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2 October 2014 Swan Island incursion

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Introduction

On 2 October 2014, eight protesters from the Swan Island peace Convergence entered the restricted area of Swan Island, in two parties of four. After some time one group was arrested by Victoria Police in the military/SASR part of the facility located near its northeast tip. These protesters did not resist arrest, and the arrests were carried out peacefully and calmly. The other four protesters were violently detained by a small number of military personnel, later described as SASR by the police. The alleged SASR soldiers bound the protesters, hooded them, and in several cases cut their clothes off them, dragged them along the ground, and then threatened them with drowning in the sea nearby and anal rape with a stick.

The Australian Defence Force announced a review the incident would be held. The report of the inquiry was completed by January 2015, but not released for more than nine months, without explanation of the delay.

GOVERNMENT SOURCES

Report of the Inquiry into the Circumstances Surrounding the Trespass Incident at Swan Island on 02 October 2014, Department of Defence.

Glossary:

ADFIS	Australian Defence Force Investigative Service
CIVPOL	civilian police
SIAD	Swan Island Army Detachment
SIPC	Swan Island Peace Convergence

SITF Swan Island Training Facility
VICPOL Victoria Police

Table 1 – Findings of the Inquiry

1. The arrested persons were trespassing on defence premises, namely the SITF, on 2 Oct 14

1. Members of the SIAD had reasonable grounds to believe that persons located at the SITF on 2 Oct 14 may have committed an offence against section 72P and/or section 82 of the Act.

1. It was reasonable in the circumstances for members of the SIAD to arrest such persons.

1. The hand over of arrested persons from the control of the SIAD members to elements of VICPOL occurred as soon as reasonably practicable in the circumstances and complied with the requirements of section 72K of the Defence Act 1903 (Cth).

1. The arrested persons committed the act of trespass when they entered the SITF and none of the recognised defences to trespass are available.

1. Members of the SIAD had the authority to conduct a citizen's arrest on the persons they identified within the boundaries of the SITF on 2 Oct 14.

1. Members of the SIAD had the power to search persons they arrested at the SITF on 2 Oct 14.

1. The conduct of a search of the arrested persons by members of the SIAD was necessary in the circumstances.

1. The arrest the persons found within the SITF by was reasonable in the circumstances.

1. The use of blindfolds on arrested persons was reasonable in the circumstances.

1. The use of handcuffs to restrain arrested protesters was reasonable in the circumstances.

1. The search of the arrested person was reasonable in the circumstances.

1. The allegations of mistreatment made by the arrested persons are not able to be substantiated.

Table 2. Recommendations of the Inquiry

1. A senior member of the **[REDACTED]** be responsible for engagement with VICPOL and civilian security elements located at the SITF to ensure that appropriate resources are provided to deal with any incursion to the facility.

1. Section 72P of the *Defence Act 1903* (Cth) be amended to provide ADF members with a specific power of arrest, restraint and search of persons, and the seizure of offensive items.

1. As part of annual force preservation training, all ADF members are advised of their powers under Section 72P of the *Defence Act 1903* (Cth).

- That planning for a response to any future breaches of the SITF perimeter should be developed to ensure that ADF responses do not require the application of blindfolds/hoods to any persons arrested by ADF members.

- [REDACTED] detailed SOPs:
  1. that address relevant issues associated with the arrest of persons found to be on the SITF without authorisation; and
  2. are assessed by a suitably qualified legal officer prior to being adopted **[REDACTED]**

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1. The ADF centrally develop SOPs that address generic issues associated with the arrest of persons found to be on the Defence premises without authorisation and these SOPs are promulgated.

1. The SIAD document titled, 'Powers of Arrest and Search' should:
   1. not be used, or relied upon, for providing guidance or instructions to ADF members exercising any powers of arrest or search; and
   2. be removed from distribution **[REDACTED]**.

2.

1. The content **[REDACTED]**, Standing Orders, Volume 4 "Security", Annex G should be reviewed by an appropriately qualified legal officer and, subject to their advice, amended and/or reissued.

1. Should any formal complaint of mistreatment be made by any of the arrested persons that allege possible criminal conduct by any SIAD member such complaint should be referred to the ADFIS and/or CIVPOL for investigation.

Government sources

Report of the Inquiry into the Circumstances Surrounding the Trespass Incident at Swan Island on 02 October 2014, Department of Defence,

SWAN ISLAND CONVERGENCE SOURCES

Australian peace activists detained and assaulted by SAS on Swan Island, Media Release Swan Island Peace Convergence, 2 October, 2014: 5pm update

> Before dawn this morning, 8 peace activists entered the top secret Swan Island military base near Queenscliff.The group entered in the early hours of the morning to nonviolently disrupt preparations for the imminent war in Iraq. Four of the activists were discovered, detained and assaulted by SAS soldiers on the base. The treatment of the activists by the SAS bordered on torture.
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> The experiences of the four were:

- Forcibly stripped naked, handcuffed, struck on the face and choked
- Activists clothing were cut off with knives
- Hessian bags were placed over their heads and told “welcome to the bag motherfucker and asked “do you want to go for a swim” before being dragged naked across the ground
- SAS personnel stood on activists’ heads and backs causing injury and said “If you move we will kick you in the face”
- Dragged and dropped on the ground when didn’t respond to questions.

