

Command responsibility: International and Australian perspectives

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This article is about command responsibility and explains the current test for the criminal liability of commanders in the Rome Statute of the International Criminal Court. With a view of the historical development of command responsibility, comment is made as to the extent that the current test is an appropriate standard. This article also describes the Australian perspective on command responsibility, and how this concept has been enacted into Australian domestic law.

From the earliest moments the operation went awry. The soldiers, with some notable exceptions, did their best. But ill-prepared and rudderless, they fell inevitably into the mire that became the Somalia debacle. As a result a proud legacy was dishonoured.

Systems broke down and organizational discipline crumbled. Such systemic or institutional faults cannot be divorced from leadership responsibility, and the leadership errors in the Somalia mission were manifold and fundamental: the systems in place were inadequate and deeply flawed; practices that fuelled rampant careerism and placed individual ambition ahead of the needs of the mission had become entrenched; the oversight and supervision of crucial areas of responsibility were deeply flawed and characterized by the most superficial of assessments; even when troubling events and disturbing accounts of indiscipline and thuggery were known, there was disturbing inaction and the actions that were taken exacerbated and deepened the problems; planning, training and overall preparations fell far short of what was required; subordinates were held to standards of accountability by which many of those above were not prepared to abide. Our soldiers searched, often in vain, for leadership and inspiration.¹

INTRODUCTION

This article uses the term “command responsibility” to describe the liability of commanders in a military context. It is recognised that “superior responsibility” is a broader term that extends the scope of the criminal liability to cover civilians as well,² however this article will utilise the common nomenclature of command responsibility to cover both military and civilians. This article examines how the concept of command responsibility has been viewed by select war crimes trials since World War II. “Dishonoured Legacy” has described how the responsibility of commanders is one which, if neglected, can give rise to the most terrible crimes of humanity. In the above case, apart from the torture and death of civilians, the result was that 2 Commando of the Canadian Airborne Regiment was disbanded despite its long and proud history, inter alia, due to the failure of command and discipline.

This article will explain the current test for the criminal liability of commanders in the *Rome Statute* of the International Criminal Court (ICC). With a view of the historical development of

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¹ *Dishonoured Legacy: 2 Commando of the Canadian Airborne Regiment in Somalia*, Report of the Somalia Commission of Inquiry, Executive Summary, p 1 at <http://www.forces.gc.ca/somalia/vol0/v0s1e.htm> viewed on 8 September 2004.

² Ambros K, “Superior Responsibility” in Cassese A, Gaeta P and Jones JRWD (eds), *The Rome Statute of the International Criminal Court: A Commentary* (2002) Vol 1, p 824.