

Select Committee on a Certain Maritime Incident

Submission

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1. My submission is directed towards the 'children overboard' incident, in particular towards issues relating to the political-military relationship. It is my view that problems were caused largely because of the failure on the part of government and on the part of ministerial staff to understand the proper nature of political-military relations.
2. The incident has to be seen in the context of a wider and longer-term failure to ensure that the ADF is as far as possible kept out of the party political arena. In recent years a number of events and practices have developed which have tended to embroil the Defence Force more deeply in party politics than is necessary or desirable.

General Principles

3. The general principle of political-military relations is undoubtedly that the ADF must in practical terms obey the government of the day. This principle, however, is often not fully understood in important respects:
 - (a) the ADF has obligations which go beyond its duty to the government. Most notably members are obliged to observe the international humanitarian law of armed conflict. Military personnel are thus obliged to refuse orders, even from government, which are manifestly illegal. They are also obliged to answer questions put to them by parliamentary committees regardless of governmental instructions or wishes.
 - (b) the ADF occupies a special position in Australian society, quite unlike that of any other institution. It acts in the name of all citizens and must as far as possible be kept out of internal political disputes. This is symbolised by the fact that the Governor-General serves as Commander-in-Chief and that officers hold their commissions from the Crown. It is correct to say that these do not have practical consequences in terms of command and control; but it is wrong to conclude that the government of the day therefore has total and absolute control over the ADF.
4. A better view of political-military relations is that the government acts in trust for the people of Australia in its management of the ADF. It must preserve the military institution (which is the ultimate guarantor of the nation's security) and deal with it in accord with established conventions that are designed to keep it outside party politics. Failure to do so will harm the

institution in many ways, including decline in public confidence, discontent and disillusionment among its members, and reluctance to enlist on the part of potential recruits.

Recent Practice

5. Several developments in recent years have undermined the traditional relations between government and the military:

(a) the widely purveyed attitude in oral and written form that the ADF 'belongs' to the Minister and that government 'owns' the military. This is simplistic, misleading and damaging. As argued above, the relationship is not one akin to owning property which can be disposed of at will but more one of holding an institution in trust for the community.

(b) involvement on the part of the government in military appointments down to the one-star level. It is customary and reasonable that governments should be involved in appointments at the two-star level and above in so far as this is conducive to effective political-military relations. To go lower down the hierarchy, however is to risk political factors rather than military criteria playing too great a part in promotion to one-star level (and even to lower levels through anticipation of government expectations).

(c) the attempt to put defence in the mainstream of party political debate. Historically, defence policy has been one of substantial bipartisanship with relatively minor party differences. This helps reassure members of the ADF that they are carrying out policies of the country as a whole rather than policies of one particular party. In recent times, however, Minister Reith actively sought to bring out party differences, putting out a publication that distanced Liberal policies from Labor. It must be said that this occurred to some extent with encouragement from the ALP. This is not to discourage debate on defence but to emphasise that all parties need to remember its potentially damaging consequences. (There is a parallel here with the use and abuse of parliamentary privilege.)

(d) the promulgation of Defence Instruction (General) No. 8 in August 2001 effectively gagged members of the ADF from making public statements, oral or written, without official approval. The idea, as the Instruction itself indicated, was to ensure that any statements would 'complement' government policy. The effect was to undermine the professional standing of members of the ADF and to indicate a lack of trust and confidence in them on the part of government.

(e) the stream of media releases leading up to the general election in 2001 which emphasised expenditure of Defence funds in particular areas of the country. This is legitimate up to a point, but if pursued too vigorously such a practice suggests that military spending and policies are dictated by political and electoral considerations. As a result military spending is made to look like any other pork barrel in the minds of both the ADF and the public.

6. In each of the above examples it is a matter of judgement how far the issue should be taken. I am not suggesting an unrealistic treatment of the ADF as an untouchable or sacrosanct institution. In each case balance and respect for conventions are required. It seems to me that both have been lacking in recent years, not least during the election year of 2001.

A Certain Maritime Incident

7. The so-called 'children overboard' incident gives rise to several critical issues in the political-military relationship. There are several events in the saga which need to be more fully explored. The purpose is not simply to discover facts but to identify the long-term principles which are at stake and which need to be kept in mind by governments and ministerial staff.

