Journal of the Australian Naval Institute

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AUSTRALIAN NAVAL INSTITUTE INC

The Australian Naval Institute was formed and incorporated in the Australian Capital Territory in 1975. The main objects of the Institute are:

- To encourage and promote the advancement of knowledge related to the Navy and the maritime profession,
- to provide a forum for the exchange of ideas concerning subjects related to the Navy and the maritime profession, and
- to publish a journal.

The Institute is self-supporting and non-profit-making. All publications of the Institute will stress that the authors express their own views and opinions are not necessarily those of the Department of Defence, the Chief of Naval Staff or the Institute. The aim is to encourage discussion, dissemination of information, comment and opinion and the advancement of professional knowledge concerning naval and maritime matters.

The membership of the Institute is open to:

- *Regular Members*. Regular membership is open to members of the RAN, RANR, RNZN or RNZNVR and persons who having qualified for regular membership, subsequently leave the service.
- *Associate Members*. Associate membership is open to all other persons not qualified to be Regular Members, who profess an interest in the aims of the Institute.
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The Journal is intended as a forum and the opinions expressed in it are those of the relevant contributor.

Nothing in this Journal should be read as the opinion or policy of the Chief of the Naval Staff, the Royal Australian Navy, the Commonwealth or the Institute itself.

The Institute welcomes contributions from members or non-members on any topic touching on the naval or maritime professions

SPECIAL FEATURE

Sovereignty disputes in the South China Sea give rise to much concern and have the potential to disrupt the relatively harmonious strategic situation in South East Asia.

In this issue **Captain Lee Cordner, AM RAN** outlines the cases presented by respective claimants and weighs their cases in terms of international law... *Page 35*

REGULARS

From the President	2
Editorial	3
Letters	4
Book Reviews	12 ,64

In this Issue

Are we developing our forces properly? **Graeme Dunk** suggests that there are serious contradictions in our approach. *Page 5*

So you want to be a naval leader? A very *personal* view on what it will take to lead in the next century, from **Al Hinge**. *Page 13*

Are the classical maritime strategists still relevant? A New Zealand Air Force officer's view, from **Athol Forrest.** *Page 47*

What do naval historians and legal professionals have in common? **Anthony Morris QC** compares methodologies using the sinking of HMAS *Sydney* as a case study. *Page 51*

COVER PHOTOGRAPH: *Men at Work*

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From the President

I was delighted to take up the post of ANI President earlier this year and have thoroughly enjoyed the job to date. My life has certainly been made easier by a hard working Council, coupled with a sound financial base for future initiatives and activities. Members can rest assured that Council will continue to be active in furthering the maritime debate. In fact, May was a very busy month for Council in arranging the Vernon Parker Oration and co-sponsoring a conference in Sydney. The Vernon Parker Oration was given at Legacy House on the evening of 25 May by Rear Admiral Fred Crickard RCN (retd) and it attracted a very lively response from the audience. He also spoke at the Sydney conference at HMAS WATSON, and we welcome him as one of the Institute's newest members.

As President my role involves looking towards the future and, as we move towards the Institute's 20th Anniversary in 1995, we should review what we are doing, why we are doing it and how we are doing it. Challenges continue to exist for the Institute and many of these were addressed in the Vice President's comments in the last issue of this journal. For example, we must attract more younger members to this, *their* professional institute. Also, more contributions from senior sailors and junior officers are needed to add to the variety of material published in the journal. Comments on current developments in the naval/maritime realm and on better ways of doing things are especially welcome. So, please take the time to sit down, think things through and burst into print! Your ideas are welcome and the journal editorial team can assist with advice.

A number of theme issues of the journal are planned, starting with one on regional engagement in the Nov 94/Jan 95 issue. Ocean sciences will be dealt with in the Feb/Apr 95 edition. Also, the ANI's 20th Anniversary issue will be featured in May/July 1995. This issue will provide an excellent vehicle by which to reflect on where the Australian Naval Institute has been and where it is headed.

Finally, a plug for the ANI photographic competition which the Institute is co sponsoring with Film Australia. More good quality entries are needed, and you can read all about it on pages 32 - 33 of this issue. As the old saying goes, 'You have to be in it to win it' , so pull out your photo albums and think about submitting an entry.

Chris Oxenbould

From the Editor

Response to the new journal format has been good and improvements in the quality of presentation will continue to be made. As always, the editorial team genuinely welcomes constructive criticism and suggestions for improvement. There is a lot to be said for the old saying that the best 'customers' are those that complain! Therefore, do not hesitate to help us lift our editorial game.

Readers will notice that the journal is now distributed dur*ing* a three month time frame as opposed to being tied down to a particular month. There are several reasons for this; the main one being the need to give the editorial team more flexibility in terms of acquiring and editing good material. Of course, the aim remains to get the journal 'on the streets' during the first month of each journal quarter. Nevertheless, to my mind, Council's decision to enable more flexible deadlines reflects a realistic appreciation of the production constraints on a publication which is basically produced by volunteers in 'own time'.

The first article in this issue won the 1993 Peter Mitchell essay competition open prize. In it Graham Dunk presents his views on force development in the absence of direct military threat and suggests that dilemmas and contradictions continue to exist in Australian security planning and implementation. This issue also features an article by Captain Lee Cordner AM RAN on the Spratly Islands dispute which is approached from a law of the sea perspective. He succinctly traces out the cases put forward by claimants and weighs them. Another offering with a distinctly legal flavour is an excellent article by Mr Anthony Morris, QC . Mr Morris compares legal and historical methodologies and concludes that there are many similarities between the approach to analysis used by naval historians and the approach used by the legal profession. As a case study he weighs different views on the sinking of HMAS Sydney in World War Two in terms of the rules of evidence.

We also have a contribution from Squadron Leader Athol Forrest of the Royal New Zealand Air Force in which he endeavours to assess the relevance of the theories of classical maritime strategists to modern maritime operations and strategies.

In future issues of the journal our New Zealand members will also be providing a regular 'Letter from Wellington' which will help us keep in close touch with developments across the Tasman. And talking of New Zealand matters, in my last editorial I mistakenly referred to Mr Hensley as the New Zealand Defence Minister. I was wrong. Mr Hensley is the New Zealand Secretary of Defence.

As a change of pace from matters strategic, technical and legal I have included an article giving some of my pers*onal* reflections on naval leadership and issues affecting leadership in practice. The article attempts to outline some social and organisational changes and challenges which may impact on leadership style as we approach 2000. It covers a lot of ground, perhaps too much ground - but I will leave this to the good reader to judge.

Al Hinge

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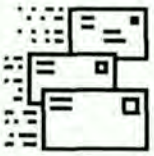

Letters to the Editor

A minor mystery

Can you or any other member of the ANI clear up a minor mystery which has cropped up for me during some research into Australian naval history?

In the November 1992 edition of the journal (Vol 18, No 4) the article on the history of HMAS *Geranium* states that the ship was paid off into reserve on 23 July 1927. Yet, I have in my possession a copy of a signal dated 8 October 1927 from the Commodore Commanding the Australian Squadron to Navy Office stating that Geranium, then at Gladstone, was available for immediate dispatch to Tulagi in the Solomon islands for a punitive expedition. I consider it highly unlikely that a ship in reserve could be immediately available for an operational deployment and this raises the question of when *Geranium* actually did pay off.

This is obviously a very small point and if I never receive an answer I won't really lose any sleep over it. On the other hand, I would like to know if a typo occurred or if the date was wrong?

Graham Wilson
Warrant Officer Class Two
Australian Intelligence Corps

(Ed. We will have an answer for you in the next edition Graham)

Please include postnominals

I am dismayed that the post nominals of office bearers are not included in the details of office bearers in the journal.

Persons honoured under the Australian Honours system and Australian awards should be proud of their honour or award, and all who refer to them should do them the honour by printing their details in such documents, whether it be in articles or in the list of office bearers. Even REPUBLICAN aspirers should be proud of AUSTRALIAN honours and awards.

Perhaps this could be corrected in future issues.
Rothesay Swan
A Past President

(Ed. I wholeheartedly agree and I will do my best to fix it up)

Uncritical analysis?

LCDR Harling's article on the use of naval diplomacy (JANI Vol.19 No3) was awarded the ANI Silver Medal for best Staff College Essay. This is a worry, as it appears that staff college students are being encouraged to merely reiterate the party line with little or no analytical thought.

Take for example the statement that force structure is adequate because defence policy says so. What sort of analysis is that? What of the argument advocated by Cheeseman and others that current defence policy is structured in such a way that the traditional force structure is endorsed, rather than to examine the fundamentals of Australia's security position and thereby arrive at a security stance consistent with regional outlooks and developments.

A further example of the lack of analysis is provided in the statement that Australia's defence and foreign policies are consistent. They are not, and are not seen to be consistent by our neighbours. How can the Australian Prime Minister and the Minister for Foreign Affairs and Trade continually advocate closer regional cooperation and integration as fundamental to the future security of Australia yet continue through the Defence Minister and defence policy to rely upon the crutch of ANZUS to protect us from the same regional neighbours that we are attempting to engage more closely? Who else is there? After all, our defence policy only has a regional focus; it says so!

Why does the Staff College appear to be rewarding such shallow, uncritical analysis of an important piece of government policy ? Perhaps it is time that the ANI played a more positive role in the determination of ANI awards.

G.A Dunk

A Peter Mitchell Prize winning essay

SECURITY OR DEFENCE? FORCE DEVELOPMENT IN THE ABSENCE OF A DIRECT MILITARY THREAT

by Graeme Dunk

'Nations do not distrust each other because they are armed; they arm because they distrust each other.'
— Ronald Reagan, 1988

'National security can either focus inward, seeking to reduce the vulnerabilities of the state itself, or outward, seeking to reduce external threat by addressing its sources'[1].
— Barry Buzan, 1991

The above quotations demonstrate the problems any country faces when addressing security, and hence the size and composition of its armed forces. Both statements address the same dilemma, although Ronald Reagan did not accept that trust and distrust can be a variable in international relations, and has advocated arming to reduce vulnerabilities. Buzan however has considered security in a more holistic manner, with solutions to a state's perceived security problems being attainable in a number of ways.

The security problems facing states are encapsulated in the defence and security dilemmas[2]. The security dilemma can be described as 'in seeking power and security for themselves, states can easily threaten the power and security aspirations of other states'[3], whilst the defence dilemma acts intra-state and involves trade-offs between national resources devoted to defence, and resources devoted to other objectives (such as economic development or environmental issues)[4]. The Reagan approach enunciated above will add further upward pressure to the paradox, with the combination of distrust and increasing military power fuelling an endless circle of competitive arms acquisitions; an arms race. The Buzan approach provides a mechanism to break free of this dilemma, and hence address security at a more fundamental and enduring level.

For countries such as Australia which face no direct military threat for the foreseeable future, the impact of the security dilemma is magnified. A defence posture based primarily on distrust and on the need to maintain a substantial military capability may become a self-fulfilling prophesy, with that posture intimidating and ultimately provoking other countries to similarly reduce their perceived vulnerabilities. A situation of no direct military threat should therefore allow real policy alternatives with respect to security and force development to be considered. This paper will address the nature of these alternatives. It will conclude that change to the traditional force development rationale is required if Australia is to draw 'closer and closer to Asia'[5].

Security and Defence

Security and defence are not synonymous concepts and attempts to address one or other will impact differently upon the development of a nation's military force. Defence is defined as 'defending from or resistance against attack'[6] whereas security is a more difficult concept and has been variously described; one definition being the 'free evolution of a society without external duress'[7]. Defence therefore is a reactive mechanism to counter a particular threat; in the military context it relates to considering military actions that may be possible by a potential adversary, and in developing a force structure capable of meeting that threat.

Defence is therefore a singular action, having limited utility apart from its narrowly defined role. As defence aims to counter a particular threat, the defensive capabilities acquired should similarly be defined by the threat posed. The aim of national force development under a defence orientation will be to deter a potential adversary from taking offensive action, either by acquiring the ability to retaliate in kind, or by demonstrating that his attempts will be both expensive and ultimately unsuccessful. Theoretically therefore, the absence of a military threat should negate the requirement for a national defence posture.

Security is a broader concept than defence, covering more than just the preservation of national territory

from invasion. Security contains social, political, economic and cultural facets, and can be addressed in the absence of any direct military threat. In the circumstance where a nation is faced with a high military threat, the tendency to equate security with defence will be great, as witnessed by the military pre-eminence in security developments during the Cold War. Unlike defence however, a nation can obtain security by ensuring that threats do not develop, and hence ensure that military action for defence is not required. This argument does not imply that military forces will not be required in the attainment and maintenance of security, only that the format, rationale and structure of such forces must have relevance for the security function, not only the defence function.

Force Development in Australia

A fundamental security aim for Australia is the continuation of its generally favourable strategic environment[8]. It should also be to contribute to, and as far as possible influence, the future shape of that environment to ensure that regional, and Australia's, security is enhanced. In order to be able to 'exert influence on the rate, direction and outcomes of strategic change'[9], Australia needs a clear indication of the strategic goals it wishes to pursue, and an understanding of the ways in which we can influence, both positively and negatively, regional developments.

One way that Australia can directly affect its own security is as a result of the security dilemma; by adopting a security policy which is perceived to affect the security of neighbouring countries. The development of military force by Australia may therefore impact upon the region through this dilemma in a number of possible ways, militarily, economically and politically. Negative security developments could see the acquisition of military capability by regional countries to counter-balance military developments within Australia, but reactions could also include the marginalisation of Australia with respect to regional economic links and political developments. As Asia 'is now the region that offers Australia the most'[10]such a development would be disastrous for our future; serving to reinforce uncertainties that may currently exist, and creating a situation of "them and us" that would have significant impact upon long term security developments in this country.

Australian defence policy must therefore be consistent with the other policy arms of Government which have consistently advocated closer regional involvement. Although the aims of defence policy are stated as maintaining and developing capabilities for the self-reliant defence of Australia; promoting regional strategic stability and security; and working to limit the spread of influences inimical to Western interests within the region[11], an almost overwhelming priority is afforded to the defence of Australia[12]. Strategic stability is pursued principally through the Defence Co-operation Programme (DCP), and ethnocentric arguments[13] that a militarily strong Australia provides a secure south to the Asian region. Defence policy has therefore failed to break free of the "just-in-case" way of thinking, with the result that the Asian focus common in our economic and foreign affairs outlooks does not exist, our Asian push is diluted, our efforts are wasted and our motives are questioned[14].

Whilst the defence of Australia is rightly addressed as a fundamental responsibility of the Government, current defence policy seeks to reduce Australia's vulnerabilities should a threat arise, rather than aiming to prevent the emergence of any threats[15]. Efforts to improve regional defence relations, and to maintain or enhance regional stability are undertaken essentially as a by-product of the militarily self-reliant posture rather than as a self-standing goal. Our security policy therefore focuses on the narrow, defence-related issues, rather than on broadening our vision to fully consider the security of Australia.

Policy Implications of Addressing Security

A force development process that eschewed nonexistent military threats as the basis of the security outlook, would have significant implications for Australia's defence policy, and hence ultimately upon force structure. Such an outlook would appear to be more attuned to the common and collective security outlook of Senator Evans and the Department of Foreign Affairs and Trade (DFAT)[16] than the present defence policy can realistically profess to be. The acceptance of a situation of no direct military threat would remove a number of inconsistencies that presently exist across the various external policy arms of the Australian Government. Under such an outlook the focus of Australia's defence effort would alter from being a *de-facto* defence from the region, to an unequivocal position of security with the region, as advocated by Bob Hawke in 1991[17].

Such an outlook would need to place more emphasis on regional involvement and in the attainment of security with regional countries, rather than providing defence against non-existent threats. It would call into question the pre-eminent position of the ANZUS alliance[18] in Australia's defence planning and it would necessitate a review of Australia's policy to maintain a technological edge over regional countries.

Continued adherence to the illusionary security offered by Australia's close military relations with the US[19] is a fundamental symptom of Australia's failure to come to terms with the fact that we face no direct military threat, and increasingly paints Australia in a hypocritical light. On one hand Australia is advocat-

ing regional cooperation as a fundamental principle for the region as a whole whilst still clinging to an extra-regional power for its own security[20]. Our regional partners could rightly question who Australia's alliance with the US is supposed to protect Australia from. Given the regional focus of our defence policy, the answer must be "From the countries within the Asia-Pacific region liable to act 'from or through the archipelago to Australia's north"[21]; the same countries we are trying to engage more closely in security dialogue and increasing levels of cooperation; the same countries with whom we see our economic future lying.

Acceptance of the reality of no direct military threat, and the acceptance of the common and collective security ideals as advocated by Senator Evans and others, would necessitate that Australia-US defence relations be toned down. It does not follow that Australia would necessarily have to sever all military ties with the US and other Western countries, and indeed it would be neither in our best interests, or necessary, to do this. Intelligence and other technical cooperation could continue in parallel with regional engagement, under arrangements similar to those presently in place with Canada and Britain, or under a specific Memorandum of Understanding (MOU). The present dependence of Australia's logistic support arrangements on the US would also require continuing military contact between the two countries, at least until we had diversified sources of supply or reduced that dependence. It is perhaps ironic that, during a period of no-threat, Australia has mortgaged its future security, in-so-far as logistic support is concerned, to a foreign power.

Under a common security regime, Australia would continue its involvement in global security issues through other contacts with western countries, and through the UN. Again, it would be in our best interests to do this, and to progress and promote initiatives in disarmament issues. The reduction in the relative importance of the US alliance in Australia's defence policy would be a direct signal to regional countries that we no longer consider them as inherently threatening, and that we see our future security flowing from a regional partnership, not as an adjunct to the considerations of a global power.

On the technological front Australia's defence policy considers that our ability to maintain a margin of technological superiority in key areas is important.[22] The ready availability of high technology systems to regional countries, coupled with an increased capability of these countries to pay for, operate and support advanced weaponry, means that Australia will find it increasingly more difficult to maintain such a gap. This likely development has been acknowledged by Paul Dibb who recently stated that such sales 'will affect Australia's capacity to retain the region's most advanced military forces'[23]. Dibb further stated that the effect of narrowing this capability margin would be to 'erod(e) (our) technological advantage with regard to possible future threats'[24]; that is, threats from within the region.

The statements by Dibb, being consistent with the defence policy on technological advantage, are but a further indication that Australia remains basically insecure in the Asian environment. The maintenance of such a policy implies that Australia is laying the foundation for a technological arms race within the region; an action reinforcing the problems of the security dilemma rather than providing a solution to it. Common security, stemming from an acceptance that there is no direct military threat to Australia, would negate any requirement for technological or capability margins to be advocated as a key plank of defence policy. Non-provocative capabilities would be acquired subject to agreed Confidence and Security Building Measures (CSBM) and arms control measures. The inherent transparency associated with common security would provide visibility of these capability acquisitions and their underlying defence rationale. Common security would therefore provide the means to undertake accurate assessments of consistency between strategic circumstance and capability development, and thereby provide warning of any seemingly unwarranted, or aggressive military build-up.

Rather than continuing to advocate a requirement for capability margins, Australia should actually encourage and assist regional countries to develop technologically-advanced capabilities in areas that are non-provocative, are useful for national defence and have utility for the likely, cooperative, regional security tasks (eg. maritime surveillance, mine countermeasures, air defence and anti-submarine warfare).[25]

Force Structure Implications of Addressing Security

Australia does not face any military threat, either now or into the foreseeable future. Current defence policy discusses military contingencies in terms of actions that may arise with short warning and the force structure of the Australian Defence Force (ADF) is planned to counter these developments, even though no identifiable issues exist that might give rise to such action. In this atmosphere of no-threat, Australia must ensure that we get "value for money" from the defence dollar.[26] The current preoccupation in building up capabilities such that Australia can defend itself from the region does not provide "value for money". This could be obtained if we were to fully embrace the implications of addressing security, ensuring that force structure capabilities are consistent with the re-

gional strategic circumstance, and that those capabilities have utility for regional cooperation.

If Australia is to address its long term security, rather than its short term defence, by preventing threats arising rather than meeting them when they do arise, the factors upon which the ADF force structure is based must consider a wider range of influences. These additional factors could address, for example, likely regional peacetime engagement, contributions to cooperative regional security arrangements, interoperability with regional allies, and the requirements for peacekeeping under UN auspices. Deterrence will have no place in the force development process as it perpetuates the image of Australia defending against the region, rather than with it, and thus is antipathetic to the fundamental premise underlying cooperative approaches to security.

This argument does not imply that any single one of these factors will supplant the direct defence of Australia as the sole determinant of force structure. It requires however that a number of issues be considered as "force structure influences", each with some priority or weighting factor attached. These weighting factors would alter with time as the regional security picture developed. Under such an arrangement provision for the defence of Australia would most likely continue to command the greatest priority, but other possible employment and utility of the defence force would be acknowledged and reflected in the force development dynamic. In this way, during a period of a "seemingly endless peace", the defence force would have direct relevance to regional security and monies expended on defence could be "value-added".

Under such determination influences, ADF force structure and capabilities would finally move beyond defence and into the broader realm of security. ADF capability requirements would therefore need to be assessed as to their utility in fulfilling those regional security tasks considered likely; responding to regional requests for disaster or other assistance; participation with regional forces in cooperative, wide-ranging security arrangements such as SLOC protection; complementing regional capabilities in CSBM regimes such as regional surveillance or anti-piracy; and involvement in UN-sponsored peace-keeping and, perhaps, peace-enforcement.

Current defence policy places undue emphasis on the direct defence of Australia, and in the development of roles for the Army in that defence that are based solely on countering a lodgement of troops on Australian soil; even though this scenario must be, in the most pessimistic analysis, extremely remote.

Significant time and effort is expended by the Defence Department on discussing such actions, the required Army reactions within the current force levels and structure and on using such improbabilities to base force development. These actions convey to regional countries our basic distrust of their activities and our inherent insecurity.

Whilst it is acknowledged that only a land force can hold, or recover territory, and there will therefore be a continuing requirement for a rapidly deployable, mobile and flexible land component of the ADF, the requirements for peacekeeping should influence the basic makeup and *raison d'etre* of that land force. Such a development has been alluded to by an Australian military adviser to the United Nations conference on the former Yugoslavia, Brigadier John Wilson, when he stated: '.. if we are to continue to contribute to international order then we must seriously consider using peacekeeping as a force determinant..'[27].

Although this view has not received wide support at present, the formation of an ADF Peacekeeping Centre, to provide the specialised training required for such operations, shows that Australia's involvement in peacekeeping activities is unlikely to decrease. The force structure implications of peacekeeping will not, necessarily, be confined to the Army and may impinge on capabilities required for both the Royal Australian Navy (RAN) and the Royal Australian Air Force (RAAF) to adequately support peacekeeping operations. Such an event has already occurred with capability alterations made to RAN units assigned to support UN activities in the Persian Gulf, but should, in future, go further and influence the types of platforms acquired.

It should be recognised that whilst Australia's participation in peacekeeping, particularly regional peacekeeping, may not be directly related to the defence of Australia, it does aid our security through a demonstrated commitment to stability in our region and a willingness to assist in the development of our neighbours. Engagement in peacekeeping operations can therefore act to build confidence. Successful peacekeeping operations in turn affect the global standing of the UN, and promotes the development of further international cooperation.

Another area that should be addressed as a security building measure is that of interoperability. The ADF has placed significant emphasis on the issue of interoperability with the US as a result of the pre-eminent position in defence planning of the ANZUS alliance. The pursuit of regional security, rather than regional defence, would require greater focus on the ability of the ADF to operate with its regional security partners.

Regional interoperability does not necessarily imply the acquisition of common systems, although coop-

eration in such activities would be possible, would have other benefits in terms of supportability and economies of scale[28], and would indicate our readiness to engage more substantially and equally with regional countries on security matters. Interoperability is more likely, in the near term, to involve the development of common procedures for combined military activities. Whilst it is possible that separate procedures will be developed for each of the bilateral interactions likely to occur in the near term, it would be preferable that regional procedures be developed cooperatively, adopted collectively and used by regional security partners whenever operating together.

Conclusion

The impact of no direct military threat upon force development should be to ensure that the fundamental security concerns of a country are addressed. For Australia one such concern is to ensure that regional strategic stability continues. Force development should therefore aim to maintain such stability, by promoting and addressing options for regional cooperation and engagement. The focus should not be on the development of capabilities that have, as their sole reason for being, the defence of Australia against some future mythical threat. Such a focus reinforces the security and defence dilemmas, not just for Australia but within the wider region, and as such has the potential for regional destabilisation.

In a situation of no military threat, and given the oft-stated imperative for Australia to integrate into the Asia-Pacific region in a multidimensional manner, the opportunity exists for Government to ensure that all policy arms act in concert toward this goal. This situation does not currently exist, with the defence focus on determining the means to combat nonexistent threats serving to undermine activities in the economic and diplomatic arenas.

Australia has long considered the Asian region a fundamental threat to its security. In a period of no direct military threat, and with no identifiable scenario likely to lead to the development of any military threat, a fundamental reappraisal of Australia's defence policy, and the development of an outlook to address our security, rather than our defence, is required. Only in this way will our long term future be assuredly peaceful and prosperous.

[1] Buzan, B; *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, Harvester Wheatsheaf, Hemel Hempstead, 1991; page 112.

[2] For a detailed treatment of various forms of the defence dilemma, and the security dilemma, see Buzan, B; *People States and Fear*, op-cit; chapters 7 and 8. See also Smith, G; *Demilitarising Security*, Working Paper No. 123, Peace Research Centre, Australian National University, Canberra, September 1992.

[3] The security dilemma described here is referred to by Buzan as the power-security dilemma. See Buzan, B; *People, States and Fear;* op-cit; chapter 8.

[4] A number of economic paradoxes related to the pursuit of security are described by Cooper, R; "The Economic Dimensions of Security" in Grove, E (ed); *Global Security: North American, European and Japanese Interdependence in the 1990s*, Brassey's Atlantic Commentaries No.5, Brassey's (UK), 1991.

[5] Hawke, R.L; The Asia Lecture, delivered on 24 May 1991 at the Asia-Australia Institute, University of New South Wales, by the Prime Minister, Mr Bob Hawke, as reproduced in The Monthly Record, Australian Foreign Affairs and Trade, Number 5, Volume 62, May 1991; page 199.

[6] The Concise Oxford Dictionary, sixth edition, Oxford, 1976.

[7] Australia's Regional Security; Ministerial Statement by Senator the Honourable Gareth Evans QC, Minister for Foreign Affairs and Trade, December 1989; paragraph 3

[8] Evans, G; Australia's Regional Security, op-cit; paragraph 1 lists the first of four main priorities of Australian foreign policy as 'protecting Australia's security through the maintenance of a positive security and strategic environment in our region'. The other priorities are 'pursuing trade, investment and economic cooperation; contributing to global security; and contributing to the cause of good international citizenship'.

[9] Australia's Strategic Planning for the 1990s, Departmental Publications, 27 November 1989; paragraph 6.7.

[10] Evans, G; "Managing Australia's Asian future"; The Third Asia Lecture, delivered on 3 October 1991 by the Minister for Foreign Affairs and Trade, Senator Gareth Evans to the Asia-Australia Institute, University of New South Wales, Sydney; as reproduced in The Monthly Record, Australian Foreign Affairs and Trade, no. 10, vol. 62, October 1991; page 656.

[11] Australia's Strategic Planning for the 1990s, Departmental Publications, 27 November 1989; paragraph 1.10.

[12] Evans, G; Australia's Regional Security, op-cit; paragraph 3, states 'The first duty of any Australian Government is the protection of our physical integrity, ie. the protection of our territory, including our maritime territory, from armed attack or the threat of armed attack'.

