



Royal United Services Institute of Western Australia

Newsletter

March 2014 Edition

Promoting National Security and Defence

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YOUR PATRONS, OFFICE BEARERS AND COMMITTEE

2014 PROGRAM

MARCH	
Thursday 27 March	7:00 for 7:30pm Lorraine Finlay “Prosecuting War Crimes – Can Theory and Practice be Reconciled?”
APRIL	
Thursday *10 April	Commodore Peter Lockwood, Senior Officer WA “Defence Engagement and the Senior Officer Western Australia” *Note - Lecture date due to Easter and ANZAC Day
Friday *11 April	*11am Sharp Brigadier Alison Creagh, CSC “The ADF Theatre Project and the production of the ‘Long Way Home’” *Note - to be held at the Lecture Room of the Army Museum of Western Australia, Fremantle
MAY	
Blamey Oration – Due to the Senate Election in Western Australia (the potential speaker and alternate are once again candidates) the plans for the Blamey Oration are being modified	
The next Newsletter will be published on 1 April 2014 Copy Deadline 15 March 2014	

**MARCH LECTURE – LORRAINE FINLAY BA, LLB (UWA), LL.M (NUS), LL.M (NYU)
‘PROSECUTING WAR CRIMES: CAN THEORY AND PRACTICE BE RECONCILED?’**

Lorraine Finlay is a lecturer in the School of Law at Murdoch University. Her research interests include criminal law, constitutional law, international criminal law and public international law.

Mrs Finlay joined Murdoch University in 2010 from the Office of the Director of Public Prosecutions (WA), where she worked as a State Prosecutor. She has also previously worked at the High Court of Australia, initially as the Legal Research Officer and then as an Associate to The Hon. Justice J D Heydon. In 2009 she was selected as a Singapore Scholar with the NYU@NUS program. As part of this program she was awarded a dual LL.M in Law and the Global Economy (with a concentration in Justice and Human Rights) from New York University and in International & Comparative Law from the National University of Singapore.

Mrs Finlay currently lectures in Criminal Law, as well as coordinating the Law School Moot Program. She was recently awarded the MSLS Law Lecturer of the Year (2011), Dean’s Service Award (2010 & 2011), and Dean’s Research Award Commendation (2011). Mrs Finlay is also responsible for coaching a number of Murdoch’s international moot teams, including the teams that participated in the International Maritime Law Arbitration Moot Competition (2011 winning team), International Invitational Mediation Tournament (2011 winning team), IT & Privacy Law Moot (2011 Ambassador Round winning team) and IASLA Space Law Moot Court Competition (2011 Asia-Pacific Grand Finalists).

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CATEGORIES OF WAR CRIMES

By Steven R Ratner

The term “war crimes” evokes a litany of horrific images—concentration camps, ethnic cleansing, execution of prisoners, rape, and bombardment of cities. These images correspond in many ways to the legal definitions of the term, but international law draws lines that do not in all ways match our sense of the most awful behavior.

War crimes are those violations of the laws of war—or international humanitarian law (IHL)—that incur individual criminal responsibility. While limitations on the conduct of armed conflict date back at least to the Chinese warrior Sun Tzu (sixth century b.c.e.), the ancient Greeks were among the first to regard such prohibitions as law. The notion of war crimes per se appeared more fully in the Hindu code of Manu (circa 200 b.c.e.), and eventually made its way into Roman and European law. The first true trial for war crimes is generally considered to be that of Peter von Hagenbach, who was tried in 1474 in Austria and sentenced to death for wartime atrocities.

By World War I, States had accepted that certain violations of the laws of war—much of which had been codified in the Hague Conventions of 1899 and 1907—were crimes. The 1945 Charter of the International Military Tribunal at Nuremberg defined war crimes as “violations of the laws or customs of war,” including murder, ill-treatment, or deportation of civilians in occupied territory; murder or ill-treatment of prisoners of war; killing of hostages; plunder of public or private property;

wanton destruction of municipalities; and devastation not militarily necessary.

