or betray those fellow Australians serving in the ADF.

The Government and the Opposition need to co-operate on a bipartisan public education campaign on the broader issue of sustaining community support for our military commitments. A further campaign is needed on the specific rationales for each commitment. This is unlikely to be bipartisan, especially in an election year, but wherever possible should avoid or minimise partisan political debate. ●

A whale of a mistake

The suggestion by Opposition Spokesman on the Environment, Peter Garret, that a Labor Government would direct the Navy to arrest Japanese whaling ships in the Southern Ocean was apparently made without any consultation with Labor's defence and homeland security spokesmen. This is worrying in itself but also of concern because it indicates Garret's understanding of defence issues may not have improved from the simplistic and extreme positions he espoused in the past. Until now Garret has enjoyed the benefit of the doubt as most have assumed that his conversion to Labor showed he had matured since his prominent membership of the extremist Nuclear Disarmament Party in the 1980s (although in his defence he did apparently leave once the Trotskyists completed their takeover of the NDP).

Just on ten per cent of the Earth's surface is some form of Australian airspace or maritime responsibility. The legal powers involved vary according to the responsibility and its underlying international law. Certain resource protection laws can definitely be enforced in the 200km EEZs surrounding our sub-Antarctic territories because the two island groups involved (Macquarie and Heard) are both north of latitude 60 degrees south – the northern boundary of the 1959 Antarctic Treaty which demilitarised Antarctica and its surrounding waters. Moreover, Australian sovereignty of these islands is undisputed whereas many countries misconstrue the Antarctic Treaty's freezing of territorial claims in 1959 as somehow meaning our sovereignty over the Australian Antarctic Territory (AAT) itself has been surrendered or otherwise rendered invalid.

Outside these EEZs it is not clear what international law could be used to prevent Japanese whaling and any use of the Navy to do so below latitude 60 degrees south would clearly violate the Antarctic Treaty and imperil our wider, much more important and much longer-term national interests concerning the AAT. General enforcement of Australian law in the Southern Ocean is better left to Coastwatch vessels such as the all-weather, 105m, *Oceanic Viking*, although it lacks the size, equipment and armaments needed to chase and forcibly board Japanese whalers.

Any serious consideration of using the Navy for maritime law enforcement in the Southern Ocean means supporting the case for larger destroyers, rather than just more frigates, for reasons of safety, sea-keeping, range and number of helicopters embarked. ●

Irony corner

- Professor Paul Dibb criticised over-centralisation in the Department of Defence and the time-consuming and bureaucratic nature of the Defence committee system. ●
- The tabloid journalist Ian McPhedran claimed ADA executive director Neil James was an 'armchair expert'. ●