

Australis is a collective name for a number of individual contributors to *Defender*

Aceh catastrophe a catalyst

Australia's speedy and significant humanitarian assistance to Indonesia, following the catastrophic tsunami that hit Aceh on Boxing Day, demonstrates both the complexity and the growing resilience of the Indonesia–Australia strategic relationship.

Aceh is one of the most sensitive areas of Indonesia. This time last year it would have been unthinkable that Indonesia would have welcomed such large numbers of foreign military personnel into the province. At its peak more than 1000 ADF personnel were involved. Many AFP disaster victim identification specialists have been there from the earliest days and will stay long after the troops have all returned home by the end of March.

The tragedy of the tsunami brought the peoples of Indonesia and Australia together as never before. Australia has demonstrated it is a true friend of Indonesia in the past, such as during the 1945–51 independence struggle with the Netherlands and the 1997–98 Asian Economic crisis, but these were primarily government-to-government relationships. This time it is different because it feels different. Despite the conspiracy theories peddled by the Islamists the relationship has again been tested and found not wanting.

The tsunami was an appalling tragedy for the people of Aceh and its aftermath remains a great challenge for all Indonesians. Our \$A1 billion assistance package to help Indonesia cope is clearly needed, has caused no worthwhile dissent on both sides of the Arafura Sea, and is a judicious investment in bolstering the nation-to-nation relationship. While we all would have preferred such a tragedy not to have occurred, it has undoubtedly offered both countries the opportunity to truly strengthen an often problematic strategic relationship. ♦

Renewed effort in Iraq

The 22 February 2005 announcement of an increase in our military support to the rebuilding of Iraq had somewhat of an air of inevitability about it. In August 2004 ago the Dutch indicated they would probably not be rotating their contingent again. They went firm on this in November. Since then, and especially by late January, there had been an increasingly desperate quest to find another country willing to protect the Japanese Ground Self Defence Force

engineering contingent, which was undertaking a range of construction and humanitarian-assistance activities in southern Iraq.

While equipped with armoured vehicles and well armed for immediate self-protection, the Japanese cannot fully defend themselves because the JGSDF is constitutionally forbidden to 'engage in hostilities' outside Japanese territory (although there is much debate in Tokyo about relaxing this strict interpretation of the constitution or even repealing it). Under the current strict interpretation, for example, the Japanese cannot even undertake defensive patrolling around their bases. The deployment in Iraq is the first ever overseas deployment of the JGSDF in a war zone, although they have been contributing to UN peacekeeping missions since 1992. Australian troops helped protect Japanese military engineers in Cambodia in 1992–93 under similar circumstances. At that time the JGSDF were permitted by the then Japanese government, after long debate, to wear only pistols.

Without someone willing to protect them the Japanese would probably have had to withdraw. This would have had obvious consequences on the ground in Iraq, for the maintenance of the US-led coalition, for US-Japan relations overall, and for the rationality of the domestic political debate in Japan about modifying the peace provisions of the Japanese constitution. These latter two aspects had considerable and direct potential to adversely affect Australia's strategic situation in the Asia-Pacific region. Prime Minister Junichiro Koizumi's direct appeal to John Howard and our, however reluctant, agreement to shoulder these additional responsibilities demonstrate the implications extended far further than Iraq.

Given that the Japanese needed to be protected by a professionally capable force this effectively meant a Western country rather than contract security personnel or the third-world contributors relied on for infantry in many UN peacekeeping operations. It is probable that Australia was long ago identified by the US, UK and Japan (and probably ourselves) as the option of last resort. This explains the sudden announcement and its apparent reversal of previous intentions not to increase to our commitment.

Many of those who were opposed to the 2003 collective intervention in Iraq have criticised this decision too. The essential point, however, is that the validity of the original

intervention is now largely peripheral to the issue of consolidating Iraq as a free and stable country, and one not prone to threatening its neighbours or otherwise undermining international peace and security.

This year, following the constituent assembly elections in late January, there will be a crucial series of referenda and elections in Iraq to decide a new constitution and then freely elect a permanent government. The process cannot be unduly hurried without threatening its success. Conversely everyone recognises the need to withdraw foreign forces as soon as possible—when the new Iraqi government can effectively assume responsibility for security.

Given our previous and continuing involvement in Iraq it therefore makes sense to beef up the military and diplomatic effort over the next year or so. There is an identifiable and achievable strategic goal in sight and therefore little risk of an open-ended commitment. This will not, of course, stop some critics from suggesting polemical and erroneous analogies with the Vietnam ‘quagmire’ of the 1960s.