> When the Victorian Police arrived on the scene the assaults ceased. “I was thankful for the arrival of the police, when they got there I finally felt safe” said peace activist Sam Quinlan. An ambulance was called to the front gate as activists were released from custody to attend to activists’ injuries. “The use of these tactics on citizens of Australia peacefully protesting the actions of the SAS is an alarming indication of the use of torture SAS is employing in Iraq, Afghanistan and other undisclosed locations” says Greg Rolles an activist who entered the military facility. “We were trying to disrupt the preparations for this imminent war and are concerned that Australia’s involvement will only play into the hands of militant extremists” said Jasmine Pilbrow another member of the group.
>
> The group are particularly concerned about the role of the SAS, who use Swan Island in their ongoing role in Afghanistan as well as likely roles in Iraq and Syria.
>
> “There are clear alternatives to bombing ISIS” said Fiona Taylor who is currently at the Swan Island main gate. “Blocking oil supply channels, having arms embargoes and support of a regional solution all will cripple ISIS without breeding another generation of militant extremists”.
>
> Responses to common objections to the SAS assaults, Swan Island Peace Convergence, 4 October 2014

Having noticed some common objections to our reports of SAS assault in the last few days, we offer the following as clarification of the context of these actions.

The common objections are in bold, and our responses in plain text.

Didn't you deserve it?

No one deserves this kind of treatment for any reason. It is unlawful and abhorrent.

Australian and international law provides clear guidelines for the reasonable use of force and these were breached in ways that fit the definition of torture.

We are concerned that this behaviour is indicative of how SAS troops are being conditioned to behave. It appears that the automatic response of the SAS troops was extreme brutality and humiliation regardless of the circumstances. We do not think that this is how professional soldiers should be being conditioned to behave.

But you broke the law. Doesn't that justify any response?
The group was engaged in a peaceful act of civil disobedience. The tradition we follow is inspired by people like Gandhi, Dorothy Day and Rev. Dr. Martin Luther King Jr., who insisted that when engaging in civil disobedience, one must do so "openly, lovingly, and with a willingness to pay the penalty of imprisonment." For this reason, we do not attempt to evade the legal consequences of our actions, but openly accept the charges which result from them. All of those discovered in the facility, both by Victoria Police and the SAS, were walking openly around and would not have attempted escape. This has been the method of all nonviolent actions so far used by the Swan Island Peace Convergence in its five year history, and both the police and base staff knew this.

It is not inherently violent to break the law – peaceful civil disobedience has a long and illustrious history in social change. In this case the civil disobedience was done to disrupt the violence being waged by our government in our names. It followed a long period of many of the group engaging with politicians and using other legal means before taking this step.

What were you expecting?
The group was expecting to be arrested by Victorian police in accordance with the law. They were expecting reasonable and proportionate force to be used to secure their arrest by Victorian police. They were expecting to be charged with Commonwealth trespass and brought before the courts.

It is unclear whether the people who detained the activists met the strict requirements of those who are authorised to do so. *Regardless, the method of detention and subsequent assault on all four protesters was not only grossly disproportionate, but is also believed to be completely unlawful.*

How could the SAS be sure you weren't terrorists?
The group who went on to the Swan Island military base were part of the Swan Island Peace Convergence, a group which has been doing nonviolent actions at Swan Island and surrounds for the past five years, including a blockade of the Swan Island base, constituted by placing their bodies in front of the entry gate. At no point has anyone – police, the public, or Defence personnel – been threatened with violence or had any violence directed towards them by any member of this group. The policing strategy of having only two policepersons at the blockade during the Convergence bears this out. For the past three years, the blockade of the gate has

held for the duration of the Convergence. For the past two years, police have not even made an attempt to break the activists' blockade of the facility.

The Swan Island Peace Convergence includes a rigorous training regime in nonviolent discipline, which includes role plays in which people practice maintaining that discipline under stressful situations. It is enormously to their credit that activists maintained this discipline under severe provocation from SAS personnel.

There have been two previous incursions into the base by the group, both of which ended with arrests by Victoria Police, and nonviolent discipline being maintained by activists, even under provocation. The SAS would have been well aware of the nonviolent discipline of this group given our extensive history of actions there, and therefore known we posed no threat. This was the third (and final) day of action at the facility during the convergence, a day when the group has often attempted entry to the base.

