

**SUBMISSION TO SENATE ENQUIRY RE;
CHANGES TO DEFENCE SPECIAL UNDERTAKINGS ACT**

9th February 2009

From:
Jim Dowling

I am one of the four people charged under the DSU Act after entering Pine Gap in December 2005 to fulfil our stated intention of inspecting Pine Gap for Terrorist activity. We called ourselves Christians Against All Terrorism.

We acted on the information from the top Defence analysts on Pine Gap in Australia, including Des Ball, Richard Tanter, and Phillip Dorling. All of these concluded without any doubt (despite any misinformation spread by Pine Gap spin doctors that “nobody knows”), that Pine Gap has been integral to the war in Iraq and provides large amounts of intelligence information used in waging that war, including information used in targeting decisions. We saw, and still do see, Pine Gap as being part of a terrorist act which has resulted in perhaps more than a million dead, four million refugees, and the terrorising of an entire nation.

We acted openly about our intention before the event. After we were refused entry by the defence Minister and the Australian head of Pine Gap, the only thing we did not reveal was the exact time and place we would enter for the inspection.

After successfully entering the base, we became the first people ever to be charged under the DSU Act, though we were not the first people to enter the prohibited area and be charged for it. Others were always charged under the Crimes Act (as we also were – as well as the DSU Act).

You are probably already aware that the DSU Act was enacted in 1952, at the height of the cold war to protect British Nuclear Testing on Monte Bello and later Womera. At the time, the main fear was supposedly Russian agents.

The Act was never intended to punish or threaten non-violent protesters.

The tenacity with which the DPP pursued the goal of sending four nonviolent Christian activists to jail, using this Act, surprised us all. We were left with little doubt that there was much pressure from the US partners of Pine Gap to do so. I do not believe this belief is in any way conspiratorial.

Despite winning the first Supreme court trial against us, the DPP launched an appeal against Judge Sally Thomas’ decision not to send us to jail. Instead of jail, Judge Thomas had given us fines totalling thousands of dollars.

As you may be aware, as the Northern Territory Court of Criminal Appeal dismissed our convictions and ordered that acquittals be entered, we not only won the appeal against an increase in penalty, but the full Bench of the NT Supreme court ruled that Judge Thomas erred in not requiring the prosecution to prove that Pine Gap was necessary for the Defence of Australia. (It was our intention in the initial trial to prove that Pine Gap was not being used in the Defence of Australia, but in fact was being used to wage a war of aggression in Iraq - a war declared illegal by Kofi Anan, and unjust by nearly every moral theologian in the world not directly connected to the invading governments) Consequently our convictions under the DSU Act were all overturned.

At this point it became extremely embarrassing to watch prosecutor Paul Usher humiliated as he insisted on requesting a retrial. The Judges had already sneered at the possibility and quickly denied his request. He had obviously been instructed to pursue every avenue of punishment to the bitter end.

A little less than a year later, we now have the law being changed to circumvent the ruling of the full bench of the Supreme Court. If you follow the Darwin Appeal hearing, you will find that the Judges agreed that, not only did the Defence Special Undertakings Act require that it be proven that Pine Gap was necessary for the defence of Australia, for the Act to be used , **but that this was the intention of the legislators at the time.**

So, now we have a situation where the present Government is not only trying to change this Act to use it for something which it was never intended, i.e. the prosecution of non-violent peace activists, but they are also trying to change an important part of the act which might have been a safeguard against abuse.

It seems to me that the only purpose in changing this law is to punish **and frighten** those thinking about engaging in non-violent resistance against pine Gap's role in war making.

Martin Luther King was trespassing when he sat in at lunch counters and segregated schools. So was Ghandi when he marched on the Salt Mine. Similarly were the Russian people when they occupied the Russian Parliament during the collapse of communism. No doubt all the governments involved had trespass laws, and other laws, to prosecute these people under.

AND SO DOES AUSTRALIA. We were charged with trespass under the Crimes Act. We were also charged with damaging property under the Crimes Act (for cutting two perimeter fences to gain entry). In fact the "Destruction of Property" charge carried a maximum penalty of 12 years jail!

If any person were thinking of sabotage or violence there are charges carrying penalties of up to life in prison under the terrorism Acts or the Crimes Act. Obviously the changes to the Defence Special Undertakings Act are not needed or intended to prosecute serious crimes like these.

I would encourage you to refuse to cooperate with this attempt to more harshly punish acts of nonviolent dissent.

If you think we should have got 7 years jail just for trespassing onto Pine Gap land, then by all means recommend the changes in this act be passed.

To perhaps help you think about that last question, I include a paper written By Fr Bruce Duncan, head of Yarra Theological Union Social Justice Department. In it he addresses our actions and the question of what a legitimate government should be doing about them. (Other than changing the DSU act).

Jim Dowling

BRISBANE NON-VIOLENT PROTEST
AGAINST RAYTHEON AND IRAQ WAR
Fr. Bruce Duncan

Taking seriously their convictions to oppose unjust violence and war, a small group of people continue to employ non-violent methods to oppose Australia's involvement with arms manufacturers and organisations involved with the Iraq war.