The 1949 Geneva Conventions, which codified IHL after World War II, also marked the first inclusion in a humanitarian law treaty of a set of war crimes—the grave breaches of the conventions. Each of the four Geneva Conventions (on wounded and sick on land, wounded and sick at sea, prisoners of war, and civilians) contains its own list of grave breaches. The list in its totality is: wilful killing; torture or inhuman treatment (including medical experiments); wilfully causing great suffering or serious injury to body or health; extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war or civilian to serve in the forces of the hostile power; wilfully depriving a prisoner of war or protected civilian of the rights of a fair and regular trial; unlawful deportation or transfer of a protected civilian; unlawful confinement of a protected civilian; and taking of hostages. Additional Protocol I of 1977 expanded the protections of the Geneva Conventions for international conflicts to include as grave breaches: certain medical experimentation; making civilians and non-defended localities the object or inevitable victims of attack; the perfidious use of the Red Cross or Red Crescent emblem; transfer of an occupying power of parts of its population to occupied territory; unjustifiable delays in repatriation of POWs; apartheid; attack on historic monuments; and depriving protected persons of a fair trial. Under the Geneva Conventions and Additional Protocol I, States must prosecute persons accused of grave breaches or hand them over to a State willing to do so.

The grave breaches provisions only apply in international armed conflicts; and they only apply to acts against so-called protected persons or during battlefield activities. Protected persons are, in general, wounded and sick combatants on land and sea, POWs, and civilians who find themselves in the most violations of the Geneva Conventions and Additional Protocols are not grave breaches. Of those not listed as grave breaches, many are still considered war crimes, although in those cases States do not have the same obligation to extradite or prosecute as they do for grave breaches. Other non-grave breaches are not war crimes, but simply illegal acts for which only the violating State is responsible under international law. To give one simple example, if the commander of a POW camp failed to keep a record of all disciplinary punishments (a violation of Article 96 of the Third Geneva Convention), he would likely not be committing a war crime—although some may disagree. Distinguishing among non-grave breaches to determine which are crimes is not an exact science, though it would seem that the more serious non-grave breaches do incur individual responsibility. (The U.S. military maintains that all violations of the laws of war, including those of the Geneva Conventions, are war crimes.)

Wartime atrocities not prohibited under the Geneva Conventions or Additional Protocol I may nonetheless be war crimes under the customary law rubric of “violations of the laws and customs of war” (the same phrase as in the Nuremberg Charter). For interstate conflicts, states agree that such war crimes include certain violations of the 1907 Hague Convention and Regulations, such as use of poisonous weapons, wanton destruction of cities not justified by military necessity, attacks on undefended localities, attacks on religious and cultural institutions, and plunder of public and private property. The Statute of the International Criminal Court (ICC) lists as war crimes for international conflicts not only the grave breaches of the Geneva Conventions, but some twenty-six serious violations of the laws and customs of war, most of which have been considered by States as crimes since at least World War II.

As for civil wars, unfortunately, international law today has fewer rules regulating the conduct of internal conflicts, which many States consider part of their domestic jurisdiction and, consequently, there is a shorter list of war crimes. Additional Protocol II of 1977, which contains basic rules for the conduct of internal conflicts, has no criminal liability provisions, and the reach of customary law war crimes is not as clear with respect to such wars as it is for international wars. The Statute of the International Criminal Tribunal for the Former Yugoslavia includes “serious violations of Common Article 3 of the Geneva Conventions” (the one article of the Geneva Conventions that addresses civil wars), as well as other rules to protect victims of armed conflict and basic rules on methods of warfare. The tribunal defined a serious violation as one that has grave consequences for its victims and breaks a rule protecting important values. This would presumably include violence to life or health (murder, ill-treatment, torture, mutilation, corporal punishment, rape,

enforced prostitution, and indecent assault), summary executions, hostage taking, collective punishment, and pillage. This list, while shorter than the list of grave breaches or other interstate war crimes, nonetheless would cover some of the most horrific acts during recent conflicts. The Statute of the International Criminal Tribunal for Rwanda includes as war crimes serious violations of Common Article 3 as well as serious violations of Additional Protocol II. The Statute of the ICC lists as war crimes for internal conflicts four serious violations of Common Article 3 (violence to life and person, outrages upon personal dignity, hostage taking, and summary executions), as well as twelve serious violations of the laws and customs of war (e.g., attacks on civilians, pillage, rape, or mutilation).