All of those attacked by SAS personnel had their hands visible, palms upwards and outwards, and did not attempt to escape. At least two of them indicated verbally that they were peaceful people. None adopted a threatening stance.

There were a number of police stationed on the island at the time of the incursion, including at least two on dirtbikes as well as others in a police transporter, who could easily have been called to detain the protesters in a timely fashion, as all of them were in possession of two way radios which were in use.

The SAS also clearly knew that these were a group of nonviolent protesters because during their interrogation of the activists they referenced an interview that Greg had done earlier in the morning on 3AW.

How can you be sure they were SAS, not security guards?
The men were in plain clothes, comprising coloured tops and jeans. At least one wore a black mask wrapped around his face, leaving just his eyes showing. All assailants insisted the activists not look at their faces. When police arrived, they told Greg that the SAS have the authority to detain. Other members of the group were told by police while they waited in the police transporter that "Defence personnel, including the SAS, have the power to detain". The interrogation techniques used on the activists are known to be used by SAS personnel. The Department of Defence has since confirmed in media reports that ADF personnel detained some members of the activist group.

Who should have conducted the arrests?

The role of arrests on Commonwealth land should be primarily that of the Australian Federal Police (AFP). Interestingly, no AFP were sighted by activists during the 4 day blockade of the island or by those who actually entered the island. The AFP can authorize Victoria Police to act on their behalf under a memorandum of understanding between the two Agencies. This can be viewed here. There were substantial numbers of Victoria Police on the island, in watercraft near the island and on the mainland. For this reason, we would argue that it ought properly to have been the role of Victoria Police to arrest, detain and process any persons found to be trespassing on the island. By the point at which any protesters were arrested, media releases had been put out and a radio interview had been conducted by a protester on the island. There was at least two hours of public notice that protesters were trespassing on the base before any arrests/ detainments. Given the smallness of the island and the ample numbers of police, it seems unreasonable that any one else should have been involved in their arrest or detainment.

Who else could detain or restrain the protesters on the military base?

The authority for any persons other than the AFP or their deputized agents to make arrests on Defence Premises is covered by the *Defence Legislation Amendment (Security of Defence Premises)* Act 2011 ("the Act") available here.

In order for anyone else on the island to lawfully 'detain or arrest' the protesters whilst on Defence Premises, they would need to have firstly been either "Contracted Defence Security Guards) or "Security Authorised Members of the Defence Force." Special authorizations and training are necessary for Defence Personnel or private individuals to be classed as these persons. These are detailed under S 71(B) and(C) of the Act.

If the persons who detained and tortured the protesters were specially authorized persons under the Act, they were required to identify themselves, to tell the protesters what offence they were reasonably suspected of and to only use reasonable force. They would then be required to hand the protesters into police custody at the earliest possible opportunity.

None of the persons who detained/ restrained and tortured the protesters identified themselves. None of the persons informed the protesters of an offence. All of the protesters state that when they became aware of the plain clothed persons who detained and assaulted them that they positioned themselves legs together, hands up with palms facing outwards and made no attempt to resist in any way. At least two made verbal declarations to the fact that they were nonviolent protesters. Under these circumstances, even if the persons who detained the protesters were specially authorised to do so, there was no justification for any use of force at all.

Is it hysterical to refer to the treatment as 'torture'?

According to the UN Convention against Torture, "*… 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*"

One SAS member stripped one of the activists naked, put a hessian bag over his head, bound him hand and foot with cable ties, and threatened to rape him anally with a stick if he did not give him the information he demanded. Another SAS member, having bound, stripped and hooded another activist, threatened to drown him if he did not give him the information he demanded. These acts causing mental suffering clearly fit the definition of torture.

There is clear and extensive case law and UN Reports that describe hooding, and particularly hooding in conjunction with other coercive interrogation techniques, as both 'torture' and 'cruel and unusual punishment.' Threats of sexual violence, drowning and beatings are clearly coercive interrogation techniques.

What proof do you have?

The base has CCTV cameras throughout so it is possible video footage of the incident exists. Therefore the evidence is being held by the base, and possibly police, and we hope it will be made public. We have submitted FOI requests for any footage. All activists testimonies have also been recorded in accordance with legal procedures.

Analysis

Jane Lee, 'Protesters to be charged after entering Swan Island defence base', The Age, 2 October 2014

Helen Davidson, 'Anti-war activists who broke into Swan Island military base to be charged', The Guardian, 2 October 2014.

Richard Tanter, 'Alleged abuse of protesters against war in Iraq disturbing', The Age, 17 October 2014.

Project coordinator: Richard Tanter
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Nautilus Institute
608 San Miguel Ave., Berkeley, CA 94707-1535 | Phone: (510) 423-0372 | Email: nautilus@nautilus.org