

Yamashita's Shadow Falls on the ADF

Alistair Pope

Upon the conclusion of World War II the victors rounded up and prosecuted many German and Japanese war criminals. Some were sentenced to death and executed. The case of William Joyce ('Lord Haw Haw') is particularly pertinent as he was a US-born, British citizen who moved to Germany and became a naturalised German citizen. Despite this, he was prosecuted for treason and hanged for treason on January 34, 1946.



The other key point is that (as far as I know) no Australians were prosecuted or convicted of war crimes in that conflict. The same applies to all other conflicts, from the Great War up to, but not including, Afghanistan. Is our latest war an aberration, or has something happened that has led to the besmirching of the reputations of our front-line combat soldiers? These are the men and women who put their lives at risk when such service is demanded. If the state and its military and political leaders consider it an obligation to prosecute their own troops for actions taken on the battlefield, rather than support and protect them, why would anyone in future sign up to fight for such a country?

Today's politicians and the current and recent crop of deskbound senior ADF brass (almost none of whom have been in combat) are opening a war crimes Pandora's Box with their investigations into potential crimes committed in Afghanistan, the outcome of which they cannot determine. These corridor guerrillas and members of the Cardigan Corps apparently fail to realise that if any 'crimes' are indeed found to have been committed and their soldiers are convicted of them, this will necessarily implicate and involve them too. This is because our political elites in their boundless wisdom

signed international conventions and laws of war that could well lead, should lead, to the prosecution of the witch-hunters themselves.

Post-Combat Reviews

When the impressively named IGADF (Inspector-General of the Australian Defence Force) investigation report is finally released it will be interesting to find out when the first 'war crime' allegedly occurred, 55 'crimes' being the rumoured number of cases. For arguments sake, let's say these alleged war crimes go right back over the whole period of our Afghanistan involvement. Are we to believe that every senior officer from the Chief of the Defence Force down was totally unaware of these allegations for eleven straight years? Bear that key question in mind; we will return to it later.

Journalist Chris Masters seems to have been a major instigator of the idea that our combat soldiers were 'fighting dirty' and executing unarmed civilians. Let me quote just two extracts that indicate the quality and objectivity of his book. His words are in *Italics*:

The ABC's 4Corners' allegation quotes the book that '*... the unarmed businessman was dragged behind a pile of planks and executed*' [P.403-404]. Masters does concede that '*... the witnesses interviewed for the 4Corners report had not actually seen the shooting*'. Apparently there is neither reason to qualify the account of an admitted non-witness nor to add explanatory comment.



Can the IGADF ignore this bodice-ripper of a tale from page 545?

Friends of friends overheard gossip at parties of Afghan males without weapons dead in fields – and far worse. Ahead of the squall of prospective war crimes was a general alert about Special Forces acting as a law unto itself. Do we need any more evidence than cocktail party chatter to justify disbanding and prosecuting what Masters describes as this 'narrow cohort now largely disconnected from the broad community'?

Whatever the trigger, the ABC, some of the media and the perpetually upset and aggrieved have succeeded in instigating this investigation into the actions of our soldiers in Afghanistan. What is striking about this is that it clearly indicates we sent our nicest soldiers to Iraq, Timor Leste, Vietnam, Malaysia, Korea, both World Wars and all the UN peacekeeping missions. Yet it seems only our most evil ruffians served in Afghanistan. How plausible is it that our soldiers only committed crimes in Afghanistan and none in Iraq or elsewhere?

Assault of the PC skirmishers

The list of politicians and senior Army officers lining up to support this investigation contains not just the usual suspects of non-combatant generals, politicians, lawyers and perennial complainers, but some who served in these combat units. So let me reiterate: when real evidence is clearly identified I do not excuse war crimes. For instance, it is irrefutable that the much eulogised Lt. Harry 'Breaker' Morant was indeed a war criminal who cold-bloodedly murdered prisoners. By the British Army laws of the day he was dealt with fairly by the court and executed. Forget any posthumous pardon.

