

CDF Opening Remarks:

TRANSPARENCY AND ACCOUNTABILITY IN MODERN MILITARY OPERATIONS

A preliminary workshop considering the future of
New Zealand's military investigative and inquiry systems

[Check against delivery]

Ko te Ope Kātua o Aotearoa e!
We are the NZ Defence Force!

He toki nā Tū
We are the instruments of Tūmatauenga (We fight on the battleground)

He toki nā Rongo e,
We are the instruments of Rongo-ma-Tane (We carry out peace missions)

Mate atu he toa
If a warrior should fall...

Ara mai rā he toa!
Another shall rise to take his place

Ngā rau e toru o te patu kotahi e!
We are the three edges of the blade of a single patu

Tihei Mauri Ora
Alas, the breath of life

Good morning and welcome.

MIHI MAI E NGA RANGITIRA, To all leaders in your fields.

It has been said that a history of the world is a history of war.

Nearly two and a half thousand years ago the Athenians invaded and besieged the city of Melos, during the Peloponnesian War.

Thucydides, the great, Greek historian, left us a powerful account in his Melian Dialogue, of the negotiations that ensued between the commanders of the overwhelmingly powerful Athenian force, and the leaders of Melos, who simply wished to be left alone.

The Melians would not budge from their principled position, and the Athenians broke through the defences of the city, slaughtering all the adult men and sold the women and children into slavery.

But ever since, the Melian Dialogue has been discussed as an early example of how the conduct of states at war, might take in humanitarian considerations.

By the nineteenth century there was an increasing international consensus, that what was acceptable in wartime; should be codified and recognised by states.

The first great milestone in this process was the adoption in 1864, of the first Geneva convention which recognised the Red Cross as a neutral medical group, and gave protection to military and civilian medical personnel treating the sick and wounded.

Over the next decade, there were further important initiatives, most notably the Hague conferences, that created a range of conventions dealing with armed conflict, including one on the laws and customs of war. This Convention prohibited such conduct as:

- attacking undefended towns or habitations.
- looting; and
- the killing of enemy combatants who had surrendered;

Other Hague Conventions outlawed the use of poison gas and bombardment from the air.

Yet virtually all the provisions of the Geneva Convention and the Hague Conventions were breached in the First World War.

In 1917, after the Battle of Messines, a New Zealand soldier Bert Stokes confessed in his diary how he had enjoyed his part in an action in which 12 Germans who were attempting to surrender, were killed, including one who was hacked to death with a shovel.

So I don't think for a moment that New Zealand's hands were entirely clean.

In the aftermath of the First World War there was a renewed effort to contain the horrors of war, with in an effective legal framework.

After the dismay caused by the Second World War, the newly established United Nations adopted conventions on the prevention and punishment of genocide, and the Universal Declaration of Human Rights, which for the first time codified the rights and freedoms that all humans are entitled to.

This commitment, in the western world at least, to human rights and the laws governing armed conflict has been reinforced by the increasing level of media scrutiny of military forces engaged in combat operations.

There can be no doubt that television coverage of the Vietnam War, the first televised war, played a major part in the shift in American public opinion that drove the United States withdrawal from that conflict.

Of all the incidents covered by the media in the war none did more to undercut United States moral authority than the massacre at Mi Lai in 1968.

Beginning in the late 20th century, the International consensus that underpin the Universal Declaration of Human Rights began to unravel.

The New Zealand Defence Force has first-hand experience of this process during in the Bosnian War and more recently in Iraq and Afghanistan and elsewhere.

For most of the current century we have been engaged in operations against opponents who have nothing but contempt for human rights and the principles that underlie the Geneva Conventions.

So while the earliest recorded event may be the biblical tale of Cain and Able, throughout history antiquity records the struggles of civilisations to define jus in bello, the laws that govern the way war is conducted: "The strong do what they can and the weak must suffer."

There is nothing civilised about war, and humanity has yet to reach the state where armed conflict between groups of humans becomes a relic of an uncivilised past.

In the interim we continue to ask young men and women in New Zealand to train for and conduct war and armed conflict on behalf of the state.

Deeply embedded in the spirit of our Defence Force culture is an ethos to serve New Zealand loyally and honourably – loyalty of service to the Government of New Zealand and serving with honourable intent and practices, in environments where humanity itself is often challenged.

The brief trip through time that I opened with, finished at a new breed of violent extremism in the world today.

While we have some modern non-state players rejecting the developed rules and norms of decency in armed conflict, that is not the case for the vast majority of those involved in the profession of arms.