[13] Evans, G; Australia's Regional Security, op-cit; paragraph 69 states 'The capability of Australia's armed forces should be seen as having relevance not only for the defence of Australia, but for the region as a whole. Australia's possession of significant mili-

tary power contributes to the strategic stability of our neighbouring regions, providing a 'secure south' for South East Asian countries, and a 'secure west' for South Pacific Nations.

[14] The Malaysian Minister for Internal Trade, Rafidah Aziz, was reported in 1992 as saying that 'it was time for Australia to identify itself with Asia and stop skirting the issue'. See Connors, T; "Australians told to look toward Asia'; The Canberra Times, 22 September 1992, page 3.

[15] See Buzan, B; People, States and Fear; op-cit; Chapter 3 for coverage of threats and vulnerabilities and their relationship to national and international security policy.

[16] See Evans, G and Grant, B, Australia's Foreign Relations: In the World of the 1990s, Melbourne University Press, 1991; pages 80-82.

[17] In the Asia Lecture of 1991, Bob Hawke stated: 'Australians have traditionally feared Asia. The security they have sought has been security from Asia. But the time for that way of thinking has passed. Instead of seeking security from Asia, we should seek security in and with Asia'.

[18] ANZUS technically collapsed with the exclusion of New Zealand (NZ) from the Treaty by the US in response to the NZ ban on visits by nuclear-capable US warships in February 1985. Australian defence planners have continued to extol the virtues of our "Alliance" with the US (presumably ANZUS), and ANZUS has been specifically mentioned on occasion since that time. For example the defence policy released by the Australian Opposition in October 1992 stated that 'ANZUS will continue to play a very important part in Australian defence planning'. See A Strong Australia, Defence Policy of the Federal Liberal Party/National Party Coalition, Canberra, October 1992; page 23.

[19] For a detailed argument that Australia does not need, or benefit from, the ANZUS alliance see Brown, G; Breaking the American Alliance: An Independent National Security Policy for Australia, Canberra Papers on Strategy and Defence No.54, Strategic and Defence Studies Centre, Australian National University, Canberra, 1989.

[20] *Defence of Australia* 1987, Presented to the Parliament by the Minister for Defence the Honourable Kim C. Beazley, MP, March 1987, Australian Government Publishing Service, Canberra, 1987; paragraph 1.25 states that: 'While it is prudent for our planning to assume that the threshold for direct United States combat aid to Australia could be quite high in some circumstances, it would be unwise for an adversary to base its planning on the same assumption.'

[21] Evans, G; Australia's Regional Security, op-cit; paragraph 62.

[22] See Evans, G; Australia's Regional Security, op-cit; paragraph 66. Australia's Strategic Planning for the 1990s, op-cit; paragraph 4.30 expresses a similar sentiment but couches it in terms of 'protect(ing) our capability margins in crucial areas'.

[23] Dibb, P; The Future of Australia's Defence Relationship with the United States, The Australian Centre for American Studies, Sydney, 1993; page 59.

[24] ibid.

[25] Proposal that Australia should encourage and assist regional countries in anti-submarine warfare made in Dunk, G.A; "Developments in Regional Anti-Submarine Warfare", Journal of the Australian Naval Institute, vol 19, no. 3, August 1993; pages 29-36.

[26] In his address to the Chief of the General Staff (CGS) Conference in 1992, the Chief of the Defence Force (CDF), General Peter Gration, also spoke of the need to ensure that the country is getting value for money from defence. See Gration, P; "Challenges for the ADF into the 21st Century", CDF Address to CGS Conference, Darwin, 9 April 1992; as reproduced in Journal of the Royal United Services Institute of Australia, Volume 13, Number 1, October 1992; page 3.

[27] Brigadier John Wilson, Speech delivered at the Australian Army's Land Warfare Centre, Canungra on 23 June 1993; as reported in Eccleston, R; "Peacekeeping force needs more training: army chief", The Australian, 24 June 1993; page 5.

[28] The proposed joint project between Australia and Malaysia for the construction of Offshore Patrol Vessels (OPV) is an example of the cooperation which could develop.

ABOUT GRAEME DUNK

Graeme Dunk served in the Royal Australian Navy from 1974 to 1994. Whilst a member of the RAN he specialised in Anti-Submarine Warfare and had postings as ASWO of HMAS SYDNEY, Staff Officer (ASW) at the RAN Tactical School, Staff Officer (Weapons) to the Director of Underwater Warfare, and Deputy Director of the Towed Array Development Project. His last posting was to undertake an ASW Capability Study.

He holds a Bachelor of Science degree in pure mathematics, a Master of Science degree in Maritime Defence Technology, and a Master of Defence Studies degree. He has also been awarded an Insignia Award in Technology from the City and Guilds of London Institute.

He is currently a Director of Graeme Dunk Consulting Pty Ltd

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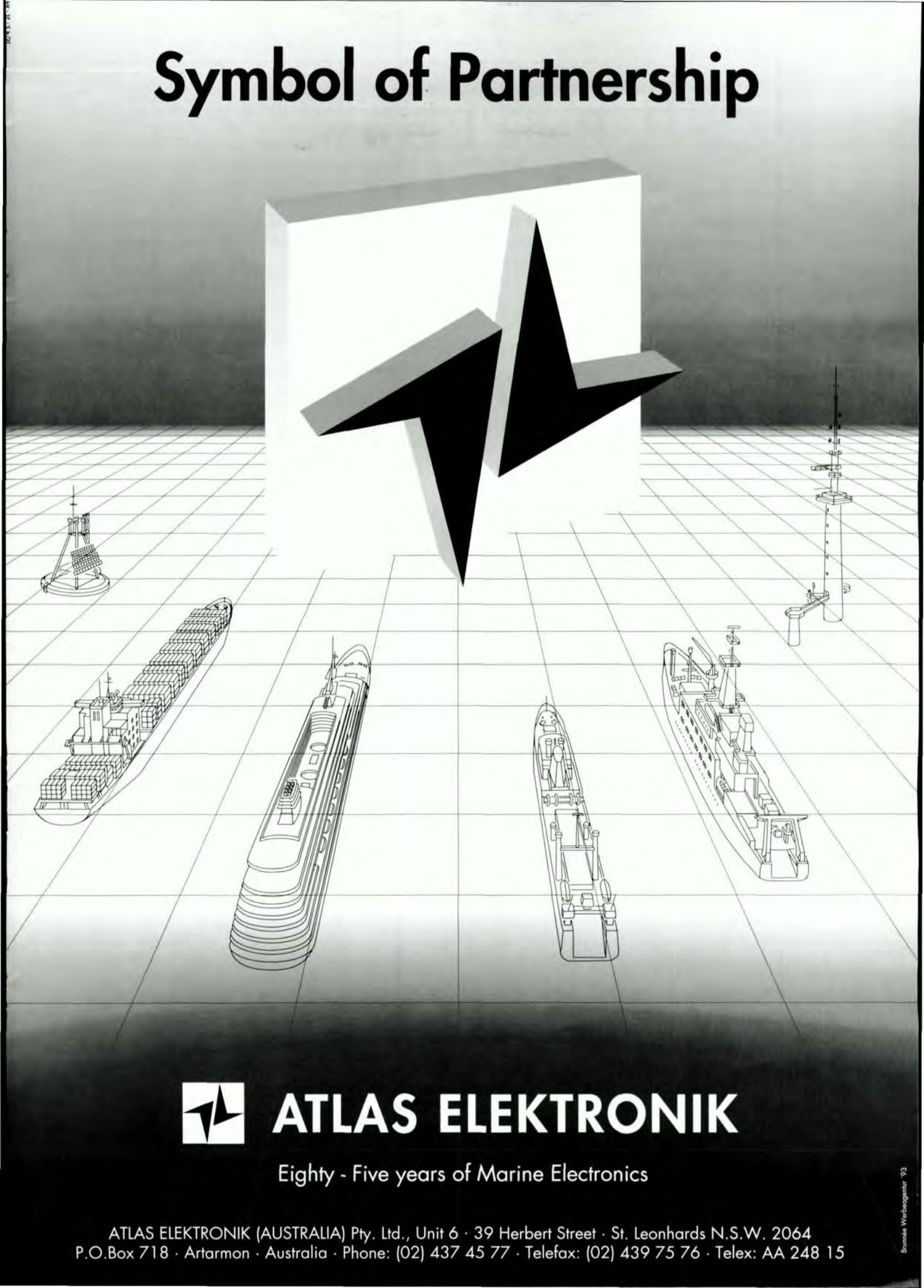

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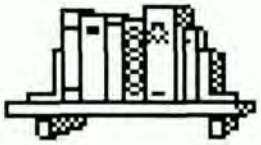


Book Review

***The Figurehead* by Vice Admiral Sir Roderick Macdonald. Illustrated by the author. Published 1993 by Pentland Press, Durham, UK. 201pp. ISBN 1 85821 056 9. Available in Australia from Biramo Books Pty Ltd, PO Box 93 New Lambton 2305, telephone 049 545 938; $40.**

This is a story about a destroyer and her company in the period late 1941 to early 1943, when the fortunes of the allies were at their lowest ebb.

It has an air of fiction but HMS *Fortune* was real enough and this first hand account deserves to be read not only for the story it tells but for its historical value as an accurate and authentic account of life at sea in those stirring times.

The 'hero' of the story is *Fortune*'s captain, a notable eccentric even in a nation that fosters the species. Anyone who has served at sea will be able to recall the idiosyncrasies, moods, opinions and, perhaps, colourful language of various captains.

Some will be remembered with affection and amusement, some with something less.

Command at sea is a responsible, lonely and occasionally stressful occupation, so it is hardly surprising that it produces some unusual 'characters'. They almost all do their job and do it reasonably well. Leadership comes in many guises.

The Figurehead is not the story of another Queeg but of a mildly inadequate officer pushed by the exigencies of war into a posting for which he was temperamentally unsuited, notwithstanding his training and experience.

That *Fortune* survived all her adventures unscathed apart from a scorched stern and met all operational tasks is to the enormous credit of her officers and ship's company.

I was particularly interested in the account of the fire in Grand Harbour resulting from the sinking of HMS *Maori* (the cause of the scorched stern mentioned above).

HMS *Kingston*, in which I was serving at the time, was in dock in Malta and I saw *Maori* hit by a bomb and start to sink. Strangely, we in *Kingston* were quite unaware of *Fortune*'s predicament not far away.

My own memories of that night are of helping to 'liberate' equipment from *Maori* just before she sank, notably a warning radar set complete, as we were not fitted with one at that stage — we were next day.

Later I was sent to trudge around the shelters with a jar of rum to issue tots to *Maori*'s survivors. One of them was a midshipman from my year at RAN college.

The author writes with humanity and a lively sense of humour, qualities which clearly stood him in good stead during his time in *Fortune* and contributed in no small way to the happy ending to her story.

Roddy Macdonald is a man of many parts — a successful naval officer, author of *Your Ship, a guide to new commanding officers* and an artist of note. The dust jacket and over 100 pen and ink sketches attest to his ability and his sense of fun.

Characteristically the author's profits from the publication go to the King George Fund for Sailors and the book is dedicated to Jack, the British sailor.

I recommend it for the lessons it contains for all who go down to the sea in ships, for its historical interest and as a good read in its own right.

—Vice Admiral Sir James Willis, KBE AO

NAVAL LEADERSHIP TODAY: SOCIAL CHANGE AND ITS EFFECT ON 'STYLE'

by Alan Hinge

(This is the last article in a three part series by the same author on issues in navy management as we approach 2000. The first two articles were: 'The Navy Project Manager's Primer' and 'Everything You wanted to Know About Defence Cost Effectiveness, But Were Afraid To Ask'. Both dealt with technical and economic aspects of naval management. This article has a much less analytical flavour and enters the shadowy realm of p*ersonal* impressions and opinions about just what constitutes good leadership. It attempts to define a fundamental difference between management and leadership and highlights some factors which tommorows' aspiring naval leaders could take into account, especially leadership challenges posed by social and organisational change. As noted, the opinions expressed in this article are purely personal and do not necessarily represent navy policy and doctrine. In fact, many in the Navy will disagree strongly with some of the opinions and conclusions expressed herein. Furthermore, the author is acutely aware that many of the issues he glosses over each need an article written about them to even begin an adequate treatment.)

'....Leadership is the ability to have a vision; then to clearly articulate that vision so your people will understand it and deliver a group commitment to the common goal' [1]

—Steve Jobs (Co Founder of Apple Computer Inc) during the Macintosh Project

Well, here we go again! Yet another esoteric discourse on naval leadership in modern times for the good reader to endure; to add to what must amount to thousands of tonnes of paraphernalia on the subject. At the risk of appearing cynical it seems that an inverse relationship has come to exist between the number of articles, books, videos and seminars on leadership and the actual practice of this almost mystical art. Leadership seems to have become the 'Holy Grail' of modern management theory. Everyone seems to want a new slant on leadership and certainly lots of folks are crying out for more of it.

The aim of this article is to re-examine naval leadership in terms of its characteristics, how it is acquired and the challenges that confront those that try to practice it . In particular we will look at the effects of various social and organisational changes on leadership 'style' in the modern Navy. Achieving our aim involves attempting to answer the following questions:

- What were the key factors in traditional naval leadership, are they still relevant and what are the enduring characteristics of outstanding naval leadership?
- What are the key social changes that condition the background, attitudes, perceptions and leadership expectations of new naval recruits (both officers and sailors)?
- What demands do these changes make on modern naval leadership style?

WHAT IS OUTSTANDING NAVAL LEADERSHIP?

There are as many definitions of good leadership as there are leaders. We will not waste time by seeking the 'perfect' definition of leadership - none exists - and a close approximation will have to suffice. Our first approximation is that *good leadership is the ability to get things done with and through others by winning their confidence, respect and willing cooperation through motivation.*

Horatio Nelson certainly fit this description of a leader. Of course, Nelson had the traditional naval leadership qualities which remain equally relevant today: physical courage, determination, professional competence, concern for *all* of his 'troops', a 'seaman's eye', boldness, ruthlessness (when necessary) and the willingness to take calculated risks. His daring actions at Cape St Vincent, Copenhagen, the Nile and Trafalgar are ample testimony to his measuring up in all these areas. But other ingredients are needed for *great* naval leadership. Importantly, Nelson was sensitive and alert to the many changes of his age, and one of the things that set him apart from most of his 'stick in the mud' aristocratic peers was that *he tried to understand his subordinates and make them understand him.* He communicated to them his vision of how things should be - often at numerous dinner parties before battle and visits below decks - and he worked especially hard to develop mutual trust between senior and junior officers. Also, he briefed his

captains thoroughly and each knew exactly what he had to do, then Nelson ensured that the 'message' was passed down the line.

As an effective leader Nelson 'made his own luck' by always making sure he had a plan. He then combined his plan with the personal 'presence' and communication skills to sell it to subordinates. Also, part of his command 'presence' involved exercising the moral courage of his own convictions and, when necessary, he was willing to take on powerful and entrenched vested interests for the sake of his crews. For example, Nelson was instrumental in getting the widows of men drowned at sea the same pensions as men killed in battle. He also took great pains to ensure his men's clothing and victuals were as up to the mark as conditions would allow, despite an often miserly Admiralty and its shaky contractors. Furthermore, and most importantly, he knew that a naval leader's position was at the front and when it came down to it Nelson was where the fighting was. It was there that he died.

Nelson was no angel, and he was certainly not infallible. He made a few costly operational blunders, could be cruel and his private life was badly flawed. Nevertheless, the acid test of his naval leadership was that crews felt safe with him, even when fighting against heavy odds. More will be said of Horatio Nelson, but his ability not only to get most of his men to respect him, but to *adore* him, stood out during his career: All this from a man who, while still in his 30s, was accurately described as a 'half blind, crippled, opium sedated wreck'!

But how did Nelson get to be Nelson? Was he born or made? Is there a magic recipe for churning Nelsons out of our training establishments? Anyway, does all this agonising, hypothesising and naval gazing on leadership really matter any more in an age of push button, over the horizon naval warfare - which is more like playing a video game than squaring off eye to eye against an opponent doing his best to incinerate you? Just what goes to make a good leader today?

The Five Elements of Naval Leadership

In 1967 General William C Westmoreland, Commander of the Military Assistance Command Vietnam (MACV), said that good management was good leadership. He was wrong, and we will see just how wrong he was in a case study later in this article. Put simply, managers only manage. They are the people who keep things ticking over, maintain the status quo or sometimes make incremental improvements by systematic planning, organising, directing and controlling. A competent manager is a valuable asset and we need more first rate managers in the Navy (All organisations need more first rate managers - you can never have enough of these valuable people). However, management is only a subset of the kind of leadership the navy needs to carry out a wide array of sustained missions in the national interest, and also win in war. Managers can be sitting ducks in war and we can look to another soldier, Sir William (later Viscount) Slim to get closer to the leadership mark.

Slim was a leader whose hallmarks were personality, professional expertise, tenacity, integrity and intellect . He gave us a little more insight into the particular brand of dynamic leadership exhibited by Nelson when he said, 'Leadership is the projection of personality; the combination of persuasion, compulsion and example that makes people do what you want them to do' [2] . Naval leadership is about getting people to do what you want them to do under varying conditions of stress - even in the face of death itself - and as a leader **you** must earn the right to control, judge or prohibit your subordinate's actions. Above all, as a leader you need people to lead, and for things to work well the 'led' have to approve of your **personal authority** to lead. As situations become more dangerous and the demands of personal survival are felt, more personal authority will be needed from you to justify their confidence. Otherwise the led will work out ways of bypassing or even removing you.

If the 'led' sense real authority - not merely formal authority bestowed by a 'system' - then they will follow. This is because most military humans, like dogs, are pack animals. They need self definition; they actually expect and look for someone to be 'top dog' in a given situation so that they know their place in the pack/universe. Then they can get on with their jobs, finish work with a bit of self respect and head off home to their families.

Your authority or right to lead stems from your ability to build up and project **personal power**, and *power* is not a dirty word. Power is simply t*he ability to influence people and circumstances to achieve your goals* (which should largely coincide with those of the Navy!) Each person; including you dear reader - no matter how inadequately - projects his or her unique blend of the five bases of human power. These ingredients of personal power blend in various situations to give you greater or lesser degrees of personal authority and hence leadership. The five ingredients are your formal, expert, reward, coercive and referative powers, and we will now look at each in some detail.

Your **Formal Power** stems from rank or legitimately awarded position in the official pecking order. Formal power as a basis for leadership has less and less utility as people have become cynical about formal rank necessarily being indicative of meritorious attainment, competence and leadership capability. This

process of disillusionment accelerated with the appalling performance of Allied generals and admirals in World War One and has more or less continued in fits and starts ever since. Military rank cannot be seen as necessarily proportional to leadership calibre, and we should never kid ourselves that the military has a monopoly on good leadership - there are far too many bodies of wasted men and women in the ground and sea that indicate differently. Unfortunately, for several reasons, the ability of the services to attract and keep the best and brightest has deteriorated in past decades and this has not been helped by selection and training processes that have their fair share of flaws. Similarly, people should not delude themselves that being in the military and wearing uniforms somehow makes them 'warriors' by definition. Probably, as with other periods in our history, most of the best warriors and leaders in this country would never dream of putting on a uniform until it is time to 'hoist the black flag and start slitting throats'.

In fact, there is a suspicion in some mutinous quarters that an 'unnatural or inverted selection process' evolves during long periods of peace. Some deluded individuals even believe that the decisive qualities of military leadership are now so relegated to the background that, *sometimes*, the people least able to exercise the traditional military leadership qualities of decisiveness, strength of character, will and moral courage make it to 'the top' for two reasons: First, they can be so lacking in real initiative that they are never seen to take risks and therefore make no conspicuous mistakes. Second, they can simply hang around long enough to get promoted after the more gifted of their peers vote with their feet after getting frustrated in an environment where pressures are bureaucratic and political rather than competitive. Consequently, the bottom line is that formal rank gives initial entree into structured situations and does help place you in a position to get some authority behind you, but real authority starts with building up your expert power base.

Your **Expert Power** or information power derives from professional training, knowledge and skill, as well as from the possession of contacts (both formal and informal). Professional knowledge is power and getting better at your job increases your ability to lead. Expert power boils down to the ability to get things done - to solve your boss' problems and your troops' problems by providing effective, convenient, quick and/or inexpensive channels for solution or savings. Whether people get to like you or not, if you can make their lives easier, help them solve their professional and personal problems, achieve excellent results and plan a happy way ahead they will stick with you out of self interest and a desire for growth if for nothing else. Ultimately leadership is about 'getting somewhere' and achieving objectives with a team.

As a leader you simply have to know your 'part of ship' and what you are talking about. 'Winging it' may work for a while, but unless you are very lucky the accountability chickens will eventually come home to roost. Word will get around about you and, while people will 'stick' in the good times, don't expect to have anyone covering your back when the going gets tough. The bottom line is that if you don't know the answers you had better find them out, or at least know someone who does know and get him or her on side. Having access to someone with information is often just as valuable as knowing it yourself.

Interestingly, in days of old, naval officers took pains to ensure that no other member of the ship's company learned how to navigate by making sure that Other Ranks were cleared from the vicinity while taking star sights, making navigational calculations or doing chart work. This ensured that officers maintained a monopoly on the critical knowledge, information and skills that would get the ship from 'A' to 'B' and eventually home. Consequently, exclusive skill and knowledge increased the threshold of crew dependency, highlighted the difference and importance of officers and discouraged mutinous behaviour. In tough times this increased the chances of survival of officers if and when mutiny did occur. Yet today the steady lessening of educational qualification gaps and increasing specialisation of skills is eroding generalist expert power as a basis for naval leadership in a range of situations. Nevertheless, having competence in your 'part of ship' still remains a prerequisite to *authority* as a naval leader.

There is no quick recipe for building expert power. For most of us, professional competence continues to come from 99% perspiration and 1% inspiration! Time in job and personal application are critical in acquiring authority, together with the self confidence and self knowledge that springs from it. Remember that Nelson went to sea at the age of twelve and ended up spending much of his life working hard there in a wide variety of jobs - from cabin boy for his uncle (Captain Suckling, RN) to Vice Admiral. Through continual application, willingness to learn and physical hardship he learned his craft and in one admittedly extraordinary case Nelson did not enter a port for two years. Consequently, by the time of Trafalgar, Nelson added up to a man who had worked through all the SLJs and stages of command. He became a man thoroughly versed in seamanship, tactics, knowledge of the enemy and knowledge of 'Jack' the British sailor. He became expert at any job he took on and this contributed to the confidence, insight and boldness which infected those around him and made them feel safe.

Today, expert power especially involves building up the detailed professional knowledge to identify new technical developments and exploit them. This im-

proves chances of success and makes everyone's lives easier. For example, Nelson was important in bringing the flintlock trigger into general service. During broadsides this caused the rate of cannon fire to increase at least five fold. Obviously, in this day and age keeping up with the latest key developments in your field cannot help but enhance your expert power base and therefore your authority in the eyes of those you aspire to lead. Giving your people an 'edge' over the opposition gives you real leadership authority, and this highlights the importance of your being able to use reward power.

Your **Reward Power** involves an ability to praise, give time off, award medals and commendations to and assist with promotion and pay. It also includes the ability to provide job satisfaction and 'good times'. People like to enjoy themselves at work and at play.

People are also selfish. They want to improve their position, influence and autonomy; they want to be able to get above the circumstances of their compellingly mediocre lives and not be buried under them, even if it means treading on a few toes to get ahead of the 'pack'. Empowering those among the led that deserve it to rise above circumstances is of inestimable importance in leadership. Giving those that deserve it the money, knowledge, morale, confidence, self esteem and time to get what they think they need or want is absolutely necessary for good leaders to keep in mind. A good leader, at any level, should take the time and trouble to ensure he or she has a bunch of 'carrots' or rewards always available.

Remember, in days of old, kings were made not because people got a lot of pleasure from showering them with wealth, palaces and concubines. Kings were investments. They were 'made up' because of their ability to give ; to give protection, strength, confidence and victory in battle and then to spread around most of the benefits that came with victory. Kings only stayed kings while they could reward; new dynasties sprung up when Kings could no longer reward or protect. Similarly, naval leaders must consistently deliver 'goods' to the deserving. These goods may come from the material/time realm - physical survival, loot, baronies, plots of land, slaves, Service Allowance, TRA, 'sporties', 'jollies' or 'make and mends' . 'Goods' may also come from the emotional/ 'ego needs' realm - self esteem, rank; or a recognised place and 'position' with some of the trappings.

Always keep in mind that a careful balance must be arrived at when handing out rewards. They must not become taken for granted, and this has certainly been the case at times with 'sporties', 'make and mends' and even commendations. If exceptional rewards are handed out too liberally they will lose value and motivational effect. If they are handed out to the undeserving, crawlers or to those that have simply done their jobs then rewards quickly become debased and objects of ridicule.

Importantly, 'Protection' stands out as the fundamental reward, benefit or 'good' that leaders are expected to give their people. Today, 'protection' starts with (diplomatically) stopping some promotion hungry or scatter brained immediate supervisors overworking your section or wasting their lives on unproductive tasks. Protection continues with very senior officers protecting their people from the erosion of conditions of service, pay and allowances.

To protect the deserving in your team, sometimes you need to coerce the undeserving within the team and also compel 'outsiders' who may start gumming up the works.

Your **Coercive Power** is reflected in your ability to intimidate, threaten, court martial, poorly report on, sack, cut pay, get to work back, punch, kick, gouge, bludgeon and generally dress down and make to feel uncomfortable and inadequate. Though unfashionable today in most civilised circles, these old navy standards still have their place in influencing some folk. While 95% of subordinates respond to positive strokes or 'carrots', some people learn best in an oppressive atmosphere steeped in guilt, fear and violence! But, seriously, the ability of a naval leader to selectively have a threatening physical presence - a 'mean switch' - has a sobering and cautionary bearing on the attitude of those who are led. No subordinate should ever feel that he or she has fully worked their 'boss' out - familiarity really can breed contempt.

While most subordinates never need the mean switch activated, circumstances sometimes arise where the behaviour of one or two has to be modified through a series of 'sticks' or strong coercive measures. Examples still have to be made, and naval leaders should have a range of 'KITA' (Kick in the Arse) options available to them to deal with that very small proportion of subordinates who simply 'can't be told'. If subordinates consistently lie, 'white ant', steal, slacken off and show disrespect then a leader must take strong, even harsh disciplinary action against them.

Ultimately, if a subordinate proves incorrigible the rest of the team must be protected, and he or she should be excreted from the system.

Bear in mind that using old fashioned coercive power is getting harder. Telling people off for incompetence, laziness or disloyalty is simply not the done thing in this enlightened, caring and genteel age. Nevertheless, we pay a price for our sophistication and that price is accountability — the crumbling cornerstone of naval discipline. When incompetence, tardiness,

and disrespect go unchecked standards fall and become the new standards. As standards fall people become scared of delegating and therefore of educating and trusting their subordinates. A vicious circle starts where officers end up doing the jobs of senior sailors, senior sailors end up doing the jobs of their leading hands and 'Jack' ends up doing what he likes! However, when leaders make people accountable through consistent use of 'carrots and sticks' they can begin to delegate again. When they delegate they educate. When people are educated the load can be spread. When the load is spread leaders can pull out of reactive mode and plan properly. When leaders plan properly everyone is better off, and leaders can start looking ahead and *invent* a future instead of falling into one. After inventing a future for one's outfit one has to 'sell' the future by exhibiting a little referative power.