Finally, no matter when or how the Saddam Hussein dictatorship eventually fell there has long been a high probability that this would result in a civil war between Iraq’s Shi’ite and Sunni Arabs. No minority ascendancy class gives up power willingly, especially where their power has been largely underwritten by violent repression of the majority over a long period. The insurgency in Iraq is mainly fuelled by Sunni fears of what will happen to them when the Shi’ites take charge and perhaps revenge.

Even critics of the US-led intervention in Iraq should be willing to admit that it is better that such civil strife is supervised and ameliorated by the physical presence and restraint of the international community rather than the Iraqis just being left alone to a bloody civil war. From both a humanitarian, and an international order and stability viewpoint, the bloodshed will obviously be a lot less and the risk of the situation escalating to involve neighbouring countries much reduced. It also maximises the chances that Iraq will emerge as a comparatively stable and democratic country in the region. ♦

Mis-playing the Vietnam card

The Winter 2004 *Defender* noted in some detail seven major differences, and two middling similarities, between the wars in Vietnam and Iraq. Subsequent events have confirmed not dismissed that analytical comparison. Recently, the insurgency nature of the conflict in Iraq has prompted some to make further mistaken Vietnam analogies.

One thing usually ignored by those deliberately misusing Vietnam analogies to criticise developments in Iraq is that the former war essentially comprised two phases (and in reverse order to that in Iraq). In the first phase, from the very late 1950s to the Tet offensive in early 1968, the bulk of the fighting was between communist guerillas, both South Vietnamese and those infiltrated in from North Vietnam, and the South Vietnamese security forces and their foreign allies. This phase was effectively won by the anti-communist side, although this did not seem clear to most on both sides at the time.

The second phase began after the significant destruction of the Viet Cong during and after the Tet Offensive. The brunt of the ensuing communist campaign was borne by regular North Vietnamese troops and largely fought in conventional battles. When Saigon fell in April 1975 there were 17 NVA divisions deployed in South Vietnam in contravention of the 1973 Paris Peace Accords.

Throughout both phases of the Vietnam conflict the communist side had the direct, wholehearted and sustained military support of two neighbouring countries and the indirect support of both a super-power and a regional great power. In Iraq the whole international and regional geostrategic frameworks are fundamentally different and no analogous foreign support exists. Moreover, the conventional intervention by foreign forces came first in Iraq and under quite different circumstances. The subsequent minority Sunni insurgency has quite different roots and attributes, and cannot prevail in the long term. There will be no major conventional invasion from outside to restore the deposed Sunni ascendancy class to power.

Finally, Australian public debate has recently been littered with much loose employment of the grand strategy terms *end-state*, *strategic goal* and *exit strategy*. Again various Vietnam ‘quagmire’ bogeys have been raised and inappropriately applied to Iraq. There is insufficient understanding that exit strategies obviously have to be adapted to changing circumstances—that is why they are a strategy not set in concrete. In the Iraq situation, moreover, the strategic goal is a free, democratic and stable country that is not a threat to its neighbours, the wider region or the international rule of law embodied in the UN Charter. The end-state is a democratically elected Iraqi government able to enforce and sustain reasonable standards of political discourse, security and hopefully liberty. The exit strategy for coalition countries is to withdraw as soon as this situation is achieved. The only real questions involved are how long this will take and how they may best be achieved. Genuine disagreement on these points in objective debate is to be expected. ♦

Two flawed pursuits of truth

Recent controversy over claims aired on the ABC *4-Corners* program by retired DIO intelligence analyst, Rod Barton, was not a high point for informed public debate. The program did not ask Mr Barton all the contextual questions it should have before selectively publicising disputed facts, or if it did, it did not put them to air. The result was, at best, an unnecessarily tendentious program. This was exacerbated by the tendency for many viewers to listen only to the bits that reinforced their existing beliefs, either way, about the repute of the Howard government.

What is not in doubt is that the *4-Corners* program painted a grossly inadequate and inaccurate picture of Australian procedures for the conduct of interrogations under the Geneva Conventions. As a result the program unnecessarily damaged the reputations of the country and its defence force with seemingly little regard for the truth and the national interest. Much of this can probably be put

down to inadequate research and a poor knowledge of defence matters generally by those putting the program together. Whatever way you look at it, the conception, execution and publicising of the program was unprofessional journalism unbecoming the supposedly independent national public broadcaster.

The selective airing of facts and claims in the program caused the subsequent session of Senate Estimates, two days later, to become understandably bogged down for eight hours on the difference between an interrogation and an interview in their military context. This can appear an arcane difference to those without the appropriate professional and legal knowledge, but is a well known and necessary moral, legal and practical distinction among practitioners of interrogation, their supervisors and commanders, and those who care to read up on the subject.