Though perhaps an obvious point, it should be noted that the laws of war only cover atrocities during armed conflict. They exclude many of the worst abuses of this century, such as Stalin's purges and destruction of the Kulaks, most of the Khmer Rouge's terror, and Mao's forced collectivisations. While these atrocities are international crimes—crimes against humanity, or, in some cases, genocide—they are not war crimes.

The definitional nexus of war crimes to armed conflict means that the atrocities against civilians committed by actors identified as terrorists do not always fit neatly within the existing categories of war crimes. As a general matter, it can be argued that the war paradigm and war crimes moniker simply should not apply to most of their actions, as they are engaged not in a war (interstate or civil), where international law accepts much belligerent activity as lawful, but rather in a criminal enterprise in which all acts are illegal. In this sense neither the Geneva Conventions nor customary law regarding war crimes captures the nature of their crimes. Insofar as terrorist activities by non-State actors are committed as part of a more paradigmatic interstate or civil war, e.g., an insurgent group working for one side blows up a civilian bus, these could well constitute grave breaches of the Geneva Conventions or other violations of the laws and customs of war, including those applying to civil conflicts. The United States government seems to hold that some terrorist acts, even those not associated with existing interstate or civil wars, are indeed "violations of the laws and customs of war." It is currently trying some suspected terrorists before military commissions at Guantanamo Bay for various offenses that it concludes are, in the words of an instruction to the commissions, "violations of the law of armed conflict or offenses that, consistent with that body of law, are triable by military commissions." The foregoing considerations make any determination whether the attacks on New York, Bali, Madrid, or elsewhere by al-Qaeda are war crimes a matter of debate. The far simpler legal characterization is to identify them as crimes against humanity, which lacks any required nexus to armed conflict.

Finally, the creation of a body of law criminalizing certain violations of the laws of war does not mean that war criminals will actually be prosecuted. This remains a matter for States and, increasingly, the United Nations and other international organizations. The Geneva Conventions require all parties to search for and either extradite or try all persons suspected of having committed grave breaches. And international law gives all States the legal right to prosecute war criminals under the theory of universal jurisdiction. While States have at times prosecuted war criminals (e.g., the U.S. trial of the My Lai offenders), the more pervasive pattern, despite the obligations of the Geneva Conventions, is either mere administrative punishment or impunity. The ad hoc tribunals for Yugoslavia and Rwanda have jurisdiction over both grave breaches of the Geneva Conventions and other crimes committed in these particular conflicts, and the ICC, as noted, has jurisdiction over most war crimes.

<http://www.crimesofwar.org/a-z-guide/war-crimes-categories-of/>

Further Reading

Law, War and Crime: War Crimes Trials and the Reinvention of International Law by Gerry Simpson (Cambridge, UK: Polity Press, 2007) ISBN 9780745630236.

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**APRIL LECTURE – COMMODORE PETER LOCKWOOD DSC, CSC, RANR
DEFENCE ENGAGEMENT AND THE SENIOR OFFICER WESTERN AUSTRALIA**

Commodore Peter Lockwood is the first officer to be appointed by Defence as the Senior Officer West Australia (SOWA) working to The Secretary and CDF. The position has been stood up in response to a recommendation from the ADF Force Posture Review:

Recommendation (10) - Defence should create a new one star Navy appointment in WA to act as a senior representational officer for broader civil and interagency coordination and international engagement, in view of:(a) the prominence of the ADF and Navy presence in Western Australia; and(b) the increasing importance of the Indian Ocean.