Your **Referative Power** is your attractiveness of character or ability to serve as a role model in the eyes of the led. Attractiveness is directly related to human needs and Erich Fromm listed people's needs as: an object of devotion, an ability to relate, a desire for unity and rootedness (wholeness), the wish to be effective and the need for stimulation. Character is that combination of qualities distinguishing you from others. You can be admired for some of your characteristics - professionalism, enthusiasm, confidence, courage, cleverness etc - and the led will want to emulate aspects of your 'self' in their personal quest for wholeness. You become a role model that they can feed off. However, character goes far beyond being recognised as a 'good hand' or a 'whiteman' and is not about winning popularity contests with subordinates - as many officers and senior sailors try to do these days. Popularity contests, especially when commanding officers or their executive officers play them, lead to serious breakdowns in the chain of command, devastating gossip, an atmosphere of suspicion throughout the ship or establishment, the build-up of departmental 'fiefdoms', institutionalised backbiting and rampant sycophancy.

True Referative power separates the leaders from the managers. Good referative leaders or role models are almost invariably good managers - that is, they are able to competently plan, organise, direct and control their team (or make sure they have someone to do it for them!). **However, the real difference between referative leadership and management is the degree of motivation and commitment to your goals that you inspire in the led.** Leaders have 'somewhere' to lead to and are not content with keeping things ticking over in situation 'A' if that situation is unsatisfactory or can be improved cost effectively. Leaders work out a clear *vision* or picture in their heads of how things should be (situation 'B'), as well as a plan for getting there. Very importantly, this vision must be coupled to a personal ability to m*otivate* and *inspire* commitment and confidence within the 'led'.

Most outstanding leaders have been *inspirers* of their visions, drive and commitment in others. Inspiring commitment comes from enthusiasm, attractiveness of character, courage, conviction, personal example and having the communications skills to clearly articulate a vision. The aim of articulation is to put a picture in your subordinate's head of what the situation should be, to get him or her to really agree that is the way things should be and the way things are going to be. Implicit in this process is the leader having the intellect and experience to develop a credible and practical plan to arrive at situation 'B' and sell the plan. If the led can help develop the plan and have a sense of ownership in it so much the better.

Drawing high commitment also depends on the leader's ability to help subordinates define themselves and what they are doing as not only worthwhile but important. If you can **educate** and **equip** people to achieve personal objectives, including definition as whole persons with self esteem, then you have their gratitude and personal commitment to your *self*. This is the power of personality and character that Slim was on about. Character was the power that Nelson radiated. But how does a leader acquire character ?

Character Development - The Importance of insight

Developing referative power starts with building character. Character - or lack of it - derives from the 'wiring' we are born with on day one, as well as from where and how we were raised. Later in life our essential character is also shaped at the margins through personal growth gained from 'stretching' beyond our immediate experience and emotional comfort zones. 'Stretching' involves meeting and working with different people, learning new physical and intellectual skills as well as confronting fear and self doubt by overcoming physical and emotional challenges. This process usually breeds keener insight into people and situations which in turn gives rise to ripened judgement and flexibility of response. These two decisive characteristics fuse into true and often infectious self confidence, poise and the will to do what is necessary.

Leadership insight involves having a deep and penetrating understanding of how different kinds of people respond to different kinds of power. To illustrate the importance of insight into character and situations as a leadership quality, we should remember that Nelson led a very disparate group of people - from the press ganged 'scum of the earth', right through to well heeled 'toffs' shoe horned into a naval officer's ca-

Into the heart of darkness! 'STRETCHING' gives insight into people and situations. It involves living and working with different *people under varying conditions of stress. Stretching takes you out of your comfort zone through new experience, especially the experience of confronting fear and self doubt by overcoming physical and emotional challenges. Properly conducted adventure training can help develop tomorrow's leaders.* (A/Cpl Hinge. AJ 282372, BRAVO Company S.U.R., January 1978)

reer. Yet Nelson made it his job to know enough about most of them to make them feel proud to be members of his team. This meant doing his homework through years of keen observation and frequent 'mixing' in the workplace. Through reflective observation and practical experience he gained a real insight into how fighting men 'tick', and his habit of getting around also highlights the importance of the GOYA (Get Off Your Arse) approach to leadership when it comes to finding out what is really 'going down'.

Insight into the needs of different kinds of men and women is the determinant of just what blend of the five powers you project at a particular place, with particular people under particular circumstances. Without insight or a feeling of where your people come from, where they stand, what they want and what they fear you cannot truly motivate them, draw their commitment to your objectives and therefore lead them. Moreover, insight into people and their situations gives you a good idea of what the team can do (so you can do it) and - sometimes even much more importantly - what the team can't do (so you don't waste everyone's time and stuff them around by trying!).

Insight may be an even more important leadership quality today as leaders are called upon to lead people from increasingly disparate ethnic, ideological, sexual and cultural backgrounds. This 'stew' of backgrounds makes up Australian society, and knowing more about the makeup of the social 'stew' may give today's leaders more insight into where recruits are coming from, what they need and where they want to go. This kind of insight can lead to more sensitivity when 'tuning' one's blend of personal power, and therefore help make one a better leader.

SOCIAL CHANGE AND ITS EFFECTS

Leadership and the 'led'

In 1945 less than 3% of Australians came from *non* English speaking backgrounds, but by 1994 this figure has increased eightfold to almost 24%. However, transition from an almost exclusively WASP to a significantly multicultural society is only one of the factors making a contribution to greater diversity of background, traditions, attitudes and values of the people that have to be led. Furthermore, six other factors will influence the diversity and challenge of navy's leadership environment much more profoundly than multiculturalism as we head into the next century. These challenges are:

- fundamental shifts in, and growing diversity of social values and priorities;
- nihilism;
- increasing numbers of females in the Services;
- breakdown of the traditional family unit;
- approval of homosexuals to serve in the Services; and
- civilianisation of the Services, coupled with an erosion of the traditional military ethos.

Leadership Challenge 1: Shifts in Our Social Value System

The major social change affecting community cohesion and the traditional military ethos in Australia has been a fundamental change in our social value system. A value system is an order of principles and standards accepted and generally practiced by most members of a society. The change in Australia's social value system is largely derived from the transformation of our society from one with conservative, conformist values - which basically existed until the end of World War Two - to a society adopting a value system based on pluralism and the almost sacrosanct rights of the individual. Individualism is certainly not a bad thing, but if non-conformism and the quest for self fulfilment becomes an excuse for the mass pursuit of self gratification then society and its navy suffers.

Against the accelerative thrust of social change, a sense of 'permanence' and immutability that characterised the pre World War Two era has faded. Previously, practically everything had a name and a place but nowadays we are swamped with new definitions of work, family, happiness and sexuality. Respect for authority of position and desire to maintain the status quo have been eroded by an acceptance of widespread dissent, challenges to accepted values of established institutions and acceptance of social transformation as the norm. Maintenance of stability and routine performance as the order of the day is now displaced by rapid change, innovation and the need for flexibility. Social change and consensus is now the order of the day, at least in theory [3]

Resignation to one's lot in life and the desire to conform to long established social norms have been largely replaced by an emphasis on self fulfilment, egalitarianism and self expression. Uncritical acceptance of rules and the status quo is no longer the norm as we move from an industrial society to an age of ambiguity, not into the 'Age of Aquarius'.

Our once clear and fairly rigid value system has become blurred. Absolute loyalties to a clear hierarchy: God, King/Queen, family, Country/Flag and Commanding Officer are getting well and truly displaced by quests for 'personal growth and fulfilment' at the expense of practically everything and everyone else. Furthermore, the 'Ends orientation' of yester-year has been replaced by the 'Process orientation' of today. Ends orientation involved the postponement of immediate rewards for long term beneficial outcomes - promotion, super -superannuation, consummation on the wedding night and heaven. Today's process ori-

entation involves a strong element of 'live now pay later', when work and leisure must provide immediate 'kicks' and gratification - the ethos of the so called 'Gimme' generation.

Service traditions could be increasingly questioned by members of the 'Gimme Generation', and it will simply not be enough to tell your new subordinates to,'....shut up and do what you're told!'. Reasons for action will be increasingly called for. Generally speaking, new recruits will be products of liberalism and have been brought up in a permissive society that has developed a high tolerance to what in yester-year would have been condemned as disrespectful, ill mannered or even deviant behaviour. This high tolerance exists partly because once absolute moral principles, institutions and beliefs - chastity, marriage, fidelity, abhorrence of homosexuality, strict honesty and even honour - have been modified by so called 'situation ethics', where an action is now - more or less - judged only by its effect on one's self and others. Moreover, the ideal of service to others and to the community has been eroded by an 'I'm all right Jack' attitude where it is OK to 'see off' the government, rort the system and take care of number one. After all, who else is going to take care of you? Consequently, the ideal of civic responsibility and institutional loyalty now only survives in a few quaint and increasingly isolated pockets of our largely materialistic and increasingly nihilistic society.

Leadership Challenge 2: Nihilism - the shadow of death

In some ways, today's teenagers have been raised in an age when 'men's love has grown cold' or an era of increasing nihilism. Nihilism is a rejection of established authority and institutions and a denial of traditional beliefs in standards of conduct, religion, morals or ethics. The nihilist has faith and confidence in nothing and adheres to negative doctrines embodying a scepticism which finds little to approve in the established order of things. Essentially, in its extreme, nihilism involves a lifestyle based on the view that nothing is really good or bad, right or wrong, and it represents an almost complete inversion of the so called Judeo-Christian ethos which still characterised western cultural attitudes during the first half of the twentieth century.

Increasing nihilism in our young is manifested in hedonistic, self indulgent tendencies which seem to be taking an increasing toll of society at large. Nihilism ultimately gives rise to indifference, boredom, apathy, dejection, destructiveness and then despair. The nihilist is simply not accountable to a god, society, family, peers or , in the final analysis to him or herself. Nihilism leads to the dead end state of acedia - spiritual and emotional sloth and solitude - the very shadow of death.[4]

Nihilism, of course, has by no means reached full bloom in Australia and hopefully it never will. Yet few among us would dispute that nihilism is affecting the community and increasingly infecting our young. Australia would have to be one of the most nihilistic countries in the world, with most Australians growing up in front of the TV developing no deep convictions or real self awareness at all. In our conformist, materialist, challengeless society individual consciousness of our own intangible being or self is stunted at best. Life has little purpose after the parties are over, so is it any wonder that there are about 45,000 attempted suicides in Australia each year, with the majority being among under 25's? In fact, Australia's male teenage attempted suicide rate is the highest in the world, with the male rate being about four times the female rate. Furthermore, in 1991 suicide even overtook the road toll as a killer of young Australians. Thankfully fewer than 5% of attempted teenage suicides are 'successful'.

Increasingly we may find Australian teenagers shuffling into recruiting offices who can be loosely termed members of the 'TV and supermarket generation'. They are poorly disciplined, poorly educated and are much less well informed than they have been led to think. They have little knowledge of or respect for history and tradition, and formal rank will not automatically breed respect. This is partly because today's teenage hero is not reflected in a 'John Wayne' kind of icon; today's teenage icon is more often than not some sort of 'cool', wise cracking, maverick anti hero who treats life like a continuous episode of MASH! This kind of teenager has probably been raised from the cradle in suburbia on a diet of addled videos and a media melting pot full of hype, slogans and stereotypes that give totally unrealistic, 'soap boxy' expectations of what life is all about. He or she will tend to judge the establishment and its representatives on the basis of second hand 'tabloids of thought' and slogans derived from sensationalised movies that often paint the world and its institutions as very dark things indeed. This leads to cynicism and an almost automatic association of the 'establishment' with incompetence, hypocrisy, unchained avarice, impropriety and cover-ups.

What all these value and expectation changes add up to is that the loyalty and commitment of the new recruit may be more difficult to earn than has previously been the case. Much less of a common denominator of views can be taken for granted and a certain amount of deprogramming, resocialisation and *energising* has to be done in *really* convincing new recruits that the Navy's goals and ways of doing things are worthwhile. Most of today's eighteen year old recruits rightly believe they are basically equal, as per-

sons, to any senior officer. He or she has been brought up to believe that there is no such thing as a 'station in life'. Yet in an age of nihilism the recruit will be seeking to establish himself or herself as a whole person; a person able to grow, to develop abilities and understand him or herself. Probably more than his or her grandfather, the recruit will be seeking real life role models in the Service worthy of drawing out his or her commitment and contributing to personal wholeness and purpose.

Consequently, today's recruit needs a well informed, enthusiastic and energetic coach and cheer leader - one who, as a role model, will motivate and educate him or her to prosper and grow as a person **now** . This is in contrast to a perceived dowdy 'establishment figure' relying on the traditional amalgam of formal, expert and coercive power. The recruit's coach/cheer leader must be able to motivate by clearly articulating the whys and wherefores of management's vision and thus gain willing commitment to it. However, the modern leader will also be expected by his followers to question why things are done in such and such a way and be seen as a **change agent** for the better. Furthermore, the leader will be expected to protect the recruit from senseless and inefficient aspects of the 'system'.

Some readers will say, quite rightly, that good leaders have always had to exhibit these characteristics. The difference is that today, given the expectations and background of recruits, these characteristics must become 'par for the leadership course'.

Leadership Challenge 3: Females in the Services

Increasing opportunity for women and higher participation rates in the workforce in general will also have a big impact on naval leadership. Growth in female work participation arose from a period of rapid economic growth, increased control of fertility and technology's contribution to freeing women to seek paid employment. In the services the female participation rate now exceeds 13% and this will continue to increase5. Women will inevitably take on many more positions in the services and they will inexorably rise to higher rank. So let's get used to it. In fact, while women occupy only 5% of all senior management positions in Australia today, within twenty years women are expected to occupy 50% of all senior management places. These figures may end up being nearly the same for the navy.

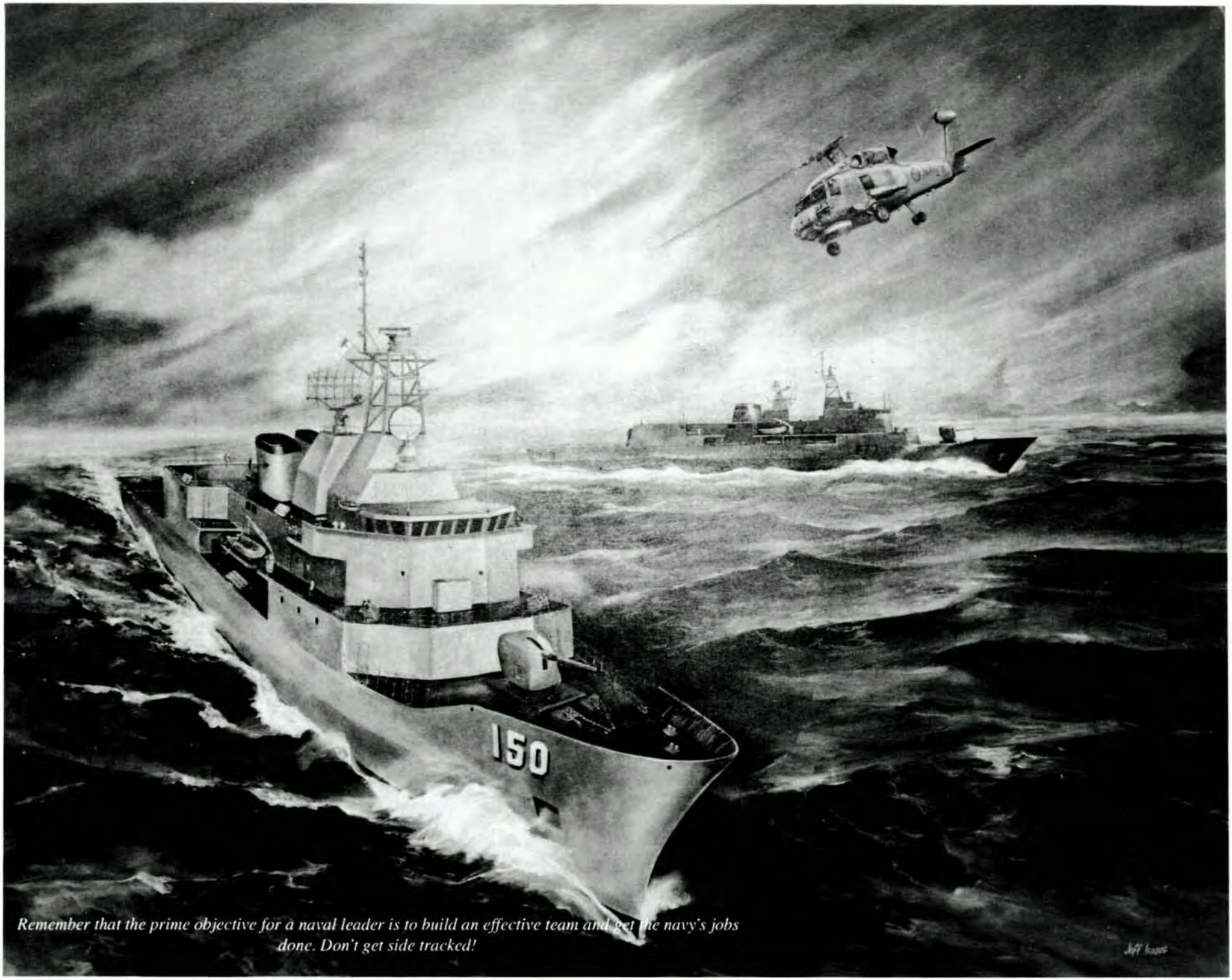
The right women, like the right men, are assets to their Services. But women are different from men! They have similar *and* different strengths and weaknesses, and both sexes can complement each other - *VIVE LA DIFFERENCE* ! and it is certainly wrong to 'masculinise' females in the Services. At the risk of being seen to stereotype, women in the workplace are g*enerally* less aggressive, better at oral communications, more empathetic and tend to be more supportive than men. They seem less prone to knee jerk reactions and generally tend to take more time to consult with others. Consequently, these gender considerations could affect modern leadership style by reinforcing a more supportive, consultative and referative leadership mode compared to the 'Jump!...How high Sir!' style of yester-year. Above all, today's leaders of women (and men) must be able to listen, consult, persuade and not always have to be seen to lead from the front. Once again, modern naval leaders must be role models, coaches and cheer-leaders who can consult, intelligently develop a vision, clearly articulate that vision and inspire commitment to it.

Women no longer need a gentleman's patronage to 'get on' and those few women that encourage traditional patriarchal behaviour towards themselves should be counselled - as should the patriarchs! A pretty face may still be the best letter of introduction, but favouritism and preferential treatment on the basis of gender is wrong and affects the morale of males and females who want genuine equality and not tokenism or patronage. In the navy most women expect to be judged, respected and promoted s*trictly* on how they do their job, and to be treated accordingly.

By the same token, naval leaders at all levels must not put up with stupidity and encourage 'herd mentalities' by letting the 'boys be boys'. Personnel who are consistently unprofessional in their conduct towards members of the opposite sex must be made examples of. Of course, this is a two way street involving males and females. Gender based resentments and issues can seriously affect team cohesion, thus, naval leaders should err on the side of harshness when dealing with male and female offenders.

Leadership Challenge 4: Breakdown in the family unit

The Family Law Act 1975 saw a doubling of the Australian divorce rate. There were 45,000 divorces during its first year of application compared to a previous average rate of 23,000 in the early 70s. The yearly divorce rate has hovered around 50,000 ever since. About half of first marriages now fail, and the figure is similar for breakup of second marriages - therefore, marriage ain't necessarily better the second time around! Today, a quarter of a million children have parents in defacto relationships and almost two million children are affected by divorce. Over one million Australian children now grow up in single parent families, and they form a major pool from which service recruits are drawn.6 But what effect, if any, could this have on naval leadership?



Remember that the prime objective for a naval leader is to build an effective team and get the navy's jobs done. Don't get side tracked!

The good, bad or indifferent effects of children growing up in a single parent home are hard to identify let alone prove, and there is no question that in *some* cases children are better off with one parent. However, the demands of properly raising, supporting, educating and supervising children exhaust even the most highly committed couples and few would seriously disagree that the two parent (one male, one female) family remains the best 'social welfare' unit ever created (let's not get side tracked with endless debates on exceptions to this rule and other inclusions in the definition of family. Of course there are different kinds of families, but let's not forget what an ideal family should be from society's perspective).

Perhaps the increasing numbers of recruits from single parent families may be especially attracted to the stability and relative security of a well led military environment? In many ways service comradeship, affiliations and esprit de corps - which must remain part of the military ethos - may help fill a possible void created by the absence or loss of a parent. Consequently, leaders of young sailors and officers may increasingly have to factor the more referative or role modelling facets of leadership into the naval leadership equation. Communications skills, imagination, personal example, good advisory and supervisory skills could well prove to be increasingly important. But who is to provide these qualities?

Obviously, only the very best staff should be selected to serve at training establishments in billets with direct contact with recruits. This is not always the case and at times staff selection at officer and senior sailor level has been abysmal. Putting a second or third rate person in a training billet because it is close to home or close to another establishment (for back to back postings), or just to get him or her off a ship is tantamount to corporate suicide. This is because first rate service socialisation during the initial, formative months of training can be decisive in forming the right service attitudes for life. Take for example the rich vein of commitment and talent that came out of HMAS LEEUWIN from 1960 to the mid 80s and which still serves the navy as some of its best senior sailors and officers. Nine months of solid navy socialisation at the beginning can make all the difference. Initial socialisation clearly has a major long term impact on trainees and the future of the navy; especially if the trainee can really be made to feel part of an 'extended family'. Again, this reinforces the need for modern leaders to be cheer- leaders and coaches; listening, consulting and *understanding* the different perceptions, family backgrounds and belief systems of the increasingly diverse group of people they must lead. However, understanding of belief systems does not necessarily mean acceptance of them and the issue of homosexuals in the services highlights this point.

Leadership Challenge 5: Homosexuals in the Services

Officially allowing homosexuals into the services may become a significant influence on modern naval leadership and this remains an emotive issue. However, those of us confirmed heterosexuals with old fashioned ideas on sexuality should calm ourselves and put the decision in perspective by remembering three things. The first consideration is that, right or wrong, the elected government that pays the bills has directed that homosexuals not be hindered from entering the Services and that they should not be discriminated against in any way. Naval leaders must accept the government's decision that the subordinate is acceptable to the Service and get on with the job of integrating homosexuals who meet objective selection criteria as productive team members. However, it is most important to remember that acceptance of the government's right to make the rules does not mean one has to accept homosexuality as a decent or normal sexual orientation. No government can dictate to your personal convictions.

The second point is that being homosexual does not preclude a person from being an effective team member. Navy's sexual harassment rules - if applied consistently by fair and impartial leaders - protect the heterosexual and homosexual alike from persecution and can ensure the maintenance of good order and discipline. Sexuality should not be an issue in the workplace.

Third, only 3-5% of the Australian population are likely to be genuine, 'genital contact' homosexuals. Fears of the services being invaded by legions of ravenously lustful, lecherous and degenerate homosexuals are quite misplaced! But, to go beyond principle into the minefield of leadership practice, how does a heterosexual naval leader lead a homosexual, or for that matter - with a eye to the future - a transsexual subordinate when he or she personally believes that homosexuality, bisexuality or transexuality are indecent and not simply alternative sexual preferences?

The leader should remember that the prime objective is to build an effective team and to get the navy's jobs done. Above all, he or she must maintain the self discipline and objectivity to avoid hyper vigilance which can lead to self fulfilling prophesies, reinforced prejudice, alienation of the homosexual subordinate and reduced unit cohesion and productivity. To repeat, sexuality should not be made an issue in the workplace, and adherence to navy's non harassment / discrimination regulations must be maintained with impartiality and rigour. Of course, this includes situations where the homosexual is at fault ,and justice must be seen to be done by all members of the team. The rules are there for everyone

What if the leader perceives moral danger to young subordinates posed by homosexuals when ashore? Before tackling this tricky issue we should at least try to define what morality means. By now most of us have chosen our own distinctions between good and bad and right and wrong behaviour, according to our conscience and convictions. These convictions or firmly held opinions give rise to standards of conduct we try (and sometimes fail) to live up to. Nevertheless, collectively they comprise our 'morality' and if this includes believing the homosexual alternative to be unacceptable, then we have no need to apologise to any government or lobby - nor should we. However, things can get complicated as more recruits enter service having been told by the media, their parents and some teachers that homosexuality is an acceptable sexual alternative. Under some circumstances 'conversion' to the gay lifestyle of impressionable youngsters can take place and, in my personal opinion, the leader in this position has a moral obligation to counsel the young subordinate and make his attitude and objections towards *homosexuality* (not the homosexual) known. This involves a leader exercising moral courage of conviction.

What about situations when counselling a homosexual subordinate? If asked, the leader should give his or her views on homosexuality and reasons for them. By the same token, he or she should make it perfectly clear that the homosexual will be judged strictly in accordance with navy's performance criteria and the ability to 'do the job', as will heterosexual members of the team. In this way a leader's personal beliefs and intellectual position on homosexuality can be maintained without compromise or judgement, and navy's teamwork missions can be achieved, even if the leader considers homosexuality objectionable.

Leadership Challenge 5: 'Civilianisation' of the Services

Since the early 1970s the Services have been progressively integrated with civilian bureaucracies of all kinds and have also been under pressure to absorb more civilian workers into their ranks. While not a social change per se, these changes can result in 'cultural' change in the military, and this in turn can affect leadership style.

The dangers of 'over-civilianisation' in terms of its effects on those that are led are two fold. First, non-selective absorption of civilian management approaches can affect the traditional military ethos and therefore the attitude and commitment of the led. Second, the 'uniqueness' of being in the military is increasingly challenged as the military/civilian difference or divide closes. Consequently, if military personnel no longer feel unique then cohesion is affected and members should no longer be expected to perform uniquely.

We will now examine each of the effects of over-civilianisation in some detail.

Breakdown in The Military Ethos

Today we have all but forgotten about naval service as a 20 or 30 year career and market the Navy as a 'first career' on TV, radio and in the tabloids, expecting most 'lifers' to serve for 10 years or so. Perhaps this is simply an acknowledgment of 'reality', or a de facto admission that our PR, personnel and career management capabilities have been found wanting. Any way you cut it, this is a pity and clearly indicative of a decline in the emphasis given to and attractiveness of a military career and the *military ethos* - that distinctive organisational spirit and identity which separates the military from any other profession - that mental disposition to perform in a unique way - that attitude of preparedness to work longer and harder under bad conditions.

The traditional divide between serviceman and civilian will decrease even further as progress in technology leads to an even more ravenous demand for trained technologists and engineers throughout the Services. Even as far back as the 60's, sociologist Morris Janowitz recognised this when suggesting that,'....the complexity of the machinery of warfare and the requirements for research, development and technical maintenance tend to weaken the organisational boundary between the military and the non military, since the maintenance and manning of new weapons systems require a greater reliance on civilian oriented technicians'[7]. As the Military/Civilian divide continues to close, the proportion of uniformed personnel in the navy has decreased steadily since the early 70s, and will continue to reduce under the Commercial Support Program. Therefore, civilian values and expectations will probably have an increasing impact on service attitudes, identity and ways of doing business.

The traditional latitude of action of military leaders will decrease as more civilians with different conditions of service and supervisory expectations come under military supervision and vice versa. More accountability, tact and explanation will probably be required of military leaders than would be the case in an 'all uniformed' environment. Moreover, besides the cost advantages of civilianising in some areas there are other advantages in civilianising parts of the services. For example, an increase in varied management exposure can broaden and improve a sometimes narrow and resource wasteful military approach to problems. However, at the same time a danger exists that

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the military ethos may be compromised by the non selective absorption of civilian attitudes and management ethos.