Senator's time would have been far better spent properly grilling senior defence officials on the department's continuing financial management difficulties, especially given the repeated annual audit qualifications on Defence accounts. The ADA has long been a strong supporter of parliamentary committee oversight mechanisms. It was disappointing to see the estimates process sidetracked by matters that could have been sorted out easily by reference to the appropriate statutes, regulations, policy documents and ADF doctrine manuals.

Not for the first time at estimates the politics got in the way of the oversight. ♦

Real lessons of Barton affair

The real lessons from the Barton affair have unfortunately been obscured. The most important one is that again we have had a serious breakdown in the passage of information between an operation in the field and the Defence hierarchy in Canberra. Just like the controversies over the so-called 'children overboard' affair and the reporting from Abu Ghraib prison in Iraq, the fundamental problem occurred not in the link between the field and Canberra but when the information reached Russell Offices.

Once again there was not a clear and unadulterated chain of military command from the CDF to and from an operational element, in this case, Barton. His reports back to Canberra and his post-tour debriefings strangely dog-legged into International Policy Division rather than moved straight up the correct joint-Service command chain. In this day and age such an unnecessarily convoluted arrangement, reminiscent of Crimean War-style command farces at their best, is nothing short of a national disgrace.

This problem could be fixed quite simply, by distinguishing the strategic military headquarters from the Department of Defence bureaucracy, and ensuring the headquarters directly controlled all aspects of all defence operations overseas. The optimum way to achieve this would be a formal split between the two entities and return to the command structure we had before 1997. This would be comparatively easy to achieve despite predictable howls otherwise from the military and civilian bureaucracies.

Why Barton's chain of command was so unnecessarily convoluted was apparently not pursued by *4-Corners*. The matter was subsequently aired, to some incredulity all round, during Senate Estimates. While Barton was nominally meant to be supervised by the senior ADF officer in the Australian contingent attached to the Iraq Survey Group (ISG), this did not occur in practice.

Barton, a retired public servant, had served with UNSCOM and the ISG before. Senior ISG officials requested his return to Iraq to further assist the ISG. Barton was brought back into the public service under contract on several occasions for this purpose. He was then nominally attached to the Australian contingent as a civilian but his status as a retired senior public servant, his virtually independent duties, and the fact he had been requested specifically by the Americans, all served to make his status anomalous to say the least. His reporting, tasking and command chain links were hazy at best. They were certainly not clear, responsive and accountable.

The clear proof of this is that all Australians in the contingent were advised verbally and in writing not to participate in interrogations by coalition or Iraqi forces, and to immediately leave any form of questioning when they considered duress was involved. Barton, however, has claimed never to have received such an instruction. Whether he did or did not is actually irrelevant. The circumstances that resulted in it being impossible to confirm or deny the matter one way or the other are proof alone of the disgracefully unclear command, accountability and administrative arrangements supposedly governing Barton's deployment to Iraq.

It surely would have made more sense to temporarily commission him as a reservist officer in the ADF before deploying him on Australia's behalf to a war zone. If the lower salary involved presented a problem, then his pay could have been supplemented in some manner to accord with his expertise and personal perceptions of appropriate remuneration. As a member of the ADF he would have been subject to military discipline, proper command, appropriate supervision, formal accountability, and there would have been no doubts about his international legal status or national duties and responsibilities. If Barton had been unwilling to accept this, then the Americans should simply have been told that, if they really wanted him, they should engage him directly on a US contract entirely independent of the Australian government, its defence force and their respective reputations.

It is also worth asking why, when Barton (a retired DIO employee) was brought back on contract, he was administratively attached to International Policy Division and not, as you would expect, to DIO? One version of the explanation is that DIO declined to do so. If so, this line of questioning should be pursued as part of the reforms to ensure anomalous attachments of civilians in war zones do not occur ever again.

Finally, instead of just taking Barton's claim that he had 'interrogated' Iraqi detainees at face value and unprofessionally broadcasting it to the world in a simplistic

and tendentious manner, *4-Corners* could have asked the simple questions: ‘Are you a qualified interrogator?’; ‘Where did you qualify as an interrogator?’ and ‘Were you duly authorised to participate in interrogations?’. Other perfectly reasonable questions would have been ‘Mr Barton, do you understand the difference between an interrogation and an interview, and if not, why not?’. The only question along such lines actually aired in the program allowed Barton to make the incorrect, irrelevant and emotionally expressed observation that it was an interrogation because the person he was questioning wore an orange jumpsuit and was accompanied to the room for the interview by an armed guard. If this was true, for example, criminal lawyers visiting people in prison would be conducting interrogations and not interviews every time they discussed something with a witness on remand or after sentence. Furthermore, not once during the *4-Corners* program was it discussed that the orange-clad individual being questioned by Barton had apparently volunteered to do so.