During this presentation Commodore Lockwood will discuss Defence's broader civil and interagency coordination, and international engagement, in WA.



Peter Lockwood was born and raised in Newcastle, Australia. He joined the Royal Australian Navy (RAN) as a Seamen Officer in 1976, graduating from the RAN College second in his class in 1978. He decided early to specialise in above water warfare and graduated as a Principal Warfare Officer in 1986.

His naval career has been predominantly seagoing, and he has served in most classes of RAN ships. He has served in a wide variety of shore appointments. For his contribution in charge of the Maritime Command Plans and Exercise section was recognised with the award of a Conspicuous Service Cross (CSC) in 1998.

Commodore Lockwood has seen operational service during both of his two major fleet unit combatant commands and as Commodore Flotillas. During the 1999 East Timor crisis, he was Commanding Officer of HMAS DARWIN with a period as the Task Unit Commander in charge of coalition combatant forces. His role in this was recognised with the award of a Commander Australian Theatre Commendation. During 2002 as Commanding Officer of HMAS ANZAC, he also saw service with the International Coalition Against Terrorism (ICAT) forces implementing UN Security Council sanctions against Iraq. Later he saw operational service in the 2003 Iraq Conflict as the Deputy Task Group Commander of the deployed RAN units, and Commanding Officer of HMAS ANZAC. For his contribution here was recognised with the award of a Distinguished Service Cross (DSC) and the US Bronze Star. Later, as Commodore Flotillas, he led the Australian Fleet Battle Staff for duties in TF 158 commanding all coalition naval forces in the North Arabian Gulf.

He is a graduate of both the Australian Defence and Strategic Studies Course and the United States Naval Staff Course. In addition, he has taught on the Directing Staff of the Royal Australian Navy Staff College. He holds a Master of Arts (Strategic Studies). Commodore Lockwood retired after 37 years service in 2013 and is currently serving part time in the Reserve Force as the SOWA.

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BIOGRAPHY - BRIGADIER ALISON CREGH CSC



Alison Creagh was educated at Canberra Girls Grammar School, and attended the Australian National University prior to joining the Regular Army in 1985.

During her 28 year career in the Army Alison has held a number of appointments from Lieutenant to Brigadier in a variety of roles including operations, capability development, acquisition, personnel management, public affairs and strategic communication. She has commanded the Defence Force School of Signals, responsible for delivering Information and Communication Technology training to the Australian Defence Force, and the independent 145th Signal Squadron.

Alison has significant operational experience having served overseas in Cambodia in support of the United Nations, as part of the International Assistance Force in East Timor, Iraq and most recently in Afghanistan with Headquarters International Security Assistance Force (HQ ISAF). She has also supported the Sydney 2000 Olympics and a number of disaster relief and border protection operations in Australia.

Alison was awarded the Conspicuous Service Cross in 1994 for her work as the Logistics Officer of the Force Communications Unit in Cambodia and was awarded the NATO Meritorious Service Medal in 2009 for her work as the Chief of Personnel, HQ ISAF.

Alison holds a Master in Management Studies (Project Management), a Master in Defence Studies, both from the University of New South Wales (UNSW), and a Graduate Diploma of Communications and Information Systems. She attended the Centre for Defence and Strategic Studies in 2009 where she completed a Graduate Diploma of Strategic Studies.

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THE ADF THEATRE PROJECT



Theatre of war: Dennis Ramsay (right) one of the 17 Australian Defence Force personnel and actor Tahki Saul (left) during a workshop at the Sydney Theatre Company for the production of The Long Way Home. Photo: Kate Geraghty

Read more: <http://www.smh.com.au/entertainment/theatre/real-soldiers-take-their-war-experience-to-the-stage-20130924-2uc62.html#ixzz2v9X7NwhF>

The Australian Defence Force is acutely aware of the impact of Defence operations but this is not always visible to the Australian community. The affect of active service can be as real to our returning servicemen and women as the conflict itself. Their wounds are not always visible, their stories are often untold.