Military leaders, perhaps more than ever before, must be able to act as role models for their subordinates and act as custodians of and living examples of the military ethos. They should certainly avoid the tendancy of becoming pragmatic 'corporate executives in uniform', as occurred in the US during the 1960s under the McNamara Defence Department. This danger of 'non selective absorption' was tragically illustrated in the failure of the US officer corps in the Vietnam War, and we should take a little time to carefully reflect on this phenomenon.

A Case Study in the breakdown of a Military Ethos: — The US Officer Corps in Vietnam

A detailed examination of the breakdown of a modern military service - the US Army in Vietnam - by Gabriel and Savage is based on two official US Army War College studies of combat leadership in the Vietnam War. It gives a salutary warning to modern leaders 8· Gabriel and Savage argue that, '... Our data suggests that the (US) Army in the field exhibited a low degree of unit cohesion at virtually all levels of command and ...The data indicate a very high rate of drug use among US field forces in country, repeated attempts to assassinate officers and senior non-commissioned officers, combat refusal that bordered on mutiny, sky-rocketing desertion rates in the Army as a whole...the Army began to border on an undisciplined, ineffective, almost anomic mass of individuals who collectively had no goals and who, individually sought only to survive the lengths of their tours'.[9]

Surprisingly, the US Army War College reports found that events external to the military organisation had relatively small influence on the cohesiveness and fighting power of units. Bearing in mind that both War College reports are cases of the Army literally 'looking at itself', we note the frank, official finding that, '...There is no significant evidence to suggest that contemporary sociological pressures - which are ever present - were primary causes of the difference between the ideal and actual performance climate in the Army; the (disciplinary) problems are for the most part internally generated... Neither does the public attitude to the Vietnam War, or the rapid expansion of the Army, or the current (civil) anti-military syndrome stand out as significant reasons for deviations from the level of professional behaviour the Army acknowledges as its attainable ideal'.[10]

So, what went wrong? According to both studies and several others, the breakdown in cohesiveness was primarily attributable to the failure of the officer corps to provide the depth of military leadership necessary in an army in the field. The responsibility for this failure appears to lie at the feet of an officer corps that forgot the age old principles of good leadership - referative leadership based on **involvement** in the daily lives, risks and problems of their troops - and not 'society' or the so called 'drug-ridden, permissive youth' of the nation. Officers learned how to manage but forgot how to lead! Is it any wonder that American soldiers refused to be 'managed' to their deaths?[11]

The 'leadership from the front' element of the military ethos became diluted by, among other things, the slick management crazes of the 60s, and studies indicted the lack of officer visibility in forward areas where, ' officers were falling over themselves in the rear echelons'[12] . Gabriel and Savage suggest that the Army began to resemble an entrepreneurial structure based on a modern business corporation with the officer corps almost evolving into a group of business executives in uniform; with most being a tad too interested in getting their 'tickets punched' for advancement. Officer attitudes, according to the US Army War College reports, began to be dominated by self interest and the military ethos was subverted by some sort of bastardised industrial ethic. However, while this kind of ethic *may* get by in civilian street, it did not take into account the unique psychological needs of troops in the field. In short, the US officer corps abrogated its rights to uniqueness even to the stage of leaving strategy and tactics to armchair strategists. It's little wonder everything turned to 'custard'[13]

Perhaps it is now appropriate to 'benchmark' and look at an officer corps displaying consistently good leadership under varying conditions of stress. To do this we must go back to 'the field where the crosses of iron grow'.

Leading in the 'field where the crosses of iron grow'!

Numerous studies testify to the superior fighting power of the German Army and among the best of these is 'Fighting Power: German and US Army Fighting Performance 1939-1945'.[14] In it Professor Martin Van Creveld pinpoints several crucial differences between respective Army performances. He and others establish that the Germans, on average, consistently inflicted at least a 50% higher casualty rate than any other comer (British, American or Russian) under *all* conditions (attacking, defending, with a numerical advantage and outnumbered).[15] This was not because German soldiers were potty trained at an earlier age than the others, or because of fanatical adherence to Nazi propaganda (which was considered by most soldiers as "mere entertainment or another load

of bullshit'[16]). Superior performance in the field was mainly due to better organisation, a better 'corporate memory' and consistently good leadership from the front.

The Germans, despite their strategic blockheadedness and propensity to back losers, excelled at the operational and tactical levels of warfare on land and sea, mainly because of carefully maintaining a tradition of good, professional leadership from the front. For example, during the early years of the war a German Army officer stood twice as much chance of getting killed as an Other Rank.[17] This chance decreased after 1942 only because of a refusal by the General staff to promote second rate material into the officer corps (in 1943 there was a sustained 13,000 officer shortage). Being a German officer was something very special and they were simply expected to lead from the front. Furthermore, the German insistence on officers living with and dying with their troops if needs be also applied to the top brass. During the war one third of all German field generals were killed in action or captured, as against the figure of 26.1% for enlisted men. In fact, 30.8% of all German officers did not return from the Fronts. This stands in stark contrast to the allied effort.[18] But most importantly, from extensive surveys undertaken after the war, German NCOs generally considered their officers brave and capable men.

German leadership from the front also applied in the Navy, with the Germans producing outstanding seamen during both wars. For examples of 'switched on' crews led by clever, resourceful and very dangerous naval officers one should analyse the piratical voyages of the German raider skippers in both world wars. In World War One these included the voyages of WOLF, MOWE and EMDEN. In World War Two the operations of Kruder (PINGUIN), Rogge (ATLANTIS), Kahler (THOR), Detmers (KORMORON), Weyher (ORION), Von Ruckteschell (WIDDER) and Eyssen (KOMET) are especially instructive.[19] These officers led crack crews very far from home for long periods with next to no support if things went wrong. Using numerous disguises, stealth and cunning these few raider crews destroyed and captured over one million tons of shipping in World War Two. (A study of the commanding officer and crew selection and training for these trips would be a very worthwhile exercise).

Leadership Challenge 7: Staying Unique

To maintain a military ethos servicemen and servicewomen must see themselves as unique and what they are called on to do as *vocations* ; not interim jobs and meal tickets that can be taken up for a couple of years, or until something better comes along. As mentioned previously, if Service people do not see themselves as unique they will not perform uniquely and with distinction. They might well end up doing some sort of quick cost benefit analysis and 'bug out' under pressure, that is, unless they come up against committed, professional killers who did not have the time to take out their MBAs.

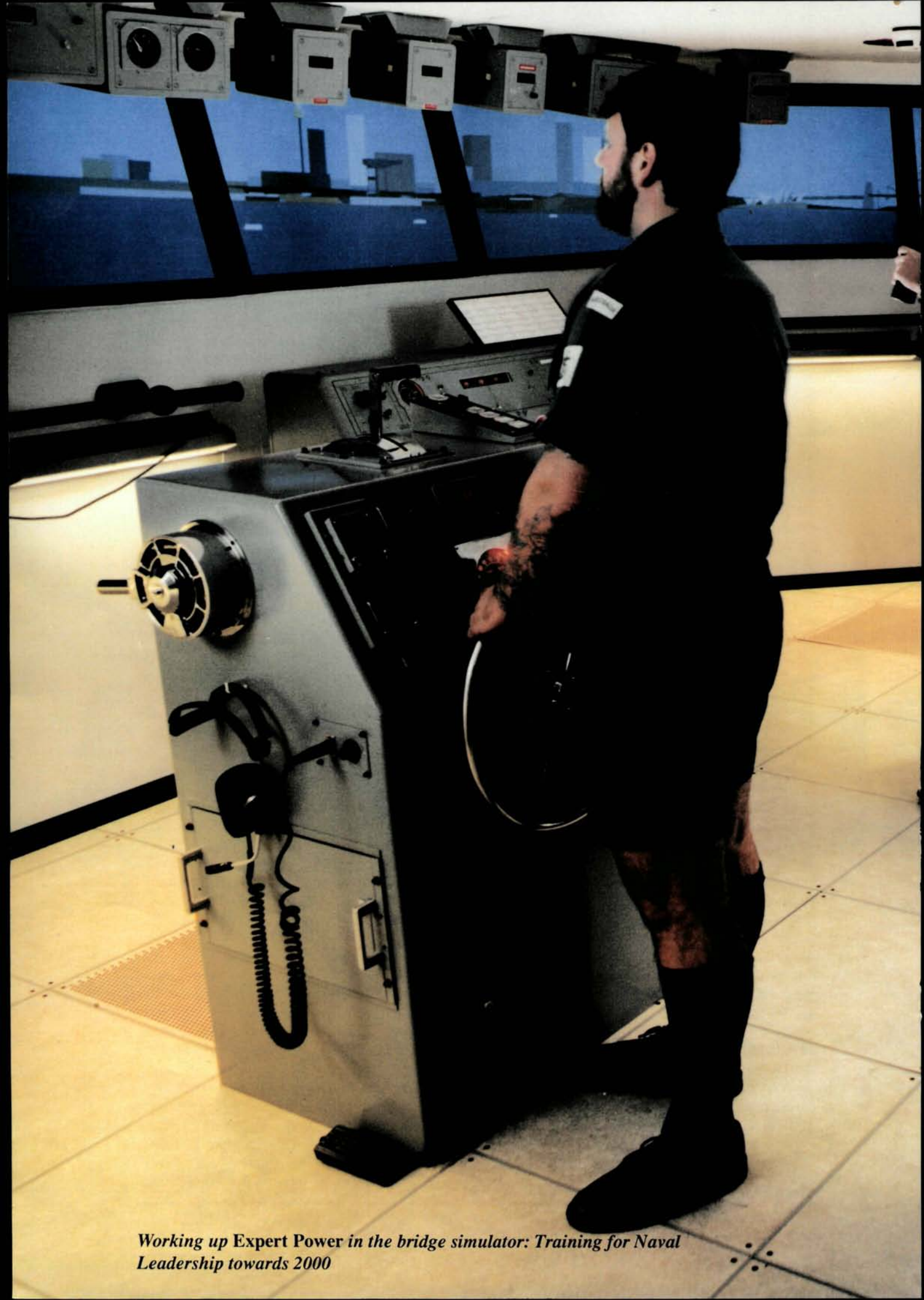
Servicemen and service women cannot feel unique if they are not viewed and treated as 'special' by their society, their political masters and the bureaucracy. But, for example, how special does a naval commander who has spent twenty years getting a 'brass hat' feel when a downy chinned youth in the public service, a couple of years out of Uni, describes himself as a 'commander equivalent'? Similarly, how special does an infantryman feel when, under 'industrial criteria' , he is equated to a plant operator trained over a period of two to four weeks for remuneration purposes?

Being treated as 'special' goes well beyond flowery words on Anzac Day. Just talking of the wonderful job being done by service people is cheap. Part of feeling special is being recognised materially in terms of conditions of service and allowances that reflect the special demands of service life and a genuine recognition of the importance of military skills. Consequently, the acid test for today's senior naval leadership is to begin to reverse this bureaucratic/political drive for 'equivalence' and reduction of everything to a lowest common denominator... Some real respect for and greater material recognition of military skills must be recovered. Otherwise the pulse of endaevour in the services will drop.

Of course, it is naive to believe that the bureaucratic, political and financial pressures against reversing these trends are not formidable, but the importance of fighting the good fight and being *seen* by the led to fight it should never be underestimated. While the risks involved in making principled stands are high, the challenge is clear. Responding to these challenges to service identity in a clever, determined and visible way *is* leadership.

CONCLUSIONS

Effective naval leadership is having a vision of how things should be, making a good plan for getting there and communicating the vision/plan so that the led understand it, are turned on by it and will deliver a group commitment to it. This article stresses the difference between a manager and a leader in terms of level of commitment to goals developed in the hearts and minds of the 'led'. A leader inspires stronger commitment by empowering the led through his or her blend of the five bases of personal power - formal, expert , reward, coercive *and* referative power. Each



Working up **Expert Power** *in the bridge simulator: Training for Naval Leadership towards 2000*

kind of power can be built up by plain hard work, by actively seeking experience, responsibility and challenge and by taking calculated risks and sometimes making mistakes. Tuning your power blend into the situation and people at hand gives you referative authority and the right to lead in the eyes of the led.

Traditionally, the use of formal and coercive power was heavily factored into the naval leadership equation, but times and society have changed. Team consensus and participative decision making are here to stay - pretentiousness, aloofness and elitism are out; empathy, approachability, listening skills and consultation are 'in'. Of course orders are still orders, and they must be obeyed. However, today's naval leaders are more than ever challenged to clearly articu*late* their visions of what should be to diverse groups, to gain a *willing* team commitment to their visions and to themselves.

Today's leader/communicator must have insight into where the led are coming from - where they stand, what they want, what they don't want and what they fear. Insight stems from a detailed understanding of - not necessarily an agreement with - the cultural, political, ideological, religious and sexual backgrounds of an incredibly disparate 'stew' of recruits coming from the melting pot of Australian society. Little in terms of common background and attitude can be taken for granted in navy's recruits. Furthermore, increasing nihilism, cynicism and suspicion towards the 'establishment'; breakdown of the traditional family unit; 'civilianisation'; dilution of the military ethos; increasing female participation rates; multiculturalism; sexuality issues and changes in society's value system will also influence naval leadership style as we approach 2000. Yet all of these factors are simply not decisive in terms of achieving navy's military and personnel objectives if the key motivational dynamic of good referative leadership exists.

The naval leadership equation has shifted to a much higher reliance on referative power. Referative leadership is role modelling at its best; where your people will want to be like and act like you because they are attracted to your confidence, character and authority. Referative leaders 'give' things to their people through coaching, educating and cheer leading - they help give their subordinates defin*ition* and *wholeness* . Definition and wholeness involve a sense of safety, control over circumstances, self worth and - above all - a sense of useful purpose in life.

Ultimately, empowering subordinates through the use of referative power - by being a better informed motivational coach, educator and cheer leader - is the key to the human dynamic of leadership. To turn the leadership coin on its head, good leadership has always had a pretty large element of good *servantship* in it. But don't be alarmed ! This is not a call to become a SNAG (Sensitive New Age Guy or Girl) ! Decisiveness and strength will not be lost as a result of more thinking, listening, consulting, educating and cheer leading. In fact, decisiveness, strength and discipline will be increased because all parties in tomorrow's navy team will have more confidence in the whole 'leadership-servantship package'. Higher interpersonal commitment, team cohesion and better corporate direction results, and the navy can't help but profit from this. What a challenge!

About the author: Lieutenant Commander Alan Hinge was born in South Melbourne in 1955.

Prior to joining the RAN in 1979 he spent two years instructing applied physics to surveyors and laboratory technicians in TAFE, and between 1975-78 served in the Army Reserve infantry as a section commander. During 1979-84 and 1988-90 he was extensively involved in organising and leading a wide variety of adventure training expeditions involving RAN and DCP personnel.

Lieutenant Commander Hinge has held a wide range of postings in weapons electrical engineering training and instruction (1979-84) and has seen application service at sea. He has also served as training administration officer of HMAS *Waterhen* and HMAS *Cerberus* and has worked in policy directorates. His last service posting was as Officer in Charge, RAN Junior Officers Staff Course. Hinge is author of the book *Mine Warfare in Australia's First Line of Defence*, a contributing author to the Australian Dictionary of Biography, winner of eight Peter Mitchell Essay Competition prizes and has thirty two articles in print in Australia and overseas. He is married with five children.

[1] Cited from the motivational training video,' In Search Of Excellence: Lessons from America's best run companies'. The video is based on the book of the same name by Tom Peters (Harper and Row, New York,1982)

[2] William , Viscount Slim ,'Defeat Into Victory', (Cassell, London ,1972)

[3] Dunphy.D,' Organisational Change by Choice' (Sydney, McGraw Hill,1982) See Chapter 1: The Organisational Vortex'. For another discussion on changing social values also see Altman.D, 'Rehearsals For Change: Politics and Culture in Australia' (Fontana Books, Melbourne, 1980)

[4] See May. W, 'A Catalogue of Sins: A Contemporary Examination Of The Christian Conscience' (New York, Holt, Rinehart and Winston, 1967), espe-

cially Chapters 5 and 6 for an incisive analysis of human descent into emotional and spriritual death. For real life, though extreme case studies of 'shot' moral 'compasses', read Brian Masters' account of serial killer Jeffrey Dahmer's decent into depravity in, 'The Shrine of Jeffrey Dahmer' (Coronet Books, Hodder and Stoughton,1992). For an account concerning a monster with different background and motivations see Ted Bundy's last interview before death in the video 'Fatal Addiction'. Frighteningly, these nihilists are different to many people in degree, not in kind.

[5] See Walbank. K, for a discussion on the problems and prospects of female officers in the RAN, Journal of the Australian Naval Institute , Vol 18 No 3 August 1992, pp 11 - 14.

[6] Year Book of Australia, Australian Bureau of Statistics (AGPS, Canberra, various years). Figures on single parent families came from the ABS study ,'Focus on Families: Demographics and Family Formation' and are cited from 'The Canberra Times', 3 June 1994, p.1.

[7] Janowitz. M, 'Sociology and the Military Establishment', (Russell Sage Foundation, New York,1959) p18.

[8] The first study was commissioned in 1968 by MACV Commander General W.C Westmoreland who restricted its distribution to general officers only. The second was the 'Study in Military Professionalism', (US Department of Defence, Army War College, Carlisle Barracks Pa, June 1970)

[9] Gabriel. R, and Savage. P, 'Crisis in Command: Mismanagement in the Army', (Hill and Wang, New York, 1978) p 8-9.

[10] US Army War College Report ' Study in Military Professionalism', op cit, p. 55.

[11] Gabriel and Savage, op cit , p 54. See also Sarkesian. S, (Ed) 'Combat Effectiveness: Cohesion, Stress and the Volunteer Military', 'Russell Sage Foundation, New York, 1980) generally and Katz. D and Kahn .R , ' The Social Psychology of Organisations' (John Wiley and Sons, New York , 1966), and particularly Chapter 12 of the latter text for a discussion on the psychological requirements for organisational effectiveness, and the importance of leaders acting as role models.

[12] See Moskos. C, 'The American Enlisted Man', (Russell sage foundation, New York,1970) p.147.

[13] There is obviously no exclusive cause of the quagmire that was Vietnam, but the inability of the military to effectively plan and their willingness to leave much of the strategic planning to politicians is well attested. For example, in February 1968 Clark Clifford, when taking over the Secretary of Defence job from Robert McNamara, asked the Joint Chiefs of Staff what their plan for victory in Vietnam was. They responded that they had no plan for victory.

[14] Van Creveld. M, 'Fighting Power: German and US Army Performance 1939-1945', (Arms and Armour Press, London, 1982)

[15] See Ibid, chapter 1 and Depuy. T, 'A Genius for War' (London,1977) pp. 234-235.

[16] See Van Creveld, op cit, pp. 83-84.

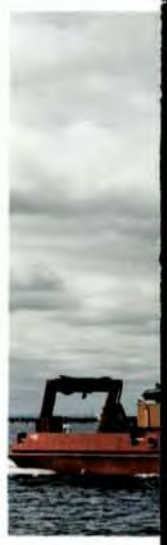
[17] Ibid, p.156.

[18] These figures are taken from Gabriel and Savage, op cit, pp. 35-36.

[19] The best collective narrative of World War Two German raider operations is given by Woodward. D, 'The Secret Raiders: The Story of the Operations of the German Armed Merchant Raiders in the Second World War' (William Kimber, London, 1955). Accounts of many of the voyages are available. For example, 'Ghost Cruiser HK 33 by Brennecke. H J (William Kimber, London, 1954) is an account of PINGUIN's voyages. ORION's cruise is detailed in Kurt Weyher's 'The Black Raider' (Both PINGUIN and ORION were involved in very successfu minelaying operations against Australia and New Zealand respectively). For an account of raider operations in World War One see, 'The Cruise of the Raider WOLF' by Roy Alexander.

NOTE: References concerning Nelson are numerous. The 1990 publication *Lord Nelson 1758 - 1805: A bibliography* is handy. Among the best of the more recent works are David Howarth's *Lord Nelson, the Immortal Memory*, Tom Pocock's *Horatio Nelson* and Ernle Bradford's *Nelson: The Essential Hero*. I have also drawn on an episode of the 'Great Commanders' video series, written and produced by Paul Grabsky and recently shown on SBS Television.

NAVAL AND MARITIME PI



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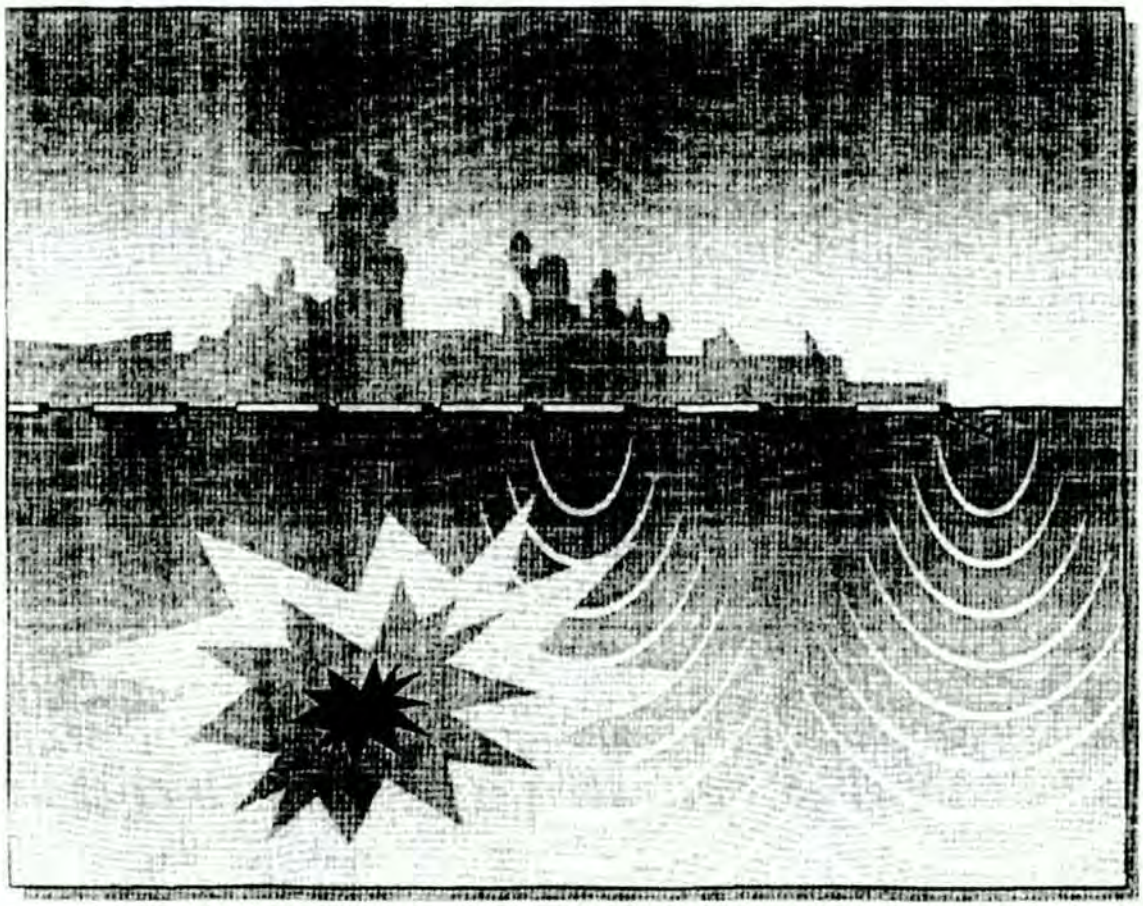

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THE SPRATLY ISLANDS DISPUTE AND THE LAW OF THE SEA

BY

CAPTAIN LEE G. CORDNER AM RAN

The views expressed in this essay are those of the author and do not reflect the policies of any Government.

The Spratly Islands group or archipelago is situated in the South China Sea and comprises a collection of hundreds of shoals, reefs, atolls, and small, mostly uninhabited islets. Predominately of volcanic origin, considerable sedimentary deposition is evident in some parts. The Spratlys lie 900 miles south of the Chinese island of Hainan, 230 miles east of the Vietnamese coast, 120 miles west of the Philippine island of Palawan, 150 miles north-west from the Malaysian State of Sabah; and cover an area of approximately 150,000 square miles.[1] The Spratlys are separated from the continental shelves of China and Taiwan by a 3,000 metre trench to the north and north-east and from the Philippines, Brunei and Sabah (Malaysia) by the East Palawan Trough. The area is poorly surveyed and marked as "Dangerous Ground" on navigation charts. The largest island, Itu Aba, is 0.4 square miles in area, and Spratly Island is 0.15 square miles.

Strategically vital sea lines of communication, linking the Indian and Pacific Oceans via the Malacca, Sunda and Lombok Straits, run close by the islands. Maritime traffic proceeding to Southeast and Northeast Asia, Indo-China and the central and eastern Pacific, all traverse the South China Sea. Exercise of sovereign control of the Spratlys, with the attendant territorial seas and exclusive economic zones (EEZs), presents a potentially central and commanding position in the region. The regional strategic balance has undergone recent and dramatic change, with the collapse of the Soviet Union and its withdrawal from Cam Ranh Bay, the United States withdrawal from the Philippines, the emergence of the Peoples Republic of China (PRC) as a maritime power, and the strong economic growth of the smaller regional powers, principally South Korea, Taiwan and Singapore. A 1969 United Nations seismology report declared that the area was possibly rich in hydrocarbon deposits.[2] Tangible evidence of economically viable seabed exploitation south and east of the Spratlys is already available, as Brunei has a highly productive offshore oilfield and Malaysia is already a significant exporter of natural gas. Six coastal states lay claim to all or part of the Spratly Islands: PRC, Taiwan and Vietnam claim all islands; Malaysia and the Philippines claim several islands, and Brunei claims one reef. The bases for these claims vary from historical (PRC, Taiwan and Vietnam), to right of discovery (Philippines), to continental shelves (Malaysia and Brunei). Disputes over territorial sovereignty are complicated by conflicting and overlapping bilateral and multilateral claims without a common basis for negotiation.