Yes, combat / war / armed human conflict is barbaric, but we accept the clear need for it to be governed by strong principles and laws.

In the New Zealand Defence Force we observe such tenets as, only engaging military objectives... The principle of Military Necessity.

We do not attack civilians or civilian objects... The principle of Distinction.

And when attacking military objectives, we ensure that the expected damage is not excessive to the expected military advantage... So we respect the principle of Proportionality.

Traditionally, embedded in the laws of the nation, military leaders are given commissions and warrants to conduct themselves, including executing armed conflict, on behalf of the state in accordance with the values, principles and the laws of the state, as well as in accordance with the Laws of Armed Conflict.

This military authority is not absolute. Civilian oversight is ultimately exercised through the Parliament, that is, through elected officials.

Confidence between the military leadership and government is therefore a paramount principle of this system.

For today's workshop, Colonel Lisa Ferris, our Director Defence Legal Services, will outline the mechanisms within the New Zealand Defence Force, and indeed beyond the NZDF, for investigating allegations of breaches of these rules of the game.

From this, you will be better prepared for this afternoon's panel where we pose the key question, is there a gap in the oversight of investigations of alleged offending by members of the NZDF?

As Chief of Defence Force, let me assure you, I am genuinely interested in your opinions.

The bedrocks of our military justice system have come from the theory and practice of law over many centuries. But the delivery must be up-to-date and relevant to the world in which we operate in today.

So I must not be afraid to ask such questions.

As we were not afraid to review and overhaul our military justice system in 2007, when we thoroughly modernised and updated relevant legislation through the Armed Forces Law Reform Bill.

Have attitudes, the environment, or community expectations shifted sufficiently that they again warrant us to evolve and adapt what we do?

But issues of transparency and accountability are complex for those involved in activities that require the careful guarding of information.

Let me illustrate: In 2007 a New Zealand soldier serving in Bamian, Afghanistan, was disciplined after local children were invited to watch the arrival of a RNZAF Hercules C-130 flight into Bamian airport.

The soldier provided the children with the date and arrival time of the flight, several days before it was scheduled to land.

While well meaning, this potentially placed the lives of those on board and the aircraft itself at increased risk.

It serves as an important reminder that even innocent comments to those without a need to know, can have unintended but potentially far reaching implications.

That is of course, the world in which we, the military inhabit.

We contend that information is one of the most valuable resources held by a Defence Force.

But to the media, commentators and a fair proportion of the wider public, to whom security considerations are far removed from their daily lives, it is another brick in the wall of their narrative that we are overly secretive, and that we hide behind security as an excuse to avoid transparency and accountability.

And that's a powerful accusation to have levelled at you as a public organisation, as both concepts – transparency and accountability - are central to the very idea of democratic governance.

By transparency I mean operating in such a way that it is easy for others to see what actions are performed.

In order that officials may be held accountable, the principle of transparency requires that the decisions and actions of those in government are open to public scrutiny. Consequently the public has a right to access government information.

“Sunlight is said to be the best of disinfectants” as Justice Louis Brandeis famously put it.

‘Accountability’ is about being responsible to someone for the actions we’ve taken; about being able to explain, clarify and justify actions.

It implies that someone has a right to know and hold an organisation to account; and that the organisation has a duty to explain and account for its activities.

How do we on the one hand acknowledge people’s right to know what their militaries are doing, with our need as a military to protect information – as a means to protect our service people?

There are no easy answers.

Today, I am asking you: ‘have we got the balance right, and how do we strike the right balance?’

But firstly, a brief comment about public trust.

As the results from a 2016 public perception on the graph behind me highlight, our Defence Force enjoys comparatively strong public support.

77% of New Zealanders have either a very, or somewhat favourable attitude towards our Defence Force – only 3 percent having unfavourable attitudes. [see graphic at end of this document.]

So we enjoy support from the wider public that may perhaps surprise many.

In 2015, Transparency International released its Government Defence Anti-Corruption Index. [see graphic at end of this document.]

The New Zealand Defence Force was the only military in Asia-Pacific to gain an ‘A’ rating – one of only two across the globe.

Transparency International singled our people, they said:

“The New Zealand Defence Force has a strong ethical culture. Ethos and values training which covers corruption is provided to personnel, and there is evidence of a focus on integrity throughout the New Zealand Defence Force.”

Indeed, it is my belief that the continued and relentless focus and investment in our military professionalism, is the greatest antidote to avoiding breaches of international law.