The whole episode appears to have occurred because Barton, who is not a qualified military or police interrogator and who has apparently never qualified on any professional course at the Defence Intelligence Training Centre, did not understand the important legal, procedural, moral and operational differences between an interrogation and an interview. It was a misunderstanding on his part, probably a genuine one, blown out of all proportion by a poorly put together television documentary; rather than any of the other conspiracy theories suggested by both sides of politics and those with political or other barrows to push on the Iraq War. But it was a misunderstanding that ended up diverting the leadership of the country, and its parliament, away from real governance issues for nearly a week. Just as importantly, it diverted due attention from what went seriously wrong with the arrangements governing Barton’s deployment to Iraq. ♦

Punishing Abu Bakar Bashir

The 30-month prison sentence imposed on Abu Bakar Bashir has naturally disappointed many people around the world. There is a small chance it might be extended if the prosecution appeals. Even this light sentence may be overturned on appeal. This is, however, a highly complex and nuanced situation in strategic and moral terms. Australia needs to tread carefully.

The West, and most of the international legal system, has responded to the threat from Islamist terrorism by designating such acts as a crime. Implicit in such a stance is the rule of law with all its attendant evidentiary requirements. Bashir getting off lightly is consistent with the international pattern of post-9/11 attempts at anti-terrorism prosecutions. While Islamist small fry have been convicted at trial across the world few senior terrorists have. In the majority of the trials conducted under accepted international standards of human rights, the ‘rules of evidence’ have undone what many would predict as a natural verdict.

Few informed observers have any doubt that Bashir is Jemaah Islamiyah’s spiritual leader. Most believe him guilty of some form of direct involvement in terrorist crimes. The problem is that a range of constitutional, legal and criminal

investigation obstacles stand in the way of convicting him of his probable major involvement in terrorist offences. As predicted in the detailed article by Professor Hasjim Djatal in the Winter 2003 *Defender*, the constitutionality of the retrospective application of the emergency decrees on terrorism promulgated after the Bali bombing was always going to be questionable. After the bulk of these decrees were struck down on constitutional grounds, the types of charge that could be levelled at Bashir under normal Indonesian law were also limited. Many of them essentially related to the Indonesian version of criminal conspiracy, which is difficult to prosecute under our legal system too.

In contrast, the Bali bombers were convicted by a judicious and overwhelming prosecution case sustained by forensic evidence, confessions, witness reports and detailed circumstantial evidence. Conspiracy is far more of a subtle crime where ‘intent’ hides in the thick fog of ambiguity, rumour and semi-plausible explanation and denial. The structure of Jemaah Islamiyah is less formal than most organisational command chains. There are few paper trails and many ambiguous means and modes of communicating orders.

Despite being declared a terrorist organisation by the UN and many other countries, Jemaah Islamiyah is not a proscribed terrorist organisation in Indonesia so membership alone is not a criminal offence. The virtually complete certainty that Bashir incited the attacks in Bali and Jakarta, and the high probability that he even authorised such action, however indirectly, does not easily translate into a conviction. This is especially so when some of the best prosecution witnesses were in custody overseas and not available to testify at all or in person, and those who were in Indonesian custody were his co-conspirators and accomplices who are most unlikely to help any prosecution case.

If Bashir’s trial had occurred under the Suharto dictatorship the application of the rule of law to the case would have been only cosmetic and Bashir would have been dealt with relatively ruthlessly. This would have satisfied natural justice but at the cost of sustaining all the other imperfections of the New Order regime. This would undoubtedly have been too high a price to pay for both Indonesia and Australia, not least because Islamist wrath festered under the dictatorship and grew steadily worse the longer the Suharto regime suppressed political pluralism.

Nowadays, however, Indonesian democracy is taking firm root. Respect for the rule of law, however imperfect its evolution thus far, and however frustrating its current application, will eventually strengthen Indonesian democracy to the benefit of that country and all its neighbours. Australians need to take the long view. If we respond with unrestrained indignation, or worse, we just bolster the simplistic slanders and deceptions of the Islamist extremists.

Abu Bakar Bashir is a wily plotter but still an extreme and violent bigot. It also needs to be remembered that for many years the bulk of Jemaah Islamiyah’s victims have been Indonesians. One day soon he or his followers will go too far and will not be able to elude even Indonesia’s still maturing criminal justice system. ♦