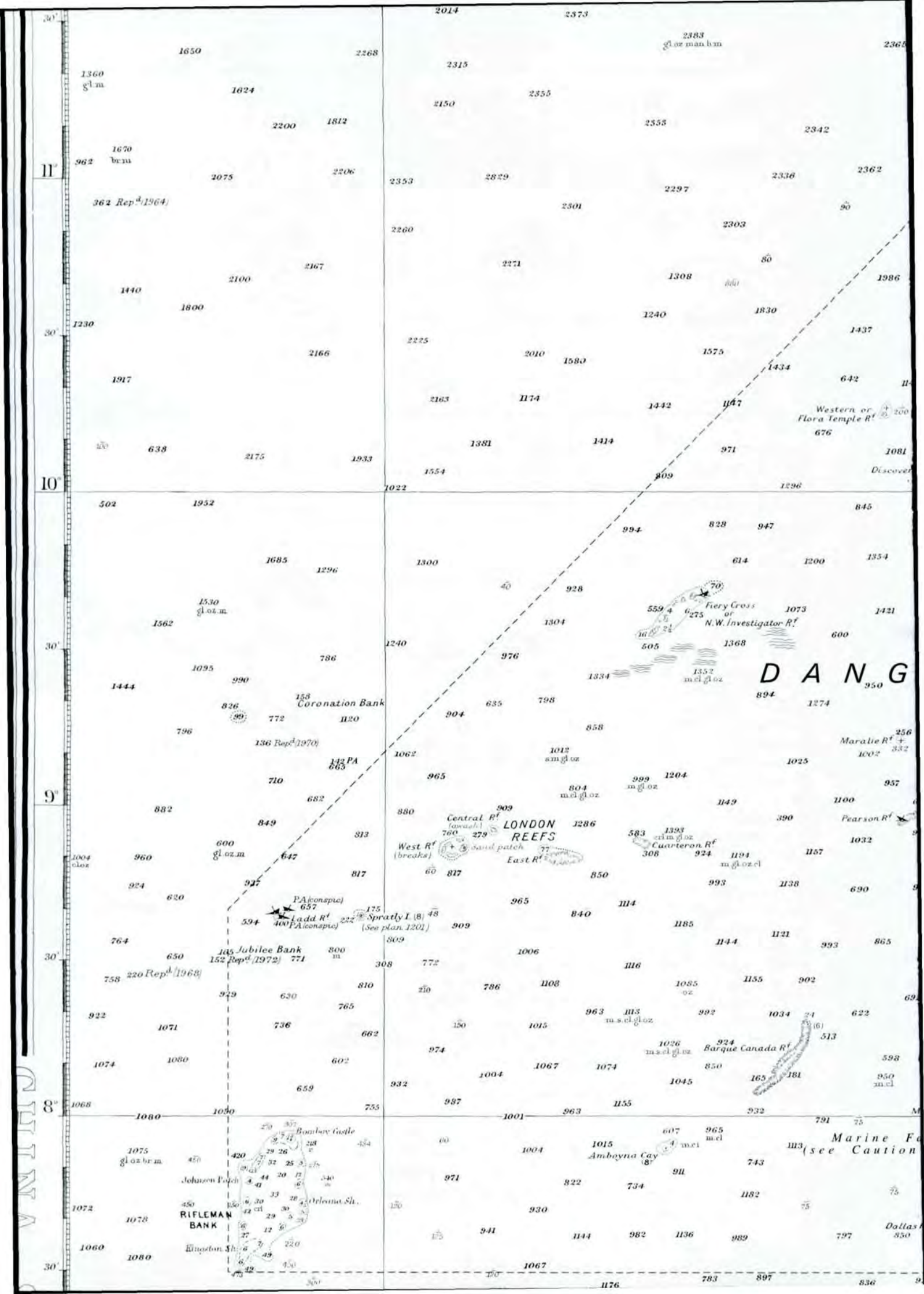
This essay briefly outlines the respective claims and examines the relevance and utility of the United Nations Convention on the Law of the Sea (1982 LOS Convention)[3] as an aid to resolution.

CLAIMS TO THE SPRATLY ISLANDS

The various claims to the Spratly Islands are complex, being based upon incomplete and sometimes inconsistent historical data, ancient oriental concepts of ownership and imaginative interpretations of contemporary international law. The claimants' cases are presented in chronological sequence, beginning with the earliest historical "evidence of sovereignty".

PRC and Taiwan

PRC and Taiwan begin with the same historical claim that the Spratly Islands and other islands in the South China Sea have been Chinese territory "since ancient times"[4]. The islands of the South China Sea are collectively described in Chinese mythology as the "Tongue of the Dragon" and are seen as an inseparable part Of China.



11°
10°
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Western or Flora Temple Rf
Discover
Fiery Cross or N.W. Investigator Rf
DANG
Coronation Bank
136 Repd (1970)
Maralie Rf
Pearson Rf
Central Rf (awash)
LONDON REEFS
West Rf (breaks)
Sand patch
East Rf
Cuarteron Rf
PA (conspic)
Ladd Rf
Spratly I. (8)
(See plan 1201)
Jubilee Bank
152 Repd (1972)
220 Repd (1968)
Barque Canada Rf
Bombay Castle
Amboyna Cay
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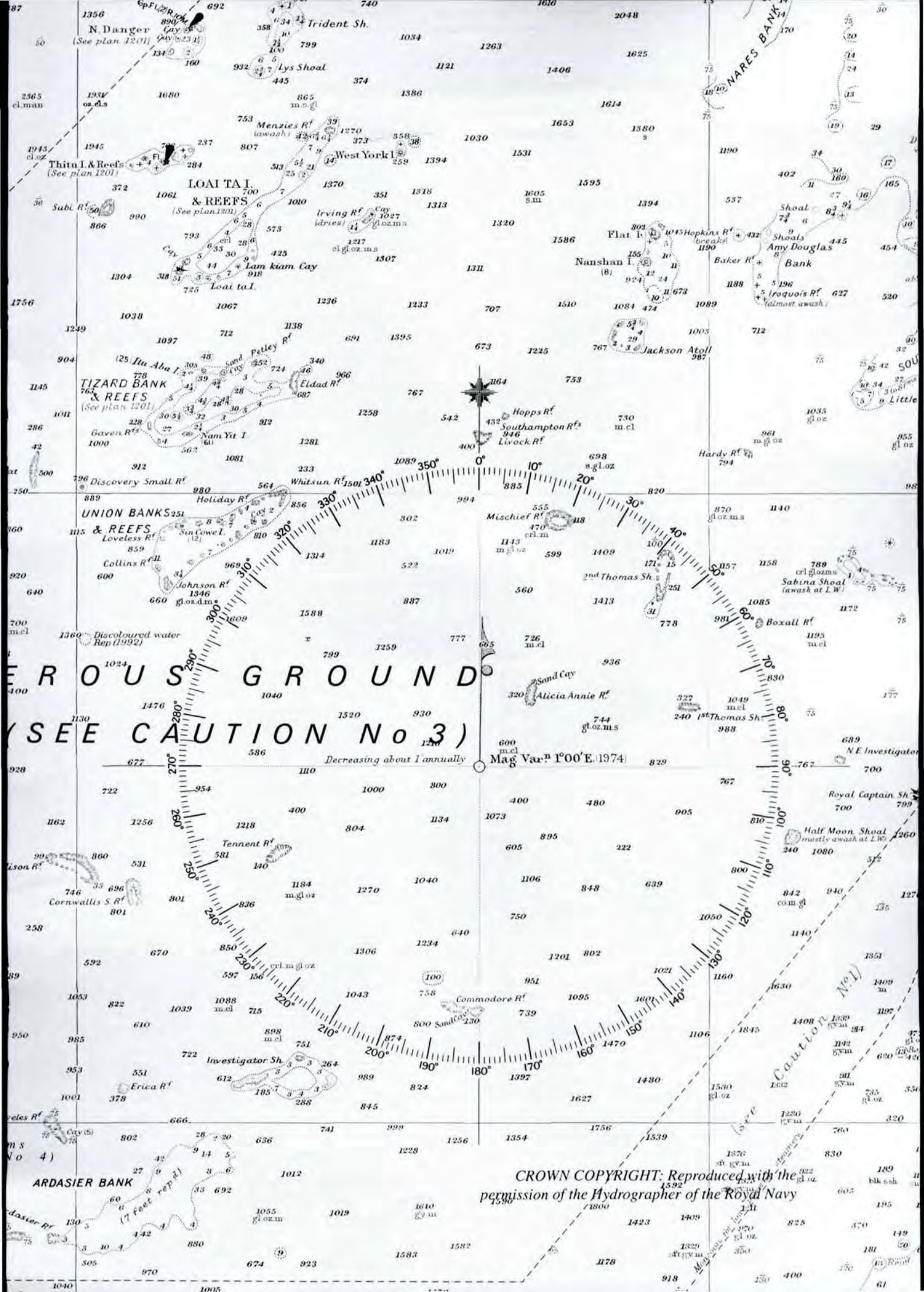
Johnson Patch
Orleana Sh.
RIFLEMAN BANK
Kingston Sh.
Dallas



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Since the separation of the PRC and the Republic of China (ROC or Taiwan) in 1947, separate claims and attempts at occupation and administration have been pursued.

The Chinese claim to have first recorded using the Spratlys for fishing activities in the Western Han Dynasty (206 B C. to A D. 24).[5] During the 10th-16th centuries, the South China Sea was used as a principal Chinese transit route for world trade. Chinese claim to have surveyed, worked and administered the Islands in the period A.D. 206-220[6]. Specific records of transit were reported in 1292, during the Yuan Dynasty (A.D. 1280-1368) and in 1403-1433 by the Chinese navigator Cheng Ho of the Ming Dynasty (A.D. 1368-1644), when the Spratlys were first roughly charted. The islands were geographically described by a Chinese scholar, Ch'en Lun-Chiung, in a book published in 1730. The names used for the islands change frequently in Chinese literature, which makes research confusing. PRC has used the name Nansha Islands since about 1934. There is evidence of intermittent use of some Spratly Islands and surrounding waters by Chinese fishermen, principally from Hainan Island, since ancient times[7]. Chinese claim that the Spratlys were "terra nullius" prior to their discovery and that they have been "effectively occupied" by Chinese fishermen "since time immemorial". Ancient records are sparse, incomplete and do not provide administration or assertion of sovereign control. The claim that the islands were exclusively Chinese is further weakened by an official Chinese Government report published in 1928 that shows the southernmost delineation of Chinese territory as the Xisha Islands (Paracels), and makes no mention of the Nansha (Spratly) Islands[8]. History includes a treaty between China and France dated 26 June 1887, formalising the establishment of Vietnam as a French protectorate, in which the French laid claim to territory west of 105 degrees 43' East of Paris (or 108 degrees 03' East of Greenwich) to be French, and therefore ceded territory east of this line to China. Since the Spratlys lie east of the prescribed line, the Chinese argue that the 1887 Treaty constitutes further evidence of Chinese ownership, even though the islands are not named, no north-south or eastern limits are specified, and respective interpretation of the Treaty in Chinese and French is controversial[9].

On 25 July 1933, France announced that it had occupied and placed under its sovereign control a number of islands in the South China Sea (including some in the Spratlys group). This assertion was protested diplomatically by China in 1933 and again in 1934. In 1939 Japan invaded Hainan, the Paracel and Spratly Islands, establishing the first recorded permanent garrison and effective sovereign control over the Spratlys. The Japanese dubbed the islands "Shin-Nan Gunto" (New South Islands) and placed them under Taiwanese jurisdiction (then a territory of the Japanese Empire). The Japanese withdrew in 1945 and in November 1946 ROC sent a naval contingent, followed by a small garrison, to Itu Aba islet in the Spratlys and in 1947, placed them administratively under Quangtung Province, to be followed by the "temporary administration of the Navy". ROC forces withdrew to Taiwan in May 1950 when PRC forces landed on Hainan Island[10].

The San Francisco Allied-Japanese Peace Conference in September 1951, in which neither PRC nor ROC participated, stated Japan renounces all right, title, and claim to the Spratly Islands ...." but did not name a sovereign successor. The PRC Foreign Minister, Chow Enlai, protested the Treaty stating that "... no matter how these provisions are worded, the inviolable sovereignty of the PRC over (the Spratly Islands)...will not be in any way affected." A separate bilateral treaty was signed between Japan and the ROC on 28 April 1952 which stated: "It is recognised that under Article 2 of the Treaty of Peace with Japan signed at the city of San Francisco...September 8, 1951 Japan has renounced all right, title and claim to Taiwan (Formosa)...as well as the Spratly Islands ...." Taiwan claims that this Treaty is compelling and substantive proof that ROC thenceforth exercised "complete sovereignty" over the Spratly Islands[11].

Taiwanese physical occupation of the Spratlys was suspended in 1950. The ROC government claims to have re-established its garrison on Itu Aba in 1956, which has been maintained and supported by naval patrols since. On 4 September 1958 PRC issued a Declaration of Territorial Sea, extending its territorial sea boundary to 12 nautical miles, stipulating the use of straight baselines, and claiming the Nansha (Spratly) Islands as belonging to China[12]. In 1973, Vietnam occupied several Spratly Islands, which prompted a very strong warning from PRC in January 1974. The PRC's first assertion of effective control occurred in March 1988, when it encountered Vietnamese supply forces in a brief naval engagement, sinking three transport vessels and killing 72 Vietnamese troops. The PRC subsequently took possession of several insular features, including Fiery Cross Reef. The latter is 14 nautical miles long, has been developed as a base for the Peoples Liberation Army-Navy (PLA-N) South China Sea Fleet and includes an air strip[13].

The PRC claim to sovereignty of the whole Spratly Island group was reiterated on 25 February 1992 in its declaration of "The Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone", which specifically identifies the Nansha

(Spratly) Islands in Article 2[14]. PRC moved to allay fears of Chinese hegemony among the regional states by participating in multilateral talks hosted by Indonesia at Bandung in July 1991 (an informal meeting attended by PRC, Vietnam and Taiwan[15]; and during Li Peng's visit to Hanoi in December 1992[16]. PRC has indicated a willingness to negotiate peacefully with Vietnam to resolve territorial disputes, urging that "Because some of the problems are very complicated, we must not become impatient."[17] In a joint communique "both sides" agreed to seek to use "...the generally recognised principles of international law...(to)...accelerate the process of negotiations to settle the territorial and boundary disputes..."[18] The possibility of laying aside the territorial and sovereignty issue, to facilitate mutually beneficial co-operation to develop and exploit resources, has also been proposed by PRC[19].

Comment

PRC and Taiwan cite the same ancient historical evidence to support their claims of sovereign control of the Spratly Islands. While the assertion of "terra nullius" status prior to Chinese discovery is undoubtly valid, the subsequent history is unconvincing. Evidence is sparse, intermittent and does not evince of continuous occupation, administration or effective control; but rather occasional transit by mariners and infrequent visitation by fishermen. The case for secession to China of the Spratlys by the Sino-French Treaty of 1887 is vague and non-specific and is weakened by the official 1928 Chinese chart excluding the Spratlys. Apart from occasional diplomatic protests, PRC occupation and therefore effective control in the Spratlys did not occur until 1988 when naval facilities and garrisons were established on a small number of features. The Taiwan case appears stronger in the contemporary period in their having effectively occupied Itu Aba Island between 1946 and 1950 and from 1956 onward, combined with the Japanese surrender of ownership of the Spratlys in the Japan-Taiwan Treaty of 1952, although this Treaty did not cede sovereignty specifically to Taiwan or any other state. However, the Taiwanese claim can probably only be effectively sustained for Itu Aba, not the whole of the Spratly archipelago.

Vietnam

The Vietnamese claim to sovereignty over all the Spratly Islands derives from historical arguments premised upon events both before, during and after French occupation. Recent official Vietnamese documents claim that ownership can be traced back to 1650-53 (although the basis for this claim is not identified)[20] Governance under Emperor Gia-long is claimed from 1816, and in 1838, an inaccurate Vietnamese map presents the Spratlys under the name of "Van Ly Truong Sa", as part of Vietnamese territory[21]. The Vietnamese lost interest in the Spratlys during the French occupation. In the Sino-French Treaty of 1887, the French protectorate declarations over Vietnam specifically avoided claims to South China Sea territory[22]. The French government sent a naval expedition to the Spratlys in 1933 and laid claim to six or seven groups of islets. Only Japan protested, claiming Japanese occupation since 1917. French claims to sovereignty effectively ceased with the Japanese invasion in 1939 and no attempts were made to re-assert them, even at the 1951 San Francisco Peace Treaty, where France signed the Treaty without reservations. Vietnam was also represented at the Peace Conference and affirmed sovereign control over the Spratly archipelago. The claim passed uncontested at the Conference, a fact which Vietnam later argued as universal recognition of the Vietnamese claim, despite immediate and strong rebuttal of the Vietnamese claim by PRC (which was not represented at the Peace Conference)[23].

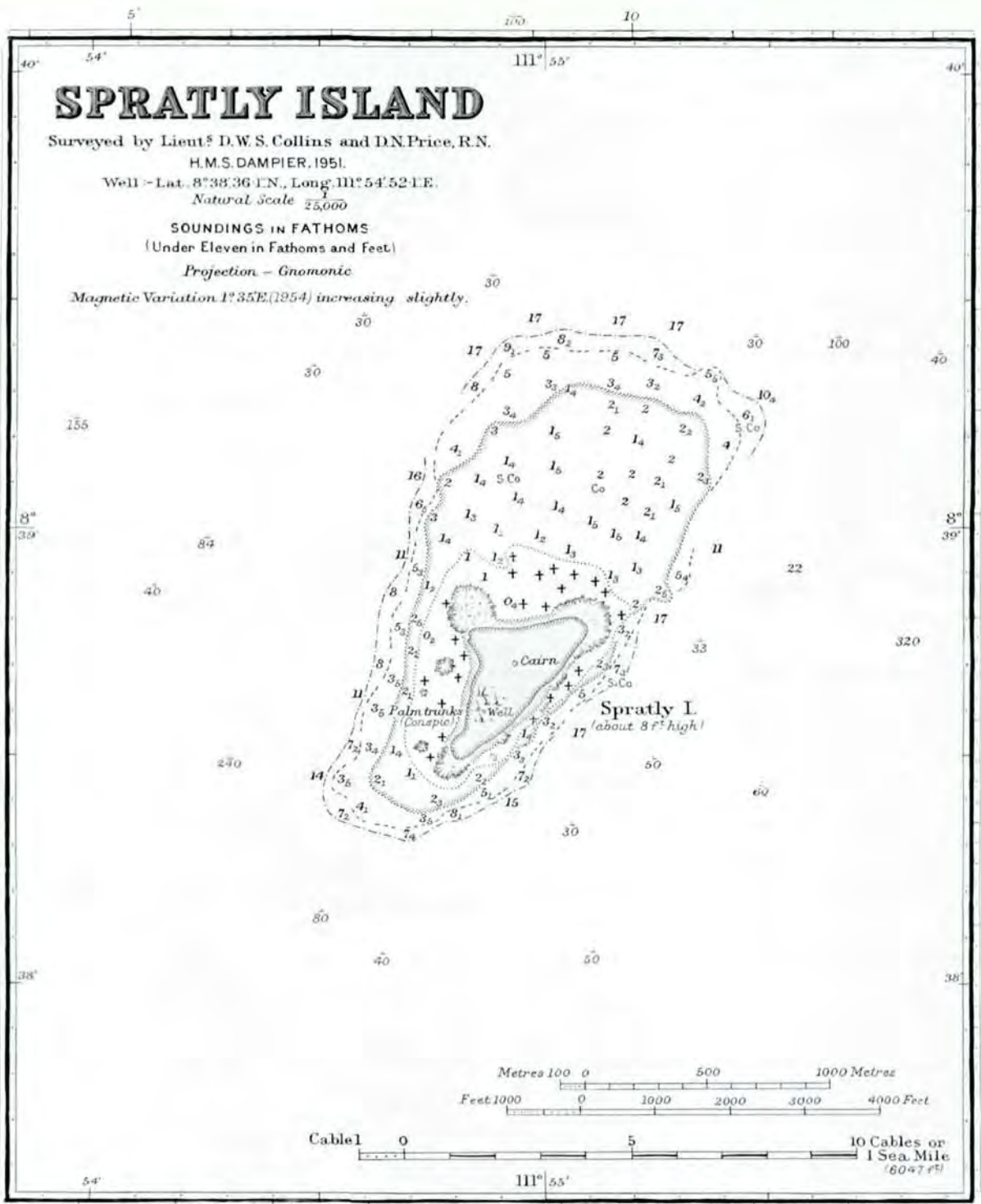
In June 1956, when the Philippines first laid claim to the Spratlys, Republic of South Vietnam (RVN) protested, thereby reaffirming Vietnamese ownership of the Spratlys. On 22 October 1956 the islands were assigned by RVN to Phuoc Tuy Province for governance[24]. The government of North Vietnam (NVN) supported Chinese ownership of the Spratlys (PRC was then a strong ally), going against the RVN claim, a position which was reiterated by the NVN Prime Minister in 1958[25].

Vietnamese activity in the Spratlys was non-existent for the next 15 years as all energies were focused on the civil war. In September 1973 RVN incorporated 11 islands into Phuoc Tuy Province and occupied five. In April 1975 Saigon surrendered and the re-unified Vietnam re-asserted sovereignty claims to the entire group, despite the earlier NVN support for PRC's claim, thereby greatly contributing to the deterioration of relations between the two countries[26]

The Vietnamese have continued to maintain precarious garrisons on up to 22 features in the Spratly group, supporting a claim to effective occupation of part of the Spratly archipelago since 1973.

Comment

The Vietnamese historic ownership claim appears weak as significant gaps in sovereign control are apparent before and during French occupation of Vietnam. France specifically stated that annexation of the Spratlys in 1933 was never ceded to Vietnam. North Vietnamese support for Chinese sovereignty claims against South Vietnam in 1956 and 1958 followed by a subsequent reversal of that position in 1975, further weaken the Vietnamese historic case. The cur-



Tidal Information and Chart Datum

Place	Height above datum of soundings					
	Average Heights				Heights at Springs near the Solstices	
	High Water		Low Water		High Water	Low Water
	Mean Higher	Mean Lower	Mean Lower	Mean Higher	Mean Higher	Mean Lower
North Danger South-West Cay	*4·8 feet*	*3·6 feet*	*2·1 feet*	*3·5 feet*	*5·7 feet*	*1·1 feet*

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rent government of Vietnam is a successor to the NVN government, not RVN, therefore effective concession to the Chinese in 1956 would appear binding.

Notwithstanding these deficiencies in its historic case, Vietnam has effectively occupied numerous Spratly islets and other insular features since 1973 and this may give more recent claims some validity.

The Philippines

The Philippines' claim to most of the Spratly Island group is based upon the "discovery" of several islands, then asserted to be "terra nullius", by a Filipino businessman and lawyer, Tomas Cloma. In 1947, he claimed to have discovered a group of unoccupied islands and in May 1956 he proclaimed a new state called "Kalayaan" (Freedomland), declaring himself to be the Chairman of the Supreme Council of the Kalayaan State. This declaration revived international interest in the Spratlys, invoked numerous diplomatic protests and incited ship visits to the area by several navies. Cloma established small settlements on a number of islets but only remained for a few months. The Philippine government did not fully support Cloma's claim officially, remaining vague and noncommittal. An assertion was offered that the Kalayaan State and the Seven-Island group, known internationally as the Spratlys, were separate. The Philippine government argued that Kalayaan territory was considered "terra nullius" after the 1951 San Francisco Peace Treaty, which left the Seven-Island group-Spratly Islands de facto under the trusteeship of the Allied Powers[27].

In 1955, the Philippines declared straight baselines around the Philippine archipelago but made no mention of the Kalayaan State. ROC artillery fired upon a Filipino fishing vessel from Itu Aba Island in 1971 which generated a Philippine government protest, the legal grounds of which included:

a. The Philippines had legal title to the island group as a consequence of Cloma's occupation;
b. the Chinese had occupied some islands, which were de facto under trusteeship of the World War II Allied Powers, a fact that precluded the garrisoning of the islands without the Allies' consent; and
c. the Spratly group was within the archipelagic territory claimed by the Philippines.

In 1974, Clona transferred ownership of Kalayaan to the Republic of the Philippines[28]. In June 1978 President Marcos decreed that the Kalayaan Island Group was part of Philippine sovereign territory and a distinct and separate municipality of the province of Palawan. A 200 nautical mile EEZ, extending from the territorial sea baselines, was also declared[29].

The Philippines claim persists and some drilling activity has been conducted in the region with limited results. Eight Spratly Islands are occupied by Filipino personnel.

Comment

The Philippines claim has little credence in international law where the independent activities of individuals is given little value. There is a distinct and deep trough between the Philippine Archipelago and the Spratlys so a 200 nautical mile continental shelf claim could be sustained under Article 76 of the 1982 LOS Convention but not a 350 nautical mile claim. Such a claim would include part of the east Spratly area but would fall well short of the current claim. The Philippines does not assert an historic connection and the assertion that the islands had been abandoned is subject to dispute by Vietnam, PRC and Taiwan. One observer has described the Philippine action as "creeping annexation"[30].

Malaysia

Malaysia claims the southern part of the Spratlys. The Malaysian claim is based upon geography and uses the provisions of the 1982 LOS Convention on the continental shelf as justification. Malaysia promulgated a continental shelf act in 1966 which closely follows the provisions of the 1958 Geneva Convention on the Continental Shelf. The Malaysian's claim to the southern Spratlys coincided with the issuing of the Malaysian Map 1979, uhich defines the Malaysian continental shelf area. Malaysia has declared sovereign jurisdiction over all islands and atolls on the prescribed continental shelf on the theory that the Geneva Convention of 1958 on territorial waters and continental shelf boundaries, and the 1982 LOS Convention, support such an assertion[31]. Malaysia proclaimed an EEZ Act in 1984 but has not yet published an official map showing the co-ordinates of these delimitations nor have baselines yet been published[32].

The Malaysians have employed an inverse application of the continental shelf (1982 LOS Convention, Article 76) provisions, which apply to "...the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise...". There is no reference to, or provision for, islands, rocks or other obstacles on the continental shelf that rise *above* sea level. Malaysia has asserted that ownership of the continental shelf extends to the off-lying obstacles thereon and have claimed a 12 nautical mile territorial sea around Swallow Reef and Amboyna Cay. These features have been classified by Malaysia as islands under Article 121.1 of the 1982 LOS Convention.

Malaysia has garrisoned troops on three insular features in the southern Spratlys since 1983-86 in order to reinforce claims of effective sovereign control and is reported to have established a holiday resort on one islet. Paradoxically, the coastal state is not required to display any specific form of control over the continental shelf in order to meet the ownership provisions of Article 77 of the 1982 LOS Convention[33].

Malaysia and the Philippines have held frequent bilateral talks since 1988 in an attempt to find a solution to their overlapping claims to the Spratlys, but to no avail[34]. Malaysia has not been involved in negotiations with the other claimants, except for as yet unproductive negotiations with Brunei, over delimitations of respective continental shelf boundaries.

Comment

The Malaysian claims make the greatest reference to contemporary law of the sea concepts. While exhibiting broad compliance with several key provisions on the continental shelf and EEZ, the Malaysian claims also exhibit misuse of the 1982 LOS Convention provisions in defining sovereignty control over features on the continental shelf that rise above sea level. Malaysia's claim to sovereignty has no historical basis except recent "effective control" of three insular features, and must therefore be viewed on their merits in competition with other similar claims.

Brunei Darussalam

Brunei is a small, oil rich state that is already reaping great benefit from hydrocarbon deposits discovered close to its narrow coast. Brunei claims Louisa Reef, which is well south of the main Spratly group, and is counter-claimed by Malaysia only. Brunei's claim is based upon delimitation of its continental shelf first established by Britain in 1954. The area claimed terminates at the 100 fathom line. In 1980, Britain issued a note to Malaysia proposing discussions on the seaward delineation of their adjacent maritime boundaries. After Brunei's independence in 1984, Malaysian and Brunei negotiations continued but the issue of the ownership of Louisa Reef remains unresolved, as the claims are incompatible. In 1988 Brunei issued a map displaying a continental shelf claim that extends beyond Rifleman Bank. The basis for this claim is not fully understood, but would appear to be based upon a 350 nautical mile continental shelf interpretation. Should this be the case this claim would exceed the stipulations of Article 76 of the 1982 LOS Convention, as the East Palauan Trough terminates the natural prolongation of the continental shelf 60 to 100 miles off Brunei.

Comment

The Brunei claims are similar to Malaysia's and derive from its interpretation of the 1982 LOS Convention. There are no attending island or territorial sea claims so the whole basis is the continental shelf provisions (Articles 76 and 77). Brunei has indicated its readiness to invoke Article 83, which enjoins parties to refer to the International Court of Justice for a ruling if bilateral negotiations are unsuccessful. Unfortunately, the multilateral nature of the Spratlys dispute would render a bilateral solution to be of limited relevance.