The ADF Theatre Project is part of a unique rehabilitation program which will use theatre to tell the personal stories of a small number of ADF members who have been harmed in the line of duty. These brave men and women are confronting new challenges in their lives. Each of them is coming to terms with their experiences on Defence operations and many continue to experience feelings of isolation, inadequacy, and intense pain. They have seen the toll of war and many have experienced the tragedy of losing a mate. Their stories will be the basis for the ADF Theatre Project, and they will be the cast.

The ADF Theatre Project will provide participants with a new and uplifting experience, shared with their comrades who have faced the same physical and psychological challenges as a result of their ADF service. The ADF Theatre Project will portray Australia's recent experience of war and provide an opportunity for Australians to demonstrate their support for these brave men and women as they create a new and different vision for their future.

Between 2014 and 2018, Australia will commemorate the Centenary of Anzac, marking 100 years since our nation's involvement in the First World War. For Australians, the Centenary of Anzac will be one of the most significant commemorations to take place in the lives of current generations. The ADF Theatre Project will be a part of these activities and will provide the opportunity to honour the service and sacrifice of all those who have worn our nation's uniform, including more than 102,000 who have made the ultimate sacrifice.

Participants of the ADF Theatre Project will include selected men and women from the ADF who have sustained various injuries ranging from posttraumatic stress disorder, to physical wounds, in service to Australia – and their lives have been changed forever. The ADF Theatre Project is a unique opportunity for these men and women to achieve something different and be part of an activity that focuses on their abilities, rather than their individual challenges. New and shared experiences will assist them as they serve in the ADF and when they transition to civilian life.

http://www.aigroup.com.au/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/LIVE_CONTENT/Industry%2520Sectors/Defence/ADF_theatre_final.pdf

**LECTURE REPORT - PROFESSOR DAVID DENEMARK
"GROWING UP DEMOCRATIC"**

The idea of democracy enjoys support across the world, but there are signs that many young people – even those in newly formed democracies – are disenchanted with democratic systems. For example, surveys of the first generation of South African youth growing up post-apartheid have found only lukewarm support for its new democratic institutions.

An international team of collaborators from UWA, UCT, UW-Madison and Rochester have been studying these issues in a series of interrelated projects. The initiative was sparked by a workshop held in Perth in 2010 which examined political engagement.

Professor David Denemark brought RUSI members up to date on the status of current research and analysis. Professor Denemark noted the striking patterns emerging in contemporary studies of political attitudes particularly the increasing pervasiveness of citizen distrust and disengagement from the political process. Significant numbers of citizens, both in established democracies and new democracies emerging from authoritarian regimes have grown distrustful of politicians, sceptical of democratic institutions and disillusioned about how the democratic process functions.

Using the immediate post war generation as a point of reference, the current research methodology analysed survey data and compared attitudes with one previous and three subsequent generations. As Professor Denemark explained through a comprehensive graphical analysis, the trend showed an increasing disengagement from the political process with the trend more pronounced in younger cohorts. Interestingly the trend seemed to be independent of race, social status or democratic traditions.

The trend was reflected in increasingly favourable attitudes towards more authoritarian

approaches such as government by experts, government that could get things done or less accountable government with longer electoral mandates. An extended and lively question period followed the lecture.

FLASHBACK – RELEVANT ARTICLES FROM PREVIOUS NEWSLETTERS

AUGUST 2013 – The Hague and Geneva Conventions

https://www.rusi.org.au/states/wa/Documents/newsletters/2013/WA_2013_08.pdf

JUNE 2013 – Australia's Defence White paper

https://www.rusi.org.au/states/wa/Documents/newsletters/2013/WA_2013_06.pdf

FEBRUARY 2014 – Book Review: The Australian Army from Whitlam to Howard by Dr John Blaxland, Cambridge University Press, 2013; 434 pp.; ISBN 9781107043657

This book is now available in the RUSI WA library

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