The act of waging war rightly places onerous responsibilities upon all combatants.

As members of the Profession of Arms, we believe it is right not only that nations are held accountable for their military actions – but that we as militaries are also seen to be accountable for our actions.

The advent of social media and media globalisation has fuelled a wave of arm chair critics who unpick the decisions of commanders with benefit of a significant degree of hindsight.

This phenomena is increasingly finding it's way into the courtroom turning the issue of combat into a legalistic activity, as the UK well knows – so much so, that there they coined the phrase - LAWFARE.

In my view, it would be troubling to seek to examine the decisions of commanders to the nanosecond, causing them to second guess every possible decision and scenario, and to hesitate where to do so could have devastating consequences.

Which is perhaps a good place for me to conclude for now.

The challenge for us in our open and democratic society, is the exercise of meaningful participation and oversight of the military, while satisfying the legitimate needs of the military in our pursuit of security.

So are our current military justice mechanisms adequate, given increasing pressure on States to conduct independent inquiries and investigations into conduct of their armed forces?

Should there be a policy on the conduct of civilian casualty investigations with regard to public reporting?

Would increasing independence in the system, devalue the institution of command within the armed forces – will this mean that armed forces will be less disciplined and therefore less cohesive going forward? This is a significant issue for me as the Commander of the New Zealand Defence Force.

What lessons have been learned by military commanders from the Chilcot report? What would and should militaries do differently in terms of advising governments?

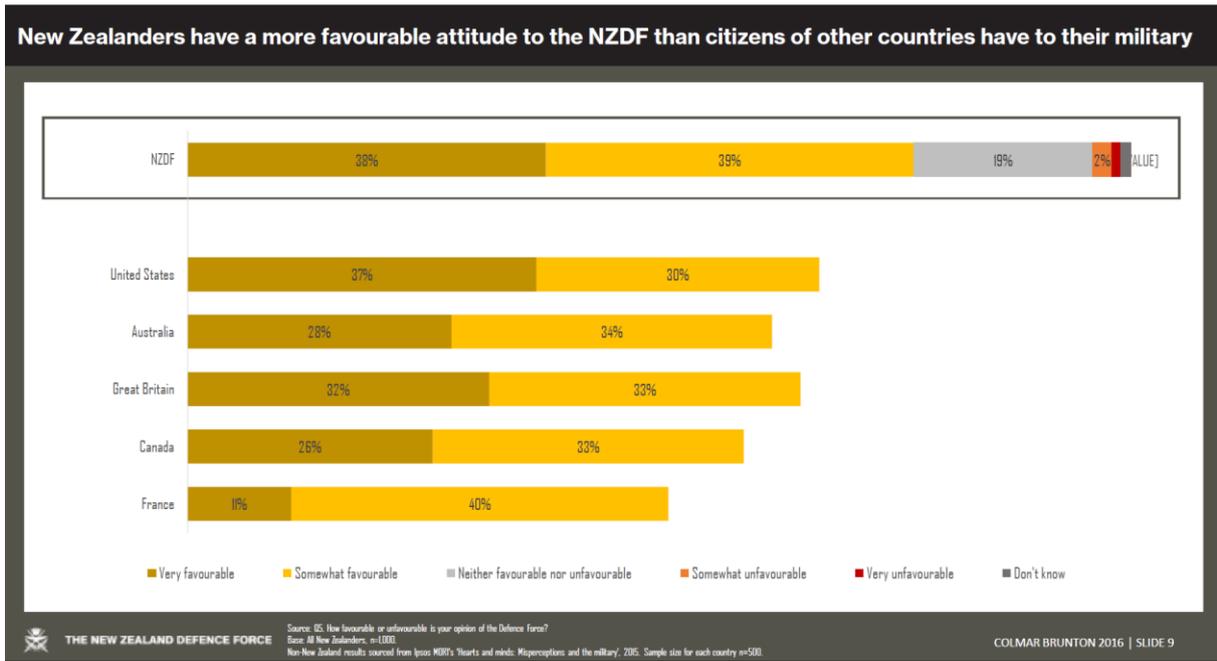
I place such issues openly before you.

I look forward to the contributions of all our speakers and panellists. But this is a 'Workshop'... and as they say, there is no such thing as a free lunch.

So I thank you all in advance for your consideration of these important issues, and your input to today's discussion.

Ka-roee E nui aku korero (I have said enough!)
No reira, Tena koutou, Tena koutou, Tena tatou katoa.

Public Perception Results referred to in the above speech.



Transparency International Results referred to in the above speech.