RELEVANCE AND UTILITY OF THE LAW OF THE SEA

The major issue to be resolved in the Spratlys dispute is that of sovereignty over the various islands, islets and cays of the archipelago. The 1982 LOS Convention is of little assistance, as it begins with an unstated premise that sovereignty of land territory is established prior to consideration of maritime issues. Application of the relevant Articles in the Convention, and possible involvement of the United Nations (UN) mediatory agencies established to assist in resolution of these disputes, can really only be of use once the sovereignty issues are resolved. Despite this underlying tenet, each of the protagonists makes some reference to the law of the sea in an effort to reinforce and justify its sovereignty claims. Observations on the apparent strengths and weaknesses of the respective sovereignty claims, followed by consideration of those provisions of the 1982 LOS Convention that are currently being utilised by the protagonists, or that could have relevance in future negotiations, are provided below.

Sovereignty and Law of the Sea Issues

The historic sovereignty claims of PRC, Taiwan and Vietnam can generally be summarised as incomplete, intermittent and unconvincing. None of the claims support a concept of "effective control, administration and governance" of sovereign territory. Permanent occupation by citizens of any state was notably lacking and administration consisted primarily of lodging occasional diplomatic protests if another nation's dalliance in the Spratlys was deemed to be too long. In reality, "transitory presence" by passing mariners and itinerant fishermen formed the bulk of the historic "occupation" of the Spratlys. Indeed, the uninviting geography of these insignificant insular features encouraged little else, until the prospect of hydrocarbons became apparent.

The first effective control of the Spratlys ocuurred in moderntimes with the Japanese invasion and occupation in 1939. Garrisons were established on some islands and regular naval patrols were conducted. The 1951 San Francisco Peace Treaty and the 1952 Japan-Taiwan Treaty offered ideal opportunities to allocate sovereign ownership in a contemporary international law sense. However, few Asian powers uere represented and therefore had little influence on the drafting of the San Francisco Treaty. The Western powers had no interest in solving Spratlys ownership — they had far bigger and more pressing issues to deal with. Japanese claims, and any prior French claims (and related Vietnamese claims that purportedly followed from the French colonial period) effectively lapsed.

Taiwan appears to have effectively controlled and administered Itu Aba islet betueen 1946-50 and from 1956 onward. This control did not extend to other features of the Spratlys and occupation by other states proceeded unchallenged by Taiwan. Island status for Itu Aba is consistent with Article 1-1 of the 1982 LOS Convention (Regime of Islands), in that it is "naturally formed" and "above water at high tide". It is unlikely that the islet could "sustain human habitation or economic life of (its) own" and therefore, while it would generate a territorial sea and a contiguous zone, the application of an EEZ or a continental shelf is less certain.

Despite many years of asserting an ancient and unalienable right to the Spratlys, including territorial claims of legal sovereignty in declarations issued in 1958 and 1992, and many decades of diplomatic protests of the activities of other states in the area, PRC appears not to have effectively controlled any part of the Spratlys until 1988. PRC occupation and control of several insular features has been continuous since then. However, photographs of PLA-N troops standing thigh deep in water, guarding some of the claimed territory, bring to question Article 13 of the 1982 LOS Convention on low-tide elevations, and Article 121 on islands. Suoh features do not qualify as islands nor are they "low-tide elevations" within the meaning of the Convention. To qualify, they must be "at a distance not exceeding the breadth of the territorial sea from the mainland or an island". (The nearest PRC island (Hainan) is 900 miles away.) The PRC case appears to be legally weak but cannot be ignored because of China's great power status, combined with a recent, persistent physical presence in the Spratlys.

Vietnam has effectively controlled many insular features in the Spratlys since 1973. The Vietnamese claim is weakened, however, by lack of support from the French and inconsistent policy stances on PRC claims by North Vietnam before and after the Vietnam War. Vietnam may have a legitimate continental shelf claim to the western part of the Spratly area. The continental shelf extending south and east from the Mekong delta area is relatively shallow and appears to be a "natural prolongation" of the land territory, as prescribed in Article 76.1 of the 1982 LOS Convention. Indeed, the sedimentary deposits that formed this area stemmed from the Mekong River outflow and another great river that was submerged about 10,000 years ago[35]. A continental shelf claim that extends to 350 nautical miles could be justified (Article 76.5). Reference to a Vietnamese continental shelf claim was not found in research for this paper, although the grounds would appear to be at least as strong as the Malaysian claim.

The Philippines has effectively controlled some Spratly insular features since 1978, when the Kalayaan State was declared sovereign territory and troops uere positioned. Article 48 of the Convention permits an archipelagic state, such as the Philippines, to extend an EEZ and a continental shelf from the arehipelagic baselines. A Philippine continental shelf claim could not be legitimately extended beyond 200 nautical miles as the East Palawan Trough breaks the natural continental shelf 60 to 100 miles off Palawan Island (Article 76.1). The Philippines has not yet advanced such a claim, which could help legitimise access to the seabed and subsoil in the eastern Spratly area. This option would appear to be more plausible, internationally acceptable and negotiable than the current position based upon the Cloma "discovery". Malaysia's effective control of one insular feature commenced in 1983, followed by two others in 1986[36]. Only one of these features, Swallow Reef, is also claimed as an island. The other two features are defined as low-tide elevations, beyond the territorial sea of the mainland and therefore cannot form the basis for an extension of the territorial sea (Article 13). While Swallow Reef may satisfy the Regime of Islands (Article 121), the ability to "sustain human habitation or economic life of (its) own" is doubtful. Malaysia does not claim an extension of the continental shelf or EEZ based on this feature.

Amboyna Cay, the other feature for which Malaysia claims a 12 nautical mile territorial sea, raises effective control questions. A Vietnamese garrison was reputed to have been established on Amboyna Cay several years before announcement of the Malaysian claim and remains to the present. The legal efficacy of the Malaysian assertion must be jeopardised by this prolonged occupation by another state.

Malaysia's continental shelf claim would appear to have partial legitimacy in international law. The claim extends 200 nautical miles from the coast of Sabah, taking account of the East Palawan Trough, in compliance with Article 76.1 of the 1982 LOS Convention. East Palawan Trough shoals and ends north-west

of the Brunei/Sarawak border. The seabed is then relatively flat and shallow and could be adjudged a "natural prolongation" of Sarawak. A 350 nautical mile continental shelf claim could be advanced by Malaysia (Article 76.5), delineated by straight lines, as prescribed in Articles 76.4 and 76.7.

Malaysia's reverse sovereignty claim over features rising above sea level from the continental shelf is not sustainable on the basis of the law of the sea. Such a provision does not appear in the 1982 LOS Convention and it is most unlikely that the drafters intended or envisaged such an inverse and incongruous interpretation.

Brunei's claim to the Louisa Reef area would appear to be consistent with the provisions of Article 76.1 of the 1982 LOS Convention, subject to satisfactory resolution of a delimitation agreement with Malaysia, as prescribed by Article 83. While Louisa Reef is within 200 nautical miles of its coast, Brunei recently laid claim beyond Rifleman Bank, which lies approximately 250 miles off the shore. A 350 nautical mile continental shelf claim would appear excessive as the natural prolongation of the continental shelf is broken by the East Palawan Trough, 60 to 100 miles off the coast.

Semi-Enclosed Sea

Definition of the South China Sea as a semi-enclosed sea under Article 122 of the 1982 LOS Convention has been mooted as a possible avenue for resolution of the conflict. The northern and southern extremities of the South China Sea are "connected to another sea or ocean (the Pacific and Indian Oceans) by a narrow outlet (Malacca, Sunda Straits and straits between Taiwan, PRC and Philippines)", is "surrounded by two or more States", and will ultimately "consist primarily of the territorial seas and EEZs of two or more coastal states". Article 123 urges bordering States to co-operate in the "co-ordination" of resource management, environmental preservation and scientific research. It is by no means convincing that the geography of the South China Sea meets the criteria for a semi-enclosed sea. The northern approaches do not easily fit the description of "narrow outlets. A semi-enclosed sea definition could, however, conceivably provide the catalyst to promote co-operation and co-ordination of the management of resources in the South China Sea. China has already hinted at putting aside the sovereignty issue to allow the mutually beneficial development and exploitation of resources. Exactly how a six state, semi-enclosed sea management organisation would function effectively and fairly is difficult to conceptualise, but so is resolution of the current impasse, short of armed conflict. Such a concept may, of course, impact upon the freedom of the seas of other states, which would require close examination. The current territorial claim situation is exceptionally complex and appears insoluble. Declaration of the South China Sea as a semi-enclosed sea could further cloud the situation and would require very careful investigation and consultation before serious consideration. A semi-enclosed sea or similar resource co-ordinating regime not entirely dependent upon resolution of sovereign control may, however, offer a means of developing and managing a workable compromise.

Settlement of Disputes

Article 279 of the 1982 LOS Convention follows the Charter of the United Nations in urging States Parties to settle disputes by peaceful means. Part XV of the Convention provides guidance and offers a number of forums to settle disputes on the law of the sea. Article 298 specifies optional exceptions to "Compulsory and Binding Decisions" over interpretation of Convention provisions. Parties can "declare in writing' that they do not accept rulings on disputes involving delimitations of EEZs (Article 74) and continental shelves (Article 83), where the dispute involves"concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory (which) shall be excluded from such submissions". This Article effectively rules out the jurisdiction of Convention instrumentalities in the Spratlys dispute, until territorial claims are resolved or put aside.

Inconclusive bilateral and multilateral discussions have occurred in recent years between several of the protagonists. While commonly coveted territory is at issue, there is little common ground in the legal sense.

CONCLUSION

The Spratly Islands dispute is complex and has the potential to degenerate into armed conflict. The stakes are high due to strategic location and potentially rich hydrocarbon deposits. There is little commonalty among the six claimants' positions and a mutually-acceptable basis for compromise is difficult to identify. Sovereign territorial issues require resolutions which are beyond the scope of the law of the sea. Some aspects of the 1982 LOS Convention are relevant and are called upon variously by the protagonists to support arguments for territory. Overall, the Spratly Islands situation highlights the limitations of the law of the sea and international law in general to provide a mechanism and framework for resolving the dispute. Since 1988, PRC appears to be proceeding cautiously in the South China Sea so as not to further alarm its small but economically significant South-East Asian neighbours. Patience and conciliation are being urged without tangible evidence of the willingness to compromise. The players are far from

finding a common playing field or an agreed game, which must first be achieved, before interpretation of the rules can be considered.

THE SPRATLY ISLANDS — A RECENT CHRONOLOGY

1887 Treaty between China and France setting Tonkin Gulf boundary on meridian 108 degrees 03'E longitude.
1933 French announce occupation of nine Spratly islands.
1939 Japanese invade the South China Sea islands & build naval base on Itu Aba.
1946 ROC forces temporarily occupy Itu Aba.
1947 ROC government announces claim to South China Sea Islands including Spratlys.
1950 ROC forces withdraw to Taiwan.
1951 San Francisco Peace Conference. Japan renounces claims to South China Sea islands; neither China nor Taiwan in attendance; Vietnam announces claim; China reaffirms claim.
1952 Bilateral peace treaty between Taiwan and Japan.
1956 Tomas Cloma of the Philippines claims Kalayaan for private colonization scheme.
1956 Vietnam reasserts claim to Spratly Islands.
1956 Philippines declares Spratlys area terra nullius, subject to exploitation by any party.
1956 ROC forces reoccupy Itu Aba.
1958 Chinese territorial sea law names Nansha (Spratly) Islands.
1968 Philippines occupies three Spratly islands.
1973 South Vietnam occupies five Spratly islands .
1974 Philippines makes formal claim to Kalayaan—Spratlys).
1975 Hanoi takes over Spratlys islands occupied by South Vietnam.
1978 Philippines presidential decree annexes Kalayaan to Palawan Province.
1978 Philippines occupies another Spratlys island.
1978 United Vietnam issues first of many reaffirmations of claim to Spratly Islands.
1979 Malaysia issues continental shelf declaration, claiming islands incorporated in it.
1980-89 Philippines occupies four more Spratlys islands.
1983 Malaysia garrisons one Spratlys island.
1986 Malaysia occupies two more Spratlys islands.
1987 China conducts naval exercises in the Spratlys.
1988 China occupies Fiery Cross Reef and five more Spratlys islands.
1988 Vietnam occupies fifteen more Spratlys islands.
1988 Chinese and Vietnamese forces clash near Chigua Reef.
1989 Vietnam builds platforms over Rifleman (Bombay Castle), Vanguard, and Prince of Wales Banks.
1990 Indonesia hosts Bali workshop on Spratly Islands conflict management.
1991 Indonesia hosts Bandung workshop on Spratly Islands conflict management.
1991 Malaysia announces tourism and airfield development for Swallow Reef.
1992 Philippines announces naval and air build up of its eight occupied Spratlys islands.
1992 New Chinese territorial sea law names South China Sea islands again.

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[4] "ROC has sovereignty over Spratlys", *The Free China Journal* 17 November 1992, p7.

[5] Ibid.

[6] Haller-Trost, op cit, p37.

[7] Hungdah Chiu and Choon-Ho Park, Legal Status of the Paracel and Spratly Islands", *Ocean Development and International Law Journal*, Volume 3, Number 1, 1975, Crane, Russak & Company, Inc, New York, pp 1011 .

[8] Haller-Trost, op cit, p39.

[9] Hungdah Chiu and Choon-Ho Park, op cit, pll.

[10] ibid, ppl2-14.

[11] ibid, pl4

[12] ibid, pl5.

[13] "South China Sea: Treacherous Shoals", *Far Eastern Economic Review* 13 August 1992, pl5.

[14] Order of the President of the People's Republic of China No. 55, *Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone*, First Edition 1992, 25 February, 1992.

[15] Rizal Sukma, "South China Sea Conflict: A Challenge to Indonesia's Active Foreign Policy", *The Indonesian Quarterly* Volume XIX/4, 1991, p303.

[16] Foreign Broadcast Information Service (FBIS), Daily Report, China 3 December 1992, FBIS-CHI-92-233, pp8-9, PRC Premier Li Peng press conference in Hanoi.

[17] FBIS, Daily Report, China, op cit. Quote is from Li Peng

[18] Foreign Broadcast Information Service (FBIS), Daily Report, China 7 December 1992, FBIS-CHI-92-235, p7, Item 4 of Sino-Vietnamese Joint Communique in Hanoi 4 December 1992.

[19] Rizal Sukma, op cit, p307; Dato' Haji Mohammad Ali bin Alwi, op cit, pl4.

[20] Haller-Trost, op cit, p41.

[21] See note 9.

[22] Haller-Trost, op cit, p49.

[23] Hungdah Chiu and Choon-Ho Park, op cit, p9.

[24] Haller-Trost, op cit, p51.

[25] ibid, p57.

[26] ibid, pp50-51.

[27] ibid, p54.

[28] ibid, pp57-58.

[29] ibid, p62.

[30] ibid, p65.

[31] ibid, p64.

[32] United Nations, 1982 LOS Convention, op cit, Article 76. Article 77.3 specifies that "The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation."

[33] Dato' Haji Mohammad Ali bin Alwi, op cit, pl8.

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THE CLASSICAL MARITIME STRATEGISTS— a discussion paper on their utility today

by

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Naval Strategy is a product of the intellectual and political concerns of its time. The use of sea power needs to be anchored in contemporary realities (and . . . cannot be based on enduring, timeless principles.

Until the first stages of the 19th century, naval writers functioned primarily as chroniclers rather than strategists, with a focus on narrative rather more than on analysis. Only with the emergence of theorists such as Colomb, Clarke and Thursfield, Mahan and Corbett was any analysis concentrated on theoretical blueprints for the use of maritime power in the future. Their works, and the works of contemporaries such as the Jeune Ecole, are deemed 'classical' because they were the first attempts to define principles for the way in which future maritime power should be exercised.

What concerns the modern strategist is whether theories formulated in a previous era and under much different geopolitical and technological conditions contribute a genuine paradigm for the employment of maritime power in our own age. Expressions of classical strategy can only be relevant for the future if they contain enduring principles, as indeed the strategists set out to achieve. Do the classical maritime strategies contain such principles, or can the survival of the works of Mahan, Corbett et al be attributed to other factors? This discussion paper considers the relevance of principles of classical strategy for modern maritime power. Clearly, there is limited scope to review the individual theories in detail. Instead, the assumption is made that in most respects, the classical maritime strategists concur in substance and differ primarily at the margins. Accordingly, any conclusion on the utility of classical strategy will apply to the theorists collectively.

THE CLASSICAL STRATEGY AND PRINCIPLES

The issue of present-day utility of classical maritime principles poses an immediate problem - by what criterion should their utility be rated? One approach is to consider the degree to which the principles are universal and absolute. To derive such principles appears to have been the goals of Mahan and Colomb and it is tempting to rate them by the same standards that they set themselves. However, such an approach would be too inflexible and would disqualify elements of what originated from the Jeune Ecole and from Corbett, whose principles and strategies were inclined to be more conditional. Instead, the criterion for relevance is not whether the classical principles comprise a stand-alone model, but whether they are a set of relatively acceptable, generalisations that have been able to be successfully modified to accommodate subsequent events and developments, and whether they continue to form the basis of maritime strategy. In this respect, the advice of Corbett is pragmatic: '. . . nothing is so dangerous in the study of war as to permit maxims to become a substitute for judgement.'[1]

Before moving to any critical examination of the classical principles as guides for the future wielding of maritime power, it is necessary to outline the central maritime strategy per se. The strategy was based on a world view, shared by the classical theorists, that history could be interpreted (and subsequently shaped) in terms of dominance at sea. Since the function of sea power is to ensure that the nation can transport across the seas as it sees fit, the objective of a navy is to deny that opportunity to its enemy while retaining the right to do so oneself. The means to attain that right is the main fleet, which engages and destroys the enemy fleet in a decisive battle. Once the enemy fleet is destroyed, the navy can exploit its advantage by engaging in operations intended to bring pressure to bear on the land, such as troop transport and com-

merce blockades. Although there are some exceptions to this strategic plan, this is the classical strategy in essence, and it is familiar enough to most students. But what were the principles that under-pinned such a strategy?

Again, they are quite familiar. The classical theorists maintained that security of the sea was the key to survival and prosperity for a maritime power. The condition where security of the sea existed for one's own sea communications while being denied to the enemy was sea control. If it existed as a singular, absolute and permanent condition, it constituted command of the sea. Command of the sea was the primary function of navies and could be attained only through the decisive fleet on fleet battle. It required, therefore, the concentration of superior strength at the decisive point, and (so the principle held) was not achievable through defensive approaches such as the direct attack on commerce (la guerre de course) or coastal raiding. Pursuit of command of the sea, then, demanded the principle of concentration, disallowing any element of strategy that involved the dispersion of the fleet until such time as command of the sea was achieved. Consequently, discursive operations such as direct commerce raiding, amphibious landings and other forms of power projection from the sea were confined to the final stage of maritime strategy and did not feature prominently in the classical maritime model.

To facilitate maritime power required six general conditions outlined by Mahan. These were: geographical position, physical conformation, extent of territory, number of population, national character, and character and policy of governments.[2] To provide for the naval strategy as outlined required, in addition to these broad, universal elements, three additional principles. A nation needed sea-borne trade to justify the effort of gaining command of the sea in the first place. So integral was this principle to Mahan and Corbett that their definitions of sea power included the merchant marine alongside the navy itself. Mahan, for example, stated that, 'The necessity of a navy . . . springs, therefore, from the existence of peaceful shipping, and disappears with it . . . '[3] Since seaborne trade is so vital to ourselves, it seemed logical to Mahan that its continuance was also vital for the enemy. He added, 'If navies, as all agree, exist for the protection of commerce, it inevitably follows that in war they must aim at depriving their enemy of that great resource . . . '[4] Secondly, a nation required colonies to sustain trade and as a source of raw materials and manpower. Thirdly, a nation needed to possess the instruments of war, which involved the grand fleet, and bases that would allow the fleet to be concentrated to a degree that command of the sea demanded, and at the point where command of the sea was to be contested.

In most respects, the classical maritime model; its world view, strategies and principles, owed more to Mahan than to the other classical theorists. Corbett followed Mahan's strategy in substance but not to the letter. For Corbett, command of the sea was also a means to an end. However, the end was the preservation of lines of operation or lines of communication, possibly requiring a limited form of sea control that would not necessitate absolute command of the sea. From this, Corbett implied that the destruction of the enemy fleet might be neither a military nor political necessity,[5] although he added elsewhere, and somewhat inconsistently, that 'Whatever the nature of war . . . permanent and general command of the sea is the condition of ultimate success. The only way of securing such a command by naval means is to obtain a decision by battle against the enemy fleet. Sooner or later it must be done . . .'[6] Another point of departure from Mahan is that while Mahan viewed maritime power as the prime determinant of history, Corbett advanced the concept of joint operations of navy and army as a future and potentially decisive military factor.

The Jeune Ecole offered more than a change of emphasis; it offered a significant variation. Mahan's maritime strategy and derivatives of it might have been appropriate for an island nation possessing a superior fleet, but were less so for a continental nation with a second-ranked navy. For Britain, a strategy aimed at sea control through command of the sea may have been a necessity. But for continental nations, it was a luxury, not warranting the risks of a decisive battle and perhaps losing a fleet that was necessary for a continental style of warfare. The continental style of maritime strategy involved using the fleet for 'secondary' purposes; ie. sea denial through la guerre de course. This principle held that an effective strategy could aim to deny the enemy the use of the ocean while having no significant requirement to use it oneself.

VALIDITY OF CLASSICAL THEORIES

So what is the present-day relevance of the classical maritime school. As we might expect, classical strategy has been subjected to a range of challenges. One challenge has been to question the validity of the world view that maintains maritime power as the premise for national greatness. This world view may be a confusion of cause and effect; greatness, in some instances, might be the antecedent of acquiring sea power. In the event that they are correct, the theorists nevertheless transgress by presenting a cause for greatness as the cause. As Crowl points out, there were other factors in Britain's pre-eminence in the 17th and 18th centuries, as indeed there have been other factors in the rise of the United States, Germany and Ja-

pan in the 20th century. Another criticism of the theoretical methods by which classical strategy and its principles were derived has been the observation that the theories were deductive, with examples selectively chosen to support a preconceived hypothesis. The selective focus was the example of Britain's predominance as a power, which the theorists used to give credence to a general theory. In this respect, Crowl accuses Mahan, in particular, of 'over-simplification by omission'.[7]

Another difficulty with maritime power in the classical sense has been the central part in the theory of concentration and the decisive battle. To be fair, Corbett allowed for some balance between concentration and dispersal, but preferred enough balance to maintain a 'fleet in being' and not so much dispersal to allow for la guerre de course. The principle of concentrating the fleet, cardinal in classical maritime strategy, denied the efficacy of sea denial strategies that, arguably, have subsequently demonstrated their war-winning potential in two world wars. Concentration also revealed the relative impotence and poor economy of effort of a great fleet when the enemy fleet refuses to engage. Classical theorists allowed that a nation '. . . so unfortunate as to have an inferior fleet'[8] would shelter in port, but erred in lightly dismissing the effects of such a defensive use of a fleet on the maritime freedom of the greater sea power. The decisive battle concept itself appears erroneous, revealing further flaws in classical theory. The instruments of conducting the decisive battle have become vulnerable, largely through new technologies such as submarines, guided missiles, satellite navigation and aircraft. None of these have been accommodated by the general theory as the theorists had assumed new technologies would be. World War II buried the concept of the decisive engagement of two concentrated fleets, if indeed the concept was ever a reality. Jan Breemer makes a convincing case that there has never been a decisive battle in naval history, in the sense that no single battle has been able to change the course of history. The argument proceeds that individual battles are part of the flow of history but do not in themselves change its outcome.[9] There have been lame attempts recently to present the end of the Cold War and the retirement of the Soviet fleet to its bases as a decisive victory for the United States' fleet. It would be a de facto and notional victory at best; certainly not a vindication of classical maritime strategy. Finally, the redundancy of the concept of decisive fleet battle has been reinforced by medium and long-range weapons delivery systems, in theory providing naval forces the capacity to project power directly at the enemy decision-making centre, without the preliminaries of command of the sea (or sea control and sea denial for that matter) and without concentrated fleet action.

In the rhetoric of United States' forward maritime strategies of the 1980's were hints of a revival of classical theories - the 600 ship fleet, largely for conventional naval operations aimed at establishing maritime superiority over the Soviet Union, and the liberal use of terminology familiar to readers of the early theories were factors in the classical interpretation of these contemporary strategies. In reality, any re-emergence was a temporary phenomenon. The 600 ship fleet was not subsequently attained; nor was it an increase on former levels. Following the collapse of the Soviet Union, the United States white paper 'From the Sea' defined maritime principles in a more relative and limited sense, substituting the '. . . open ocean, big fleet, so-called "blue-water" operations'[10] focus of maritime strategy in the Mahanian sense in favour of a more regional and littorial maritime approach.

In general, latter military doctrine developments collectively challenge more than they support classical maritime theories. There has been little doctrinal support, for example, to indicate that maritime power is valued above land and air power as a war-time instrument of national power. Furthermore, doctrinal developments, particularly in the United States, have blurred the traditional distinctions between sea, land and air power, making unlikely the exercise of one environmental command in pursuit of a major war-time goal. Sea/land and sea/air doctrines now provide a flexible range of options for the employment of maritime power from the sea, in pursuit of limited as well as strategic aims. These options are not the preserve of the major powers and are available to medium powers and even to relatively minor states in possession of anti-ship cruise missiles, anti-ship mines and land-based maritime attack aircraft.[11] Classical maritime strategy was always reserved for those few, non-continental nations, close to trade routes, possessing colonies, and possessing large navies. It might be applicable, in part, for the total war of World War III, but is inappropriate for the '. . . wars of national liberation, civil wars, border wars, and wars of intervention carried out at high and low conflict levels . . .'[12] that characterise conflict in the late 20th century.

CONCLUSION

Classical maritime strategy has been largely superseded, and all that remains from the classical theorists that is of use to proponents of maritime power in our age are a few, very broad fundamentals. Seaborne trade remains the lifeblood of nations, and naval forces and overseas bases are required to ensure communication lines remain intact. Also intact are the six factors of maritime power. It is not much to offer; useful in the most general sense, but unhelpful for the complex art of modern maritime power and the complex geo-political context in which it operates. Yet the classical theorists have had a significant influence on 20th

century naval development. Their pre-occupation with absolute command of the sea through the battle royale contributed for half a century to an unfortunate focus on the logic of the battle, at the expense of the logic of war-winning strategy. In effect, the complex and technical business of maritime strategy was reduced to a single and dominant factor, to the detriment of other less offensive methods for the dispute of command. As a comment on the impact of the classical theorists, Gough makes an astute observation of Mahan, as the embodiment of classical strategy, when he notes that his '. . . influence was profound but not convincing.'[13]

The legacy of the classical maritime strategists has continued out of respect for their part in our intellectual tradition and because they were successful propagandists. They were the 'pens behind the fleet'. They delivered what naval commanders, often hard pressed to justify their budgets under the fiscal strains of capital ship building and with the competing claims of air forces, have wanted to hear. And they have provided a comforting frame of reference when things have gone wrong.

In the wake of Vietnam, voices within the service called for a return to the neglected philosophies and theories of conventional war. Vice Admiral Stansfield Turner, President of the Naval War College, said in 1972, 'This year's shift of emphasis toward a deeper study in strategy . . . represents a return to our great tradition - to the strategic and historical contribution of men like Mahan . . .'[14]

[1] Allen, M. 'The Changing Nature of Modern Strategy', *The Naval Review* Vol 81, No. 3, July 1993. p. 235

[2] Both Mahan and Colomb viewed the world as deterministic. Mahan, for example, assumed the existence of 'permanent facts and factors (whose identification would reveal certain and definite) relations subsisting between them.' Quoted in Livezey, W.E. Mahan on Sea Power (University of Oklahoma Press, Norman, 1947) p. 31. According to Mahan, a principle was an expression of such a relationship and that '. . . however various its application, as conditions change (it) remains a standard to which actions must conform . . . ' Quoted by Sokol, A. Sea Power in the Nuclear Age (Public Affairs Press, Washington, 1961) p. 211.