In fact, in regard to Afghanistan, the word is that several soldiers have indeed confessed to killing civilians and prisoners in Afghanistan. They should not be cut any deals. These criminals should be dealt with severely and given very long prison sentences, according to our laws. We also need to know the chain of command and why these incidents went unreported for years. Negligence? Cover-up? Incompetence? Lack of leadership? Take your pick, or add more options, but none I can think of is inspiring.

Australian Compliance with International Laws

Which brings me to the most important point; the application of the international laws of war to which Australia is a signatory. I am not a lawyer, nor an expert in this area, but it appears to me that there are three particular laws that apply:

- The Nuremberg Trials Laws / Conventions;
- The Third Geneva Convention for the Treatment of Detainees and Prisoners of War; and
- The Yamashita Standard.

The Nuremberg Trials

In 1945, the victors commenced criminal proceedings against senior Nazis accused of having instigated aggression or committed crimes against the populations of the countries they invaded. The curious issue is that some of the prosecutions dealt with crimes thought up in retrospect as they did not exist before the war.

Alfred Jodl was the Chief of Operations for the German High Command and was active in planning the attacks against Norway, Holland, Poland, Greece, Yugoslavia, and Russia. He was responsible for the elimination of the Soviet commissars, but used the defence of 'superior orders', prohibited by Article 8 of the Charter as a defense. As Chief of Operations it was the job of Jodl and his Staff to do precisely what he was convicted of doing: plan strategic military operations against other countries as directed by the Government. How many governments today are planning (and even carrying out) wars of aggression? I can name a dozen with ease. So why is The Hague not brimful judging cases? However, the ADF for all Afghanistan cases that they 'were only following orders' was disallowed and cannot be used as a defence.

The Third Geneva Convention and the Treatment of Detainees

The appropriate part of the Convention states:

... persons deprived of liberty for reasons related to the conflict must also be treated humanely in all circumstances. In particular, they are protected against murder, torture, as well as cruel, humiliating or degrading treatment.

There appear to be confessions of some maltreatment, but again the question arises: was this going on for the eleven years of our commitment to Afghanistan, or is it a recent series of events in just the final years? We will have to await the IGADF report to find out. If the worst whispers we hear reflect what happened, it is not just the 'abusers' but their negligent or complicit commanders who must also be prosecuted.

The Yamashita Standard

I can only conclude that those who commissioned this enquiry are apparently unaware of, or do not understand the [Yamashita Standard](#), which is enshrined in international law and has been accepted by Australia as applicable to our military. Firstly, let me provide a little history on the disgraceful show trial that convicted General Yamashita.

General Yamashita (right), the 'Tiger of Malaysia' was hanged on 23rd February, 1946, for crimes committed by his soldiers in the defence of the Philippines. It is important to note that Yamashita was not accused of personally committing any crime, nor could it be proven that he even knew of the atrocities committed by any of the 360,000 soldiers under his command. Yamashita took command of 14th Army only 10-days before the American invasion. Yet, after the war ended MacArthur had him court-martialled for 'failing in his duty as commander of the Japanese forces' by not preventing massacres of civilians in Manila.



His defence lawyer, Col. Harry E. Clark, Sr. argued that Yamashita:

... is not charged with having done something, but simply with having been the commander. American jurisprudence recognises no such principle so far as military personnel are concerned. (and the key point he made was) No one would even suggest that the commanding general of an American occupation force becomes a criminal every time an American soldier violates the law.'

Due to a lack of communications capability, Yamashita did not have effective control of his army from the time he arrived to take command. The American landings quickly

broke the 14th Army into three separate areas. When the war ended, Yamashita surrendered the Shobu Group in northern Luzon, but was convicted of the crimes committed by the independent Shimbu Group in Manila. The U.S. Supreme Court upheld the decision (7-2) that:

'... a commander can be held accountable for crimes committed by his troops even if he did not order them, did not know about them or did not have the means to stop them.'