The group, 'Christians Against ALL Terrorism', this year have staged a number of protests outside Raytheon offices in Brisbane, with prayer vigils, exorcisms and splashing of blood. As well as managing Pine Gap, which is involved with US military communications and targeting over Iraq, Raytheon manufactures electronic war fighting equipment and missiles, including cruise missiles and cluster bombs. Cluster bombs had released 800,000 bomblets over Iraq.

After a third protest on 29 May 2008, Jim Dowling and Lisa Bridle were charged with disobeying a police directive and wilful damage. But a Wynnum magistrate on 25 July found them not guilty of disobeying the police, and Raytheon withdrew the charge of wilful damage.

Their protests are part of a determined campaign to use non-violent methods to challenge Australia's involvement with unjust war-making policies and arms manufacturers. But the Howard government found it difficult to win convictions against the non-violent protestors. Faced with a possible gaol sentence of seven years, four Christian peace activists found guilty of entering the Pine Gap Joint Defence Facility in December 2005 were on 15 June 2007 given modest fines by Justice Sally Thomas.

Apparently determined to make an example of the protestors, the Howard government's legal team of nine silks and lawyers in the Northern Territory Supreme Court in Alice Springs was pressing for prison terms, but the judge considered this excessive and unwarranted. The defendants were the first ever to be charged under the 1952 Defence (Special Undertakings) Act.

The four activists, Donna Mulhearn, Jim Dowling, Adele Goldie and Bryan Law, were convinced that they could not in conscience remain silent in the face of the deceit about the war in Iraq and Australia's role in the bungled occupation.

They were not alone in believing the war unjust. Along with many other leading Australians, key custodians of the just war tradition, the churches declared the war unjust from the first.

Pope John Paul II led strenuous efforts to avoid war. On 13 January 2003, he insisted forcefully that an invasion of Iraq did not meet the stringent just war criteria. 'I say NO TO WAR! War is not always inevitable. It is always a defeat for humanity'. The Vatican's observer at the United Nations, Archbishop Celestino Migliore, unambiguously reiterated to the UN Security Council on 20 February 2003 that 'The Holy See is convinced that to resort to force would not be... just.'

Even the Catholic Bishops' Conference of the United States on 13 November 2002 had challenged the Bush Administration's rationale for war, declaring that without definite evidence of Iraq's involvement in the 9/11 terrorist attacks or of a serious and imminent threat from Iraq, war would not be justified.

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Catholic bishops' conferences from around the world, including that of Australia, England and Wales, Germany, France, Canada and Italy, firmly endorsed John Paul's views in an unprecedented flood of statements opposing the invasion of Iraq.

Yet for the first time in the history of the western democracies, the United States, Britain and Australia invaded a country in defiance of the moral authority of the just war tradition, especially the Catholic and other mainstream churches.

Benedict supports non-violent opposition to war

Pope Benedict XVI followed closely the thinking of John Paul II in opposing the war. Benedict has also strongly endorsed non-violent means to protest unjust war. On 30 May 2007 he insisted that 'the moral implication' of loving one's enemies is that it 'proposes "nonviolence" as the law of life.' On 18 February he had said that 'nonviolence, for Christians, is not mere tactical behaviour' but the attitude of one who 'is not afraid to confront evil with the weapons of love and truth alone... even at the cost of life.'

The action of the protesters at Pine Gap reflects the Pope's call to active non-violence. Indeed

Benedict in early June 2007 recognised as a martyr Franz Jägerstätter, an Austrian who refused to be conscripted into the German army because of his Christian belief that Hitler's wars were unjust. In effect the Pope has held up Jägerstätter as an example of the duty of Christians to defy governments undertaking unjust wars.

It is extremely curious that the Howard government was pressing to imprison the four protesters at Pine Gap, while those who encouraged the invasion of Iraq and committed

Australian forces to fight, falsely claiming to have indisputable evidence of Saddam's weapons of mass destruction, face no sanction at all.

The Vatican Secretary for Relations with States, Archbishop Jean-Louis Tauran, on 24 February 2003 declared that war would be a 'crime against peace'. Yet it appears to be a crime, a war crime, for which no one in Australia is to be held responsible. Is it of no consequence that the Howard government misleadingly plunged us into a bloody and protracted war in clear violation of the just war moral criteria?

Hundreds of thousands of Iraqis have been killed or injured, and thousands of western troops as well. Some millions of people have fled Iraq – many to Australia - or been internally displaced. The cost of the war and its flow-on effects has blown out astronomically, according to Nobel Prize-winning economist, Joseph Stiglitz, and could reach as much as US\$3 trillion.

And instead of bringing al-Qaeda to justice, the world now faces a religiously-based conflict that could last decades, raising real fears that such groups could even explode nuclear weapons in major western cities.

Rivers of blood have been shed, but the Howard government dismissed this whole fiasco as if it were an honest mistake. The people responsible for Australia's involvement in the carnage have offered no apology and shown no remorse or regret.

Who should face trial: those who protest non-violently against the deception that led Australia into an unjust war; or those who so misleadingly unleashed the 'dogs of war' in Iraq?

Dr Bruce Duncan coordinates the program of social justice studies at Yarra Theological Union in Melbourne. He is the author of War on Iraq: is it just? (Sydney: Australian Catholic Social Justice Council, 2003).