[3] Cited by Robertson, CDRE J.A. 'Maritime Strategy in History', *Royal Australian Historical Society Journal*. Vol 70, Part 1, June 1984. p. 34.

[4] Crowl, P.A. 'Alfred Thayer Mahan: The Naval Historian', *Makers of Modern Strategy from Machiavelli to the Nuclear Age*. Edited P. Paret, (Clarendon Press, Oxford, 1986). p. 463.

[5] Mahan, A.T. *The Influence of Sea Power Upon History, 1660-1783* (Little, Brown & Co, Boston, 1890) p. 26.

[6] Mahan, A.T. *The Interest of America in Sea Power, Present and Future* (Little, Brown & Co, Boston, 1898) p. 128.

[7] Corbett, Sir J.S. *Some Principles of Maritime Strategy* (Longmans, Green & Co, London, 1911). p. 169.

[8] See Gough, B.M. 'Maritime Strategy: The Legacies of Mahan and Corbett as Philosophers of Sea Power', *RUSI Journal*, Winter 1988, p. 59.

[9] Breemer, J.S. *The Burden of Trafalgar: Decisive Battle and Naval Strategic Expectations on the Eve of the First World War* Newport Paper # 6. Naval War College, October 1993, p. 14.

[10] Crowl, op.cit., p. 454.

[11] ibid., p. 452.

[12] Sprout, M.T. 'Mahan: Evangelist of Sea Power', Makers of Modern Strategy. Edited E. Earle, (Princeton University Press, Princeton, 1961). p. 434.

[13] Breemer, op.cit. Bremmer's case rests on the assumption that although naval battles may have settled events for the moment (tactically), they are not decisive because they have not changed the course of history. Trafalgar, for example, was not decisive because Napoleon reached the zenith of his power subsequently; that it did not end France's naval ambitions; and that it did not save England from an invasion that was most unlikely to be attempted whatever the outcome of the battle. Of Midway, as another example, Breemer argues that it was not decisive; that a reversal of fortunes would not have produced a different end result.

[14] Canan, J. 'From the Sea' in Washington Watch, AIR FORCE Magazine, January 1993, p. 10.

[15] By 1992, 71 nations possessed anti-ship cruise missiles and 46 possessed naval mines. Linn, LT COL T. 'Naval Forces in the Post-Cold War Era', Strategic Review. Vol.XX, No. 4, Fall 1992. p. 19.

[16] Allen, S. 'The Elements of Seapower: Mahan Revisited'. Ocean Yearbook 7. Edited E. Borgese, N. Ginsberg and J. Morgan. (The University of Chicago Press, Chicago, 1988) pp. 329-330.

LEGAL AND HISTORICAL METHODOLOGIES: A NAVAL COMPARISON

by

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This article, by a practising barrister, contrasts the methodology employed by courts of law in resolving disputed questions of fact, with the methodology adopted by historians for the same purpose. As a case in point, the Author has adopted Tom Frame's recent book, HMAS Sydney: Loss and Controversy. The conclusion is that there is much for both lawyers and historians to learn from studying one another's methodologies.

The function of a court in the hearing and determination of an action involving disputed questions of fact is precisely that of a scholarly historian. The ultimate aim of each is to determine the true course and sequence of events which occurred at some time in the past, based on evidence which is usually incomplete, often unreliable, and sometimes contradictory. Neither the professional historian nor the professional jurist can aspire to achieving absolute certainty; the goal of both professions is an empirical assessment as to which possible construction of events is, on the available evidence, to be regarded as the most probable.

Various branches of the legal profession perform, more or less independently of one another, the functions for which an historian must generally take sole responsibility. Broadly speaking, it is the role of solicitors (sometimes with the assistance of loss adjusters, private detectives, and the like) to marshall the evidence available to establish or refute a particular allegation; it is the role of barristers to formulate and present arguments to justify or contradict conclusions which the evidence may be capable of supporting; and it is the role of the tribunal of fact to determine the matters in issue, having regard to the evidence which has been adduced and the arguments which have been addressed on the basis of that evidence. Although there may be no conscious differentiation between the three roles, a scholarly historian must discharge each of them.

In one respect, the jurist's job is perhaps more onerous: he or she, generally speaking, must make a decision one way or the other; by contrast, the historian is entitled to find that the evidence is inconclusive. As the distinguished English Judge, Sir Robert Megarry, was once driven to observe: "Judges must decide cases even if they are hesitant in their conclusions; and at the other extreme a judge may be very clear in his conclusions and yet on appeal be held to be wrong. No human being is infallible, and for none are there more public and authoritative explanations of their errors than for judges."

That distinction between the functions of jurists and historians is, however, more apparent than real. Judges, like historians, may - and frequently do - express doubts and reservations; but the nature of litigation requires that a conclusion be reached, even if it is one with which the judge does not feel entirely comfortable. As Australia's highest Court unanimously remarked in a recent case: "A common law court determines on the balance of probabilities whether an event has occurred. If the probability of the event having occurred is greater than it not having occurred, the occurrence of the event is treated as certain; if the probability of it having occurred is less than it not having occurred, it is treated as not having occurred."

It is seen, then, that lawyers and historians are involved in a similar exercise. To what extent are their methodologies comparable ?

THE ONUS OF PROOF

Frame observes that:"... [T]here is much similarity between the discipline of history and the practice of law. Both the historian and the lawyer are searching for the truth. They rely on material evidence, which must be independently tested, and statements from witnesses which need to be corroborated separately. When the evidence and the facts have been marshalled into some logical order, a case for or against a proposition or a charge can be made. Nothing is proved until the evidence is presented and argument is heard. The burden of proof remains with those making alle-

gations or proposing conclusions. It is invalid to base either a legal or an historical case on the premise that an allegation or a conclusion stands until it is refuted. In history as in the law, it is vital to have academic reticence, intellectual fairness and an abiding respect for the limitations of the available evidence."

The onus (or burden) of proof is a central concept in our legal system. But it is a concept which is much misunderstood by non-lawyers. It is convenient, therefore, to commence with some observations of a general character.

In our legal system, a distinction is drawn between the "onus" (or "burden") of proof and the "standard" of proof. The former concept is relevant to identify the party upon whom the law places the onus of establishing a particular factual conclusion. The latter concept is relevant to identifying the degree of evidentiary satisfaction which the law requires before that onus can be said to have been discharged. In general, there is a distinction between civil actions in which the standard is the "balance of probabilities", and criminal proceedings in which the standard is "beyond reasonable doubt".

The criminal standard is of no real relevance for present purposes, as it bears no comparison with any aspect of historiography. It is based on the proposition that the accused person in a criminal case, like a batsman in a cricket match, is entitled to "the benefit of the doubt"; or, in the more lofty (and perhaps less cynical) words of the House of Lords:

"Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt ... . If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, ... the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

In civil proceedings, the general rule is that expressed in the latin maxim, *Probandi necessitas incumbit illi qui agit* ("the onus of proof lies with the person who sues"). However, if the defendant in a civil action wishes to set up an affirmative ground of defence, the defendant bears the onus of proving the facts upon which that defence is based. So, in a simple action for negligence, the plaintiff must prove that the defendant acted negligently, resulting in the plaintiff suffering injury or damage; but if the defendant wishes to assert (for example) that the plaintiff was guilty of contributory negligence, or voluntarily assumed the risk inherent in a dangerous activity, the defendant bears the onus of proving the facts upon which that defence is based.

Where there is evidence which is capable of supporting either of two possible conclusions, the onus of proof is largely irrelevant; in that situation, the function of the tribunal of fact is to determine which of the possible conclusions is the more likely. It is theoretically possible, but in practice very uncommon, for the evidence to be so finely balanced that the court is unable to conclude that either hypothesis is more likely: in such a case, legal theory suggests that the issue must be determined against the party bearing the onus. But, in practice, the onus of proof is only relevant in civil cases where there is no evidence at all in relation to a particular issue, in which circumstance the issue must be determined against the party who bears the onus.

Whilst the onus, in civil cases, lies on the party making allegations or proposing conclusions, it does not always remain with that party. There is a variety of circumstances in which the so-called "evidentiary onus" shifts to another party during the course of a trial. One principal reason for that is the doctrine *res ipsa loquitur* ("the facts speak for themselves"). If one party establishes circumstances which, from their very nature and in the absence of an explanation, necessarily suggest a particular conclusion, the evidentiary burden falls on the opposing party to explain those circumstances. A very simple example is that of an action arising out of a head-on collision between two vehicles, in which the plaintiff bears the onus of proving that the defendant was negligent: if the circumstantial evidence shows that, after the collision, the plaintiff's vehicle was still on its correct side of the road, and the defendant's vehicle was on the incorrect side of the road, the burden transfers to the defendant to "explain away" circumstances which, if unexplained, would justify the conclusion that the defendant was negligent. Similarly, if (as frequently happens) only one party is in a position to call direct evidence of what occurred - such as in a motor collision case, where the driver of one vehicle died in the collision - the version of events given by the surviving witness will normally be accepted, unless it is shown to be inherently improbable or unreliable.

Whilst the standard of proof in civil proceedings is the "balance of probabilities", it is well-settled in English and Australian jurisprudence that the degree of evidence necessary to establish a proposition depends upon the seriousness of the proposition being advanced. Judges in England have recognised that, the more serious the allegation which is made, "the higher the degree of probability that is required", or

"the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it"[2]. The High Court of Australia has expressed the same principle in these terms[3]:

"The 'clarity' of the proof required, where so serious a matter as fraud is to be found, is an acknowledgment that the degree of satisfaction for which the civil standard of proof calls may vary according to the gravity of the fact to be proved ... ."

Frame's propositions that "The burden of proof remains with those making allegations or proposing conclusions", and that "It is invalid to base either a legal or an historical case on the premise that an allegation or a conclusion stands until it is refuted" are undoubtedly correct, both as propositions of law and of logic. This may be illustrated by the issues canvassed in H*MAS Sydney: Loss & Controversy*.

The conventional view of the circumstances in which HMAS *Sydney* was sunk is that expressed, albeit briefly, in Gill's Official History[4]. As against that, there are the "revisionist" views expressed by Montgomery[5], and the members of the *soi dissant* "*Sydney* Research Group"[6].

It would be exceedingly churlish to suggest that a particular version of history is deserving of some special status, merely because it has the *imprimatur* of being an "official" version. The fatuity of such an approach is obvious, when one considers the worth of "official" histories published by the propagandists of totalitarian regimes. Undoubtedly, the appropriate way to treat "official" histories is that adopted by Frame; namely to accord to such histories the value to which they are objectively entitled, having regard to the competence and integrity of the "official" historian. On that basis Gill is entitled to no greater nor less respect than any other historian of recognised competence and integrity.

On the other hand, there is much to be said for the view that an onus of proof rests on those who seek to challenge a conventional view of history. That may sound very conservative, if not reactionary. But it is not meant to imply that a conventional view is entitled to be accorded special weight, merely because it is the conventional view. Given that standards of historiography and the facilities available for historical research improve from generation to generation - and given also that, with the passing of time, the conscious or unconscious influence of emotion and bias is likely to subside, allowing historians to view the same events more objectively and dispassionately - prejudice in favour of a conventional view of a particular event would operate as an entirely undesirable sheet-anchor against proper and scholarly revision of past historical writings. Nonetheless, if one starts with the premise that a conventional view of history must be based on some evidence, however slight, there is clearly an onus on those who seek to challenge that conventional view to adduce contrary evidence, before they are entitled to claim that the conventional view is wrong. As previously discussed, once there are two bodies of evidence suggesting conflicting conclusions, the function of the historian, acting as a tribunal of fact, is to determine which body of evidence is more probable. But until such a conflict emerges, the conventional view is entitled to hold sway.

In the case of HMAS Sydn*ey*, there is only one body of eye-witness evidence as to what occurred, namely the evidence of Captain Detmers and the crew of HSK *Kormoran*. It is that body of evidence upon which the conventional version of history is based. Opponents of the conventional view plainly bear the onus of adducing evidence which objectively out-weighs the eye-witness accounts.

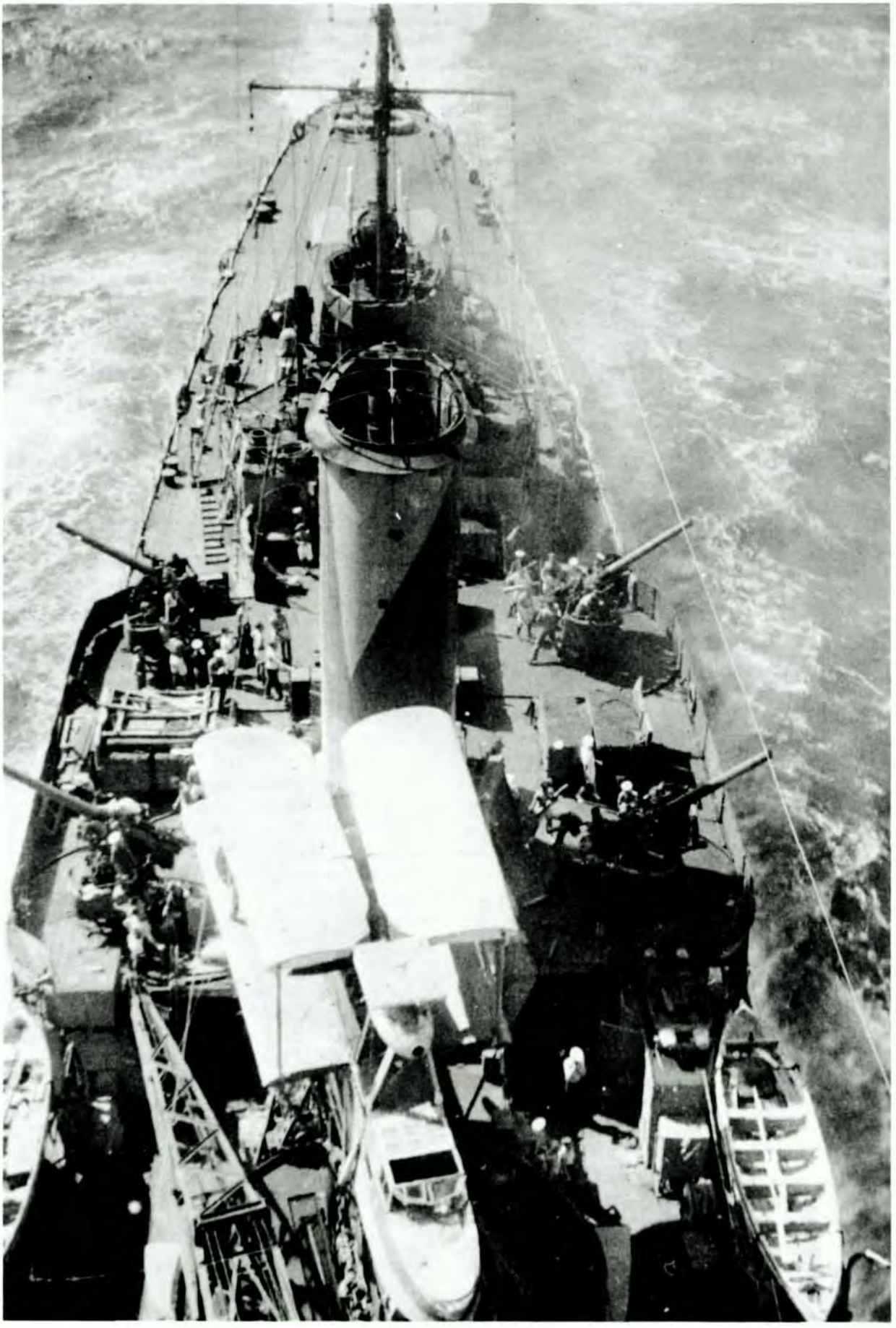
ASSESSING CREDIBILITY

Jurists have one distinct advantage over historians: generally speaking, a court of law has the opportunity to see and hear the sworn oral testimony of the material witnesses. This has a number of benefits.

In the first instance, it is arguably possible to assess the credibility of a witness based upon his or her appearance or demeanour in giving evidence. Traditionally, our legal system accords significant weight to the benefit of observing witnesses whilst they give evidence. This is one of the principal reasons often cited by appellate courts, for declining to interfere with findings of fact made by a trial judge. The traditional view, which has frequently been re-stated by the highest appellate courts both in England and in Australia, is that:

"... [N]ot to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the higher Court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case."

The view that a trial Judge enjoys an especial advantage from seeing and hearing witnesses first-hand is not, however, one which attracts universal acceptance. President of the New South Wales Court of Appeal, Justice Michael Kirby, has remarked that: "Lord Atkin, then in the English Court of Appeal, quite frequently



A rare crow's nest view of the aft section of the ill fated light cruiser HMAS SYDNEY in her camouflague livery. Photo courtesy of Vic Jeffery, Navy Public Affairs Officer WA

expressed his doubts about the capacity of 'the lynx-eyed Judge who can discern the truth-teller from the liar by looking at him'. He declared that such a person was 'more often found in fiction or in appellate judgments than on the Bench'."

Again, witnesses who are called to give evidence in a court of law must do so either on oath or under solemn affirmation. In contemporary society, one may feel reservations as to the extent to which a witness who is inclined to dissimulation might be deterred from that course by the fear of divine retribution. But there is also the fear of temporal retribution, in the form of punishment for perjury. Although prosecutions for perjury are rare, and successful prosecutions even rarer, the risk of imprisonment constitutes at least some incentive for truthfulness.

The dignity and solemnity of proceedings in a court of law - including the much deprecated practice of wearing wigs and gowns - may succeed in impressing upon a witness the importance of giving careful and accurate testimony. Whilst this affords little protection against deliberate untruthfulness, it may well curb a witness's tendency to extemporisation and exaggeration.

Perhaps most importantly, witnesses called to give evidence in a court of law are subject to the rigours of cross-examination. Even the most competent and astute barrister cannot, by subtle interrogation or verbal bludgeoning, force a recalcitrant perjurer to tell the truth; but effective cross-examination not infrequently unmasks the weaknesses and inconsistencies in testimony which is superficially reliable.

Recognising, therefore, that historians are at a disadvantage - as compared with courts of law - in reaching conclusions based on conflicting evidence, there remains a number of techniques applied by courts in resolving factual controversies, which are equally applicable to an historical methodology.

In very broad terms, evidence - whether oral or documentary - may give a false or distorted picture of events, for any one of five reasons:

First, the witness may be deliberately concealing or obfuscating the truth. Generally, although not invariably, this occurs where the witness has an interest in giving a false account.

- Secondly, without actual deliberation, a witness may be prone to extemporisation or exaggeration. As previously mentioned, the dignity and solemnity of a court-room is calculated to curb such tendencies; but historians do not generally have that protection.
- Thirdly, a witness's observation of material events may be confused or distorted. The possible reasons for that are diverse: momentary inattention or preoccupation with another matter may prevent a witness from observing an incident of critical significance; darkness, or physical obstructions, may inhibit a witness's view of relevant matters; or a traumatic event which occurs suddenly and without warning may give rise to genuine confusion.
- Fourthly, there are genuine errors of memory. The human mind has a remarkable capacity for self-delusion; and when a person's memory begins to fail, the subconscious starts to fill the gaps. Often, events tend to become reconstructed in a person's mind in a way which is favourable to that person, so that an innocent delusion is often difficult to distinguish from a deliberate falsehood. The major difference is that, unless the witness is a compulsive liar, it is much harder to shake an innocent delusion than a deliberate falsehood.
- Fifthly, there is the inevitable risk of ambiguity in interpreting the account of an eye-witness. This is not such a problem in legal proceedings, where ambiguities are generally resolved by cross-examination. But a written account by an eye-witness who is no longer available for interrogation may be, and often is, open to misconstruction.

What, then, are the processes by which courts tend to distinguish between reliable and unreliable testimony? The following catalogue of methods is intended to be indicative rather than exhaustive, and is not itemised in any particular order.

Particular weight is generally accorded to statements (oral or written) which are made contemporaneously with the events in issue. This applies, in particular, to contemporaneous documentary records. Thus, in relation to contractual agreements, courts will not ordinarily receive oral testimony "to contradict, vary, add to or subtract from the terms of a valid written instrument". Even where that rule does not apply strictly, the testimony of a witness will be regarded with considerable circumspection if it conflicts with contemporaneous documents. The same is true - although, in practice, it occurs with less frequency - where a witness's evidence conflicts with an oral statement or expostulation made "in the heat of the moment".

Plainly, where two witnesses give conflicting evidence regarding the same matter, the evidence of an independent or impartial witness is entitled to added weight. The importance of motive in assessing the credibility of a witness was recognised even in the time of Cicero, who simply posed the question, "*Cui bono?*" ("Who benefits ?")[7].

Prior inconsistent statements by the same witness are, quite properly, regarded as inimical to the credibility of that witness. Conversely, prior consistent statements

cannot generally be used to "bolster" a witness's credit, save where the witness is accused of recently fabricating or inventing his or her version of events. One may speculate as to the logic of this distinction: on the one hand, the truth of a witness's testimony cannot be determined by reference to the number of occasions on which that witness has repeated the same version of events; but, on the other hand, the witness who has consistently told the same story is obviously to be preferred to a witness who has given conflicting versions of events on different occasions.

Courts of law do not ordinarily permit evidence to be adduced solely for the purpose of discrediting a witness. Again, the logical basis for that principle is illusive. If a witness has given false evidence on ten previous occasions, surely that may be taken into account in determining whether the witness's testimony is truthful on the present occasion. This principle of law is no doubt explicable solely in the interests of confining litigation within manageable parameters. If a witness gives evidence of a material fact, and then another witness gives evidence intended only to discredit the first witness, there would be nothing to prevent further witnesses being called to discredit that witness, yet further witnesses to discredit the last-mentioned witnesses, and so on *ad infinitum*. Curiously, as an exception to the rule excluding evidence solely as to the credit of witnesses, courts will receive testimony of a person's general reputation for truthfulness.

Courts pay particular attention to internal inconsistencies. Evidence may be said to be "internally inconsistent", either where one witness's version of events (given either on the same or on separate occasions) involves elements which are inconsistent with one another; or where different witnesses who give substantially similar accounts are nonetheless inconsistent with one another in matters of detail. But most lawyers' experience is that minor inconsistencies are an unreliable basis for rejecting the substance of a witness's account. That is particularly so where a witness is describing very traumatic events, which occurred in circumstances of confusion, such that minor discrepancies in the recollection of detail may not only be excused, but may well be expected. Indeed, one's suspicions are alerted if several witnesses give accounts of such events which coincide in every detail; ordinary experience suggests that that cannot happen, unless there has been a conscious attempt to "synchronise" their testimony. Minor variances in matters of detail tend to add to, rather than detract from, the credibility of evidence which is generally consistent.

The single most important question which a court must pose for itself in assessing the reliability of a witness is, "Is the evidence of this witness inherently credible ?". All other considerations aside, that must be the decisive factor in determining which version of events is to be preferred. At the same time, it must be recognised that the unlikely does sometimes happen; and a witness's testimony is not necessarily to be rejected merely because the events described by the witness appear, at first sight, to be improbable. The test of inherent probability is most efficacious where there are two conflicting versions, one of which is inherently more probable than the other: the test is of limited applicability where there is only one available body of evidence, and is inapplicable where each version of events is equally probable (or equally improbable).

Finally, an adverse inference may be drawn in relation to a person who behaves in a manner which evidences a "consciousness of guilt". A person who resists arrest, or who flees from lawful custody - or a person who gives a demonstrably false account of events, or relies upon an "alibi" which is plainly fabricated - may be inferred to have acted out of a "consciousness of guilt". But a "consciousness of guilt" does not, in itself, prove guilt: it is capable of being explained by a variety of circumstances. A person who is charged with murder, and who originally denies inflicting the mortal blow, may lose some credibility when his or her fingerprints are found on the instrument of death: but it does not necessarily follow that, having initially made a false denial, such a person is precluded from arguing that death was inflicted accidentally or by way of self-defence. It is often difficult to distinguish the conduct of a guilty person who is seeking to escape a just conviction, from the conduct of an innocent person who is actuated by the fear of an unjust conviction.

It remains to consider whether, and to what extent, those principles are applicable to the available evidence of the circumstances surrounding the sinking of HMAS Sydney.

For the reasons previously outlined, it must be accepted that the onus of proof lies on those who seek to challenge the conventional view of history. The principal difficulty which the proponents of the "revisionist" view face, is that the only body of eye-witness evidence (namely that of Captain Detmers and his crew) supports the conventional view.

A Motive for Lying

The first proposition advanced by the revisionists is that their evidence must be viewed with suspicion, as Captain Detmers and his crew had an interest in concealing the truth. Of course, if it is assumed that there was some form of "skulduggery" on their part, then they certainly had a motive to conceal that fact. But that reasoning is entirely circular: a text-book case of

the logical fallacy, *petitio principii*. If it is assumed that a person is guilty, then of course that person has every motive for giving false evidence consistent with his or her innocence; but that is to begin by assuming what one is setting out to prove. In the context of a criminal trial, the High Court of Australia has recently held that "... to direct a jury that they should evaluate evidence on the basis of the interest of witnesses in the outcome of the case is to strike at the notion of a fair trial for an accused person".

Internal Inconsistency

The issue in this context is not whether discrepancies are apparent amongst the accounts given by the *Kormoran* crew: plainly there are such discrepancies[8]. The issue, rather, is whether those discrepancies are of such a nature as to cast doubt on the credibility of that body of evidence as a whole.

Captain Theodor Detmers (Australian War Memorial No. 53869

Notwithstanding the magnitude of the tragedy, the forensic issues resulting from the sinking of HMAS *Sydney* are not unlike those encountered by courts of law every day. Take, again, the example of a motor collision case where the driver of one vehicle is killed. It not infrequently happens that, in such a case, the only surviving witnesses are the occupants of the other vehicle. No doubt, just like Detmers and his crew, they have an interest in the outcome of the enquiry - an interest in disproving allegations of negligence, or even more serious allegations such as dangerous or culpable driving, or possibly manslaughter. And, not infrequently, their versions are slightly different: the driver may recall that his vehicle was travelling at 70 km/h, and that the on-coming vehicle was first observed at a distance of 300 metres, whilst a passenger thinks that the speed was 65 km/h, and the distance 250 metres. But a court would view their evidence with great suspicion, if the driver and the passenger gave identical estimates of speed and distance. Minor inconsistencies of that nature are of little significance, if the accounts are consistent in matters of substance.

In the case of Sydney, no discrepancies of substance are apparent. Such inconsistencies as are evident amongst the accounts given by the *Kormoran* crew are precisely what one would expect of honest witnesses who observed a calamitous event from different stand-points. It is hard to imagine that Captain Detmers had the presence of mind, in the immediate aftermath, not only to concoct a false yet plausible account of the engagement, but also to direct his crew to replicate that account with slight differences of detail and emphasis, so as to dissemble the confabulation; and it is even more far-fetched that such a stratagem, conceived and put into effect hastily and in circumstances of some confusion, could have been executed so successfully as to deceive Australian naval authorities at the time, and succeeding generations of historians. This is one of the cases in which minor variances in matters of detail add to, rather than detract from, the credibility of a body of evidence which is generally consistent.