I find this principle totally illogical but wonderfully useful for my purposes! Read the following twice and very carefully as it is the essence of this article. The Yamashita Standard states that:

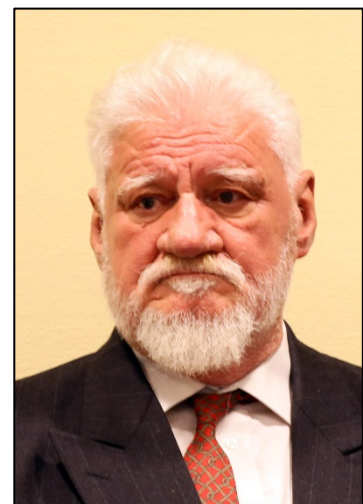
The highest ranking officer is accountable for, and should be prosecuted and convicted of the crimes of every officer and soldier under his command, even if he/she is unaware of that the crime, or was aware and actually gave orders to stop it. Ignorance of the actions of his/her subordinates and failed attempts to stop them are not a defence.

Well, that seems clear. Find any soldier who committed a war crime during the eleven years our Army was in Afghanistan and the most senior commander in Afghanistan at that time (and probably right up the hierarchy to the Chief of the Defence Force) is just as guilty as the soldier. Got that?

War is a nasty, brutal business. Yet what we now have are Australian politicians, socially conscious 'pseudo-generals', media pundits and lawyers poring over every contact and shot and incident of unintended collateral unintended damage, actively looking for crimes committed by our troops. As Beria told Stalin, 'Show me the man and I will show you the crime'.

But let's have a look at the implications of this inquiry that is seeking testimony from insurgents, beheaders, murderers, innocent farmers and those claiming both innocence and damage. Firstly, how do you categorise friend, foe and which is which? After all, several Australians were killed in 'Green-on-Blue' attacks (where Afghans on 'our' side murdered Australian soldiers).

This bizarre doctrine of 'command accountability' has now been added to the Geneva Convention as the Yamashita Standard and adopted by the International Criminal Court in 2002. Australia is a signatory to this convention and our generals are therefore subject to the Yamashita Standard for any and all actions – and crimes – committed by any soldier under their command. It was applied and used to convict many military leaders in the recent Balkan War prosecutions. In fact, in 2017 at the International War Crimes Court in The Hague, Croatian General Slobodan Praljak (right) was convicted of war crimes during the Balkans War and was sentenced to 20-years imprisonment. He shouted 'I am not guilty of war crimes' drank poison and fell dead.



Remember the '[Jedi Council](#)' fiasco in Australia in which the Yamashita Standard was not applied? (*The 'Jedi Council' was a group of ADF officers who received explicit pornographic material from a civilian contractor. Some officers viewed them, but others did not open the emails and deleted them unread. All were convicted and discharged from the Army on the orders of General Morrison – who accepted no accountability as their senior commander.*) What's that catchy cliché? Ah yes, 'The standard you walk past is the standard you accept'. Yet junior officers were scape-goated and their lives and careers destroyed even though some had not taken part. Meanwhile, their senior officers were not held accountable, as they should have been.

It appears that our current clique of Army generals is ignoring this cliché and the impacts the Yamashita Standard could have on them as they wish to prosecute some of our frontline combat soldiers for potential war crimes. These are the rabbits leading the warrior lions who put their lives on the line as their government directs. It was bad enough when they were merely failing to support their soldiers from slanders and unsubstantiated allegations, but now they have individually or collectively taken proactive action to ask the enemies that we, as a nation asked our soldiers to fight and kill, if they know of any 'crimes' committed by Australian soldiers on the battlefield.