(a) seeking information from the captain of *Adelaide* while the ship was in the middle of a difficult and complex operation. In this case information was sought by the local military commander from the captain – but it is necessary to know why he was seeking it. Was this to meet a government requirement? In some cases the need of governments for up-to-the-minute information may be justified. As a matter of principle, however, it is preferable for those in command on the spot to determine when to report back and for the normal military reporting system to be allowed to function.

(b) the effect of Defence Instruction (General) No. 8. Many activities of the ADF are routine, or at least do not affect national security. ADF personnel should be trusted after appropriate training to make public statements about such events in accord with necessary principles. In this case, it seems that the government knew that ADF personnel were effectively banned from making public statements except as directed. The overall effect was to allow misleading information to gain currency with no natural check from members of the ADF. It also made the ADF appear to be a mere tool of the government. For example, the public statement Chief of Navy to the effect that he was not contradicting the Minister for Defence clearly illustrated to the public the effectiveness of government control over information.

(c) efforts by ministerial staff to secure information from ADF personnel by inappropriate practices. For example, contacting all possible areas and individuals for information damages the normal chain of communication within the military as the Powell Report clearly notes (§22). Brigadier Bornholt's testimony to the Senate Estimates Committee also indicated that ministerial staff were not above heavy handed approaches in dealing with junior ADF personnel. This sort of attitude both cuts across normal lines of information and serves to entangle military personnel in party political issues.

(d) the phone call from Acting CDF Houston to Minister Reith. It was difficult for the Acting CDF to state bluntly that CDF Barrie was incorrect in his previous advice to the government. Serving officers are reluctant to do

this. Minister Reith should have understood this difficulty rather than emphasising the failure of Air Marshal Houston to advise him categorically. It was likewise highly inappropriate for the Prime Minister to use subsequent testimony by the CDF to 'sink' the evidence given by the Acting CDF. Exploitation of apparent differences between military personnel serves only to engender mistrust of politicians on the part of all those in uniform.

(e) use of information by the government which is known by the ADF to be incorrect. This can place the Defence Force in a difficult position. If CDF Barrie had clearly and decisively stated during the election campaign that the information put out by the government was wrong, this could be perceived as playing a role in party politics. Even if it was the CDF's duty to correct the government in such circumstances (as I believe it was), he should not have been put in a position by the government where a correction could have been seen as a political intervention

8. No doubt some fault must be laid at the door of the ADF itself in the 'children overboard' incident. But the whole episode indicates above all a failure on the part of the government and ministerial staff to respect the conventions that govern political-military relations.

Conclusion

The 'children overboard' incident together with a other practices on the part of the government in recent years has damaged political-military relations. Harm has been done in terms of the morale of personnel who felt that the ADF was being used for party political purposes. Public confidence in the ADF may have been undermined, though more perhaps lost confidence in the government. Restoring a good political-military relations will require better understanding, especially on the part of the government.

The key to the relationship is that, precisely because the government has effective control over the ADF, it must handle the Defence Force carefully and responsibly. Ministers and those who work for them must respect and understand the traditions and conventions that govern political-military relations. At the same time, opposition parties must also play their part by recognising the special status of the ADF and of defence in the political arena.

The problems evident in 2001 were no doubt exacerbated by the pressures of an election campaign. But some of the problems clearly date from much earlier and could well continue into the future. This is all the more likely in view of the changing pattern of activities of the ADF.

Military operations such as we see at present in Afghanistan – where political entanglement is less likely – will be relatively infrequent. Activities that mean the ADF is engaged in law enforcement of one kind or another are more probable, whether in the form of border protection at sea or 'homeland security' on land e.g. the Olympic Games or the Commonwealth Heads of Government Meeting in Brisbane. It is precisely these sorts of activities that

are prone to touch political sensitivities at home – note the intense debate over legislation dealing with military aid to civil authorities prior to the Olympic Games in 2000, and the authorisation of RAAF planes to shoot down hijacked civil airliners during CHOGM. All the more reason, therefore, to ensure that all sides in politics fully understand the complexities of the political-military relationship.