Inherent Probability

This issue can only be addressed from the starting-point that the sinking of a light cruiser by an auxiliary raider is, in itself, something inherently improbable. It is not a case in which there are two possible versions of events, only one of which accords with usual expectations as to the outcome of such an engagement. Rather, it is a case in which the improbable undoubtedly happened; and the historian's function - like the function of a court of law in similar circumstances - is to determine the most probable cause for an improbable occurrence.

Even on the Detmers' version of events, it might be thought to be inherently improbable that HMAS Sydney approached so closely to HSK *Kormoran*, unless Captain Burnett had been given some reason to suppose that Detmers was intending to surrender. Some of the details given in the Detmers account are strikingly improbable, such as the suggestion that *Kormoran* was decamouflaged in as little as six seconds. But, given that there are some weaknesses in the evidence upon which the conventional view of history is based, is there evidence to support an alternative view ?

Accepting, for example, that the estimate of six seconds is unlikely to be correct, what does that prove ? On one view, it may prove nothing more than the existence of understandable confusion as to the precise sequence of events; it does not necessarily prove deliberate obfuscation. Contrariwise, even if the estimate was deliberately false, it may simply be the case of a (justifiably) proud German officer rather overstating the efficiency of his ship and crew. To assume that the estimate was deliberately falsified as part of the cover-up of a possible "war crime" is exceedingly far-fetched. All other considerations aside, if Detmers set out to fabricate a story intended to vindicate his own innocence, he has carried off that subterfuge with tremendous success: Is it to be imagined that such a master of mendacity would, either deliberately or through oversight, weave such a palpable falsehood - a falsehood which is seemingly inessential to his account as a whole - into the fabric of his story ?

The inescapable conclusion is that, whether through "legitimate" or "illegitimate" tactics, the Kormo*ran* succeeded in sinking the *Sydney*. Revisionist historians start with the assumption that Captain Burnett could not have lost the *Sydney*, unless some devious and illegitimate tactic was employed against him. But even on the most favourable view, it is difficult to say that Burnett can escape any degree of culpability for losing his ship. The revisionists are left to argue that, even though the inherently improbable did happen, it is even more improbable that it happened in the way which Detmers and his crew describe - that, even though Burnett cannot escape complete blame for the loss of his ship, the blame should be mitigated because some "illegitimate" tactics were employed by the enemy.

A challenge to the only available evidence of eyewitnesses on the basis that their testimony is inherently improbable is valid, if but only if a more probable explanation of events is available. That is the real problem which the revisionists face. It is not proposed, in this present article, to review the alternative hypotheses which have been propounded, each of which has been soundly defenestrated by Frame. On any objective analysis, the alternative hypotheses are much more far-fetched than any aspect of the Detmers' account. The notion, for example, that a Japanese submarine somehow materialised in an area thousands of kilometres from any recorded arena of Japanese submarine activity at the relevant time, and then took the risk of jeopardising Japan's plan to attack Pearl Harbour by prematurely entering the war simply to destroy a single light cruiser - an hypothesis for which there is not one scrap of supporting evidence - can hardly be regarded as more probable than the Detmers' account, even if the Detmers' account itself is viewed with some suspicion.

Consciousness of Guilt

It seems that revisionist historians subscribe to the view that a person who feels threatened is therefore presumed to be guilty. Thus, much significance is attached to the fact that Detmers considered that he was liable to be court-martialled in connection with the sinking of Sy*dney*.

A more sympathetic approach to the position of Detmers might look at his attitude to the Australian authorities through his eyes. No doubt, during the War, there was a great deal of anti-German propaganda disseminated (whether officially or insidiously) through the ranks of Australian military and naval personnel. It would be foolish to imagine that similar propaganda, aimed at the Allies, did not filter through the German military and navy. An Australian naval captain, captured by the Germans, would no doubt feel some apprehension as to the way in which he would be treated by the German authorities, and particularly the S.S. or the Gestapo; and that would especially be so in the case of an Australian naval captain who had been successful in destroying a large tonnage of German mercantile shipping, and who had carried off a major cou*p* by destroying a larger and better-equipped German naval vessel in circumstances where the odds were clearly on the German side.

Undoubtedly, Detmers did have some apprehension as to how he would be treated by his captors. He may or may not have known that Syd*ney* was a ship of which the Australian community as a whole was inestimably proud. He probably guessed that Australians generally - and the R.A.N. in particular - would be hugely embarrassed as a result of the S*ydney* being sunk by an auxiliary raider. No doubt he foresaw that there would be an attempt to find a scape-goat for the loss of Sy*dney*, and that he was the obvious person to take the blame.

With the benefit of hindsight, we know (or, at least, think that we know) that Australian naval and military authorities treated Detmers and his crew with justice and fairness, and in strict accordance with the Geneva Convention. But, from Detmers' view-point, Australia was a far-flung outpost of the British Empire, which could not entirely be relied upon to treat him with civility. Why would he not, therefore, feel some apprehension as to how he would be dealt with?

One of the extraordinary features of Detmers' conduct is that he and his crew were so co-operative with the Australian authorities, and provided such a fulsome account of events, when plainly - under international law - they had no obligation to do so. Detmers could, quite properly, have refused to provide any information apart from his name and rank. Since Australian authorities had no other knowledge whatso-

ever of the circumstances in which Sydney was sunk, it may be thought that the provision of any information by Detmers was inimical to German naval interests. Such information as he did provide was, no doubt, of at least some assistance to the R.A.N. (and other allied naval forces, including the R.N.) in determining how to deal with German raiders in future encounters.

If Detmers really believed that he was likely to be court-martialled (or tried as a war criminal), the best advice which he could have been given was to maintain absolute silence. There is no charge which could possibly have been brought against him arising out of the sinking of the Sydney in the absence of any non-German witnesses to testify against him.

Far from showing a "consciousness of guilt", Detmers' conduct is entirely consistent with a "consciousness of innocence". He believed (rightly or wrongly) that he had done nothing wrong; but he feared (rightly or wrongly) that, although innocent, he would be prosecuted by Australian authorities. As an experienced naval captain - rather than an experienced lawyer - he recognised that his best protection against prosecution was to co-operate with the Australian authorities, at least to such an extent as did not prejudice German military and naval interests. If he did "gild the lily" to some limited extent, it may be suspected that it was merely to emphasise those aspects of the engagement which were consistent with his own (and his crew's) innocence - not to create an entirely fictitious account of events.

Moreover, at the time when Detmers gave his account of events, he could not have been entirely confident that survivors of the Sydney might not be found. Even if one accepts the most extravagant hypothesis that Australian survivors were machine-gunned by the Germans (or, for that matter, the Japanese), Detmers could not have been absolutely confident that a survivor or survivors would not materialise over a period of time. If one works on the "consciousness of guilt" theory, it must have occurred to Detmers as at least a possibility that another ship - perhaps travelling from Fremantle to South-East Asia - would have picked-up survivors from Sydney, and that - due to restrictions on the use of radio communications - the fact that survivors had been picked-up might not be established for some weeks after the event. From Detmers' view-point, he could not simply proceed on the assumption that his version of events (and the version given by his crew) would remain unchallenged.

The very best that Detmers could have done, if he had a "consciousness of guilt" and expected to be prosecuted, was to maintain his silence, whilst waiting to see whether there were any survivors, and reserving his defence until he was prosecuted. The worst thing which he could have done, in such a case, was to furnish an entirely fictitious account of events, which could easily be disproved in the event that survivors from Sydney were recovered. On the other hand, it is difficult to imagine any other way that a man in his position would have acted, who considered himself innocent, but regarded himself as a potential victim of an unjustified prosecution.

ADMISSIBILITY OF EVIDENCE

Courts of law operate in accordance with strict rules regulating the evidence which may or may not be received. Historical research would in many cases be impossible if historians were subject to similar constraints. But the rules of evidence are, generally, designed to ensure that courts are presented only with the most probative testimony which is available, so that testimony which is inherently unreliable is excluded from consideration. Whilst it is obvious that historians must accommodate a greater degree of latitude in relying on "inadmissible" evidence than do courts of law, the rationale which underlies the rules of evidence may be thought to provide a useful guide to historical research.

Hearsay

One of the most important but least understood rules of evidence is that which excludes "hearsay". The point of vital importance is that second-hand and third-hand accounts must be treated with circumspection; but that is not to say that such accounts are invariably worthless or unhelpful.

Even in courts of law, evidence which is "hearsay" (in the layman's sense of that expression) is admissible for certain purposes. One example has already been mentioned: where it is asserted that a witness has fabricated a version of events, evidence of "prior consistent statements" is admissible to establish that the witness has consistently adopted the same version of events; and, by the same token, evidence of "prior inconsistent statements" is admissible to challenge a witness's testimony. There is a vast difference between prior consistent or inconsistent statements of an eye-witness, and second-hand or third-hand accounts relied upon as evidence of their truth.

The legal rule excluding "hearsay" evidence is (in some respects) very technical; but it is ultimately based upon logical considerations which are as valid to an historian as they are to a lawyer. Those considerations include the following:

- When evidence is given in "hearsay" form, the eye-witness (that is to say, the person who actually observed the relevant events) is not available to be cross-examined or challenged, and the tribunal of fact does not have the benefit of observ-

ing the witness's demeanour under cross-examination.

- There is an inevitable risk of mistake or confusion when a version of events is communicated by an eye-witness to an intermediary; and the more intermediaries involved, the greater the risk.
- The risk of deliberate fabrication or distortion is exacerbated, as the credibility of the testimony depends not only on the integrity of the original eye-witness, but also on the integrity of each intermediary.
- Communications made in informal circumstances are notoriously prone to exaggeration, extemporisation, or outright invention. In our society, it is a much-valued social skill to be able to relate an essentially mundane incident as an interesting or amusing anecdote.

Frame mentions two items of "evidence" proposed by Montgomery[9] to support his hypothesis of Japanese complicity in the sinking of *Sydney*. Both are very good examples of the rationale behind the rule of law excluding hearsay evidence: not only are they hearsay in a technical sense; they are also devoid of any probative value whatsoever.

The first item is ascribed to a prisoner of war, who "often had discussions with his Japanese captors about naval matters 'but as soon as the name of *Sydney* was mentioned the Japanese would abruptly break off and take their leave'". Even if reticence could somehow be regarded as evidence of actual knowledge - and even if it could be assumed that the knowledge was therefore knowledge which supported Montgomery's thesis - the "evidence" is entirely worthless, unless the information can be traced to his source; and, as Frame observes, it is highly improbable that POW guards would be aware of such a significant Japanese military secret.

The second item is, if anything, even less compelling. It attributes to an ex-naval steward at the Pretty Officers' Club at Kure, in Japan, the remark that Sydney was sunk "with torpedoes". Those words are, one might think, entirely consistent with *Sydney* being sunk by torpedoes fired from *Kormoran*, rather than the ubiquitous Japanese submarine favoured by Montgomery. But even if, in the context, the ex-naval steward is to be understood as having implied that the torpedoes were Japanese rather than German, the evidence is valueless unless it can be shown that the ex-naval steward had any direct or indirect knowledge of the truth.

Opinion Evidence

In courts of law, evidence consists essentially of two kinds: the evidence of "eye-witnesses", who are in a position to recount incidents and events which they actually observed; and the evidence of "expert" witnesses, who are permitted to express opinions based on the observations of others.

The qualification to be an "expert" witness is, generally speaking, to have knowledge or training in a recognised field of expertise. The fields can be extremely diverse, ranging from engineering and other physical sciences, through medicine and other biological sciences, to such subjects as forensic document examination (the study of disputed hand-written or typewritten documents), ballistics, finger-printing, and other forms of expertise commonly employed in police matters. Frame's chapter dealing with forensic analysis of a Carley float recovered from Sydney[10] is a very good example of the way in which expert evidence should properly be used.

That is not to say, however, that every form of opinion evidence is admissible. On the contrary, the reception of "expert" evidence is an exception to the general rule excluding evidence based upon opinions. If it is simply a matter of reaching a conclusion of fact based on the available information, a witness cannot be called to give evidence as to the opinion or hypothesis which that witness has formed based on that information. The proper course is to adduce the primary evidence, and allow the tribunal of fact to reach its own conclusion based on that evidence.

Unfortunately, revisionists like Montgomery do not seem to be able to distinguish in their own minds between "evidence" that something occurred, and the untested and unsubstantiated opinions or hypotheses expressed by other people on other occasions. Again, Frame mentions some very compelling examples of "evidence" of that nature which is obviously valueless.

One example is the significance attached by Montgomery to Admiral Sir John Crace's diarised remark that 'N' Branch at Navy Office is "very worried about *Sydney*", and that "the Naval Board ... think there is a possibility that a Vichy submarine escorting a Vichy ship has torpedoed her". That is the worst sort of inadmissible opinion evidence: not only is there no explanation as to the reasoning which led to that conclusion; there is also a complete absence of any factual information on which that conclusion was supposedly based.

A second example relates to Montgomery's reliance on Dr. Habben's *Seekriegsleitung* War Diary entry to the effect that, "In the opinion of Australian specialists the *Kormoran* was co-operating with a submarine, and it was the latter which was responsible for sinking the cruiser". As in the case of Crace, Habben

does not even purport to express his own opinion; he merely reports what he understands to be the opinion held by others. There is no indication as to the reasoning which led to that conclusion, or as to the information on which it was based. Habben's comment is even less useful than Crace's, only in the limited sense that Crace might be expected to have known what opinion was held by the Naval Board, whereas it is highly improbable that Habben knew what the "Australian specialists" (whomever they might be) were thinking at the time.

A third example concerns Montgomery's allegation that Commodore Collins was "sent specifically ... to Japan to investigate the loss of *Sydney*". Even if that proposition were true (which seems very doubtful), the fact that Collins may have been asked to make enquiries relating to the loss of *Sydney* establishes, at the very highest, that someone in the R.A.N. might have considered that there was a possibility of a Japanese connection. It is quite an extraordinary notion that, merely because it was considered that a possibility existed which warranted investigation, that constitutes proof that the possibility was a fact. Again, of course, there is no explanation of the reasoning which may have led the R.A.N. to reach the conclusion that a Japanese connection was even a possibility; let alone any disclosure of the information upon which that conclusion might have been based.

CONCLUSIONS

It would be presumptuous for the present contributor to comment on its historical worth; but, even to a person entirely unqualified to comment on matters of naval history, it is apparent that Frame's book is painstakingly researched, that the arguments for and against competing hypotheses are marshalled and presented with fairness and clarity, that the argumentation is cogent and logical, and that the conclusions are restrained and sober. It has the added benefits of being an entirely readable, intellectually satisfying, but nonetheless lively book.

What commends this work is the discipline with which the author has adhered to the best principles of historiography.

Those considerations make HMAS Sydney: Loss & Controversy a perfect "case in point" to contrast the methodologies of professional lawyers and historians. The present contributor believes that lawyers and historians have much to learn from one another's disciplines, and it is hoped that this article - written from the stand-point of a lawyer, rather than an historian - may contribute in some small way to the cross-fertilisation of ideas between two learned professions.

[1] The contributor is a practising barrister in the State of Queensland. He is also admitted to practise as a barrister and Senior Counsel in the State of New South Wales; as a barrister, solicitor and Queen's Counsel in the State of Victoria; as a legal practitioner in the Northern Territory; and as a lawyer of the National Court of Papua New Guinea. The contributor has been a visiting tutor in Equity and lecturer in Civil Procedure in the Faculty of Law, University of Queensland, and has been examiner in a number of subjects (including Jurisprudence and Pleadings & Practice) for the Barristers' Board of Queensland.

[2] (Hodder & Stoughton, Sydney, 1993). The contributor is indebted to Rev'd. Dr. Frame for his generous encouragement to publish this article, and for his kind offer to review a draft prior to publication. Of course, the views expressed in this article are entirely those of the contributor, who takes complete responsibility for its contents.

[3] The expression "tribunal of fact" is used to identify the person or persons who determine disputed factual issues in a trial. Depending on the nature of the dispute, the tribunal of fact may comprise a jury, a judge sitting without a jury, a magistrate, an arbitrator, or an official referee.

[4] Erinford Properties Ltd. v. Cheshire County Council, [1974] Ch. 261, per Megarry J. at p.268.

[5] Malec v. J.C. Hutton Pty. Ltd., (1990) 169 C.L.R. 638, per Deane, Gaudron and McHugh JJ. (Brennan and Dawson JJ. concurring) at pp.642-3.

[6] Frame, *op. cit.*, pp.229-30.

[7] It is arguable that there is a separate standard which applies in some interlocutory proceedings, namely whether there is a "triable issue" or a "serious question to be tried": see, for example, Fancourt v. Mercantile Credits Limited, (1983) 165 C.L.R. 87; Webster v. Lampard, (1993) 67 A.L.J.R. 886.

[8] Woolmington v. The Director of Public Prosecutions, [1935] A.C. 462, per Viscount Sankey L.C. (Lords Hewart L.C.J., Atkin, Tomlin and Wright concurring) at pp.481-82.

[9] Thus, in Miller v. Minister of Pensions, [1947] 2 All E.R. 372, Denning J. (subsequently Lord Denning M.R.) observed at pp.373-74, "If the evidence is such that the tribunal can say 'we think it more probable than not,' the burden is discharged, but if the probabilities are equal it is not."

[10] Hornal v. Neuberger Products Ltd., [1957] 1 Q.B. 247, per Denning L.J. at p.258.

[11] Re Dellow's Will Trusts, [1964] 1 W.L.R. 451, per Ungoed-Thomas J. at pp.454-5.

[12] Rejfek v. McElroy, (1965) 112 C.L.R. 517, per Barwick C.J., Kitto, Taylor, Menzies and Windeyer JJ. at p.521.

[13] Frame, *op. cit.*, pp.229-30.

[14] G.H. Gill, *The Royal Australian Navy 1939-42*, Vol.I,

Official History of Australia in the War of 1939-45 (AWM, Canberra, 1957).

[15] M. Montgomery, *Who Sank the Sydney ?* (Cassell, Melbourne, 1981).

[16] See Frame, *op. cit.*, Ch.14.

[17] *ibid.*, Ch.11.

[18] Footnote 14, *supra*.

[19] S.S. Hontestroom v. S.S. Sagaporack, [1927] A.C. 37, per Lord Sumner at p.47. Recent cases in which the same principle has been applied by the High Court of Australia include Brunskill v. Sovereign Marine & General Insurance Co. Ltd., (1985) 59 A.L.J.R. 842, Jones v. Hyde, (1989) 63 A.L.J.R. 349, Abalos v. Australian Postal Commission, (1990) 171 C.L.R. 167, and Devries v. Australian National Railways Commission, (1993) 177 C.L.R. 472.

[20] Kelso Builders Supplies Pty. Ltd. v. Timbreck Pty. Ltd., (1989) 9 B.C.L. 206, per Kirby P. at p.208.

[21] This is known as the "parol evidence rule": see L.G. Thorne & Co. Pty. Ltd. v. Thomas Borthwick & Sons (A/Asia) Ltd., (1956) S.R.(N.S.W.) 81, per Herron J. at pp.93-94; Hoyt's Pty. Limited v. Spencer, (1919) 27 C.L.R. 133, per Knox C.J. (with whom Rich J. agreed) at pp.138-39, and per Isaacs J. (with whom Rich J. also agreed) at pp.143-4 and pp.147-8.

[22] An oral statement made "in the heat of the moment" is admissible in evidence as an exception to the hearsay rule, on the basis that it forms part of the *res gestae* (the facts surrounding or accompanying a relevant event).

[23] Cicero, *Pro Sistio* (c.50 B.C.).

[24] Robinson v. The Queen [No.2], (1991) 65 A.L.J.R. 644, per Mason C.J., Brennan, Deane, Toohey and McHugh JJ. at p.646.

[25] See generally Frame, *op. cit.*, Chs. 7 and 8.

[26] *ibid.*, especially Chs. 10 and 12 to 17.

[27] *ibid.*, p.166.

[28] Footnote 15, *supra*.

[29] Frame, *op. cit.*, Ch.15.

[30] *ibid.*, pp.166-69.

[31] *ibid.*, pp.169-70.

[32] *ibid.*, p.170.

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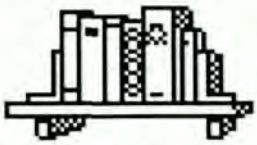

Book Review

Twice Around the World, Some memoirs of diplomatic life in North Vietnam and Outer Mongolia, by John Colvin; Leo Cooper, London, 1991

During the height of the Vietnam conflict, in 1966 and 1967, John Colvin was in Hanoi as Britain's Consul-General, enduring the nightly American air raids. He proved to be a man of special qualities with the necessary inner reserves of humour, character and keen powers of observation to survive a war-time Hanoi assignment during an intensive bombing campaign.

His despatches on the air offensive became an open secret among policy makers in western capitals who depended on his analysis and reporting of the effect of air raids on that country's capacity to prosecute the war.

As a diplomat, Colvin's status was of little protection as he took his chances with the North Vietnamese in the streets of Hanoi amid the cannon fire, rocketry and bombs over the city.

It was perhaps inevitable that the circumstances of Colvin's birth would provide some future direction in his life.

Born in Tokyo in 1922, his father was Captain Ragnar Colvin, who many Australians will remember as Admiral Sir Ragnar Colvin, the RAN Chief of naval Staff from 1937 to 1941. The younger Colvin followed his father into the Navy entering RNC Dartmouth in 1935. As a young lieutenant, Colvin had an adventurous war including service at Scapa and with convoy protection between Freetown and Rio. He also served in cruisers in the Pacific Fleet and was a member of the port party which entered Saigon in 1945 after the Japanese surrender, to serve with allied forces tasked to administer the former French colony until order could be restored and government functions returned to France.

After university studies in slavonic languages, Colvin joined the Foreign Office in 1951. By that stage he was married and commenced regular foreign postings. Apart from his father's connection with Australia, Colvin can also claim links with our country. His son, Mark Colvin, is a highly respected television reporter, currently the ABC's European correspondent based in London. A daughter, Zoe Colvin, is married to a senior Australian diplomat serving in Europe.

Colvin's work is long overdue and his book fills an important gap in the history of Vietnam. It is highly entertaining but it goes beyond mere harmless anecdote. Firstly, John Colvin was a professional and he accurately and objectively describes events as he witnessed them. For that reason the book retains a certain credibility which less capable works have not achieved, being reduced to mere polemic.

For Colvin '...Hanoi was a point of adventure, even of history, Here was the chance to break with compromise, to discard the chic ennui of London life. To return to Indo-China was...an escape from the routine, from the known, from dull care, towards a concept of the exotic that has as one purpose an evasion, however temporary, of reality. I found that the padi fields of Asia, the rain forests, the people of village and city had at least as strong a call on emotion as the landscape of home which, anyway, will still be there when the adventure was done.'

'The night sky over the Hanoi area, as the stratoliner approached, was ablaze with antiaircraft fire. To the east I could see the lights of ground fires and little pinpoints of flame as the Vietnamese guns opened up. I recalled for the first time James Cameron's book *Witness* written after an earlier visit to Hanoi, and his inscription on the flyleaf "...on the edge of the abyss."'

The British Consulate-General (now embassy) was located near the end of Ly Thuong Kiet, a healthy stroll from the present Australian embassy, several blocks away in the same street. The British Vice-Consul Livesey proved a loyal deputy. In his eagerness to observe a low-level attack he suffered temporary damage to his eardrums. He was later honoured with an MBE. Colvin modestly avoids mentioning his own CMG in the same list.

The author's description of Hanoi street life and his dealings with administrative authorities is disturbingly familiar. There were few distractions in the war-time capital but a cultivated interest in Annamite porcelain proved an attraction. It still does in 1994.

The circumstances of Colvin's appointment were unusual. As a diplomat posted from the Foreign Office his post was not accredited to anyone. Despite normal protocol, the Mayor of Hanoi refused to receive him. His activities were controlled through the Administrative Committee of Hanoi. Ambassador John Fawcett had similar difficulties in 1974. In correspondence with his office the local authorities took care not to address him by title but by the use of his name and street address. During one official reception, the

ing country spat in his face. The only travels undertaken outside Vietnam, other than one flight to London for consultations in 1967, were those by ICC aircraft to Saigon (via Laos) with the diplomatic bag. The fact that An ICC airliner had disappeared mysteriously in the dangerous skies between Vientiane and Hanoi in 1965 would not have assured his safety.

In May 1967 the Consul-General and his deputy witnessed from the balcony an air attack by a group of Thunderchief fighter-bombers. Their target was the Hanoi thermal power plant less than one mile to the south. The blast from the first strike on the adjacent Paul Doumer bridge lifted Colvin from the annex balcony and slammed him against the back wall of the living room. Australian diplomats who enjoyed the hospitality at her Majesty's table in later years did so in less challenging circumstances. Colvin's reflections on the bombing campaign make compelling reading. He refers to the damage, misery and death on both sides. Britain had no war with Hanoi yet her diplomats in Hanoi were often carpeted in various situations. 'The role played by Britain in support of her American Ally was...insubstantial, but ministerial statements at home (London) favourable to or even uncritical of US objectives had occasional unfavourable consequences for (Colvin) in Hanoi.'

He was moved by the suffering inflicted on the Vietnamese people as he shared their dangers. He had obvious sympathy for neighbours accidentally killed in raids. The threat was real as in 1972 several embassies were accidentally bombed and several foreigners were killed. The French Delegate-General, Pierre Susini, died from injuries sustained when an American bomb levelled the delegation building in Hanoi on 11 October. The centre of Hanoi was bombed that day for the first time since 1966. Four Vietnamese members of the staff and an Egyptian woman were also killed. The Albanian Chargé d'Affaires was injured. The Indian and Algerian embassies were also damaged in the raid.

While this attack was outside Colvin's period of duty, in December 1972 the industrial suburbs were so heavily bombed that thousands of people camped out in the streets of the diplomatic quarter, It was during that month that the East German and Hungarian trade missions were hit.

His Hanoi assignment over, John Colvin returned for further duty at the Foreign Office in London. Commuter life to working London was a period he would rather forget. 'The era was not one of civility nor elegance, those attributes being restricted to the clubs, or to the homes of friends and family. Later the public times were bad indeed, not ameliorated by the appointment of a Prime minister, Edward Heath, a trimming, frightened, appeasing period without direction or courage ending in surrender over principle: Times without conviction.'

Hanoi over, new horizons beckoned. 'Abroad, see new sights, your country's cause calls you away.' It was to Mongolia as ambassador that john Colvin would depart. 'Strong inner resources, or special interests, were required, but given these, political, human and scientific interest, plus the usual effort needed for self-administration,.were enough to make service at Ulan Bator rewarding, if not exciting.' Clearly, it was a representative post with much 'huntin', shootin' and fishin'.'

All in all a good book by a remarkable and cultivated person who enjoyed a stimulating diplomatic career. The author has highly-developed writing skills and keen powers of observation and analysis. The book will sit comfortably with other standard historical-political works by such writers as Donald Lancaster, Peter Fleming, Fitzroy McLean, Charles Robequain and Edmund Wilson. While Wilson is more familiar with the dialectical, as well as the nature of communist societies and the sweep of history, it is Colvin who is the better writer. In an essence, Colvin has captured the dislocating phenomena of travel, arrival and departure of first world diplomats in third world countries. He has achieved in non-fiction what V S Naipaul has attempted in fiction.

The author provides an appropriate conclusion to his book which will remain as an epitaph for any foreign service posting. 'It was a difficult country to leave and, in rain, Tube and rush hour, difficult to forget. Our happiness there was deep, our longing for it is still acute, sharp nostalgia never far away. But because return, however brief, might bring either disappointment or, on the other hand, the terrible sadness of the first days after our departure, we will never go back'.

Michael Fogarty
St. Patrick's Day 1994

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