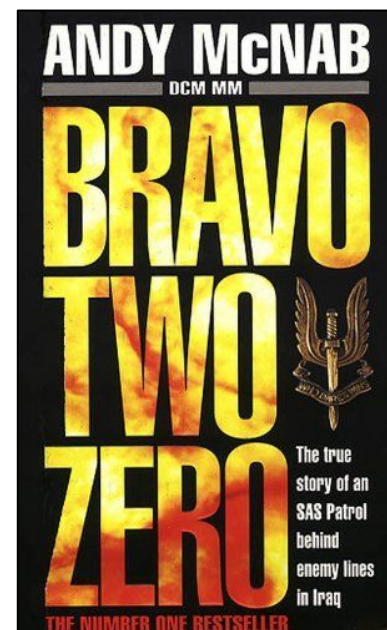
This raises a whole series of pertinent questions about the fitness of our current crop of generals to lead or command soldiers in battle. If you have any doubts about killing your enemies, then a military career is not for you.

In his book Bravo 20, about a disastrous SASR patrol in Iraq, Andy McNab tells of his patrol being spotted by a shepherd and a bulldozer driver. They let both go and, as a result, the patrol was soon being hunted by Iraqi soldiers. One of their number is killed, two die of hypothermia, only one escapes and the rest are captured.

Question: from the comfort of your armchair would it have been a war crime for them to save themselves by killing the shepherd and bulldozer driver, or if it was you, would you prefer to die with a clear conscience?

In the true story book and movie Lone Survivor an American SEAL Team is spotted by a goat-herder. They discuss the option of killing him and making their escape, but eventually decide to let him go and make for the pickup point. They are soon pursued by 100+ jihadis. All but one of the five SEAL's is killed. Worse, in trying to rescue them a Chinook carrying a relief force of 18 SEALs is shot down and all on board are killed: a total of 22 American dead as a consequence of the very humanitarian decision to let one goatherd live. In the film of the operation, one of the SEALs says "If I kill him and save us I will spend the rest of my life in Leavenworth." Instead, he was one of those killed by the Taliban. His first child was born after his death.

Question: from the comfort of your armchair, now that the outcome is known, what is the correct decision you would have made?



An extract from a biography on Nancy Wake 'our greatest WW2 heroine' reads:

The third woman, however, was entirely different. She proudly supported the Nazis ... It was unthinkable to release her ... That left only one option ... Nancy ... had no hesitation in making it happen. 'I am sorry', she told the woman ... 'You will have to be shot immediately, and I would like you to prepare for that.' Nancy recalls, 'I went to organise the firing squad.' ... they [the Maquis] drew the line at executing one of them [a woman] in cold blood, and initially they outright refused to do so. 'If you don't, I will, Nancy threatened, and meant it. ... they reluctantly agreed. Nancy sat down under tree to have her usual breakfast of stale croissants and coffee ... The sounds of shots rang around the forest as the now shattered and naked body of the woman ... crashed to the ground where it moved no more. Nancy kept eating her croissant and sipping her coffee. 'I was not a very nice person', she says. 'And it didn't put me off my breakfast.'

Question: from the comfort of your armchair, did Nancy Wake commit a war crime? Should she be stripped of all her honours and awards and denigrated for her action? What is the decision you would have made?

Summary

Unless our war in Afghanistan is an extraordinarily bizarre aberration surely we cannot stop here? Albert Jacka, VC wrote that he had to shoot several prisoners (including wounded ones) as he could not guard them and fend off a new German attack that was being mounted at the same time. Should we strike this self-confessed criminal from the record of heroes? No doubt WW2 should provide legal warriors with an even greater feast of rich gravy before we move on to the post-1945 smorgasbord.



If we can all agree that the Yamashita Standard will be ruthlessly applied in its entirety, then it will probably surprise the reader that I actually wholeheartedly support this travesty. Then again, I see it as probably the best opportunity we will have to clear out and imprison the desk warriors who are no longer focussed on war, but on the 57 varieties of gender, fighting climate change, ethnic and religious diversity, building mythical Pyne-Box submarines and buying the world's most expensive and ineffectual warplane, etc. We only get to lose one war and investigations such as this are well on the way to helping achieve that outcome.

Oh, what great days when the Iron Law of Unintended Consequences eats its own.